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Bridging the Black-Green-White Divide: The Impact of Diversity in Environmental Nonprofit Organizations

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**BRIDGING THE BLACK-GREEN-WHITE DIVIDE:
THE IMPACT OF DIVERSITY IN ENVIRONMENTAL
NONPROFIT ORGANIZATIONS**

FAITH R. RIVERS*

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INTRODUCTION

Nonprofit organizations have been the lifeblood of the environmental movement. While charitable organizations have played an important role in the evolution of American society for centuries, environmental nonprofits are a relatively new development. These organizations, and the governmental policies that support and encourage the charitable sector generally, have helped to shape the landscape of the discipline. Over the

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past thirty years, environmental nonprofits have helped to develop federal laws and administrative regulations, conducted scientific research, and litigated cases which established the nation's environmental protection paradigm. From the National Environmental Protection Act to the Clean Water Act, most environmental policies are created, monitored, or enforced through the action of nonprofit organizations.¹ Moreover, utilizing the benefits of charitable status and encouraged by governmental tax policy that subsidizes the conservation of natural places, environmental nonprofits have purchased tracts of land and held conservation easements on property that is preserved in its natural state in perpetuity. In the modern era, nonprofits have begun to proactively facilitate remediation measures and establish mechanisms for environmental protection in partnership with the federal government and the private sector.² In essence, environmental nonprofits are the keystone to environmental law, policy, and preservation. This broad range of activities places these organizations in a unique position to identify, frame, and pursue new environmental issues as they arise.

The power and purpose of environmental nonprofits is evident on the issue of climate change. While the national and global conversation about global warming had its genesis in the scientific community, it was the drum beat of environmental nonprofits that raised the issue to public consciousness. Through public education efforts and traditional advocacy, and with the enlisted assistance of national spokespersons, such as Nobel Laureate and Vice President Al Gore, environmental nonprofits have impacted the position of the national government and spurred a generation to action on the cause.

Conversely, the power of environmental nonprofits has yet to be unleashed on the issue of environmental justice. Environmental justice considers the "unfair, unjust and inequitable conditions and decisions"³ that subject "blacks, low-income groups and working-class persons . . . to a disproportionately large amount of pollution and other environmental stressors in their neighborhoods as well as in their workplaces."⁴ Dedicated to the elimination of environmental discrimination,⁵ the movement has

¹ See generally Lee Breckenridge, *Nonprofit Environmental Organizations and the Restructuring of Institutions for Ecosystem Management*, 25 *ECOLOGY L.Q.* 692, 694 (1999).

² See generally *id.* at 700-01.

³ Robert D. Bullard, *Leveling the Playing Field Through Environmental Justice*, 23 *VT. L. REV.* 453, 454 (1999).

⁴ ROBERT BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 1 (1990).

⁵ *Id.* at 7 (Bullard defines "environmental discrimination" as "disparate treatment of a group or community based on race, class, or some other distinguishing characteristic.").

called upon the environmental community and the nation to acknowledge the environmental hazards unfairly imposed upon communities of color, and demands that they take action to halt the discrimination and ameliorate these conditions.⁶

Characterized as part of a broader social justice movement, the environmental justice paradigm takes a holistic approach⁷ and considers the underlying policies and practices that lead to segregation and environmental discrimination, such as governmental and individual housing discrimination, deed restrictions, unregulated growth, biased zoning and land use planning; and suggests a broad range of housing, economic and environmental "strategies to eliminate unfair, unjust, and inequitable conditions and decisions" in communities of color.⁸

The concept of environmental justice has a breadth of applications, including attempts to ameliorate, monitor, and prevent activities that unjustly concentrate harmful environmental impacts in minority neighborhoods.⁹ Yet, while environmental organizations are the dominant force in framing and pursuing environmental protection goals, environmental justice advocates have bemoaned the dearth of "mainstream" environmental nonprofit organization support for this cause.¹⁰ This gulf can be described as a "black-green-white divide" that separates black and white environmentalism.¹¹ A wide range of reasons has been offered to explain this

⁶ See *id.* at 5-7.

⁷ See Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619, 641 (1992) ("Many third wave [grassroots] environmentalists take a holistic view, seeing structural societal change as a way to alleviate many of the problems—poverty, crime, joblessness, environmental degradation—their communities endure.").

⁸ BULLARD, *supra* note 4, at 454.

⁹ See *id.*; see also James H. Johnson et al., *Racial Apartheid in a Small North Carolina Town*, 31 *THE REV. OF BLACK POL. ECON.* 89, 91 (2004); Ora Fred Harris Jr., *Environmental Justice: The Path to a Remedy Hits the Mark*, 21 *U. ARK. LITTLE ROCK L. REV.* 797, 798 (1999); J.B. Ruhl, *The Co-evolution of Sustainable Development and Environmental Justice: Cooperation, Then Competition, Then Conflict*, 9 *DUKE ENVTL. L. & POL'Y F.* 161, 161 n. 2 (1999); Robert Bullard, *Environmental Justice for All: It's the Right Thing to Do*, 9 *J. ENVTL. L. & LITIG.* 281, 281 (1994).

¹⁰ See ROBERT D. BULLARD, *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS* 22 (1993) ("... mainstream groups were slow in broadening their base to include poor and working-class whites, let alone African Americans and other people of color. Moreover, they were ill-equipped to deal with the environmental, economic, and social concerns of these communities."); Cole, *supra* note 7, at 637 ("Until recently, the traditional environmental law community largely ignored third wave environmentalists." The author cites a variety of exceptions where mainstream environmentalists have addressed environmental justice issues).

¹¹ See Cole, *supra* note 7, at 629 n. 27.

divide between black and white environmentalism, in particular, the failure to coalesce on common ground is viewed as a major impediment to the achievement of environmental justice goals.¹²

The black-green-white divide raises broader questions about the governance of environmental nonprofit organizations. Whether mainstream environmental organizations embrace minority and poverty environmental concerns, to some extent, may reflect staff composition, perspective, and effort.¹³ But the bigger issue of organizational governance looms large, as the board of directors is charged with identification of the organization's environmental mission, the program goals, the objectives it seeks to achieve and the organizational values.¹⁴ Whether mainstream environmental nonprofits embrace multicultural environmentalism will be determined by the composition of their boards, the viewpoints they express through selection of program goals and objectives, and the allocation of resources which reflect their prioritization of programs.¹⁵

Harvard University President Charles Elliot made the case for the government subsidy of nonprofits by explaining the benefits these organizations provide.¹⁶ Elliot's argument that the broad economic benefits justified the school's tax exemption was so successful that the Massachusetts legislature increased the institution's charitable exemption and expanded the range of exempt institutions to include any "educational, charitable, benevolent, or religious purpose."¹⁷ This list grew to include new kinds of cultural organizations with elite constituencies, such as museums and symphony orchestras.¹⁸ By the latter part of the 19th century, industrial-era tycoons followed the lead of Andrew Carnegie and sought to "remedy the evils of the industrial economy" by allocating some

¹² The reasons range from historical classism and racism, see Matthew Kingle, *Class Notes: Thoughts on Diversity in the Classroom and the Environmentalism's Past*, in DIVERSITY AND THE FUTURE OF THE U.S. ENVIRONMENTAL MOVEMENT, 73, 80-84 (2007); to the disparate impact of discriminatory hiring practices among environmental nonprofit organizations, disparate memberships and constituencies, conflicting agendas, see BULLARD, *supra* note 4, at 2-14; and to contrary legal needs and strategies, see Cole, *supra* note 7, at 639-43. See generally Tseming Yang, *Balancing Interests and Maximizing Rights in Environmental Justice*, 23 VT. L. REV. 529, 529-30 (1999).

¹³ See Cole, *supra* note 7, at 640.

¹⁴ See *id.* at 639-40.

¹⁵ See *id.*

¹⁶ Peter Dobkin Hall, *Historical Perspectives on Nonprofit Organizations*, in HANDBOOK OF NONPROFIT LEADERSHIP AND MANAGEMENT 13 (3rd ed. 2005).

¹⁷ *Id.*

¹⁸ *Id.* at 14.

measure of their wealth to charitable trusts and private foundations which used their assets to achieve their "goals of reforming social, economic, and political life."¹⁹

An outgrowth of this era of nonprofit expansion was a focus on the conservation of land and preservation of wild animals. Charles Elliot expanded the horizons of nonprofit organizations by creating the first land trust.²⁰ Elite sportsmen adopted the causes of conservation and preservation, though the motives and effects of their efforts have been critiqued as classist and discriminatory.²¹ Thus, the environmental segment has deep, historical roots in the evolution of the nonprofit sector as a whole.

The government provides substantial subsidies to nonprofits through tax expenditures and government grant programs.²² This governmental support raises important public policy questions regarding the representativeness and effectiveness of nonprofit organizations. Gilbert M. Gaul and Neill A. Borowski, have called attention to the "free ride" in the tax-exempt economy.²³ They estimate that 1.2 million organizations were exempt from taxes in 1992, and the number of nonprofit organizations continues to increase.²⁴ Due to government subsidization through forgiveness of tax liability, tax "exemptions are costing more than \$36.5 billion a year in lost tax revenue At the local level, the exclusion of billions of dollars worth of property from the tax rolls . . . is increasing budget woes and straining social services."²⁵ Thus, the benefits that nonprofits provide, both within and outside the environmental sector, come at a cost. In 1998, environmental and wildlife nonprofits received \$5.25 billion, or 3.2% of all charitable donations.²⁶ When adjusted for the major impact of donations to religious organizations, environmental nonprofits garnered 8% of non-religious contributions, and nearly 25% of all households contributed to environmental organizations.²⁷ The tax-exemption subsidy has a broad socio-economic impact on corporate and individual

¹⁹ *Id.* at 15-16.

²⁰ See J. Breting Engel, *The Development, Status, and Viability of the Conservation Easement as a Private Land Conservation Tool in the Western United States*, 39 URB. LAW. 19, 32 (2007).

²¹ See Klinge, *supra* note 12, at 80-84.

²² See generally Gilbert M. Gaul & Neil A. Borowski, *Free Ride: The Tax-exempt Economy*, in FISHMAN AND SWARTZ, *NONPROFIT ORGANIZATIONS 2* (West Publishing Co. 2001) (1993).

²³ See *id.*

²⁴ *Id.* 2-3.

²⁵ *Id.* at 3.

²⁶ See INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC IN BRIEF: FACTS AND FIGURES ON THE INDEPENDENT SECTOR 11* (2001), <http://www.independentsector.org/PDFs/inbrief.pdf>.

²⁷ See *id.*

taxpayers, as well as local governments and school districts which depend on property taxes to fund operations and services. The government debt incurred, investment forgone and services withheld position all Americans as stakeholders in the nonprofit organization construct.

I. ROLE OF ENVIRONMENTAL NONPROFITS

A. *Environmental Landscape: From Conservation to the City Beautiful and Modern Land Use*

Elliot's Trustees of Reservations was established "to promote the establishment of a Board of Trustees capable of acquiring and holding, for the benefit of the public, beautiful and historic places in Massachusetts."²⁸ With the Massachusetts legislature's approval, the land trust movement began.²⁹ A leading land trust in the modern era, the Trustees of Reservations owns over seventy properties totaling more than 17,500 acres, all of them open to the public.³⁰ Yet, there was another side to the magnanimous nature of conservation. Elite sportsmen and leaders like Theodore Roosevelt were staunch proponents of conservation on natural places and preservation of wildlife.³¹ These sportsmen supported "fair chase principle[s] of hunting game with minimal equipment."³² In essence, however, the movement denigrated and sought to halt the hunting practices of poor white, black, and native people who caught and killed birds and fish for food and commerce.³³ According to historian Matthew Klinge "[i]n its original guise, conservation amounted to regulating hunting and fishing in ways that restricted poor people's access to nature."³⁴ Prescient of the claims of elitism that plague the modern conservation and preservation movements,³⁵ the

²⁸ RICHARD BREWER, *CONSERVANCY: THE LAND TRUST MOVEMENT IN AMERICA* 17 (2003).

²⁹ *See id.*

³⁰ *See* Robert J. Blackwell, *Overlay Zoning, Performance Standards, and Environmental Protection After Nollan*, 16 B.C. ENVTL. AFF. L. REV. 615, 625 n. 81 (1987).

³¹ *See* Klinge, *supra* note 12, at 80.

³² *See id.*

³³ *See id.* at 80-81.

³⁴ *Id.* at 81.

³⁵ *See* George Middendorf & Bruce Grant, *The Challenge of Environmental Justice*, 1 FRONTIERS IN ECOLOGY AND THE ENV'T 154, 154 (2004) (suggesting that preservation and conservation are often conflicting goals within the environmental movement). Authors assert that "wilderness protection is frequently viewed as bio-centric and elitist, while conservation is seen as natural resource management for anthropocentric, commercial, and utilitarian purposes." *Id.*

early movement is criticized as “setting aside wildlife for the worthy”: “[s]ome measures did protect wildlife, but their intention and effect was also to reserve the best of nature for the best of people.”³⁶

While poor hunters in rural areas contended with conservationist policies that prevented them from seeking game, and native people were expelled from national parks,³⁷ the urban poor also suffered harmful effects of conservationist land use policies expressed through land use planning. Frederick Law Olmstead’s “The City Beautiful” movement set out to rectify the plagues of industrialized cities through land use planning.³⁸ But life in the industrial core of America’s cities was anything but beautiful. During the Industrial Revolution, the advent of the automobile and population growth created critical problems for central cities.³⁹ Early land use policies sought to direct noxious property uses “to the physical and social margin”—which plagued poor and minority neighborhoods with toxic and foul land uses.⁴⁰ Exclusionary land use policies directed poor uses away from wealthy areas, without much regard for the decrepit conditions that already existed or which arose in the areas designated for toxic uses.⁴¹ This movement was engrained in law when the U.S. Supreme Court empowered government to segregate land uses pursuant to the police power in the landmark case, *Village of Euclid v. Ambler Realty Co.*⁴² Under modern Euclidian zoning, there is “a place for everything, and everything is in its place.”⁴³ This case, and its planning fundamentals continue to drive modern land use planning that incorporated urban parks.⁴⁴ One consequence of the success of Olmstead’s park was that market forces drove property values so high that only the wealthy could afford to live in the area.⁴⁵

Early environmentalism embraced both conservation and land use planning, setting aside natural areas and segregating land uses, and those perspectives continue to serve as the platform for the modern movement.⁴⁶

³⁶ Klinge, *supra* note 12, at 81.

³⁷ See *id.* at 81-82.

³⁸ See *id.* at 82.

³⁹ See Eric R. Claeys, *Euclid Lives? The Uneasy Legacy of Progressivism in Zoning*, 73 *FORDHAM L. REV.* 731, 731 (2004).

⁴⁰ Klinge, *supra* note 12, at 82-83.

⁴¹ See Robert D. Bullard & Beverly Hendrix Wright, *The Politics of Pollution: Implications for the Black Community*, 47 *PHYLON* 71, 72-73 (1986).

⁴² 272 U.S. 365 (1926).

⁴³ Claeys, *supra* note 39, at 739.

⁴⁴ See *id.* at 740.

⁴⁵ See Klinge, *supra* note 12, at 82.

⁴⁶ See *id.* at 82-83.

As the modern industrial era developed, communities became more dependent on land use planning and zoning in order to accommodate conflicting uses of property that common law private and public nuisance could not achieve on a large scale.⁴⁷ No longer were cities simply trying to solve their *own* waste problems, but entire regions had to manage waste imported from different areas of the country.⁴⁸ As the nation began to become more dependent upon nuclear energy and processes that produced hazardous materials, the nature of waste evolved from animal by-products to nuclear and hazardous waste by-products.⁴⁹ As toxins began to seep into populated communities, such as Love Canal, the ongoing crises inspired a groundswell of support for measures designed to halt the environmental contamination that springs from modern industrial development.⁵⁰

These controversies called federal attention to the issue of determining how the burdens of industrial pollution should be accommodated on a national level. Congress stepped in with legislation establishing environmental mandates to guide governmental agencies in the decision making process. In 1969, Congress enacted the National Environmental Protection Act ("NEPA"),⁵¹ which requires the government to collect information and prepare an environmental impact statement ("EIS") for projects. Years later, the Resource, Conservation and Recovery Act ("RCRA") set up a federal-state system to regulate and manage the treatment, storage and disposal of hazardous wastes in facilities such as landfills, surface impoundments, and incinerators.⁵² This legislation came too late for many communities where contamination had already occurred. Subsequently, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund") established a trust fund to finance the cleanup of hazardous waste sites.⁵³

As growth and development encroached upon wild habitats and chemical hazards that decimated wildlife populations, Congress responded

⁴⁷ See Claeys, *supra* note 39, at 741.

⁴⁸ See Jane Chuang, *Who Should Win the Garbage Wars? Lessons from the Low-Level Radioactive Waste Policy Act*, 72 *FORDHAM L. REV.* 2403, 2408-09, 2413 (2004).

⁴⁹ *Id.* at 2409.

⁵⁰ See Bullard & Wright, *supra* note 41, at 75.

⁵¹ National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-47 (2000 & Supp. 2005).

⁵² See Charles Lee, *Beyond Toxic Wastes and Race*, in *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS*, 46 (1993).

⁵³ *Id.* 46-47.

by enacting the Endangered Species Act ("ESA") in 1973.⁵⁴ In homage to the preservation strategies of the early conservation movement, this measure protects threatened species from over-consumption. While the ESA does not protect the habitat of any species,⁵⁵ it has had far-reaching implications on the uses of land where endangered species are spotted.

In all, the modern movement resulted in the creation of a new discipline of environmental law. Environmental organizations create, monitor, and enforce environmental laws through the legislature, administrative agencies, and the courts.⁵⁶ Building upon the foundation of newly adopted environmental statutes, lawyers and advocates utilize the legislative process and administrative procedures to authorize and amend statutes, to develop regulatory guidelines and rules, and to monitor government enforcement of these statutory mandates. Statutory provisions for citizen participation invite input from environmentalists in local communities and on the national level.⁵⁷ Both traditional conservation and preservation organizations have continued the century-long history of providing charitable stewardship of natural areas. Traditional and modern organizations have taken up the cause of providing educational and scientific research to inform the legislative and administrative processes. These nonprofit organizations are the lifeblood of the movement.⁵⁸

B. Conservation and Enforcement Environmental Organizations & the Environmental Justice Movement

While many tout the efficiency and allure of order in Euclidian zoning, the task of assigning "a place for everything, and everything in its place"⁵⁹ is a complex task executed by political planners. At its inception, the American "City Beautiful" movement was born out of the desire to isolate "not so beautiful" uses from prime land. Land use planning and the

⁵⁴ Endangered Species Act of 1973, 16 U.S.C. §§ 1531-44 (2006).

⁵⁵ See Jonathan Remy Nash, *Trading Species: A New Direction for Habitat Trading Programs*, 32 COLUM. J. ENVTL. L. 1, 2 (2007).

⁵⁶ See Breckenridge, *supra* note 1, at 695.

⁵⁷ For example, on its face, NEPA would empower citizens to comment on environmental impact statement and to sue the Government if the citizen disagrees with the policies articulated in the statement and/or the administrative action taken. NEPA's judicial history has seriously curtailed citizen suits. See Sam Kalen, *The Devolution of NEPA: How the APA Transformed the Nation's Environmental Policy*, 33 WM. & MARY ENVT. L. & POL'Y REV. 483 (2009).

⁵⁸ See Breckenridge, *supra* note 1, at 695.

⁵⁹ Claes, *supra* note 39, at 739.

assignment of certain uses to specific places is, by definition, a zero sum game where one neighborhood's victory in keeping an undesirable land use out of the community becomes a loss for another unlucky community where the harmful use is placed.⁶⁰ Bullard notes that "[e]xclusionary zoning (and rezoning) has been a subtle form of using government authority and power to foster and perpetuate discriminatory practices—including environmental planning."⁶¹ The exclusionary zoning phenomena of "NIMBY"—Not in My Back Yard—has relegated minority neighborhoods, both poor and middle income, to prime status for "LULUs"—locally unwanted land uses.⁶²

From its earliest beginnings, exclusionary zoning was driven by insidious classist, anti-immigrant, and anti-minority policies that denied African Americans land ownership opportunities, imposed segregated housing zoning restrictions, and enforced racially restrictive covenants.⁶³ The pattern and practice of discriminating against minorities through property and land use regulations have been termed "environmental racism"—a practice that results in an imbalance of benefits and costs.⁶⁴

Environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color. Environmental racism combined with public policies and industry practices to provide *benefits* for whites while shifting industry *costs* to people of color. It is reinforced by governmental, legal, economic, political, and military institutions.⁶⁵

Interestingly, the imbalance between costs and benefits provided the conceptual foundation for the modern environmental movement. Garrett Hardin argued for pollution cost controls to force polluting industries to take account of the externalities of their operation, rather than allowing

⁶⁰ See Robert D. Bullard, *Smart Growth Meets Environmental Justice*, in GROWING SMARTER: ACHIEVING LIVEABLE COMMUNITIES, ENVIRONMENTAL JUSTICE, AND REGIONAL EQUITY 30-31 (2007).

⁶¹ *Id.* at 30.

⁶² See Robert D. Bullard, *Environmental Justice in the 21st Century: Race Still Matters*, 69 PHYLON 151, 158 (2001).

⁶³ See Klinge, *supra* note 12, at 82-83; BULLARD, *supra* note 4, at xv.

⁶⁴ Pamela Johnson & Betty Bushak, *Environmental Equity: A New Coalition for Justice*, 101(6) ENVTL. HEALTH PERSP. 478, 478 (1993), available at <http://www.pubmedcentral.nih.gov/pagerender.fcgi?artid=15198968&blobtype=pdf>.

⁶⁵ BULLARD, *supra* note 4, at 98.

companies to impose the cost of their pollution on the public.⁶⁶ Hardin provided the theoretical underpinning to the modern enforcement movement:

Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all. . . .

In a reverse way, the tragedy of the commons reappears in problems of pollution. Here it is not a question of taking something out of the commons, but of putting something in—sewage, or chemical, radioactive, and heat wastes into water; noxious and dangerous fumes into the air; and distracting and unpleasant advertising signs into the line of sight. The calculations of utility are much the same as before. The rational man finds that his share of the cost of the wastes he discharges into the commons is less than the cost of purifying his wastes before releasing them. . . .

The tragedy of the commons as a food basket is averted by private property, or something formally like it. But the air and waters surrounding us cannot readily be fenced, and so the tragedy of the commons as a cesspool must be prevented by different means, by coercive laws or taxing devices that make it cheaper for the polluter to treat his pollutants than to discharge them untreated.⁶⁷

Although the traditional and modern conservation movement and land use planning operations seek to regulate the commons, the resulting regulatory scheme still “brings ruin” to those left to endure the unpaid externalities when their segment of the commons has been left to become a cesspool. While the environmental laws that Hardin called for may have made it “cheaper for the polluter to treat his pollutants,” the polluter still receives the benefit of a partial “free ride” when distant majority-minority communities are forced to bear the burden of health

⁶⁶ See Garrett Hardin, *The Tragedy of the Commons: The Population Problem has No Technical Solution; It Requires a Fundamental Extension in Morality*, 162 SCIENCE No. 3859, 1243, 1245 (1968).

⁶⁷ *Id.* at 1244-45.

risks, depressed property values, and immobility that result from the disproportionate siting of LULUs in their communities.⁶⁸

Industry, political leaders, and land use planners may have concluded that, under the present system, "the cost of the wastes he discharge[d] into the commons" in minority communities "is less than the cost of purifying his wastes" or siting them in white populated or conserved areas.⁶⁹ The environmental justice movement's primary goal is to establish a more equitable distribution of environmental threats.⁷⁰ The movement demands reallocation of costs and benefits in a fair and equitable manner.⁷¹

Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups should bear a disproportion income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Over several decades, government agencies and environmental justice advocate organizations have documented the otherwise inexplicable concentration of hazardous waste sites and industrial polluters in majority-minority communities.⁷² In the early 1990's, the EPA took note of the unfair impact of environmental degradation on minority and low-income people and adopted a definition of "environmental justice" that envisions eliminating these disparities:

Fair treatment and meaningful involvement of all people regardless of race, color, national origin, or . . . share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.⁷³

⁶⁸ See Bullard, *supra* note 62, at 158.

⁶⁹ Hardin, *supra* note 66, at 1245.

⁷⁰ See Sherry Cable et al., *Mission Impossible? Environmental Justice Activists' Collaborations with Professional Environmentalists and with Academics*, in POWER, JUSTICE, AND THE ENVIRONMENT 60 (David Naguib Pellow & Robert J. Brulle, eds. 2005).

⁷¹ See *id.* at 60-61.

⁷² See U.S. GEN. ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES 4 (1983); see also BULLARD, *supra* note 4, at 33 (noting that one-third of the nation's twenty-seven hazardous-waste landfills are located in five southern states. Although within the region, African-Americans constituted 20% of the South's population, three of the four waste sites were placed in overwhelmingly minority neighborhoods, including Sumter County, Alabama (92% African-American); Warren County, North Carolina (66% African-American); and Chester County and Sumter County in South Carolina (52% and 38% African-American, respectively)).

⁷³ U.S. ENVTL. PROT. AGENCY, GUIDANCE FOR INCORPORATING ENVIRONMENTAL JUSTICE IN EPA'S NEPA COMPLIANCE ANALYSIS 7-8 (1998).

Environmental justice advocates were successful in their campaign to respond to such concerns during the George H.W. Bush administration. Bush appointed an Environmental Equity Workgroup and directed them to "review the evidence that racial minority and low-income communities bear a disproportionate environmental risk burden."⁷⁴ While the Workgroup's results indicated that "racial minority and low-income populations are disproportionately exposed to lead, selected air pollutants, hazardous waste facilities, contaminated fish tissue, and agricultural pesticides in the workplace,"⁷⁵ the Bush group concluded that the data was insufficient to link disparities in health status and exposure to environmental pollutants.⁷⁶ In the meantime, observers charged that the EPA was failing the environmental justice mission and in fact perpetuated environmental racism by selectively enforcing protective measures and inequitably assessing fines on offending polluters:

There is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results, and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor.⁷⁷

President Bill Clinton heeded the environmental justice movement's call to utilize existing environmental and civil rights statutes as a tool to achieve environmental justice goals.⁷⁸ Executive Order 12898 directs federal agencies to include environmental justice as a part of its mission by identifying and addressing "disproportionately high and adverse human health or environmental effects" of their actions on minority and low-income communities.⁷⁹ The accompanying Presidential memorandum directed agencies to ensure that federally funded programs do not violate

⁷⁴ Letter from Robert M. Wolcott, Chair, Environmental Equity Workgroup to William K. Reilly, Administrator, U.S. Env'tl. Protection Agency (May 29, 1992), *available at* http://www.epa.gov/compliance/resources/publications/ej/reducing_risk_com_vol1.pdf.

⁷⁵ *See id.*

⁷⁶ *See* Browne C. Lewis, *What You Don't Know Can Hurt You: The Importance of Information in the Battle Against Environmental Class and Racial Discrimination*, 29 WM. & MARY ENVTL. L. & POL'Y REV. 327, 349 (2005).

⁷⁷ Robert D. Bullard, *Decision-Making*, in *FACES OF ENVIRONMENTAL RACISM, CONFRONTING ISSUES OF GLOBAL JUSTICE* 1, 5 (Laura Westra & Bill E. Lawson eds. 1995).

⁷⁸ *See* BULLARD, *supra* note 4, at 117.

⁷⁹ *Id.*; *see* Exec. Order No. 12,898, 3 C.F.R. § 859 (1994), *reprinted in* 42 U.S.C. § 4321 (2000).

Title VI of the Civil Rights Act through use of "criteria, methods, or practices that discriminate on the basis of race, color, or national origin."⁸⁰ Clinton's memorandum added environmental justice issues to the scope of NEPA tools.⁸¹ Agencies were directed to analyze the environmental effects on minority and low-income communities as required by NEPA.⁸²

Despite these directives, over the past decade, policy analysis and government agencies—including the EPA's own Inspector General—have criticized the agency for failing to strategically integrate environmental justice concerns into the agency's operations.⁸³ Meanwhile, community residents, environmental advocates, and their attorneys have been discouraged in their efforts to use Title VI and Executive Order 12,898 to halt practices and siting decisions they believe to be environmentally unjust.⁸⁴ Browne Lewis observes that courts have held that the provisions of the Executive Order provide no private right of action, require proof of discriminatory intent—a standard more difficult than showing discriminatory impact, and have accorded agency decisions the highest level of deference by courts under the lowest "arbitrary and capricious" standard of judicial review pursuant to the Administrative Procedures Act.⁸⁵ Legislation could improve the rigor of environmental justice enforcement tools, provide a private right of action, and lower the level of deference that courts afford to agency determinations that are perceived to be unjust. To date, however, the movement has been unsuccessful in efforts to shepherd environmental justice legislation through the Congress.⁸⁶

Traditional environmentalism includes both conservation organizations and modern enforcement organizations. Building upon a century of growth, conservation organizations boast large memberships, massive land assets, and substantial endowments. The Sierra Club, The Nature Conservancy, and the Trust for Public Lands represent the largest of this genre.⁸⁷ These groups are joined by traditional preservation organizations, such as the National Audubon Society and the National Wildlife Federation in

⁸⁰ William Clinton, Memorandum for the Heads of All Departments and Agencies (Feb. 11, 1994), available at http://www.epa.gov/compliance/resources/policies/ej/clinton_memo_12898.pdf.

⁸¹ See *id.*

⁸² See *id.*

⁸³ See Bullard, *supra* note 60, at 29.

⁸⁴ See Lewis, *supra* note 76, at 344.

⁸⁵ See *id.*; see also Administrative Procedures Act § 706(2)(a), 5 U.S.C. § 706(2)(a) (2006).

⁸⁶ See Lewis, *supra* note 76, at 341.

⁸⁷ See Cole, *supra* note 7, at 634 n. 44.

efforts to preserve endangered species of animals.⁸⁸ In the modern era, these groups are joined by a proliferation of local land trusts dedicated to conserving tracts throughout the nation. In the 1960's and 1970's, these groups were joined by a breed of new enforcement organizations. Arising out of the a new form of activism that grew out of the student movements,⁸⁹ organizations such as the Natural Resources Defense Council and the Environmental Defense Fund were created. Along with newly created advocacy arms of existing groups, such as the Sierra Club's Earthjustice, these organizations engaged in efforts to enact, monitor, and enforce new environmental laws through legislative and administrative advocacy and litigation efforts.

While legislative and administrative advocacy are the primary province of traditional environmental enforcement organizations, on the whole these organizations have not been at the forefront of efforts to formulate, refine, and enforce environmental justice legislation or administrative regulations. Local offshoots and chapters of enforcement organizations are regularly involved in local land use issues where the vast majority of environmental justice issues arise. "On the ground" preservation and conservation efforts, however, have created conflicts over placement of infrastructure in rural areas where social justice advocates seek economic development. Contrary to local environmental organizations' NIMBY-inclinations, many such groups have been perceptively silent in the face of "PIBBY" siting decisions that place unwanted land used in *blacks'* back yards—Put it in Blacks' Back Yard's.⁹⁰

Robert Bullard notes that "a growing number of grassroots groups and their leaders have adopted confrontational direct action strategies."⁹¹ According to Cable, Mix and Hastings, many grassroots efforts have scored significant victories against proposed sitings in minority communities, and have ameliorated some problems associated with existing facilities.⁹² Nevertheless, these scholars conclude that despite two decades of local victories, no structural changes occurred to facilitate a more equitable distribution of the environmental costs of production.⁹³

⁸⁸ See *id.*

⁸⁹ See BULLARD, *supra* note 4, at 9.

⁹⁰ Bullard, *supra* note 62, at 19.

⁹¹ ROBERT D. BULLARD, CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 24 (1993).

⁹² See generally Sherry Cable et al., *supra* note 70, at 55.

⁹³ See *id.* at 56.

II. SUMTER COUNTY CASE STUDY

A. *Briggs-DeLaine-Pearson Bridge Controversy*

Nowhere has the black-green-white battle become more pitched than in the crucible of South Carolina, where issues of race and place go back for centuries.⁹⁴ Environmentalists and African American interests appear to be in conflict over plans to build a bridge over the Sparkleberry Swamp, re-connecting two traditionally African American communities that were cut off by the WPA construction of Lake Marion in the 1930's.⁹⁵ Championed by the 6th District's Congressman Jim Clyburn, the Majority Whip for the Democratic Party in the U.S. House of Representatives, the bridge was promoted as the fulfillment of a generations-old promise to reconnect these communities, and a new promise of economic development in the resort-based South Carolina economy that could benefit the isolated minority communities.⁹⁶ To Clyburn, the Connector is a part of a comprehensive campaign to "catch up" on vital infrastructure⁹⁷ and promotes economic development in the I-95 corridor in the Orangeburg-Sumter area.⁹⁸ This area, which lies at the heart of South Carolina's portion of

⁹⁴ See generally Faith R. Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1 (2007).

⁹⁵ See Thomas Brown, *Others Drawn By Different Challenge*, THE TIMES AND DEMOCRAT, May 2, 2005, 2005 WLNR 7126889.

⁹⁶ See *id.* ("Tim Fowler, a Lone Star Resident, offered some history of the proposed bridge. Getting this bridge is making good on a promise The people in that area were promised this bridge 50 years ago."); Claudia Smith Brinson, *The Great Divide: Chapter 6: A Nickle in Your Pocket*, THE STATE, May 17, 2007, available at <http://www.thestate.com/greatdivide/v-print/story/66963.html> ("Sixty years ago they were talking about that bridge, and it was never built, says Ezekiel Bodrick. When we were cleaning up that land, they said there would be a bridge."); Wayne Washington, *This Bridge is about Hope*, THE STATE, July 31, 2005, 2005 WLNR 15893000 ("Clyburn sees a different set of possibilities for the area—golf courses, a conference center, assisted living facilities."); Bernice Scott, *Editorial: Connector Offers Infrastructure to Areas Too Long Left Behind*, THE STATE, Sept. 13, 2006, 2003 WLNR 14769256 ("It would create a scenic route and commerce corridor for a number of small towns in Calhoun, Clarendon, Orangeburg, Sumter and Lower Richland counties.").

⁹⁷ See Brown, *supra* note 95 ("My goal is economic development for the residents of that area. There are people in both Lone Star and Rimini communities that don't have decent drinking water.") (quoting Clyburn); see also Scott, *supra* note 96 ("For too long, these communities have been without adequate infrastructure, water and sewer services, and decent roads.").

⁹⁸ See Joseph S. Stroud, *S.C. Spends Least on Roads Ranks at Bottom Nationally on Funding Permile*, THE STATE, Jan. 18, 2001, at A1.; see also Sammy Fretwell, *Groups*

the Southeastern "Black Belt," an area described as having "the richest soil and the poorest people in the United States."⁹⁹ Booker T. Washington articulated the historical beginnings and sociological significance of the region as "the part of the South where the slaves were most profitable, and consequently they were taken there in the largest numbers. Later, and especially since the war, the term seems to be used wholly in a political sense—that is, to designate the counties where the black people outnumber the white."¹⁰⁰ An outgrowth of this sociological history for the Orangeburg-Sumter area is the lack of infrastructure and economic development that characterizes other integrated interstate intersections.

With public support from the state's governor, Mark Sanford, and represented by the Southern Environmental Law Center ("SELC"), the South Carolina Coastal Conservation League ("SCCCL"), Audubon South Carolina, and S.C. Wildlife Federation want to return federal funds obtained for the project. Alleging that the bridge will "ruin a 'spectacular' swamp, pollute the lake and hurt wildlife,"¹⁰¹ these groups have sued the state Department of Transportation and the Federal Highway Administration to stop the permitting process for the bridge.¹⁰²

The tenor and fervor of environmental opposition to the bridge has been tainted by incendiary charges and resentful denials of racism as the communities—black and white, traditional residents and transplants¹⁰³—battle over the fate of the Briggs-DeLaine-Pearson Connector. Characterized as government waste and derogatively deemed "the bridge to nowhere"

Sue to Stop Clyburn's Bridge, THE STATE, Sept. 13, 2006, at A1 ("This bridge is one piece of the puzzle . . . All of them must work in tandem for us to improve the quality of life for the people who live along the I-95 corridor.") (quoting Clyburn).

⁹⁹ UNIV. OF ALA. INST. OF RURAL HEALTH RESEARCH, BLACK BELT FACT BOOK 4 (2002) (quoting ARTHUR F. RAPER, PREFACE TO PEASANTRY; A TALE OF TWO BLACK BELT COUNTIES (1936)), available at <http://cchs.ua.edu/rhi/publications> (follow "Black Belt Fact Book" hyperlink); see also Allen Tullos, *The Black Belt*, SOUTHERN SPACES, Apr. 19, 2004, available at <http://www.southernspaces.org/contents/2004/tullos/4a.htm> (considering the change in the meaning of the term "Black Belt" as a function of different historical eras).

¹⁰⁰ See BOOKER T. WASHINGTON, UP FROM SLAVERY 108 (Penguin Books 1986) (1901).

¹⁰¹ Fretwell, *supra* note 98, at A1.

¹⁰² See Complaint at 24, S.C. Wildlife Fed'n v. S.C. Dept. of Transp., 485 F.Supp.2d 661 (D.S.C. 2007) (No. 2:06 CV 02528), 2006 WL 3738374.

¹⁰³ See Donald Small, Editorial, *Bridge Opponents are Misinformed*, THE STATE, June 19, 2001, at A9 ("But many of those there in opposition were not from this area. Quite a few were members of environmental organizations who live in Charleston or Columbia. A number of other 'outsiders' were very vocal hunters, who complained loudly that their favorite duck nest near the railroad trestle may be disturbed, and they may have to actually hunt for a new nest in the swamp before shooting their prey.").

by opponents,¹⁰⁴ bridge supporters counter that their largely African American community is "somewhere" that warrants government infrastructure investment.¹⁰⁵ Clyburn is a long-time advocate of environmental justice. In 1998 when he began his ascent into leadership as Chairman of the Congressional Black Caucus, Clyburn pledged to combat environmental racism.¹⁰⁶ Astute to the implications of unjust land use policies, Clyburn and many of his constituents who favor the bridge charge that racism was the reason that these communities were denied bridge infrastructure in the first place, and that a desire "keep blacks poor" is driving opposition to the bridge.¹⁰⁷ Bernice Scott, chairwoman of neighboring Richland County Council rhetorically asks: "So what's the problem? Is the problem that the proposed connector, which some say would lead to nowhere, will actually lead to somewhere by laying the groundwork for economic prosperity in underserved communities?"¹⁰⁸ Jennie Stephens, executive director of the Center for Heirs' Property Preservation in Charleston, characterizes the black residents' response to environmentalist opposition to economic development of black-owned land: "You've got yours, but you want to tell me I can't have mine."¹⁰⁹ In the same vein, Bernie Mazyck, president and chief executive of the South Carolina

¹⁰⁴ See Stroud, *supra* note 98, at A1; see also Dana Beach, *Transportation Department Fails to Meet Needs*, THE STATE, Nov. 25, 2005, at A11 (listing the Briggs-DeLainey-Pearson connector among a list of "boondoggle" projects); Fretwell, *supra* note 98, at A1 (quoting Sanford spokesman Joel Sawyer: "We think this bridge is a bad idea from an environmental standpoint and from a taxpayer protection standpoint.").

¹⁰⁵ See Bernice Scott, *Connector Offers Infrastructure to Areas too Long Left Behind*, THE STATE, July 19, 2003, at A11 ("This phrase ["the bridge to nowhere"] is perhaps more telling about those who use it than an adequate description of the project. For this reveals a mindset that the people of these communities are, in fact, nobodies who live nowhere.").

¹⁰⁶ See Michelle R. Davis, *Southerner Will Lead Congressional Black Caucus: James E. Clyburn Aims to be a Bridge-Builder*, PHILADELPHIA INQUIRER, Nov. 18, 1998, at A12 ("Clyburn said he would concentrate on such issues as making sure that minorities were not undercounted in the 2000 census; that blacks were well-represented among judges; and that they did not face so-called environmental racism, the practice of concentrating polluting industries in poor, minority communities.").

¹⁰⁷ See Claudia Smith Brinson, *Crossing a Great Divide: Chapter 15 'Time to Call a Duck a Duck': Whites and Blacks Accuse Each Other of Bringing Race Into the Conversation*, THE STATE, May 17, 2007, at B1, available at <http://www.thestate.com/greatdivide/v-print/story/67159.html>.

¹⁰⁸ Scott, *supra* note 96, at A11.

¹⁰⁹ Claudia Smith Brinson, *Crossing a Great Divide: Chapter 7 Black, White, Green: Southern Conservation has a Problem: The Inhabitants of Remaining Natural Areas Often are Poor, Rural Blacks Longing for Development*, THE STATE, May 17, 2007, at B1, available at <http://www.thestate.com/463/story/66967.html>.

Association of Community Development Corporations, sums up the challenge between blacks who depend on their land and white environmentalists who want to force conservation upon them: "We kept it. We farmed it. We preserved it. You like it."¹¹⁰

Offended at the charges of racism, environmentalists contend that their sole mission is to protect the swamp.

A meeting with environmental groups inadvertently iced [Clyburn's] cake. He remembers an activist's commentary this way: "I was at the lake, and I saw this black man sitting on the bank, fishing for his supper. I don't want that ruined."

The speaker—Viney [former executive director of S.C. Wildlife Federation]—was sincere in her vow, which moved her. She expected Clyburn to be moved, too. Instead, he was infuriated, still is: "Well, I want that man to fish for recreation, not necessity. I don't want him fishing for his supper."¹¹¹

Clyburn, who enjoys a high ranking with the League of Conservation Voters, pledged that he would withdraw the project if studies showed adverse impacts on the environment and threats to wildlife, but stated that he expected the groups to remove their opposition if the studies concluded that there were no environmental threats.¹¹² Citing

¹¹⁰ *Id.*

¹¹¹ Brinson, *supra* note 107, at B1; *see also*, Jim Kelly, Editorial, *Connector Project Completely Wasteful*, THE STATE, Aug. 6, 2003, at A11 (basing his opposition to the bridge being built on a waste of money and suggesting that racism does not play a role in his decision); Wayne Washington, *This Bridge is About Hope*, THE STATE, July 31, 2005, at B7.

Tee Hooper of Greenville, chairman of the state Department of Transportation Commission, . . . bristles at the suggestion that race plays a role in his views on the project. "It's not a factor to me," said Hooper, who is white. "It has nothing to do with black or white." [Dana] Beach [executive director of SCCCL], who is also white, shares that view. He said the race and poverty of those in the area make it harder for him to be opposed to something residents believe will bring economic development. "It's much harder because we know our state's history," he said. "It is not satisfying to be involved in a debate that is turning in part on racial issues."

Id.

¹¹² *See* Brinson, *supra* note 107, at B1.

three environmental studies, Clyburn contends that the bridge, which would be built in place of an existing railroad trestle, would not cause environmental damage.¹¹³

The controversy has sparked pitched battles between proponents and opponents of the bridge, and racial misperceptions and stereotypes poison the debate. Jane Lareau, the third-ranking Democrat in the United States Congress and SCCCL's Land Director, exclaims, "he's completely lost his mind on the subject."¹¹⁴ Bridge opponent Jim Kelley objects to the proposal to bring access and economic development to African Americans in the Lone Star-Rimini area because "poor blacks without cars don't need a bridge." Rather, Kelly opines, "it's not the government's responsibility [to bring jobs to area residents]. If you're able-bodied, you've got to go where the jobs are Let's get those people trained and moved somewhere else. I don't believe in making jobs to help people live in the swamp."¹¹⁵ A duck hunter's online forum hosted by real estate developer John Ball III posted blatantly racist and explicative comments about Clyburn and African Americans seeking to build the bridge, including inflammatory poetry denigrating African Americans who fish: "*Wait'in for a welfare check sho would be fine / If I had a new fishing bridge to pass da time.*"¹¹⁶

B. *Pristine or Polluted?*

Beyond the race and class implications raised in the controversy, the irony lies in the lake and swamp itself. The 1930's-era man-made lake is dammed and there is no fish migration. Within Sumter County, just twenty miles to the north, the Air Force has use a range outside of Wedgefield—a predominately African American town—for bombing practice.¹¹⁷ Sumter County is also the home of one of the largest hazardous waste sites in the nation. The site was originally mined to produce "kitty litter," until Bennett Mineral Company ("BMC") completed mining operations. The company applied for and received an Industrial Waste Permit to fill the mined areas with industrial waste. According to court records,

¹¹³ See Thomas Brown, *Others Drawn by Different Challenge*, THE TIMES AND DEMOCRAT, May 2, 2005.

¹¹⁴ Claudia Smith Brinson, *Crossing a Great Divide: Chapter 3 Paradise and Paradox: Environmentalists Sue, Determined to Protect One of the State's Largest Remaining Wildlife Habitats*, THE STATE, May 17, 2007, at B1, available at <http://www.thestate.com/463/story/66949.html>.

¹¹⁵ Brinson, *supra* note 107, at B1.

¹¹⁶ *Id.*

¹¹⁷ See Brinson, *supra* note 114, at B1.

the state Department of Health and Environmental Controls (“DHEC”) “issued the permit *without providing a public notice or hearing* and prior to the promulgation of either state or federal regulations governing such facilities.”¹¹⁸ Months later, a former DHEC employee incorporated South Carolina S.C.A. Services, Inc. (“SCA”) which purchased the facility, including a transfer of the Industrial Waste Permit from BMC.¹¹⁹ For twenty years, environmental justice advocates called attention to the unjust siting of a hazardous waste facility on the shores of the lake, just next to the same town of Rimini. A 1983 GAO report noted that this site was one of five placed in heavily minority communities in the Southeast.¹²⁰ The facility operated from 1977 to 2000 under a number of corporate entities,¹²¹ leaving many to question whether the lake is pristine or soon to be polluted.

Over the years, site operators were fined for breaking environmental laws, including a record \$1.85 million fine in 1993.¹²² A local environmental group, Citizens Asking for a Safe Environment (“CASE”)—led by Janet Lynam, who maintains a lake house on the shores of Marion—campaigned against the site in the 1980’s and 1990’s.¹²³ The 240 acre site now holds 5 million tons of industrial waste, including heavy metals, solvents and cancer-causing PCBs.¹²⁴ Because of longstanding concerns, in the late-1990’s, CASE petitioned the Agency for Toxic Substances and Disease Registry (“ATSDR”) to conduct a health assessment of the site:

ATSDR did not identify completed human exposure pathways for the GSX Landfill; however, potential human exposure pathways exist. On-site workers could be exposed to contaminants in on-site air, although the use of personal

¹¹⁸ *Leventis v. S.C. Dept. of Health and Envtl. Control*, 530 S.E.2d 643, 647 (S.C. Ct. App. 2000).

¹¹⁹ See *id.* Notably, “DHEC never required a public notice, comment, hearing, or adjudication prior to transferring the permit . . . [In the following successive years,] . . . DHEC extended the permit to SCA IWP-145 after conducting public meetings and a joint public hearing with the Environmental Protection Agency (EPA). In March 1980 . . . [the legislature] . . . approved the hazardous waste management regulations.” *Id.*

¹²⁰ See U.S. GEN. ACCOUNTING OFFICE, *SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES*, H.R. Rep. No. 83-168, at 2-4 (1983).

¹²¹ See *Leventis*, 530 S.E.2d at 648. Originally, the waste site was owned by SCA. SCA turned over the site to GSX, which turned the site over to Safety-Kleen and finally Laidlaw of South Carolina. *Id.* at 648 n.3.

¹²² See Sammy Fretwell, *Landfill Deal Threatens S.C. Lake, Taxpayers*, THE STATE, June 13, 2004, at A1.

¹²³ See *id.*

¹²⁴ See *id.*

protective equipment mitigates this exposure pathway. Area residents are unlikely to be exposed to site-related contaminants in their drinking water because:

- 1) groundwater contamination presently exists only on-site,
- 2) groundwater under the site appears to flow in a west/southwest direction *toward Lake Marion* and away from residences to the east, north, and south, and
- 3) no downgradient drinking water wells exist between the landfill and Lake Marion.

Contaminants in on-site groundwater, surface water, or leachate could possibly migrate off site to Lake Marion. Lack of data prevents ATSDR from determining whether exposure occurred as a result of releases from trucks and rail cars carrying wastes to the landfill . . .

Using available information, ATSDR concludes that the GSX site is an indeterminate public health hazard. There is no evidence that persons have been exposed to hazardous substances at concentrations likely to cause adverse health effects. However, ATSDR has identified data gaps that limit ATSDR's ability to fully evaluate the site.¹²⁵

Despite this ominous report, no steps have been taken to remove the hazardous waste at the Sumter County site. The South Carolina Environmental Law Project ("SCELP") represented the Sierra Club in litigation appealing the site's permit. The organization proudly reports that the site is now closed.¹²⁶ The operating company negotiated a deal to provide only a portion of funds required to cover the potential costs of contamination,¹²⁷ but soon after declared bankruptcy.¹²⁸ State regulators

¹²⁵ AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, PETITIONED PUBLIC HEALTH ASSESSMENT, GSX LANDFILL, PINEWOOD, SUMTER COUNTY, SOUTH CAROLINA, CERCLIS NO. SCD070375985 (Sept. 26, 1997), *available at* http://www.atsdr.cdc.gov/HAC/PHA/gsx/gsx_toc.html (follow "summary" hyperlink) (emphasis added).

¹²⁶ See The South Carolina Environmental Law Project, Safety-Kleen/Laidlaw Landfill, <http://www.scel.org/projects/view/1> (last visited Dec. 16, 2008) [hereinafter SCELP].

¹²⁷ See Fretwell, *supra* note 122, at A1.

¹²⁸ See SCELP, *supra* note 126.

now bemoan the decision to allow the operating company to significantly reduce the amount of funds set aside for potential contamination costs.¹²⁹

There does not appear to be any consensus that the site will hold in its contaminated waste. In state court proceedings regarding DHEC regulation of the facility, the South Carolina Court of Appeals noted its "concerns about the proximity of this facility to Lake Marion,"¹³⁰ but decided that the administrative record contained "substantial evidence" for DHEC to conclude that there were no significant findings of contamination caused by tears in the landfill's lining, nor that there was a high potential for a leak.¹³¹ Press reports reiterate DHEC's position that it has no proof that pollutants are trickling into Lake Marion from the landfill, however, regulators "expect part of [the landfill's] protective liner system to fail," which could threaten the area's groundwater and possibly the lake.¹³² According to CASE advocate Lynam, "South Carolina was hoodooed . . . Safety-Kleen did exactly what they wanted to do. They used us, made their money and left us with the liability."¹³³ Moreover, the people of Pinewood are left with the potential exposure of the "indeterminate public health hazard" at the hazardous dump site.¹³⁴

The irony of the connection between the Bridge, the hazardous waste site and the web of environmental groups involved is not lost. Across the years of public debate over the bridge, a noted few lay writers raised the issue of contamination of Lake Marion as a broader issue. As a part of the Department of Transportation ("SCDOT") process of planning the bridge, the Department's agents contacted Safety-Kleen representatives, successor to GSX and Laidlaw, who refused to volunteer access to the site, reportedly due to concerns about potential contamination.¹³⁵ The SELC complaint to block the bridge, utilizes the key environmental statute, NEPA, and alleges that the administrative process was inadequate because the Department failed to consider the potential for

¹²⁹ See Fretwell, *supra* note 122, at A1.

¹³⁰ *Leventis*, 530 S.E.2d 643, 655 (S.C. Ct. App. 2000).

¹³¹ *Id.* at 654.

¹³² Fretwell, *supra* note 122, at A1.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ See Complaint, *supra* note 102, at 16. The complaint references an internal SCDOT memorandum which reports that an attorney for Safety-Kleen advised SCDOT's consultant that the company did not want soil or groundwater samples collected from the site because of the possibility of exposing Safety-Kleen to scrutiny by DHEC if the site were found to be contaminated. *Id.* at ¶ 50. The count further alleges that SCDOT agreed not to proceed with collecting soil and groundwater samples from the site. *Id.*

disturbance of contaminated soils at the hazardous waste site.¹³⁶ Accordingly, the environmental groups' proposal to halt the bridge, regardless of economic development prospects, because of the potential harm to natural areas is, in part, for fear that the construction workers might be exposed to dangerous contaminants at the site and grounded on leaving contaminated soils at the hazardous waste site in place on the shores of Lake Marion.¹³⁷ These soils, now declared contaminated, threaten the local community where a substantial portion of people living in the vicinity of the site are African American. Yet, there is no current environmentalist campaign to *remove* the hazardous waste "contained" in a dump with a liner considered "faulty."

A 1992 study by the National Law Journal pointed to the disparity of EPA action and policies with regard to Superfund sites located near African American communities.¹³⁸ For minority sites, EPA chose containment 7% more frequently than the preferred cleanup method of permanent treatment to eliminate the waste or rid it of its toxins.¹³⁹ The trend reverses in white community sites, with the EPA pursuing permanent treatment 22% more often than containment.¹⁴⁰ Robert Bullard observed that the National Law Journal study reinforces what environmental justice "activists have been saying all along: Not only are people of color differentially affected by industrial pollution but also they can expect different treatment from the government."¹⁴¹ The current experience in Sumter, South Carolina reveals that the differential treatment may extend to the approach that environmentalists take, including identification of issues to pursue (or ignore) and the strategies by which their objectives are sought.

¹³⁶ See *id.* at ¶¶ 48-49. Paragraphs 48 and 49 of the complaint note that DHEC submitted comments on the DEIS stating that the preferred building alternative "had the potential to disturb contaminated soils at the Safety-Kleen Pinewood hazardous waste landfill," and that the agency recommended further environmental testing; and refers to an internal SCDOT memorandum that suggested further testing for hazardous material contamination at four sites in the project area. *Id.*

¹³⁷ *Id.*

¹³⁸ See Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law, A Special Investigation Bottom Line: Tale of Two Cities*, NAT'L L. J., Sept. 21, 1992, at S.10.

¹³⁹ See Robert D. Bullard, *Decision Making in FACES OF ENVIRONMENTAL RACISM: CONFRONTING ISSUES OF GLOBAL JUSTICE* 5 (Laura Westra and Peter S. Wenz eds. 1995) (citing Lavelle & Coyle, *supra* note 138, at S.10).

¹⁴⁰ See *id.*

¹⁴¹ *Id.* at 6.

The black-green-white divide is the fundamental fault line in the environmental movement in South Carolina.

III. THE BLACK-GREEN-WHITE DIVIDE IN ENVIRONMENTALISM

A. *Diversity: Mission, Strategy, Trust & Accountability*

The socio-political history of the environmental and environmental justice movements reveal a long-standing tension between categories of nonprofits. While the divide is in some respects based on organizational objectives, e.g., conservation organizations versus enforcement organizations, there is mounting concern and evidence that the exclusion of environmental justice objectives from the “mainstream” environmental agenda reflects a bias against people of color and their concerns. Notably, both conservation and enforcement organizations have been accused of ignoring environmental justice issues, often leaving environmental activists without a partner on the ground to help organize and achieve environmental protection in minority communities.¹⁴² Advocates complain that neither category of mainstream environmental groups has been involved on a major scale in environmental justice advocates’ efforts to steer LULU’s away from minority and low-income communities.¹⁴³ Moreover, traditional conservation organizations’ views on preservation of open spaces may conflict with social justice advocates’ efforts to pursue economic development.¹⁴⁴

The tension reached a boiling point that exposed the racial divide within the environmental movement. In 1990, a group of environmental justice organizations wrote letters to the “Group of Ten”¹⁴⁵

¹⁴² See Luke W. Cole, *A Jeremiad on Environmental Justice and the Law*, 14 STAN. ENVTL. L.J. ix, xiii (1995); see also Maya Wiley, *Smart Growth and the Legacy of Segregation in Richland County, South Carolina*, in GROWING SMARTER: ACHIEVING LIVABLE COMMUNITIES, ENVIRONMENTAL JUSTICE, AND REGIONAL EQUITY 149-50 (Robert D. Bullard, ed. 2007).

¹⁴³ See George Middendorf & Bruce Grant, *supra* note 35, at 154 (noting environmental justice groups’ lack of success in mobilizing support from mainstream protection—and conservation—oriented environmental groups).

¹⁴⁴ See *supra* Part II. The Sumter County case study reveals an occasion of a campaign against efforts to pursue economic development in minority communities under the banner of environmental protection, pitting conservationists against powerful minority political leadership. *Id.*

¹⁴⁵ *The Letter that Shook a Movement*, SIERRA MAGAZINE, May/June 1993, at 54, reprinted in LOUIS S. WARREN, AMERICAN ENVIRONMENTAL HISTORY 322 (Blackwell Publishing 2004) (2003). The following organizations had dubbed themselves the “Group of Ten”: Environmental Defense Fund, Environmental Policy Institute, Friends of the Earth, Izaak

major conservation and enforcement environmental groups, calling for an end to exclusionary practices and policies that leave environmental justice concerns off of the table:

For centuries, people of color in our region have been subjected to racist and genocidal practices, including the theft of lands and water, the murder of innocent people, and the degradation of our environment. Mining companies extract minerals, leaving economically depressed communities and poisoned soil and water. The U.S. military takes lands for weapons production, testing, and storage, contaminating surrounding communities, and placing minority works in the most highly radioactive and toxic work sites. Industrial and municipal dumps are intentionally placed in communities of color, disrupting our cultural lifestyle, and threatening our communities' futures. Workers in the fields are dying and babies are born disfigured as a result of pesticide spraying.

Although environmental organizations calling themselves the "Group of Ten" often claim to represent our interests, in observing your activities it has become clear to us that *your organizations play an equal role* in the disruption of our communities. There is a clear *lack of accountability* by the Group of Ten environmental organizations towards Third World communities in the Southwest, in the United States as a whole, and internationally.

Your organizations continue to support and promote policies that emphasize the cleanup and *preservation of the environment on the backs of working people in general and people of color in particular*. In the name of eliminating environmental hazards at any cost, across the country industrial and other economic activities which employ us are being shut down, curtailed, or prevented while our survival needs and cultures are ignored. *We suffer from the*

end results of these actions, but are never full participants in the decision-making which leads to them

We . . . call upon you to cease operation in communities of color within 60 days, until you have hired leaders from those communities to the extent that they make up between 35 and 40 percent of your entire staff. We are asking that Third World leaders be hired at all levels of your operations¹⁴⁶

The letter, signed by over 100 individuals from community groups, churches, unions, and universities, landed a heavy blow to the “mainstream” environmental movement.¹⁴⁷ The letter deftly addressed the policy differential and placed responsibility for exclusionary policy making at the organizational level.¹⁴⁸

The letter’s primary target and the focus of the Group of Ten’s response was organizational *staff* composition. Spokespersons for the Group of Ten “agreed that they had a poor record of hiring and promoting minority employees, but they denied that racism was involved and insisted they were trying to correct the situation.”¹⁴⁹ While acknowledging that the groups lacked an aggressive recruiting program, organizational leaders identified empirical reasons for the poor record, citing the low number of minority environmental specialists,¹⁵⁰ and the fact that their nonprofit organizations paid lower wages.¹⁵¹ At the time of the letter, none of the top leaders of any of the Group of Ten was minority (black or Hispanic or Asian), and admittedly few of their middle managers come from minority groups.¹⁵² Minority staff representation ranged from a high of 12.5% (including administrative staff) at Friends of the Earth, to a low of 0.4%

¹⁴⁶ *Id.* at 323 (emphasis added).

¹⁴⁷ See Marcelo Bonta & Charles Jordan, *Diversifying the American Environmental Movement*, in DIVERSITY AND THE FUTURE OF THE U.S. ENVIRONMENTAL MOVEMENT 13, 18 (Emily Enderle ed., 2007).

¹⁴⁸ *See id.*

¹⁴⁹ Philip Shabecoff, *Groups Told They are Racist in Hiring*, N.Y. TIMES, Feb. 1, 1990, at A20.

¹⁵⁰ *See id.* Bob Norman, director of human resources for the National Audubon Society, reported that three of the organization’s 315 staff members were African American, constituting just 1% of the organization’s manpower. *Id.* “We are not proud of our record—we are terrible,” Mr. Norman said. But he said: “I can’t believe it is racism. We are not getting the candidates from the minority community.” *Id.*

¹⁵¹ *See id.*

¹⁵² *See id.*

minority staff of any rank at the Sierra Club.¹⁵³ Other justifications offered for the lack of minority staff were based on Group of Ten leaders' generalizations about minorities, suggesting that they are not interested in environmental work, as "minority members who are 'cause oriented' tend to be attracted to issues like discrimination and poverty."¹⁵⁴ In justifying this policy differential, Frederic D. Krupp, executive director of the Environmental Defense Fund, remarked that "only recently have environmental problems been recognized as falling disproportionately on the poor and minority neighborhoods."¹⁵⁵ Though this declaration was proffered as a justification of minority disinterest in environmental issues, the statement revealed a symptom of a deeper problem within the environmental organizations themselves. Though the environmental movement had been empowered with powerful monitoring tools through NEPA for three decades, the Regan-era GAO had confirmed that waste siting decisions disproportionately affected minority communities in the early-1980's. Furthermore, the United Church of Christ report had called national attention to the problem of environmental racism in the placement of hazardous waste facilities in its 1987 study, *Toxic Wastes and Race in the United States*.¹⁵⁶ The report stated that the director of one of the largest environmental organizations had "only recently" become aware of environmental injustice in minority communities.¹⁵⁷

B. Bridging the Divide: Diversity & Board Governance

The "black-green-white divide" begins in the boardroom and spills over into the organization's mission, strategic plans, resource allocation, and staffing. While staff composition and policy diversity are critical to the operation of any nonprofit organization, the process of strategic planning, the identification of organizational goals and selection and

¹⁵³ See *id.* (National Audubon Society: 3 African Americans of 315 staff members (1%); Friends of the Earth: 5 minorities of 40 staff members (including secretaries) (12.5%); Natural Resources Defense Council: 5 professionals of color of 140 staff members (3.6%); Sierra Club: 1 Hispanic, 0 African American, 0 Asian Americans of 250 member staff (0.4%)).

¹⁵⁴ Shabecoff, *supra* note 149, at 20 (citing Frederic D. Krupp, executive director of the Environmental Defense Fund).

¹⁵⁵ *Id.*

¹⁵⁶ COMM'N FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES (1987), available at <http://www.ucc.org/about-us/archives/pdfs/toxwrace87.pdf>.

¹⁵⁷ *Id.*

prioritization of the board of directors. Mainstream environmental organizations' failure to perceive, connect, and engage in environmental justice issues reflects the nature of organizational governance within these environmental nonprofits.

Despite a shared "birthright" out of the civil rights movements of the 1960's, the black-green-white divide between mainstream environmental and environmental justice organizations is pervasive. A decade after the activist letter to the Group of Ten demanding minority representation, the demographic composition of governance leadership in nonprofits remains paltry in comparison to their percentage of the population generally, and in comparison to the percentage of the population directly affected by pollution and lack of enforcement of environmental statutes. Robert Stanton reports that people of color comprise nine percent of boards for environmental organizations that are members of the Natural Resources Council of America.¹⁵⁸ People of color represent one-third of the U.S. population; yet a recent Minority Environmental Leadership Initiative reported that a third of environmental organizations have *no* people of color on staff.¹⁵⁹ Marcelo Bonta, Director of the Center for Diversity and the Environment, and Charles Jordan, the first African American Chair of The Conservation Fund, suggest that the exclusion of people of color is not, in large part, intentional.¹⁶⁰ However, they chide the movement for overlooking 100 million people of color and urge that diversification is crucial to the survival of the environmental movement. Bonta and Jordan trace the remaining exclusion challenge to multiple factors, including erroneous misperceptions that minorities do not care about the environment and a lack of funding for diversity initiatives in mainstream environmental organizations. In particular, they remark that environmental organizations have failed to achieve cultural competency and equitable collaboration with communities and groups of color.¹⁶¹

¹⁵⁸ See ROBERT STANTON, ENVIRONMENTAL STEWARDSHIP FOR THE 21ST CENTURY: OPPORTUNITIES AND ACTIONS FOR IMPROVING CULTURAL DIVERSITY IN CONSERVATION ORGANIZATIONS AND PROGRAMS 10 (2002), *available at* <http://www.environmentaldiversity.org/resources.html> (follow "Part I" hyperlink).

¹⁵⁹ DORCETA TAYLOR, DIVERSITY IN ENVIRONMENTAL INSTITUTIONS: SUMMARY RESULTS OF THE MELEDI STUDIES (University of Michigan School of Natural Resources and Environment 2005).

¹⁶⁰ See Bonta & Jordan, *supra* note 147, at 14.

¹⁶¹ See *id.* at 16-18. It should be noted, however, that the "lack of funding for diversity efforts" reflects board prioritization of needs and resource allocation. While foundations have fostered diversity initiatives, at some point within the past twenty years, foundations might anticipate that environmental organizations would adopt these special initiatives

Whether mainstream environmental organizations embrace minority and poverty environmental concerns, to some extent, may reflect staff composition,¹⁶² perspective and effort. But the larger issue of organizational governance looms above, as it is the board of directors that is charged with identification of the organization's environmental mission, the program goals and objectives, and organizational values. The board is charged with identifying stakeholders and strategically integrating their needs and participation so that the organization might more effectively achieve its mission.

Bonta and Jordan suggest that recruiting diverse leadership and staff would be more productive when environmental nonprofits change the organizational culture and begin working equitably with minority communities.¹⁶³ They advise environmentalists not to seek out minority communities "only when we want something"¹⁶⁴ and offer that achieving an equitable relationship requires sharing resources, power, and decision-making responsibilities. Notably, Jordan's Conservation Fund established a unique Resourceful Communities Program that pairs low-income communities with environmentally-friendly economic development alternatives. Though limited to a North Carolina service area where the concept was developed in concert with local officials and communities facing loss of property tax revenue due to the establishment of conservation easements,¹⁶⁵ this effort to achieve a "win-win" for conservationists and communities in dire need of economic development opportunities offers an instructive model for other mainstream environmental organizations.¹⁶⁶

The experience of many environmental nonprofits, particularly as exemplified in the Sumter County bridge controversy, indicates that the views and perspectives of minorities and low-income people are not well articulated and embraced in organizations where there is insufficient

into their organizations' regular operations. Just as a nonprofit must allocate resources for staff training and auditing functions, "diversity efforts" might be considered core functions that should be contemplated and funded as ongoing administrative expenses within an organization's operating budget.

¹⁶² See *The Letter that Shook a Movement*, *supra* note 145.

¹⁶³ See Bonta & Jordan, *supra* note 147, at 22.

¹⁶⁴ See *id.* at 25.

¹⁶⁵ Interview with Erik Meyers, Vice President for Sustainable Programs, The Conservation Fund (Oct. 2007).

¹⁶⁶ Though invited to assist in the Sumter County bridge controversy, The Conservation Fund Resourceful Communities staff declined to participate, expressing reservations about "the whole race issue." See Brinson, *supra* note 109, at B1 (referencing this author's work).

board representation. Of the organizations involved in the controversy, none have boards that reflect the diversity of the populations in the state, where minorities comprise a third of the population.¹⁶⁷ One of the SCCCL's 22 directors is a person of color (representing 5% of the twenty two member board),¹⁶⁸ Audubon South Carolina's fourteen member board has one person of color (representing 7% of the board),¹⁶⁹ and the South Carolina Wildlife Federation has three people of color (representing 12% of the twenty six member board).¹⁷⁰ The Southern Environmental Law Center (the nonprofit which is prosecuting the case) has two African American directors, reflecting 6% of the 31 member board.¹⁷¹ While the SELC does not include environmental justice work in its mission, the six states serviced by the SELC have minority populations averaging 31.2%.¹⁷² Reflecting upon the Sumter County bridge situation and responding to environmentalist objections to development on black-owned land, Bernard Mazyck stated: "Environmentalists don't trust the local community to know what's best. Definitely, the local community doesn't trust the environmentalists, who say, 'You can't use this land to support your community.'"¹⁷³ Without effective representation in the establishment of the mission and objectives of environmental organizations, this lack of trust is likely to continue.

The modern era of enforcement-based environmentalism set out to reallocate the economics of the externalities of poor land uses. Environmental justice advocates indicate that the reallocation is still inequitable. There is, however, another externality to consider: the externalities of the tax exemption. Under the current system, environmental donors receive tax benefits from their contributions, and the public generally receives benefits from the agencies' work, although conservation easements do not require owners to allow public access, the preservation of green spaces is said to help the environment generally. The costs are shared generally by the American public.

¹⁶⁷ See U.S. CENSUS BUREAU, *South Carolina QuickFacts*, U.S. Census Bureau reports for 2006: Black: 29%, Hispanic: 3.5%, Native Americans 0.4%, Asian 1.1%, Bi-racial 0.9%, available at <http://quickfacts.census.gov/qfd/states/45000.html>.

¹⁶⁸ Interview with Dana Beach, Executive Director, South Carolina Coastal Conservation League (Fall 2007).

¹⁶⁹ Telephone Interview with Program Staff, Audubon South Carolina (Nov. 14, 2007).

¹⁷⁰ Telephone Interview with Program Staff, South Carolina Wildlife Federation (Nov. 14, 2007).

¹⁷¹ Telephone Interview with Haley Parrish (Nov. 16, 2007).

¹⁷² See U.S. CENSUS BUREAU, *State QuickFacts*, <http://quickfacts.census.gov/qfd/states/45000.html> (last visited Feb. 23, 2009). U.S. Census Bureau reports minority population for 2005 as: SC: 35.5%, NC: 31.7%, VA: 31.8%, TN: 22.1%, GA: 40.4%, AL: 30.7%. *Id.*

¹⁷³ Brinson, *supra* note 79, at B1.

Through bipartisan articulation of deficit reduction goals and the operation of "pay as you go" budget rules, tax expenditures such as the subsidy provided to nonprofits generally and conservation easements in particular are offset by reductions or limitations in spending on domestic programs. While an argument can be made that low-income and poor families in need of governmental assistance experience the impact of tax expenditure induced spending reductions at a more critical level, *all* taxpayers bear the costs of the tax exemption subsidy. Despite the environmental benefits attained, the programs pursued by environmental nonprofits impose yet another cost on minority communities (regardless of income) when NIMBY and conservation efforts relegate the "cesspool" burden to these communities.

Ranging from reduced property values and increased health costs, the cost of these externalities are inequitably imposed on minority communities that generally do not have sufficient representation in the governance of environmental nonprofits. Akin to the dilemma of "taxation without representation" that incited the American Revolution, inequitable allocation of the benefits of the tax subsidy without representation creates a trust and accountability dilemma for environmental nonprofit boards and their organizations. Reflecting upon the Sumter bridge situation and responding to environmentalist objections to development on black-owned land, Bernard Mazyck stated, "[e]nvironmentalists don't trust the local community to know what's best. Definitely, the local community doesn't trust the environmentalists, who say, 'You can't use this land to support your community.'"¹⁷⁴ Without effective representation in the establishment of the mission and objectives of environmental organizations, this lack of trust is likely to continue.

In order to ameliorate the misdirection, oversight, or avoidance of environmental justice issues in an organization's mission and strategy, and to build trust and establish organizational accountability, I suggest that the fiduciary duty of obedience, which is committed to effective achievement of an organization's mission, should obligate a board of directors to address its own composition and to institute staff and information gathering resources that enable the organization to aptly recognize the impact of the cumulative effect of environmental racism on minority and low-income communities. This will strengthen the efforts of environmental nonprofits to develop strategies that effectively address environmental justice issues in a culturally competent manner. Therein lies the

¹⁷⁴ *Id.*

challenge of the “diversity crisis.” To the extent that minority and low-income individuals are underrepresented on environmental nonprofit board of directors—the locus of power where strategic plans are developed and policy decisions made—these groups will continue to lack the cultural competence, community legitimacy, and accurate information to recognize and address environmental justice issues in a holistic and effective manner. The black-green-white divide must be repaired if environmental organizations are to remain relevant.¹⁷⁵ The Sumter County case study suggests that mainstream organizations need to recognize environmental justice concerns and respect minority and low-income community positions. Integration of the boards will help the divergent movements evolve into an “environmental equity movement” that has the potential to combine the best features of traditional environmental and environmental justice movements.

¹⁷⁵ Bonta & Jordan, *supra* note 147, at 25.