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AT THE INTERSECTION OF ENVIRONMENTAL JUSTICE AND SUSTAINABILITY LIES A MORE EQUITABLE, HEALTHY FUTURE FOR U.S. COMMUNITIES

Alexandra Dapolito Dunn*

I. INTRODUCTION

When major societal movements come together, the result is progress, learning, and significant change. The movements at focus in this Article are first, environmental justice, which grew out of the civil rights movement in the late 1960s¹ and which is, at this moment, at its peak of influence over federal, state, and local policy.² Second, the sustainability movement, which can be traced, for contemporary purposes, to the United Nations Conference on the Human Environment in Stockholm, Sweden,³ and which today is affecting international, national, and local decisions regarding land use, waste management, and corporate operations.⁴ As the environmental justice and sustainability movements converge, opportunities present themselves to policy makers, the judiciary, governments, non-governmental organizations (“NGOs”), and lawyers in private practice—to name a few—to make decisions and to offer counsel that advance equity and justice in how we treat and work with communities overburdened by pollution and in how we choose to use our country’s natural resources.

This Article offers a brief and recent history of the environmental justice and sustainability movements, with a decidedly U.S. focused approach necessary due to the breadth of the subject matter. This Article then offers examples of how the movements are coming together, in U.S. federal and state law and policy, judicial decisions, and in community applications. This Article then shows how

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¹ See *Environmental Justice Timeline*, ENV’T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/environmental-justice-timeline> (June 27, 2023) (referring to the February 1969 Memphis, Tennessee sanitation strike as “the first time African Americans mobilized a national, broad-based group to oppose environmental injustices.”).

² See Josh Boak & Drew Costley, *Biden Signs Order Prioritizing ‘Environmental Justice’*, AP NEWS (Apr. 21, 2023, 2:18 PM), <https://apnews.com/article/biden-environmental-justice-pollution-white-house-0e7be502f530b2eed4f45d6bd28b19fa> (The influence of environmental justice in 2023 can be seen in the Executive Orders signed by President Biden during his presidency, the most recent of which, is E.O. 14096 of Apr 21, 2023; upon its announcement the President reiterated that “[e]nvironmental justice will be the mission of the entire government woven directly into how we work with state, local, tribal and territorial governments.”).

³ *The Sustainability Movement is 50. Why Are World Leaders Ignoring it?*, NATURE (June 1, 2022), <https://www.nature.com/articles/d41586-022-01508-2> (“Fifty years ago, the United Nations held its Conference on the Human Environment in Stockholm. This landmark event gave the concept of sustainable development its first international recognition.”).

⁴ See *Fast Facts – What is Sustainable Development?*, U.N.: SUSTAINABLE DEV. GOALS (Aug. 8, 2023), <https://www.un.org/sustainabledevelopment/blog/2023/08/what-is-sustainable-development/> (“Where development is sustainable, everyone has access to decent work, quality health care and education. Natural resource use avoids pollution and permanent losses to the environment. Public policy choices ensure that no one is left behind due to disadvantages or discrimination.”).

the alignment of environmental justice and sustainability is serving to advance equity and a healthier future for many U.S. communities. This Article concludes that the continued intersection of these movements will serve to benefit our nation and its residents for years to come if we continue to exercise intentionality, and educate multiple stakeholders, including decision makers, on both movements and how they work together, as well as seek opportunities to lead through examples that present themselves to us all.

II. A BRIEF AND RECENT HISTORY OF THE U.S. ENVIRONMENTAL JUSTICE AND SUSTAINABILITY MOVEMENTS

The environmental justice and sustainability movements have grown in broad strokes at the federal, state, and local levels. Most striking is the evolution and advancement of environmental justice and sustainability policy, programs, and resources at the state and local levels, which sometimes exceed the federal precedent. A frame of reference for the evolution of these initiatives is helpful for understanding how they align and amplify one another.

A. Environmental Justice

1. Federal Focus

Environmental justice has deep roots in the civil rights movement and in key studies connecting low-income communities and communities of color to proximity to industrial facilities.⁵ Communities have brought legal actions and raised environmental justice issues to local, state, and federal officials for decades. While there is no federal environmental justice law, yet⁶ the civil rights laws,⁷ environmental protection laws,⁸ and local zoning laws dictating where industrial

⁵ See U.S. GEN. ACCT. OFF., SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES app. 4 (1983); see generally UNITED CHURCH OF CHRIST COMM'N ON RACIAL JUST., TOXIC WASTES AND RACE IN THE UNITED STATES (1987).

⁶ The "EJ for All" Act is introduced regularly in the U.S. House of Representatives and the U.S. Senate each year but has yet to pass. See, e.g., RAUL M. GRIJALVA & BARBARA LEE, A. DONALD MCEACHIN ENVIRONMENTAL JUSTICE FOR ALL ACT (Mar. 2023), https://democrats-naturalresources.house.gov/imo/media/doc/2023.03%20Fact%20Sheet_EJ%20for%20All%20Act.pdf; Booker, Grivalja, Lee, Duckworth Introduce the A. Donald McEachin Environmental Justice for All Act, CORY BOOKER (Mar. 22, 2023), <https://www.booker.senate.gov/news/press/booker-grijalva-lee-duckworth-introduce-the-a-donald-mceachin-environmental-justice-for-all-act>.

⁷ Civil Rights Act of 1964, 42 U.S.C. § 2000d (prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance).

⁸ See generally Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (2023); Clean Air Act, 42 U.S.C. §§ 7401-7671q (2023); Resource Conservation and Recovery Act, 42 U.S.C. § 6901 (2023).

activities may be conducted,⁹ are used to advance environmental justice principles articulated in policy documents, speeches, and executive orders.

Following scientific studies which documented that communities of color were statistically more likely to be exposed to industrial facilities and by extension greater environmental stressors,¹⁰ President Clinton, in 1994, signed the first executive order on environmental justice. The order required all federal agencies to take proactive steps in this space, and every Administration since has kept the order in place,¹¹ making it foundational to the U.S. federal government's approach to environmental justice.

President Biden came to office in 2021 with a highly proactive plan for advancing environmental justice. This proactivity came as no surprise, as environmental justice was a significant campaign issue, and many environmental justice communities expected tangible results from the Biden Administration, hoping to would make up for what was largely viewed as years of only modest attention to the issues of concern to overburdened communities.¹² The President signed two "day one" Executive Orders on environmental justice, prioritizing the issue and connecting it with climate change.¹³ Flowing from these actions were the development of the Justice40 initiative, to ensure that 40% of the benefits of federal environmental programs are directed to disadvantaged communities; the creation of the White House Environmental Justice Advisory Council;¹⁴ and the directive to create the Climate and Economic Justice Screening Tool ("CEJST").¹⁵ In 2023, the President signed a third environmental justice focused Executive Order which contains the broadest definition of environmental justice at the federal level to date. This order added disability, climate, and a paragraph on systemic

⁹ See generally *Manufacturing Districts: Overview*, NYC PLAN., <https://www.nyc.gov/site/planning/zoning/districts-tools/mfg-districts.page> (last visited Dec. 14, 2023); *Cleveland Zoning Code*, CLEVELAND CITY PLAN. COMM'N, <https://planning.clevelandohio.gov/zoning/index.php> (last visited Dec. 14, 2023); *Zoning Division*, FLA.: ORANGE CNTY. GOV'T, <https://www.orangecountyfl.net/PermitsLicenses/ZoningDivision.aspx> (last visited Dec. 14, 2023).

¹⁰ See U.S. GEN. ACCT. OFF., *supra* note 5; UNITED CHURCH OF CHRIST COMM'N ON RACIAL JUST., *supra* note 5; see generally Robert D. Bullard et al., *Toxic Wastes and Race at Twenty: Why Race Still Matters After all of These Years*, 38 ENV'T L. 2, 371 (2008).

¹¹ Exec. Order No. 12,898, 59 FR 7629 (1994).

¹² See Kristoffer Tigue et. al., *Activists See Biden's Day One Focus on Environmental Justice as a Critical Campaign Promise Kept*, INSIDE CLIMATE NEWS (Jan. 24, 2021), <https://insideclimatenews.org/news/24012021/activists-see-bidens-day-one-focus-on-environmental-justice-as-a-critical-campaign-promise-kept/> (providing an environmental justice leader's perspective on how candidate Joe Biden announced the creation of a joint task force to shape climate change policy and talked meaningfully about environmental justice).

¹³ Exec. Order No. 14,008, 86 FR 7619 (2021) (containing significant sections on environmental justice and connecting the issue to climate change and sustainability); Exec. Order No. 13,985, 86 FR 7009 (2021) (establishing a "whole of government approach" to "pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.").

¹⁴ *White House Environmental Justice Advisory Council*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council> (last visited Dec. 14, 2023).

¹⁵ *Climate and Economic Justice Screening Tool*, COUNCIL ON ENV'T QUALITY, <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5> (last visited Dec. 14, 2023).

barriers that will set a new table for environmental justice conversations for years to come.¹⁶

Under the Biden Administration, environmental justice has taken the form of, in overburdened communities, increased pollution monitoring, the prioritization of enforcement cases against environmental violators, and using technology to identify pollution “hot spots.” U.S. Department of Justice (“DOJ”) complaints and investigations involving communities with environmental justice concerns now more frequently contain a compelling narrative about the economic and racial composition of the affected community, and the Civil Rights Act’s enforcement powers are more intentionally being directed to address environmental justice allegations.¹⁷ The DOJ and the Environmental Protection Agency (“EPA” or “Agency”) have issued environmental justice progress¹⁸ and accomplishments reports holding themselves publicly accountable for advancements. The EPA has taken many tangible steps to advance legal support for considering environmental justice in decision making through an updated Legal Tools document¹⁹ with a legal addendum on consideration of cumulative impacts,²⁰ and additionally, the Agency took comment on cumulative risk assessment approaches and guidance, and updating its 2016 guidance on incorporating environmental justice considerations into regulatory development.²¹

¹⁶ Exec. Order No. 14,096, 88 FR 25251 (2023).

¹⁷ See e.g., *United States Files Complaint and Reaches Agreement on Stipulation with Limetree Bay Terminals LLC and Limetree Bay Refining LLC Relating to Petroleum Refinery in St. Croix, U.S. Virgin Islands*, U.S. DEP’T OF JUST. OFF. OF PUB. AFF. (Jul. 12, 2021), <https://www.justice.gov/opa/pr/united-states-files-complaint-and-reaches-agreement-stipulation-limetree-bay-terminals-llc> (complaint contains extensive narrative regarding the demographics and long-term environmental stressors on minority residents, while focusing on substantive violations of the Clean Air Act); see also INTERIM RESOLUTION AGREEMENT BETWEEN THE U.S. DEPARTMENT OF JUSTICE AND THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE ALABAMA DEPARTMENT OF PUBLIC HEALTH (2023) (“ADPH”), <https://www.justice.gov/opa/press-release/file/1582566/dl?inline> (investigation using Title VI of the Civil Rights Act and accompanied by press announcements stating “that despite ADPH’s awareness of the issues and the disproportionate burden and impact placed on Black residents in Lowndes County, it failed to take meaningful actions to remedy these conditions”).

¹⁸ See generally U.S. ENV’T PROT. AGENCY, ENVIRONMENTAL JUSTICE AND EXTERNAL CIVIL RIGHTS IMPLEMENTATION PLAN (2023), <https://www.epa.gov/system/files/documents/2023-08/FY%202023%20Summary%20of%20the%20Environmental%20Justice%20and%20External%20Civil%20Rights%20Implementation%20Plans.pdf> (EPA’s FY 2023 environmental justice implementation plan); U.S. DEP’T OF JUST., ENV’T & NAT. RES. DIV. COMPREHENSIVE ENVIRONMENTAL JUSTICE ENFORCEMENT STRATEGY ANNUAL REPORT (2023), <https://www.justice.gov/d9/2023-10/comprehensive-environmental-justice-enforcement-strategy-annual-report.pdf> (DOJ’s October 2023 first annual environmental justice progress report).

¹⁹ See generally U.S. ENV’T PROT. AGENCY, EPA LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE (May 2022), <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf>

²⁰ See generally U.S. ENV’T PROT. AGENCY, EPA LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE: CUMULATIVE IMPACTS ADDENDUM (Jan. 2023), <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>.

²¹ Public Comment on the Cumulative Risk Assessment Guidelines Planning and Problem Formulation, 88 Fed. Reg. 39424 (June 16, 2023) (initial comment period); Public Comment on the

Demonstrating further tangible results, EPA's 2023 Enforcement and Compliance Annual Results highlighted increases in criminal investigations, civil settlement conclusions, and on-site inspection at facilities, particularly in EJ areas.²²

2. State and Local Focus

In many cases, states are advancing environmental justice alongside, and even more aggressively, than the federal government. Consider Colorado's environmental justice law, which begins with a compelling preamble that highlights the long legacy of discrimination, geographic redlining, and the systemic isolation of communities of color.²³ New Jersey, in comparison, has one of the most heralded laws in the nation as it resulted in a statewide map of overburdened communities and a process for declining siting for certain industrial facilities under key conditions in those areas.²⁴ Similarly, New York adopted an environmental justice law which is in the early stages of implementation.²⁵ California has one of the only tools in the nation that allows an assessment of cumulative impacts of multiple stressors on environmental justice communities.²⁶ Recent resources provide comprehensive inventories of state programs demonstrating their depth and effectiveness at advancing community opportunities to protect against further pollution impacts and to increase business consideration of community impacts.²⁷

Finally, several major U.S. cities have developed progressive environmental justice programs and analytical tools, demonstrating the importance

Cumulative Risk Assessment Guidelines for Planning and Problem Formulation; Extension of the Comment Period, 88 FR 55036 (Aug. 14, 2023) (comment period extension); Public Comment on the Revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, 88 Fed. Reg. 78358 (Nov. 15, 2023), Extension of Comment Period, 88 Fed. Reg. 89687 (Dec. 28, 2023) (comment period extension).

²² *Enforcement and Compliance Annual Results for Fiscal Year 2023*, ENV'T PROT. AGENCY (Dec. 18, 2023), <https://www.epa.gov/enforcement/enforcement-and-compliance-annual-results-fiscal-year-2023>.

²³ H.B. 21-1266, 2021 Gen. Assemb., Reg. Sess. (Colo. 2021), https://leg.colorado.gov/sites/default/files/2021a_1266_signed.pdf.

²⁴ N.J. STAT. ANN. § 13:1D-157 (2020), <https://dep.nj.gov/wp-content/uploads/ej/docs/ej-law.pdf> (New Jersey's statute); *Overburdened Communities*, N.J. DEP'T OF ENV'T PROT., <https://dep.nj.gov/ej/communities/> (Oct. 12, 2023) (overburdened community maps).

²⁵ S.B. S8830, 2021-2022 Leg. (N.Y. 2022), https://www.nysenate.gov/legislation/bills/2021/S8830?utm_source=ny_state_senate&utm_medium=email&utm_campaign=subscriptions&utm_content=SIGNED_BY_GOV.

²⁶ *CalEnviroScreen*, CAL. OFF. OF ENV'T HEALTH HAZARD ASSESSMENT (May 1, 2023), <https://oehha.ca.gov/calenviroscreen>.

²⁷ *Environmental Justice State by State*, VT. LAW SCHOOL ENVTL. JUST. CLINIC, <https://ejstatebystate.org/> (last visited Feb. 5, 2024) (site created by several academic institutions released in 2023 that creates an environmental justice profile for each state, and contains links to statutes and programs, and resources); PAULINA LOPEZ-SANTOS & MIRANDA CHIEN-HALE, ENV'T COUNCIL OF THE STATES, *STATE STRIDES ON ENVIRONMENTAL JUSTICE & TITLE VI OF THE CIVIL RIGHTS ACT 9* (Dec. 2022), <https://www.ecos.org/wp-content/uploads/2022/12/2022-ECOS-Green>.

of local government in responding to community concerns. For example, Minneapolis-St. Paul has a mapping tool that can assist in evaluating environmental impacts.²⁸ New York City passed a law that prioritizes the consideration of environmental justice in City decision-making. The City also makes comprehensive resources available to community members, has an advisory board, and issues regular environmental justice reports.²⁹ Cities like Baltimore, Los Angeles, Cincinnati, Austin, and others have created green zones, have adopted explicit policies supporting proactive consideration of environmental justice, and have aligned their zoning policies to advance community health.³⁰

B. Sustainability

1. Federal Focus

Sustainability in the United States has a long history by some accounts, and due to its depth, this Article focuses on more recent developments.³¹ One of those developments is Rachel Carson's 1962 publication of *Silent Spring*, regarded by many as a galvanizing moment that highlighted how human actions and modern industrialization and use of chemicals could permanently imperil our relationship with the planet.³² The 1972 Stockholm United Nations Conference on the Environment is recognized as the first global conference with the environment front and center, where attending nations adopted a declaration and principles,³³ and the nations later created the United Nations Environment Programme.³⁴ With

Report-State-Strides-on-EJ-Title-VI.pdf (Environmental Council of States Green Report on state environmental justice dialogues).

²⁸ *Twin Cities Environmental Justice*, CTR. FOR EARTH, ENERGY & DEMOCRACY, <https://ceed.org/resource/twin-cities-environmental-justice/> (last visited Feb. 5, 2024).

²⁹ Local law 64 of 2017; *Environmental Justice*, NYC MAYOR'S OFF. OF CLIMATE & ENV'T JUST., <https://climate.cityofnewyork.us/topic/environmental-justice/> (last visited Feb. 5, 2023) (hereinafter NYC MAYOR'S OFF.).

³⁰ *Environmental Justice in Your City*, ENV'T L. INST. (Dec. 11, 2019), <https://www.eli.org/vibrant-environment-blog/environmental-justice-your-city>; ANA ISABEL BAPTISTA, TISHMAN ENV'T AND DESIGN CTR., LOCAL POLICIES FOR ENVIRONMENTAL JUSTICE: A NATIONAL SCAN 24 (Feb. 2019), <https://www.nrdc.org/sites/default/files/local-policies-environmental-justice-national-scan-tishman-201902.pdf>.

³¹ See NATIONAL RESEARCH COUNCIL, SUSTAINABILITY AND THE U.S. EPA 15-34 (2011) (National Academies Chapter 2, which provides a history of U.S. the sustainability movement, citing early leading thinkers on the importance of considering deeply the human interaction with the environment (Marsh, 1864; Roosevelt, 1907), to more recent developments such as the enactment of the National Environmental Policy Act (NEPA) in 1969 and formal endorsement by the U.S. in 1992).

³² INT'L INST. FOR SUSTAINABLE DEV., SUSTAINABLE DEVELOPMENT TIMELINE 1 (2012), https://www.iisd.org/system/files/publications/sd_timeline_2012.pdf.

³³ United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm, UNITED NATIONS, <https://www.un.org/en/conferences/environment/stockholm1972>; UNITED NATIONS, REPORT OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT 3-28 (1973), <https://digitallibrary.un.org/record/523249?ln=en> (report of the Conference containing the Declaration, Principles, and action items).

³⁴ UNEP: 50 years of Environmental Milestones, UN ENV'T PROGRAMME, <https://www.unep.org/environmental-moments-unep50-timeline> (last visited Feb. 5, 2024).

the creation of the EPA and the passage of major protective statutes for air, water, land, and species, for example, the terms sustainable development³⁵ and sustainability—endorsed³⁶ in the National Environmental Policy Act of 1969—became more common domestic parlance.

Following this beginning, today the United States has deeply advanced its consideration of sustainability in federal government operations,³⁷ and the private sector demonstrates a deep commitment to sustainable goals in operations.³⁸ President Biden took a key year one action when he signed Executive Order 14057, focusing on advancing clean energy business and jobs through sustainability at the federal level.³⁹ The order advances a zero carbon electric sector by 2035 and economy-wide net zero emissions by 2050.⁴⁰ Like with environmental justice, Executive Order 14057 takes a “whole of government” approach to “demonstrate how innovation and environmental stewardship can protect our planet, safeguard Federal investments against the effects of climate change, respond to the needs of all of America’s communities, and expand American technologies, industries, and jobs.”⁴¹

The EPA is not the only federal agency with clear sustainability commitments, and a complete inventory across the federal government is beyond the scope of this Article. However, relevant examples can be found by reviewing the U.S. Department of Energy’s Sustainability Performance Office⁴² which profiles leading programs, awards, and scorecards in this arena, and states that “[s]ustainability is crucial to increasing the efficiency of the U.S. Department of

³⁵ The 1987 Brundtland Report—Our Common Future—is associated with popularizing the term “sustainable development.” INT’L INST. FOR SUSTAINABLE DEVE., *supra* note 32; 1987: *Brundtland Report*, FED. OFF. FOR SPATIAL DEV., <https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html> (last visited Feb. 5, 2024).

³⁶ *Learn about sustainability*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/sustainability/learn-about-sustainability#what> (Oct. 16, 2023) (EPA states that NEPA “committed the United States to sustainability, declaring it a national policy ‘to create and maintain conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations.’”).

³⁷ See, e.g., *Federal Sustainability Plan*, OFF. FED. CHIEF SUSTAINABILITY OFFICER, <https://www.sustainability.gov/federaalsustainabilityplan/> (last visited Feb. 5, 2024) (outlining a federal sustainability plan); see also *Sustainability*, OPM, <https://www.opm.gov/sustainability/> (last visited Mar. 3, 2024) (noting the federal government is the largest employer in the nation and the federal government’s opportunity to influence sustainability policy).

³⁸ See, e.g., Megha Sharma, *Ten of the most sustainable companies to watch out for in 2023*, CEO MAG., <https://www.theceomagazine.com/business/news/sustainable-companies-2/> (last visited Feb. 5, 2024) (citing the most sustainable private companies in the nation in 2023).

³⁹ Exec. Order No. 14,057, 86 Fed. Reg. 236 (Dec. 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-13/pdf/2021-27114.pdf>.

⁴⁰ *Id.* at 70,935.

⁴¹ *Sustainability*, FEDCENTER, <https://www.fedcenter.gov/programs/sustainability/> (Sept. 20, 2023). FedCenter.gov is “the Federal government’s home for comprehensive environmental stewardship and compliance assistance information for Federal facility managers and their agencies.” The sustainability page of FedCenter.gov inventories all the policies, regulations, and programs of the federal government in one resource area.

⁴² See *About SPO*, U.S. DEPT. OF ENERGY, <https://www.energy.gov/management/osp/sustainability-performance-office> (last visited Feb. 5, 2024).

Energy’s (“DOE”) facilities and infrastructure, enhancing livability for the scientists and employees at the sites, improving performance for the taxpayer, and supporting the communities in which we live and work.”⁴³ The U.S. Department of the Interior produced a sustainability plan⁴⁴ consistent with Executive Order 14057 and “supports the implementation of proactive sustainable and environmental practices in order to carry out its mission to protect and manage the nation’s natural resources and cultural heritage.”⁴⁵ A further example can be found within the U.S. Department of Agriculture, which “is committed to working with partners and stakeholders toward the sustainability of diverse agricultural and food systems, where the sustainability of a system is judged by its success in advancing objectives related to the social, economic, and environmental dimensions of sustainability.”⁴⁶

At the White House level, the Council on Environmental Quality (“CEQ”) houses a Chief Sustainability Officer for the federal government and recognizes sustainability progress across the federal family.⁴⁷ CEQ truly captures the sustainability leadership potential that lies in the federal government given that it “sustainably manag[es] its footprint of over 300,000 buildings, over 600,000 vehicles, and \$650 billion spent annually on goods and services.”⁴⁸

2. State and Local Focus

Like environmental justice, state governments are also advancing sustainability. For example, many states have “mini NEPAs”⁴⁹ which make a commitment to sustainable actions in state decision making much like the federal law. California’s Environmental Quality Act (“CEQA”) “establishes a state policy of sustainability: to ‘create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.’”⁵⁰ California describes how the Attorney General has an important role in implementing CEQA using language proximate to environmental justice—in that they “focus[] on the need to address those impacts that affect our most vulnerable residents – children, the elderly, and people who already are bearing an unfair share of pollution and those impacts that will be

⁴³ *Id.*

⁴⁴ See generally U.S. DEPT. OF THE INTERIOR, 2022 SUSTAINABILITY PLAN (2022), <https://www.sustainability.gov/pdfs/doi-2022-sustainability-plan.pdf>.

⁴⁵ *Sustainability*, U.S. DEPT. OF THE INTERIOR, <https://www.doi.gov/oepe/sustainability> (last visited Feb. 6, 2024).

⁴⁶ *Sustainability*, U.S. DEPT. OF AGRIC., <https://www.usda.gov/oce/sustainability> (last visited Feb. 6, 2024).

⁴⁷ See *Welcome*, OFF. OF THE FED. CHIEF SUSTAINABILITY OFFICER, <https://www.sustainability.gov/> (last visited Feb. 6, 2024).

⁴⁸ *About the Office of the Federal Chief Sustainability Officer*, OFF. OF THE FED. CHIEF SUSTAINABILITY OFFICER, <https://www.sustainability.gov/about.html> (last visited Feb. 6, 2024).

⁴⁹ See *State Environmental Policy Acts*, BALLOTPEDIA, https://ballotpedia.org/State_environmental_policy_acts (last visited Feb. 6, 2024).

⁵⁰ *California Environmental Quality Act (CEQA)*, CAL. DEPT. OF JUST., <https://oag.ca.gov/environment/ceqa> (last visited Feb. 6, 2024).

particularly felt by our children and grandchildren.”⁵¹

Like the federal government, many states have adopted zero carbon or zero impact energy laws and executive orders, also designed to advance sustainability, such as Rhode Island.⁵² Other states have specific sustainability acts, such as Oregon, which defines sustainability as “using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs from the joint perspective of environmental, economic and community objectives.”⁵³

Where states stand on sustainability is important to the public and business communities, so much so that they are ranked on their policies by the news media.⁵⁴ Factors making a state more or less sustainable include solar deployment, water consumption, and electric car inventory.⁵⁵ Notably, at least one ranking group makes a connection between sustainability and environmental justice by including social justice and access to green space as a scoring category.⁵⁶

Several localities are not far behind the federal government and states in their sustainability policies. Cities such as San Jose, Seattle, Honolulu, San Diego, St. Paul, and Boston are recognized by one major environmental organization for their leading edge approaches to job creation, building codes, electric vehicle ordinances, congestion based transportation pricing, and climate impact reduction goals.⁵⁷ Cities like Pittsburgh, Seattle, Atlanta, Boston, and San Francisco are recognized by a global engineering firm for their leadership in connectivity, ease of doing business, green finance, economic development, and job quality.⁵⁸ These cities are often called out as better for business and more popular for tourism due to their green policies. However, it is important to note that more analysis is being conducted to assess whether a greener city is a more expensive city in which to live and work, potentially advancing inequity and undermining environmental

⁵¹ *Id.*

⁵² *2021 Act on Climate*, R.I. CLIMATE CHANGE, <https://climatechange.ri.gov/act-climate> (last visited Feb. 6, 2024) (Rhode Island’s 2021 Act on Climate).

⁵³ OR. REV. STAT. § 184.421 (2021).

⁵⁴ Ana Durrani, *Sustainability Index: Ranking the States On Their Sustainability Efforts*, FORBES HOME (Aug. 21, 2023), <https://www.forbes.com/home-improvement/features/sustainability-index-by-state/>.

⁵⁵ *Id.*; see also Nick Robertson, *Here are Most and Least Environmentally Friendly States*, HILL (Apr. 22, 2023), <https://thehill.com/changing-america/3964275-here-are-most-and-least-environmentally-friendly-states/> (assessing state eco-friendly scores, including commute times); John S. Kiernan, *Greenest States*, WALLETHUB (Apr. 12, 2023), <https://wallethub.com/edu/greenest-states/11987> (assessing environmental conditions, eco-friendly behaviors, and climate change); *The Greenest States in America*, MPH ONLINE, <https://www.mphonline.org/green-states/> (last visited Feb. 6, 2024).

⁵⁶ *The Greenest States in America*, *supra* note 55 (assessing green space protection, waste diversion, and social justice/access to the outdoors).

⁵⁷ *Sustainable Cities*, NRDC, <https://www.nrdc.org/issues/sustainable-cities#solutions> (last visited Feb. 6, 2024).

⁵⁸ ARCADIS, *The ARCADIS SUSTAINABLE CITIES INDEX 2022* 4 (2022), https://images.connect.arcadis.com/Web/Arcadis/%7Be08e5cda-768d-46a3-91ce-4efe16cbfc05%7D_The_Arcadis_Sustainable_Cities_Index_2022_Report.pdf.

justice goals.⁵⁹ A worthy goal for the U.S. related to the advancement of sustainability policies is to ensure that a green and sustainable life is not mutually exclusive from an affordable life for families of more limited means.

III. THE INTERSECTION OF THE ENVIRONMENTAL JUSTICE AND SUSTAINABILITY MOVEMENTS: U.S. COMMUNITY EXAMPLES

A key element of both environmental justice and sustainability is consideration of the impact of human activity on the landscape and its people. Environmental justice places emphasis on equity and fairness for overburdened communities, procedural rights to participate in decision making, and penultimately mitigating the impact of industrial activity to improve their day-to-day health and quality of life. Sustainability emphasizes the environmental impacts of industrial activity on the land, water, and air and on balanced use of natural resources to create livable and healthy communities. Where the prime focus of environmental justice is impact on overburdened communities, the prime focus of sustainability is impact on the resources. The two movements overlap significantly, however, as both seek to create healthier and livable communities, with access to outdoor space, necessities such as healthy food and water, and economic opportunity such as jobs and education.

The EPA connects the environmental justice and sustainability movements clearly in its discussion of “environmental justice as a planning issue as first articulated by “delegates who attended the First National People of Color Environmental Leadership Summit in 1991.”⁶⁰ The Agency offers comprehensive resources on “equitable development” and notes that environmental justice leaders, for decades, have been connecting together the importance of sustainable community development and environmental justice, recognizing that the two must be considered together to create fair and sustainable results on the ground where people live, work, and play.⁶¹ The National Environmental Justice Advisory Committee (“NEJAC”), as early as 1996, issued a report on brownfields—which are redeveloped and remediated land parcels which are put to beneficial reuse—and sustainable outcomes in a seminal report.⁶² The NEJAC found that “[a]t the core of an environmental justice perspective is recognition of the interconnectedness of the physical environment to the overall economic, social, human, and cultural/spiritual health of a community.”⁶³

⁵⁹ Terry F. Yosie, *Why Sustainable Cities are Hitting a Wall*, GREEN BIZ (Nov. 29, 2021), <https://www.greenbiz.com/article/why-sustainable-cities-are-hitting-wall>.

⁶⁰ *Equitable Development and Environmental Justice*, U.S. ENV'T PROT. AGENCY (Aug. 30, 2023), <https://www.epa.gov/environmentaljustice/equitable-development-and-environmental-justice>.

⁶¹ *Id.* (“Lower-income citizens and people of color are successfully guiding the changes that occur within their communities rather than reacting to them. This unique narrative is often missing from prevailing planning, design, and place-based discussions. EPA sees value in elevating this narrative because it draws attention to solutions from environmental justice actions.”).

⁶² U.S. ENV'T PROT. AGENCY, ENVIRONMENTAL JUSTICE, URBAN REVITALIZATION, AND BROWNFIELDS: THE SEARCH FOR AUTHENTIC SIGNS OF HOPE 1 (1996), <https://www.epa.gov/sites/default/files/2015-02/documents/public-dialogue-brownfields-1296.pdf>.

⁶³ *Id.* at es-ii.

Several communities serve as examples of the intersection of environmental justice and sustainability principles, and particularly the influence of community voices in advancing land use decisions, cleanup goals, and community justice and equity. The EPA features the ReGenesis Project in Spartanburg, South Carolina; the Fruitvale Transit Village in Oakland, California; and the Westside Specific Plan in National City, California as examples of sustainable, community informed, and equitable projects that, at their heart, blend environmental justice with sustainable development areas.⁶⁴

Other examples of integrating environmental justice and sustainability together include the redevelopment of the Wells G and H superfund site in Woburn, Massachusetts into a mixed use residential and commercial area with access to public transportation.⁶⁵ A 2010 report by a working group of environmental justice and community leaders lists projects knitting environmental justice and sustainability together such as via a sustainable transit solution in Los Angeles, California; transformation from a coal to a green economy in Harlan County, Kentucky; a site cleanup in Little Village near Chicago, Illinois; green and affordable worker housing in Miami, Florida; and clean buses in New York City, New York.⁶⁶ A 2006 EPA report highlights sustainability and environmental justice case studies including an Indochinese Cultural and Service Center in Tacoma, Washington; work to advance “Pacoima Beautiful” in Pacoima, California; the West End Revitalization Association in Mebane, North Carolina; the voices of the Anahola Homesteaders Council (“AHC”) in Anahola, Hawaii; and walkable roads in Brooklyn, New York.⁶⁷

What these case studies reveal is that with intentionality and community empowerment, for decades the U.S. environmental justice and sustainability movements have been aligning to create powerful, impactful, changed communities across the nation. The reports compiling these examples all emphasize that early community engagement, listening, planning, and discussion are essential to a successful project.⁶⁸ Successful projects are able to describe the environmental or public health concern early, and the issue to be addressed and public health outcomes were described with clarity. Such projects also have clear

⁶⁴ *Equitable Development and Environmental Justice*, *supra* note 60 (The “ReGenesis Project easily reveals the connections between land use, environmental justice, and sustainability;” the Fruitvale project “reveals the key to creating truly sustainable communities is to be pliable,” and the Westside Specific Plan “is the outcome of collaboration among community, environmental and local government interests to create a successful neighborhood planning process.”).

⁶⁵ EPA SUPERFUND REDEVELOPMENT PROGRAM, SITE REDEVELOPMENT PROFILE: WELLS G&H SUPERFUND SITE 1 (Dec. 2021); *see also Proposed Settlement Reached for Soil, Sediment and Groundwater Cleanup at Wells G&H Superfund Site in Woburn, Mass.*, U.S. ENV’T PROT. AGENCY (July 14, 2020), <https://www.epa.gov/newsreleases/proposed-settlement-reached-soil-sediment-and-groundwater-cleanup-wells-gh-superfund> (indicating a further cleanup agreement in 2020 advanced public health and the environment for the surrounding community).

⁶⁶ WE ACT FOR ENVIRONMENTAL JUSTICE, ENVIRONMENTAL JUSTICE AND THE GREEN ECONOMY 3 (2010), https://www.weact.org/wp-content/uploads/2016/10/EJGE_Report_English.pdf.

⁶⁷ U.S. ENVIRONMENTAL PROTECTION AGENCY, CASE STUDIES FROM THE ENVIRONMENTAL JUSTICE COLLABORATIVE PROGRAM PROBLEM-SOLVING PROGRAM: MODELS FOR SUCCESS 13 (2008), <https://www.epa.gov/system/files/documents/2021-12/ejcps-case-studies.pdf>.

⁶⁸ *Id.* at 9 (listing factors for success).

goals and benchmarks for success, realistic approaches, and an understanding that changes would need to occur to achieve success. They also deploy a collaborative problem-solving approach to achieve sustainable and meaningful results.⁶⁹

IV. ALIGNMENT OF ENVIRONMENTAL JUSTICE AND SUSTAINABILITY CAN ADVANCE EQUITABLE AND HEALTHIER COMMUNITY OUTCOMES

As the foundational sections of this Article and the case studies demonstrate, aligning environmental justice and sustainability has multiple benefits for communities. The environmental justice movement is focused on overall community health in its broadest sense. The sustainability movement is focused on land use, compatibility of human settlements on the land, climate change, resilience, and creative mutually beneficial approaches to living and working in a geographic place with multiple stressors. The deep connection between these movements is not new, but depending on the researcher could be found to be either articulated with more clarity than ever before⁷⁰ or as an area that needs significant attention.⁷¹

The present evolution of the environmental justice movement to include a broad notion of community health to include air, water, and land quality; access to economic opportunities to advance household income; affordable housing; access to open space and nature; healthcare and educational facilities; and clean

⁶⁹ See *id.*; CAL. STATE LANDS COMM'N, ENVIRONMENTAL JUSTICE WORKING GROUP CASE STUDIES 3 (2018), <https://www.slc.ca.gov/wp-content/uploads/2018/07/EJWG-Case-Studies-FINAL.pdf> (California Environmental Justice Working Group Case Studies); CAL. STATE LANDS COMM'N, ENVIRONMENTAL JUSTICE WORKING GROUP RECOMMENDATIONS FOR THE STATE LANDS COMMISSION ENVIRONMENTAL JUSTICE POLICY UPDATE 8 (June 15, 2018), <https://www.slc.ca.gov/wp-content/uploads/2018/07/EJRecsSLCEJPolicy6-21-18.pdf> (California State Lands Commission Environmental Justice Working Group Report 2018). These California State Lands Commission reports are important because they delve particularly into the issues that are unique to Native American Tribes, environmental justice, and sustainable development in the areas of transportation, oil and gas, and public land use.

⁷⁰ See, e.g., Patricia E. Salkin et al., *Sustainability as a Means of Improving Environmental Justice*, 19 J. OF SUSTAINABILITY AND ENV'T L. 1, 13 (2012), <https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1667&context=scholarlyworks>; see also *The Connection Between Sustainable Development and Public Health*, VETERANS TODAY (Apr. 26, 2022), <https://www.veteranstodayarchives.com/2022/04/26/connection-sustainable-development-public-health/> (“Public health and sustainable development are closely connected. The effects of sustainable development on public health are relatively clear.”).

⁷¹ Susan S. Clark & Monica L. Miles, *Assessing the Integration of Environmental Justice and Sustainability in Practice: A Review of the Literature*, 13 MDPI 20 (2021), <https://www.mdpi.com/2071-1050/13/20/11238> (finding that “in general, our literature review revealed a wide range of how well EJ and sustainability concepts were integrated in academic scholarship. We found many case studies where equity and justice considerations were being considered explicitly in sustainable development projects or played a central or underlying component of the planning process. However, some of the studies only refer to EJ issues with brief mentions of sustainability and others are more heavily focused on sustainability related initiatives, with scant attention to EJ considerations.”)

transportation, is wholly aligned with the sustainability movement.⁷² In fact, the very broad definition of environmental justice adopted by President Biden in his 2023 Earth Day Executive Order further connects sustainability and environmental justice by adding to the definition of Environmental Justice references to climate change, the “cumulative impacts of environmental and other burdens,” “the legacy of racism or other structural or systemic barriers,” and the importance of having equitable access to an environment that supports “worship, and engage[ment] in cultural and subsistence practices.”⁷³ Similarly, major environmental organizations and non-governmental organizations also directly connect environmental justice and public health with climate change and resilience.⁷⁴ Experience shows that overburdened communities facing climate strain are more likely to have a difficult time rebounding from natural disasters such as hurricanes, flooding, heat, wildfires, and drought.⁷⁵ Notably, the previously cited DOJ Office of Environmental Justice also connects the stressors on overburdened communities with sustainability and the possibility of improved community health,⁷⁶ as do other federal agencies including the EPA⁷⁷ and the USDA.⁷⁸ When sustainability and

⁷² Live Well Arizona offers an exceptional diagram demonstrating a healthy and equitable community wheel which brings all these points together and shows how their integration advances overall community health and equity. *Who We Are*, LIVE WELL ARIZ., <https://livewellaz.org/who-we-are/> (last visited Feb. 6, 2024).

⁷³ Exec. Order No. 14,096, 88 FR 25251 (2023). The full definition in the Executive Order is that environmental justice is:

[T]he just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

Id.

⁷⁴ See, e.g., *What Environmental Justice Means – and Why it Matters*, GOLDMAN ENV'T PRIZE (Jan. 4, 2022), <https://www.goldmanprize.org/blog/what-environmental-justice-means-and-why-it-matters/> (connecting climate change and environmental justice); NYC MAYOR'S OFF., *supra* note 29 (connecting “climate justice” with the “recognition that it is these same historically overburdened communities that are most vulnerable to a rapidly changing climate”) (last visited Feb. 25, 2024).

⁷⁵ NYC MAYOR'S OFF., *supra* note 29 (“Disparities that are persistent in our society, from social, to economic and health inequities, can be exacerbated by impacts of climate change like extreme heat, flooding, and catastrophic weather events.”) (last visited Feb. 25, 2024).

⁷⁶ *Office of Environmental Justice*, U.S. DEP'T OF JUST., <https://www.justice.gov/oerj> (last visited Dec. 15, 2023) (“The mission of OEJ is to protect overburdened and underserved communities from the harm caused by environmental crimes, pollution, and climate change.”)

⁷⁷ *Equitable Development and Environmental Justice*, *supra* note 60.

⁷⁸ *Environmental Justice*, U.S. DEPT. OF AGRIC., <https://www.climatehubs.usda.gov/priorities/environmental-justice> (last visited Dec. 15, 2023) (Regional Climate Hub Program which “work[s] with many underserved or burdened communities throughout the U.S.” and “support communities by building resilience to extreme events and providing materials to help increase food security, support mental health and more.”)

environmental justice are brought together, the resilience, not only of the environment but of overburdened communities, can be proactively considered.⁷⁹ In short, consideration of sustainability can, and should, advance equity.⁸⁰

Sustainability is also focused on improving human health, as is environmental justice, and together, these movements can serve to reinforce one another. For example, the U.S. Centers for Disease Control's Healthy People 2030 Initiative connects the environment and health directly by setting as one of its goals the creation of "social, physical, and economic environments that promote attaining the full potential for health and well-being for all"⁸¹ and counting among its many measurement categories the number of days people are exposed to unhealthy air,⁸² reducing heat related deaths,⁸³ and reducing the amount of toxic pollutants released into the environment.⁸⁴ Significant research also connects sustainable development to advances in public health by looking at the beneficial effect of transportation options and increased physical human activity.⁸⁵

By connecting environmental justice with sustainability, and putting both movements front and center as communities address their futures, opportunities will present themselves for the U.S. to create and advance more equitable, livable, and holistic communities. Sustainability alone will achieve many important goals for our use of natural resources, land redevelopment, climate, and resilience. Environmental justice will achieve dramatic advances for overburdened

⁷⁹ *Research on Community Resilience to Climate Change*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/climate-research/research-community-resilience-climate-change> (last visited Dec. 15, 2023) (EPA outlines its research that "will assist all communities, and particularly those communities that are most vulnerable to climate change, including communities with environmental justice concerns and tribes").

⁸⁰ UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2011 19 (2011), https://www.undp.org/sites/g/files/zskgke326/files/migration/mk/HDR_2011_EN_Chapter1.pdf ("While we argue strongly for the need to consider sustainability and equity jointly, we do not claim that the two are the same. Sustainability is concerned with one type of equity—across people born in different times—as distinct from the distribution of outcomes, opportunities or capabilities today.").

⁸¹ *Healthy People 2030 Framework*, OFF. OF ASSISTANT SEC'Y FOR HEALTH, <https://health.gov/healthypeople/about/healthy-people-2030-framework> (last visited Dec. 15, 2023).

⁸² *Reduce the number of days people are exposed to unhealthy air – EH-01*, OFF. OF ASSISTANT SEC'Y FOR HEALTH, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/environmental-health/reduce-number-days-people-are-exposed-unhealthy-air-eh-01> (last visited Dec. 15, 2023).

⁸³ *Reduce Diseases and Deaths Related to Heat – EH-D02*, OFF. OF ASSISTANT SEC'Y FOR HEALTH, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/environmental-health/reduce-diseases-and-deaths-related-heat-eh-d02> (last visited Dec. 15, 2023).

⁸⁴ *Reduce the Amount of Toxic Pollutants Released into the Environment – EH-06*, OFF. OF ASSISTANT SEC'Y FOR HEALTH, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/environmental-health/reduce-amount-toxic-pollutants-released-environment-eh-06> (last visited Dec. 15, 2023).

⁸⁵ CHRISTINE COUSSENS & ERIN RUSCH, PUBLIC HEALTH LINKAGES WITH SUSTAINABILITY: WORKSHOP SUMMARY 9 (2013), <https://www.ncbi.nlm.nih.gov/books/NBK202304/> (noting that "[e]ncouraging green economy actions has the potential to avert a large proportion of chronic obstructive pulmonary disease due to smoke from indoor cookstoves (Wilkinson et al., 2009); reduce cardiovascular and respiratory disease from air pollution as private motorized transport is replaced by walking, cycling, and public transport (Boone-Heinonen et al., 2009); and improve health equity by lessening exposure to pollution and expanding access to clean air and water, nutritious food, and health care facilities (WHO, 2011b)").

populations seeking fairness, a voice in decision making, and an opportunity to influence how they and their children will live in their communities for the future. However, when these two movements are brought together early, when choices regarding land use and environmental remediation are being made, when the siting or expansion of facilities is under consideration, and when options remain on the table, the net benefit to communities of color and disadvantaged communities will multiply, the environmental conditions within those communities will improve,⁸⁶ and overall public health will advance.

V. CONCLUSION

A powerful advocate stated to prominent environmental law professors that “[I]n this life, once you have opened your eyes, you can never close them again.”⁸⁷ This applies deeply to this Article and to the very compelling reason for decision makers to become familiar with both the environmental justice and sustainability movements, and to consider carefully how to bring them together as we enter the coming decades of increased urbanization and population growth. Without knowledge and understanding of these two movements and how they can complement and leverage one another, our domestic society will lose opportunities to ensure that we are creating communities that will foster overall health and equity for the most vulnerable and overburdened populations among us.

⁸⁶ *Sustainability and Environmental Justice*, ARIZ. STATE UNIV. GLOBAL INST. OF SUSTAINABILITY & INNOVATION, <https://sustainability-innovation.asu.edu/media/wrigley-lecture-series/morris-collin/> (last visited Dec. 15, 2023) (Now a senior adviser to the EPA Administrator, Robin Morris Collins “maintain[s] whenever sustainability is on the table, environmental justice needs to be in the room”).

⁸⁷ SVITLANA KRAVCHENKO & JOHN E. BONINE, *HUMAN RIGHTS AND THE ENVIRONMENT: CASES, LAW, AND*, preface at xxiii (Carolina Acad. Press 2008), <https://cap-press.com/pdf/1801.pdf>; Witness, *Svitlana Kravchenko & John Bonine - ELAW Interview*, YOUTUBE (Sept. 10, 2009) Series https://www.youtube.com/watch?v=_Sjw9SLcN84.