Note

"Pollution Does Not [sic] Discriminate"[1]: *Louisiana v. EPA*, Disparate Impact, and the Fight for Environmental Justice in a Hostile Climate

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Human-induced climate change hurts people. Environmental burdens impact a person's ability to live freely, in good health, and with loved ones. And in the United States, people in positions of political authority and decision-making—who are predominantly white and high-income—use the legal system to push environmental harms disproportionately onto low-income, Black, Indigenous, People of Color (BIPOC) communities. This has occurred for centuries and continues in the present.

A basic sense of justice makes the following conclusion easy to reach: skin color, zip code, and pocketbook should not determine whether someone enjoys a clean and healthful environment.

1. Louisiana v. U.S. EPA, 712 F. Supp. 3d 820, 866 (W.D. La. 2024).

* J.D. Candidate, 2026, University of Minnesota Law School; B.A., 2021, Carleton College. First and foremost, I would like to thank my stepdad, Michael S. Johnson, for the time, thought, and expertise he offered me throughout this process. This note would not have been possible without you. Thank you for always being there for me, supporting me in my pursuits, and modeling radical curiosity and open-mindedness. I'd also like to thank my Faculty Advisor, Prof. Nick Bednar for his responsiveness, encouragement, and genuine investment in me and my work. Thank you to Note & Comment Editors JJ Mark, Brandon Stottler, Tristen Lindell, and Bill Holt, for providing thoughtful feedback on my note in its various iterations; and to the Volume 110 editing team for helping me polish my piece and take it through the finish line. Thank you to Prof. Susan J. McKinstry (Carleton College) for sharing and encouraging my love of writing. And to my mom, Amy; my dad, Tom; my grandparents, Bean and Joe Okimoto, Evie Brim, Pete and Diane Kirkman—thank you for emphasizing, throughout my life, the importance of education and a life lived for others. This Note is dedicated to the residents of East Phillips, who model community strength and resilience, and who deserve justice, clean air, and an urban farm.

For plaintiffs seeking relief from environmental injustice, a critical tool is the U.S. Environmental Protection Agency's (EPA) Title VI regulations (the Regulations), which prohibit EPA funding recipients from taking actions that have a discriminatory effect, or "disparate impact," on the basis of race.

However, legal challenges and changing political conditions make the Regulations' future tenuous. In Louisiana v. EPA *(W.D. La. 2024), for the first time since the Regulations were promulgated in 1973, a federal court held that the Regulations' disparate impact requirements are invalid and issued an injunction barring the EPA from enforcing them. The second Trump administration is also taking steps to eliminate disparate-impact requirements and cease civil rights enforcement.*

This Note examines these emergent challenges to the EPA's Title VI disparate impact regulations. It considers state-level measures for combatting environmental racism amidst a federal landscape that is increasingly hostile towards race-based equity measures. Using the Biden administration's Justice40 Initiative as a case study, the Note analyzes arguments for and against race-neutral environmental justice policies, providing novel data analysis on the correlation between Justice40's race-neutral environmental burden metrics and racial demography.

Ultimately, I maintain that the decision to pursue race-based or race-neutral environmental justice laws must be made on a state-by-state basis, in forums led by BIPOC communities. This Note aims to assist state legislators, policymakers, organizers, and advocates. It identifies a recent legal development threatening environmental justice efforts; analyzes relevant factual, legal, and policy considerations; and offers empirical analysis to inform strategy.

INTRODUCTION

> I call us "the Sandwich…" That's NuStar [crude oil storage facility] and that's Shell [a closed refinery]. We are actually sandwiched in. And I'm the meat.
>
> My neighbor had breast cancer. The lady that lives in the white trailer, her husband passed [away] last Friday. And [there were] about five of us standing there talking about the fact that we had breast cancer.[2]

This is how Brenda Bryant, who is Black, describes life in St. James Parish, Louisiana, located within "Cancer Alley."[3] Cancer Alley is an eighty-five-mile stretch of communities along the Mississippi between New Orleans and Baton Rouge[4] where state agencies have sited over 200 petrochemical facilities that emit toxic chemicals into the air.[5] As its nickname underscores, the region faces unusually high cancer rates, such that "almost every household has someone who has died of cancer."[6]

Barbara Washington, another St. James resident, lives on land purchased in 1874 by her great-great-great-grandmother, Harriet Jones, who was formerly enslaved at a nearby plantation.[7] Washington "can personally name some 50 people who

2. *See* Bobbi-Jeanne Misick, *Louisiana's Most Vulnerable Residents Share Their Stories During EPA's 'Journey to Justice' Tour*, NEW ORLEANS PUB. RADIO, (Nov. 19, 2021), https://www.wwno.org/news/2021-11-19/louisianas-most-vulnerable-residents-share-their-stories-during-epas-journey-to-justice-tour [https://perma.cc/8D4Y-2YNU] (quoting Brenda Bryant from St. James Parish).

3. *See id.* (containing excerpts from an interview with Brenda Bryant).

4. *"We're Dying Here": The Fight for Life in a Louisiana Fossil Fuel Sacrifice Zone*, HUM. RTS. WATCH 4 (2024), https://www.hrw.org/sites/default/files/media_2024/01/us_louisiana0124web.pdf [https://perma.cc/KE5KQH3R].

5. Lylla Younes et al., *In a Notoriously Polluted Area of the Country, Massive New Chemical Plants Are Still Moving In*, PROPUBLICA (Oct. 30, 2019), https://projects.propublica.org/louisiana-toxic-air [https://perma.cc/8E5L-J5KY].

6. *See* Jamiles Lartey & Oliver Laughland, *Almost Every Household Has Someone That Has Died from Cancer*, GUARDIAN (May 6, 2019), https://www.theguardian.com/us-news/ng-interactive/2019/may/06/cancertown-louisana-reserve-special-report [https://perma.cc/8E5L-J5KY] (interviewing residents of Reserve, Louisiana, a small town in "Cancer Alley" about twenty miles from St. James Parish).

7. *See* HUM. RTS. WATCH, *supra* note 4, at 51 ("Barbara Washington can personally name some 50 people who have died of cancer from her small community of Convent across the river on the east bank of the Mississippi in St. James Parish. Her list includes her sister. The two lived on the same lane on land originally purchased in 1874 by their great-great-great-grandmother Harriet Jones, who had been enslaved at a nearby plantation. Washington's sister

have died of cancer," including her sister, who died from lung cancer.[8] "She was not a smoker."[9]

St. James exemplifies the link between race and environmental burden. While St. James is 50% Black, its Fourth and Fifth Districts—where nine of the eleven polluting plants in the Parish are located—are 52% and 88.6% Black, respectively.[10] The high concentration of petrochemical plants in these communities produces some of the highest cancer incidences in the country, with the Fourth and Fifth Districts ranking in the ninety-fifth to one-hundredth percentile nationwide for Air Toxic Cancer Risk.[11]

Twelve hundred miles away, residents of East Phillips, a neighborhood in Minneapolis, Minnesota, are also getting sick and losing loved ones to pollution-related illness.[12] The East Phillips neighborhood is 83% Black, Indigenous, People of Color (BIPOC) and home to Little Earth, the only Native-American-preference subsidized housing complex in the United States.[13] East Phillips also ranks at, or above, the ninetieth percentile in the nation for diesel particulate matter, nitrogen dioxide pollution, traffic proximity, and hazardous waste proximity, as well as the ninety-ninth percentile for proximity to Superfund (toxic

worked multiple jobs, including the night shift as a cleaning person for petrochemical plants. At age 56, she was diagnosed with stage four metastatic lung cancer. 'She was not a smoker,' Washington quickly added. She died six months later. Cancer is a brutal way to die, and the chemotherapy was devastating.").

8. *Id.*

9. *Id.*

10. Complaint at 12, Inclusive Louisiana v. St. James Parish, 702 F. Supp. 3d 478 (E.D. La. 2023) (No. 23-987).

11. *Id.* at 108.

12. *See, e.g.*, Chloe Johnson, *Residents Confront Officials over Longtime Health Concerns Linked to Minneapolis Foundry*, MINN. STAR TRIB. (Nov. 27, 2023), https://www.startribune.com/smith-foundry-east-phillips-pollution-air-minneapolis-epa-mpca/600322739 [https://perma.cc/M466-PEJT] ("'I don't want to see nobody else bury a child,' said Cassandra Holmes, a former Little Earth resident who said her son had been diagnosed with a heart condition at 14 and died at 16. 'It's the worst feeling in the world.'").

13. *See EJScreen Multisite Report*, PUB. ENV'T DATA PARTNERS, https://pedp-ejscreen.azurewebsites.net [https://perma.cc/5FSJ MAY2] (providing demographic and pollution data on ZIP code 55407, where much of East Phillips is located); *see also About*, LITTLE EARTH, https://www.littleearth.org/about [https://perma.cc/33TL-W2GC].

waste) sites.[14] Some days, children in the neighborhood cannot play outside due to unsafe air pollution levels.[15]

"The kids at Círculo de Amigos Child Care Center in south Minneapolis's East Phillips neighborhood are enrolled in a nature-based program intended to educate them about the world by exploring the outdoors daily."[16]

But according to Tania Rivera, a manager at Círculo, on many days, school officials often check air quality monitors and realize it's not safe enough to bring the kids outside.[17] "The daycare is on Cedar Avenue, just around the corner from Smith Foundry, a metal plant where federal investigators found a host of pollution violations during a surprise inspection" in May 2023.[18]

Human-induced climate change hurts people.[19] Environmental burdens impact a person's ability to live freely, in good health, and with loved ones.[20] And in the United States, people

14. *See id.*; *see also What is Superfund?*, ENV'T PROT. AGENCY (last updated Sept. 17, 2025), https://www.epa.gov/superfund/what-superfund [https://perma.cc/GAR7-HFQV] (describing the Superfund program).

15. *See* Johnson, *supra* note 12.

16. Andrew Hazzard, *Smith Foundry Seeks New Permit to Continue Operations as State Scrambles to Address Public Outrage Over Pollution*, SAHAN J. (Nov. 22, 2023), https://sahanjournal.com/climate-environment/smith-foundry-polluted-east-phillips-neighborhood-minneapolis [https://perma.cc/P4RT 4WW5].

17. *Id.*

18. *Id.* The foundry ceased operations in August 2024, following public and agency pressure. See Andrew Hazzard, *Residents Celebrate as Smith Foundry Announces Its Closure in Minneapolis' East Phillips Neighborhood*, SAHAN JOURNAL (July 29, 2024), https://sahanjournal.com/climate-environment/smith-foundry-closing-minneapolis-east-phillips [https://perma.cc/27J5-TJMQ].

19. *See, e.g.*, Press Release, Security Council, United Nations, Climate Change 'Biggest Threat Modern Humans Have Ever Faced', World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation (Feb. 23, 2021), https://press.un.org/en/2021/sc14445.doc.htm [https://perma.cc/Z7GW-TUKT] (quoting naturalist David Attenborough who warned the U.N. Security Council that "'[i]f we continue on our current path, we will face the collapse of everything that gives us our security' . . . food production, access to fresh water, habitable ambient temperature and ocean food chains."); *The Effects of Climate Change*, NAT'L AERONAUTICS & SPACE ADMIN., https://science.nasa.gov/climate-change/effects [https://perma.cc/R3MF-CFBK] ("The effects of human-caused global warming are happening now, are irreversible for people alive today, and will worsen as long as humans add greenhouse gases to the atmosphere.").

20. *See, e.g.*, Hazzard, *supra* note 16 (describing the effects of pollution in East Phillips); HUM. RTS. WATCH, *supra* note 4, at 51 (interviewing a Cancer

in positions of political authority and decision-making—who are disproportionately white and high-income[21]—use the legal system to push environmental harms disproportionately onto low-

Alley resident who personally knew over fifty people who died of pollution-induced cancer).

21. *See* Katherine Schaeffer, *The Changing Face of Congress in 8 Charts*, PEW RSCH. CTR. (Feb. 7, 2023), https://www.pewresearch.org/short-reads/2023/02/07/the-changing-face-of-congress [https://perma.cc/88RW-JG8C] (noting that, while the 118th Congress is the most racially and ethnically diverse in U.S. history, "[w]hite Americans [still] account for 75% of voting members in the new Congress, considerably more than their 59% share of the U.S. population"); Karl Evers-Hillstrom, *Majority of Lawmakers in 116th Congress Are Millionaires*, OPEN SECRETS (Apr. 23, 2020), https://www.opensecrets.org/news/2020/04/majority-of-lawmakers-millionaires [https://perma.cc/MJZ3-AQBA] (revealing, from personal financial disclosures, that more than half of the members in the 116th Congress had a net worth of over one million dollars); Justin de Benedictis-Kessner et al., *American Local Government Elections Database*, SCI. DATA, Dec. 19, 2023, at 1, 7 (examining election data from 1,747 cities, counties, and school districts from 1989–2021 and finding that white officeholders are "overrepresented in every local office across the last three decades"); Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787, 819–20 (1992) ("[People of color] have had little influence on either the lawmaking or priority-setting processes at any of the legislative, regulatory, or local enforcement levels . . . [and] have not been well represented among the interest groups lobbying and litigating before governmental authorities on environmental protection issues. Nor have they been well represented, especially at the national level, within those governmental organizations actively involved in the relevant environmental processes.").

income, BIPOC communities.[22] This has occurred for centuries and continues today.[23]

A basic sense of justice makes the following conclusion easy to reach: skin color, zip code, and pocketbook should not determine whether someone can access a clean and healthful environment.

For plaintiffs seeking relief from environmental injustice, the U.S. Environmental Protection Agency's (EPA) Title VI

22. The disproportionate infliction of environmental harms on BIPOC communities is well-established. *See, e.g.*, Robert D. Bullard, *Introduction: Environmental Justice - Once a Footnote, Now a Headline*, 45 HARV. ENV'T L. REV. 243, 246 (2021) ("Black Americans and Latinos bear a disproportionate burden of pollution caused mainly by whites: Black Americans and Latinos breathe in 56% and 63%, respectively, more pollution than they generate. Whites, on the other hand, breathe 17% less air pollution than they cause."); U.S. ENV'T PROT. AGENCY, EPA 430-R-21-003, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS 6 (2021) (finding that Black, Latine, American Indian and Alaska Native, and Asian communities are "most likely to currently live in areas where the analyses project the highest levels of climate change impacts"); Leora Friedman, *Recommending Judicial Reconstruction of Title VI to Curb Environmental Racism: A Recklessness-Based Theory of Discriminatory Intent,* 32 GEO. ENV'T L. REV. 421, 423 (2020) (explaining that Black Americans are eighty percent more likely to live near hazardous pollution sites). For examples of the ways the U.S. legal system has facilitated this disparate impact, see *Environmental Justice*, UNIV. OF MICH. CTR. FOR SUSTAINABLE SYS. (2024), https://css.umich.edu/sites/default/files/2024-10/Environmental%20Justice_CSS17-16.pdf [https://perma.cc/LD9L-R2WH] (explaining that permitting and exclusionary zoning laws "have funneled racial and ethnic minorities into areas of greater environmental degradation"); *Environmental Justice and Civil Rights in Permitting Frequently Asked Questions,* EPA 2 (2022), https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant_0.pdf [https://perma.cc/RK8W-JKZ4] ("Historically, industrial facilities have been sited, have expanded, and have added to the pollution burden in already vulnerable communities without due consideration of whether, either intentionally or in effect, the decisions allowing such outcomes are discriminatory."); Tali Natter, *Pollution and Unequal Burdens*, NAT'L GEOGRAPHIC (last updated May 8, 2025) https://education.nationalgeographic.org/resource/yes-environment-can-have-racist-effects-too [https://perma.cc/WXW8-X28Q] (explaining that discriminatory housing laws and redlining contribute to environmental injustice, with formerly redlined communities tending to have fewer trees and parks, hotter temperatures, and more polluting industrial facilities). BIPOC communities in the Global South similarly bear a disproportionate share of environmental harms. Global environmental injustice exceeds the scope of this Note. For a study documenting this phenomenon, see Sebastian Bathiany et al., *Climate Models Predict Increasing Temperature Variability in Poor Countries*, SCI. ADVANCES, May 2, 2018, at 1 ("The countries that have contributed least to climate change, and are most vulnerable to extreme events, are projected to experience the strongest increase in variability.").

23. See *supra* note 22 and accompanying text.

regulations (the Regulations) are a critical tool.[24] But mounting legal challenges and changing political conditions make the Regulations' future uncertain.[25]

Title VI of the Civil Rights Act of 1964 imposes an anti-discrimination mandate on federal funding recipients.[26] Specifically, Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[27] Title VI directs any federal agency that provides federal assistance to an outside recipient to effectuate this provision by regulation.[28] Eighteen federal agencies have promulgated regulations under Title VI.[29] One of these agencies is the EPA, which codified its regulations at 40 C.F.R. § 7.[30]

Like other agencies with Title VI regulations,[31] the EPA prohibits recipients from taking actions that have a discriminatory effect, or "disparate impact" based on race.[32] The Regulations provide that any agency or program that receives EPA funding cannot, on the basis of race: (1) deny, or differentially

24. Britteny Jenkins, *Title VI Turns 60! But Its Future Is Under Threat*, CONSERVATION L. FOUND. (Dec. 7, 2024), https://www.clf.org/blog/title-vi-turns-60-threats-loom-ahead [https://perma.cc/ERZ2-PKWF] (describing the importance of Title VI for fighting environmental injustice).

25. *See infra* Part II (discussing the mounting threat to disparate impact regulations).

26. *See* 42 U.S.C. § 2000d (prohibiting federal funding recipients from discriminating on the basis of race).

27. *Id.*

28. *See* 42 U.S.C. § 2000d-1.

29. *See Agency-Specific Civil Rights Information*, U.S. DEP'T OF JUST.: CIV. RTS. DIV. (last updated Sept. 14, 2023), https://www.justice.gov/crt/agency-specific-civil-rights-information [https://perma.cc/P6TQ-UQDR] (listing eighteen federal agencies that have promulgated regulations under Title VI).

30. *See* 40 C.F.R. § 7 (1984) (issuing regulations to ensure racial nondiscrimination in programs or activities that receive federal assistance from the Environmental Protection Agency).

31. *See, e.g.*, 34 C.F.R. § 100.3(b)(2)–(3) (2025) (Department of Education disparate impact regulations); 45 C.F.R. § 80.3(b)(2)–(3) (2025) (Department of Health and Human Services disparate impact regulations); 49 C.F.R. § 21.5(b)(2)–(3) (2025) (Department of Transportation disparate impact regulations); 38 C.F.R. § 18.3(b)(2)–(3) (2025) (Department of Veterans' Affairs disparate impact regulations).

32. *See* 40 C.F.R. § 7.35 (2025) (prohibiting racial discriminatory effects, not just racially discriminatory purpose).

provide, benefits or services;[33] (2) deny opportunity to participate in planning or advisory bodies;[34] (3) use criteria or methods of administration that have the effect of discrimination, or of substantially impairing the accomplishment of the program's objectives for the discriminated-against group;[35] or (4) choose a site for a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program.[36] Violations of the Regulations are handled through an administrative complaint process, whereby individuals file complaints that the EPA investigates and resolves.[37]

Although the EPA has been widely criticized for its inadequate Title VI enforcement,[38] environmental justice[39] advocates nevertheless regard the Regulations as a critical tool because of

33. *Id.* § 7.35(a)(1)–(4).

34. *Id.* § 7.35(a)(5).

35. *Id.* § 7.35(b).

36. *Id.* § 7.35(c).

37. *See infra* Part I.B (explaining the EPA's Title VI administrative complaint process).

38. *See, e.g.*, *Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12898*, U.S. COMM'N ON C.R. 1–3 (2016), https://www.usccr.gov/files/pubs/2016/Statutory_Enforcement_Report2016.pdf [https://perma.cc/F42Y-MZS7] ("EPA's Office of Civil Rights has never made a formal finding of discrimination and has never denied or withdrawn financial assistance from a recipient in its entire history . . . EPA continues to struggle to provide procedural and substantive relief to communities of color impacted by pollution. EPA's deficiencies have resulted in a lack of substantive results that would improve the lives of people living in already overly-burdened communities."); Lombardi et al., *Environmental Racism Persists, and the EPA Is One Reason Why*, CTR. FOR PUB. INTEGRITY (Aug. 3, 2015), https://publicintegrity.org/environment/pollution/environmental-justice-denied/environmental-racism-persists-and-the-epa-is-one-reason-why [https://perma.cc/DPY4-3FRG] ("More than nine of every 10 times communities have turned to it for help, the civil-rights office has either rejected or dismissed their Title VI complaints. In the majority, the office rejected claims without pursuing investigations. On the few occasions that it did, it dismissed cases more often than it proposed sanctions or remedies."); Marianne Engleman Lado, *Toward Civil Rights Enforcement in the Environmental Justice Context: Step One: Acknowledging the Problem*, 29 FORDHAM ENV'T L. REV. 1, 8 (2017) ("Across the country, many environmental justice activists have long ago lost hope in Title VI compliance and enforcement as a means of addressing racial inequalities in public environmental decision-making processes, the distribution of polluting facilities, and access to environmental benefits.").

39. The phrase "environmental justice" holds a variety of meanings. For a discussion of terminology, see *infra* notes 53–69 and accompanying text.

their disparate-impact standard.[40] This is because one of the only other avenues for federal redress from environmental racism lies in the Fourteenth Amendment's Equal Protection Clause.[41]

The Supreme Court interprets the Equal Protection Clause to only prohibit intentional discrimination, not disparate impact.[42] This intentional discrimination requirement imposes a high evidentiary bar that severely limits plaintiffs' ability to obtain relief; government actors regularly make decisions and adopt policies that disproportionately harm BIPOC communities, but seldom cite racial animus as their motivation.[43] The

40. *States Ask EPA to Eviscerate Environmental Civil Rights Protections*, EARTHJUSTICE (Apr. 17, 2024), https://earthjustice.org/press/2024/states-ask-epa-to-eviscerate-environmental-civil-rights-protections [https://perma.cc/2E65-Y6VB] (characterizing EPA's Title VI regulations as "one of the country's most important environmental justice tools").

41. *Cf.* Lylla Younes, *A New Salvo in the Fight to Protect the 'Holy Grail' of Environmental Justice*, GRIST (Sept. 20, 2024), https://grist.org/justice/fight-to-protect-title-vi-epa-holy-grail-environmental-justice [https://perma.cc/R7K5-24L4] (explaining that the first federal environmental justices cases brought in federal court relied on the Equal Protection Clause, but that, in the 1990s, advocates shifted their focus to Title VI after the Supreme Court narrowed the scope of the Equal Protection Clause); Lauren Cormany, *Standing in the Way of Environmental Justice*, 2024 UTAH L. REV. 167, 174 (2024) ("Attorneys currently use two different legal doctrines to challenge discriminatory siting of heavy industry and waste facilities near minority communities: the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.").

42. Washington v. Davis, 426 U.S. 229, 239 (1976) (holding that evidence of disparate impact—absent a showing of discriminatory purpose—does not violate the Equal Protection Clause).

43. *See id.; see also* ROBERT L. GLICKSMAN ET AL., ENVIRONMENTAL PROTECTION: LAW AND POLICY 5 (2023) (explaining that the intentional discrimination standard pronounced in *Washington* "profoundly impacted communities who found themselves litigating under a standard that makes it very difficult to prove discriminatory intent from circumstantial evidence"); Vann R. Newkirk II, *Why the EPA Backed Down*, ATLANTIC, (Sept. 23, 2024), https://www.theatlantic.com/ideas/archive/2024/09/michael-regan-epa-environmental-justice-lawsuit/679941 [https://perma.cc/T38Q-TD92] ("Without clear proof of racist intent, discrimination can be hard to establish. When it comes to environmental laws, permitting decisions, and industrial siting, unfavorable treatment rarely comes with outright declarations of bigotry. More typically, minority communities become de facto targets because they lack the political capital and other resources to challenge industrial polluters. Additionally, many communities inherit zoning laws, land-use ordinances, and hazardous sites that originated decades ago under more explicitly racist rationales . . . . A company may claim that a siting decision, say, was based simply on the availability of cheap land and had nothing to do with discrimination. But discrimination may explain why the

Regulations' disparate-impact framework makes space for this reality, prioritizing the observable effects of decisions, which are, by nature, more possible to prove than discriminatory purpose.[44]

However, disparate impact regimes are under attack. In *Louisiana v. EPA*, for the first time since the Regulations were promulgated in 1973, a federal court held that the Regulations are invalid and issued an injunction barring the EPA from enforcing them.[45] This ruling only applies to the Western District of Louisiana. However, *Louisiana v. EPA* exists within a larger attack on disparate-impact regimes—and indeed, on any race-conscious policy that exists to remedy white supremacy.[46]

This Note examines emergent threats to the EPA's Title VI disparate-impact regulations and evaluates strategies for fighting environmental racism amidst an increasingly hostile federal landscape. Part I provides background on environmental racism, the EPA's Title VI enforcement, and Equal Protection and Title VI jurisprudence. Part II examines *Louisiana v. EPA*, discussing its invalidation of the Regulations and situating its holding within a broader movement to invalidate race-conscious laws.

Then, given the federal landscape, Part III proposes that environmental justice advocates should shift focus away from Title VI and towards the states. To this end, Section III.A reviews existing state environmental justice laws, identifying the decision of whether to use race-based or neutral-criteria laws[47] as a

land was cheap in the first place. In the 1950s, when big petrochemical companies came to Louisiana's river parishes, they invariably built near Black communities, where most residents were disenfranchised. . . . A legal approach known as 'disparate-impact theory' attempts to acknowledge this reality. Instead of solely trying to establish purposeful bigotry, it looks plainly at the racial effects of specific policy decisions. This theory has proved to be a powerful corrective when it comes to enforcing civil-rights law.").

44. *See supra* note 43 and accompanying text.

45. *See* Louisiana v. U.S. EPA, 712 F. Supp. 3d 820, 866 (W.D. La. 2024) (holding that the EPA's Title VI regulations exceed their statutory authority and enjoining the EPA from enforcing them).

46. *See infra* Part II.B (discussing a broad threat to disparate impact regimes that extends beyond Louisiana).

47. "Race-based" laws or policies are those that explicitly reference and consider race in definitions, statutory scheme, or decision criteria. *See* Stephen Menendian, *Advancing Racial Equity: Legal Guidance for Advocates*, OTHERING & BELONGING INST. (last updated Feb. 14, 2025), https://belonging.berkeley.edu/advancing-racial-equity [https://perma.cc/QB4T-BHCQ]. In contrast "race-neutral" laws do not explicitly reference race in definitions or decision-criteria. *Id.*

central issue. Sections III.B and III.C discuss arguments for and against race-neutral environmental justice policies, using the Biden administration's Justice40 Initiative as a case study and offering independent data analysis on the correlation between non-racial environmental burden metrics and racial demography.

Ultimately, this Note does not propose that one method—race-based or race-neutral laws—should be universally adopted. Each approach presents advantages and drawbacks.[48] For example, race-neutral approaches may decrease litigation risk but bring attendant dignitary harm[49] by not reflecting the lived realities of racism.[50] The relative weight of these considerations depends on the analytic lens, experiences, and identities a person brings to the assessment.

What is most important is that directly affected BIPOC community members lead policy decisions. The concentration of decision-making power in the hands of a few, predominantly white, high-income people perpetuates environmental inequity.[51] This Note, written by a white law student who did not grow up in an environmentally overburdened community, avoids replicating this dynamic by declining to advocate for a single policy solution. Environmental justice strategies should be shaped by the

48. *See infra* Part III.B.2 (analyzing the advantages and disadvantages of race-neutral laws).

49. The term "dignitary harm" is commonly used in legal contexts to refer to injuries to a person's liberty, autonomy, or identity; it arises from speech or conduct that embarrasses, humiliates, or demonstrates blatant disrespect for another person. *See, e.g.*, RESTATEMENT (THIRD) OF TORTS: REMEDIES § 22 cmt. b (AM. L. INST. 2023) ("[D]ignitary harms are those that interfere with the liberty or personal autonomy of the plaintiff, or that embarrass, humiliate, or show blatant disrespect for the plaintiff, potentially leading to emotional distress or reputational harm. . . . [C]ourts have recognized significant affronts to dignity as a compensable harm when caused by intentional torts."). We have discerned three distinct core interests that the dignitary torts protect. At the core, there are protections against interferences with liberty and personal autonomy; protections against speech or conduct that embarrasses, humiliates, or shows blatant disrespect; and protections against communications that diminish the regard that others have for the plaintiff. *See* Kenneth S. Abraham & G. Edward White, *The Puzzle of the Dignitary Torts*, 104 CORNELL L. REV. 317, 358–59 (2019) ("[D]ignitary torts protect . . . liberty, autonomy, respect, humiliation, embarrassment, and the regard of others. . . . [A]ll these terms and the concepts they represent [involve] dignity or infringement of dignity.").

50. *See supra* note 49 and accompanying text.

51. *See supra* note 21 (discussing the overrepresentation of white people in positions of political decision making and its connection to environmental injustice).

communities facing injustice, not prescribed from the top-down. This Note aims to assist by identifying an important issue facing environmental justice advocates, offering empirical analysis, and analyzing relevant legal, factual, and policy considerations.

I. BACKGROUND: ENVIRONMENTAL RACISM, THE FOURTEENTH AMENDMENT, AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

This Part provides background relevant to understanding *Louisiana v. EPA* and its consequences. First, Section A defines "environmental justice" and "environmental racism," providing illustrative examples. Then, Section B outlines the EPA's Title VI administrative processes, describing the EPA's historic underenforcement of the Regulations. Finally, Section C provides an overview of Equal Protection and Title VI jurisprudence, necessary for understanding the legal issues at play in *Louisiana v. EPA*. As will be discussed, the underlying legal disputes in *Louisiana v. EPA*—concerning disparate-impact regulations and their permissibility under Title VI and Fourteenth Amendment jurisprudence—extend beyond the environmental context, affecting a wide range of agency and state actions.[52] This Note is principally concerned with the effect of these legal arguments and developments on environmental justice efforts.

A. INTRODUCTION TO ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL RACISM

"'Environmental justice' means many things to many people."[53] The difficulty of defining environmental justice arises, in part, because of its broad scope—and because of the many structural changes needed for its realization.[54] At its core, environmental justice means a more just distribution of environmental harms (like pollution and climate change impacts) and environmental goods (like clean air, green space, and clean water).[55] For

52. *See infra* Part II.A.

53. Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENV'T L. REP. NEWS & ANALYSIS 10681, 10681 (2000).

54. *Id.* ("Efforts to understand environmental justice are further complicated by the term's international, national, and local scope; by its broad definition of the environment—where one lives, works, plays, and goes to school; and by its broad range of concerns—such as public health, natural resource conservation, and worker safety in both urban and rural environs.").

55. *Id.*

this sort of distributive environmental justice to occur, public processes and environmental enforcement must transform.[56] Environmental justice requires that all people meaningfully participate in the public processes and forums that determine the allocation of environmental harms and goods (procedural environmental justice).[57] It also demands that regulators enforce environmental laws, punish lawbreakers, and compensate harmed communities (corrective justice).[58] When this Note uses the phrase "environmental justice," it references each of these types of just system change.

This Note often uses the phrase "environmental racism" in discussing environmental *in*justice to capture its uniquely racialized nature.

People of color are disproportionately exposed to environmental harms and deprived of environmental goods in the United States. For example:

Air pollution: Black and Latine Americans breathe 56% and 63% more pollution, respectively, than they generate, whereas White Americans breathe in 17% *less* air pollution than they produce;[59]

Access to green space: Nearly 75% of BIPOC families live in "nature-deprived" neighborhoods;[60]

56. *Id.* at 10688.

57. *See id.* at 10688–93 (defining and discussing procedural justice).

58. *See id.* at 10693–98 (defining and discussing corrective justice).

59. *See* Bullard, *supra* note 22, at 246 ("Black Americans and Latinos bear a disproportionate burden of pollution caused mainly by whites: Black Americans and Latinos breathe in 56% and 63%, respectively, more pollution than they generate. Whites, on the other hand, breathe 17% less air pollution than they cause.").

60. *Id.* at 247.

Heat exposure: Formerly redlined[61] neighborhoods, which are predominantly Black and Hispanic,[62] are nearly five degrees hotter on average—and sometimes up to twelve degrees hotter—than non-redlined neighborhoods, due to factors like less tree coverage, more paved surfaces, and fewer parks;[63]

Toxic waste proximity: Three out of five Black and Hispanic Americans live in a community with an uncontrolled toxic waste site;[64]

Lead exposure: 11.2% of Black children and 4% of Mexican-American children are poisoned by lead, as compared to only 2.3% of white children;[65]

61. "Redlining" refers to the practice, common between the 1930s and 1960s in the United States, of systematically denying financial services, such as mortgages and insurance loans, based on a person's residence. The U.S. government designated some neighborhoods—most of them predominantly Black—as hazardous for lending. These areas were colored red on maps—hence the term "redlining." The practice produced vast disparities in homeownership and exacerbated racial-wealth inequities. *See* Helen C.S. Meier & Bruce C. Mitchell, *Tracing the Legacy of Redlining: A New Method for Tracking the Origins of Housing Segregation*, NAT'L CMTY. REINVESTMENT COAL. 5 (2022) https://ncrc.org/redlining-score [https://perma.cc/687K-5273].

62. *Id.* at 4 ("The concentration of Black and Hispanic residents in redlined areas is high – The average redlined neighborhood is predominantly Black (32%) and Hispanic (30%).").

63. *See* Brad Plumer & Naja Popovich, *How Decades of Racist Housing Policy Left Neighborhoods Sweltering*, N.Y. TIMES (Aug. 24, 2020), https://www.nytimes.com/interactive/2020/08/24/climate/racism-redlining-cities-global-warming.html [https://perma.cc/56QE-VDSC] (discussing how the history of redlining—a process in which mostly white local and federal officials utilized the legal system to reinforce racial segregation in cities and discourage investment in BIPOC neighborhoods—has resulted in severe disparities in urban heat exposure).

64. *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites*, UNITED CHURCH OF CHRIST COMM'N FOR RACIAL JUST. xii, xiv (1987), https://www.nrc.gov/docs/ml1310/ml13109a339.pdf [https://perma.cc/DX79-EGD9] (finding that three out of five Black and Hispanic families live in a community with an "uncontrolled toxic waste site," a location identified by the EPA to be contaminated by an improper release of a hazardous substance which poses a threat to human and environmental health); Bullard, *supra* note 22, at 244 (characterizing the report as "landmark").

65. *See Blood Levels --- United States, 1999--2002*, CTR. FOR DISEASE CONTROL (2005), https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5420a5.htm [https://perma.cc/TK7P-7GWU] ("Overall, by race/ethnicity, non-Hispanic blacks and Mexican Americans had higher percentages of elevated BLLs (1.4% and 1.5%, respectively) than non-Hispanic whites (0.5%)."). Disparities in lead-exposure illustrate how environmental injustice extends to one's home environment: Poor quality housing means greater exposure to hazardous substances.

Water pollution: Community water systems that serve higher proportions of Hispanic/Latine and Black populations have a significantly higher chance of containing per- and polyfluoroalkyl substances (PFAS), a class of synthetic compounds associated with a variety of adverse health impacts;[66]

Climate change impacts: BIPOC communities are more likely to reside in geographic areas projected to face the most severe effects of global climate change in the coming decades;[67]

Flooding: Flooding (and related losses) disproportionately affect Black neighborhoods; for example, four of the seven ZIP codes with the costliest flood damage during Hurricane Katrina were at least 75% Black;[68]

Sacrifice zones: Race is the most significant predictor of where polluting facilities are sited.[69]

See Megan Haberle, *Fair Housing and Environmental Justice: New Strategies and Challenges*, 26 J. AFFORDABLE HOUS. & CMTY. DEV. L. 271, 278 ("Environmental issues affecting health can include access to safe and clean drinking water, soil contamination, excessive air pollution, and indoor health hazards (lead based paint, radon, mold, asbestos).").

66. *See* Jahred M. Liddie et al., *Sociodemographic Factors Are Associated with the Abundance of PFAS Sources and Detection in U.S. Community Water Systems*, 57 ENV'T SCI. & TECH. 7902, 7907–09 (2023) (finding that Hispanic/Latino and Black populations are disproportionately exposed to PFAS pollution, as "both the locations of PFAS sources and PFAS concentrations in drinking water were positively and significantly associated with the proportion of non-Hispanic Black and Hispanic/Latino residents served").

67. *See* CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES, *supra* note 22, at 5–6 (finding that Black, Latine, American Indian and Alaska Native, and Asian communities are "most likely to currently live in areas where the analyses project the highest levels of climate change impacts").

68. *See* Thomas Frank, *Flooding Disproportionately Harms Black Neighborhoods*, SCI. AM. (June 2, 2020), https://www.scientificamerican.com/article/flooding-disproportionately-harms-black-neighborhoods [https://perma.cc/LD7C-VNPU] (explaining that Black Americans are disproportionately burdened by flooding).

69. *See, e.g.*, *Toxic Wastes and Race in the United States*, *supra* note 64, at xiii (conducting an empirical study of hazardous waste facilities and finding that "[r]ace proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities . . . [which] represented a consistent national pattern"); Robert D. Bullard et al., *Toxic Wastes and Race at Twenty: Why Race Still Matters After All of These Years*, 38 ENV'T L. 371, 405 (2008) ("All race variables (percentages of Hispanics, African Americans, and Asians/Pacific Islanders) are highly significant independent predictors of the facility locations. . . . [T]he higher the people of color percentages, the more likely a census tract is to be within three kilometers of a commercial hazardous waste facility."). For a definition of "sacrifice zones," see *Sacrifice Zones 101*, CLIMATE REALITY PROJECT, https://www.climaterealityproject.org/sacrifice

As these examples illustrate, the harms of polluting industry are pushed disproportionately onto people of color. This unequal status quo is not natural. It is the product of decisions made by people—more specifically, office holders who are predominantly white.[70]

State agencies that receive EPA funding issued permits to the polluting facilities in St. James and East Phillips.[71] The Louisiana Department of Environmental Quality (LDEQ), which permits NuStar and Shell, received over $20 million from the EPA in Fiscal Year 2025.[72] The Minnesota Pollution Control Agency (MPCA), which permitted Smith Foundry, received fourteen federal grant awards in 2024, totaling over $207 million.[73] The Regulations exist to ensure that the EPA does not finance environmental racism,[74] yet facilities like these release toxic

-zones [https://perma.cc/27E9-JGAD] ("Sacrifice zones are often defined as populated areas with high levels of pollution and environmental hazards, thanks to nearby toxic or polluting industrial facilities. These areas are called 'sacrifice zones' because the health and safety of people in these communities is being effectively sacrificed for the economic gains and prosperity of others.").

70. *See supra* note 21 (establishing that in the United States, people in positions of political decision-making—from the national to the local level—are disproportionately white).

71. *See Settlement Agreements 2021*, LA. DEP'T OF ENV'T QUALITY, https://deq.louisiana.gov/page/settlement-agreements-2021 [https://perma.cc/RX69-8UD3] (listing NuStar and Equilon Enterprises LLC as facilities permitted by the Louisiana Department of Environmental Quality (LDEQ)); *Equilon Enterprises LLC dba Shell Oil Products US Settlement*, CAL. AIR RES. BD. (2014), https://ww2.arb.ca.gov/equilon-enterprises-llc-dba-shell-oil-products-us-settlement [https://perma.cc/98QY-QCFP] (indicating that Equilon Enterprises LLC is doing business as Shell); *Fiscal Year 2025 Executive Budget Review: Department of Environmental Quality*, LA. H.R.: H. COMM. ON APPROPRIATIONS, FISCAL DIV. 12 (2024), https://www.house.louisiana.gov/housefiscal/DOCS_APP_BDGT_MEETINGS/DOCS_AppBudgetMeetings2024/FY%2025%20Department%20of%20Environemtnal%20Quality.pdf [https://perma.cc/87QC-MNH2] (showing that, in Fiscal Year 2025, the LDEQ received over twenty million dollars from the EPA); *Minnesota Pollution Control Agency FY 2022–23 Biennial Budget*, STATE OF MINN. 50 (2020), https://mn.gov/mmb-stat/documents/budget/2022-23-biennial-budget-books/base-budget-november/pollution-control-agency.pdf [https://perma.cc/CU4W2AXG] (showing that the MPCA receives federal funds every year).

72. *See Fiscal Year 2025 Executive Budget Review, supra* note 71.

73. *See Prime Award Results*, USASPENDING.GOV, https://www.usaspending.gov/search/?hash=084cae7b03bab162fde466154516aba8&section=map [https://perma.cc/9VL8-HS33] (listing EPA grant awards to MPCA and showing that MPCA received fourteen grant awards in 2024, totaling over $207 million).

74. *See infra* note 79–94.

pollutants into BIPOC neighborhoods under the EPA's financial and regulatory purview.

This incongruity can be explained, at least in part, by the EPA's historic underenforcement of the Regulations.[75] The following Section describes the EPA's enforcement of the Regulations, discussing enforcement inadequacies that explain the gap between purported regulatory protections and persisting inequalities.

B. THE EPA'S TITLE VI REGULATIONS: COMPLAINTS, REMEDIES, AND ENFORCEMENT

This Section overviews the EPA's Title VI enforcement. Title VI violations are handled through an administrative complaint process where the EPA investigates and resolves alleged violations.[76] This Section offers examples of remedies that the EPA has pursued in Title VI resolution agreements with complained-against entities.[77] Finally, the Section discusses the EPA's chronic underenforcement of the Regulations, which has left many communities without relief.[78]

1. The EPA's Title VI Administrative Complaint Process

Each year, the EPA provides billions of dollars in grants to non-federal entities, including state environmental agencies.[79] Many major environmental laws in the United States embrace a cooperative federalism model, where states play a significant role in implementing federal environmental laws.[80] For

75. *See infra* Parts I.B.3–4.

76. *See infra* Part I.B.1.

77. *See infra* Part I.B.2

78. *See infra* Parts I.B.3–4

79. *EPA Grants*, ENV'T PROT. AGENCY (last updated Oct. 20, 2025), https://www.epa.gov/grants [https://perma.cc/F2JKFHCV].

80. *See* John Cruden, *Cooperative Federalism: A Central Concept of Environmental Law*, U.S. DEP'T OF JUST.: BLOG POST (July 27, 2016), https://www.justice.gov/archives/opa/blog/cooperative-federalism-central-concept-environmental-law [https://perma.cc/Q775-MZCF] ("[C]ooperative federalism [is] a concept central to the structure of our environmental laws."); Ben Grumbles, *The Clean Water Act at Year 50: What's Next for Water Protection?: Championing Clean Water Federalism*, 39 ENV'T F. 54, 58 (2022) https://www.ecos.org/wp-content/uploads/2022/09/Debate_septoct.pdf [https://perma.cc/26BQ-9G95] ("States stand on the front lines of implementing the nation's environmental laws, administering more than 90 percent of delegable programs. CWA permitting, water quality standards, infrastructure planning,

example, Clean Water Act and Clean Air Act permits are primarily issued by state agencies, with authorization from the EPA to administer the programs.[81]

If a state agency administers its programs in a manner that produces a racially disparate impact, concerned individuals must file complaints with the EPA through its administrative complaint processes, rather than pursue their claims directly in an Article III court.[82] This is because the Supreme Court has held that Title VI disparate-impact regulations do not confer a private right of action: only the EPA may bring claims against violators of the Regulations.[83]

Complaints to the EPA must identify the entity alleged to be discriminatory and describe in detail why the complainant believes the entity to be discriminatory.[84] The EPA accepts or rejects, investigates, and resolves the complaint—typically by way of a resolution agreement.[85] Between 2014 and 2023, of roughly 150 complaints filed, the EPA rejected 82 with no investigation, reached 17 resolution agreements with complained-against entities, and denied 4 after investigation.[86]

financing, and prioritization all depend on states."); *see also Basic Information About Operating Permits*, U.S. ENV'T PROT. AGENCY (last updated Dec. 27, 2024), https://www.epa.gov/title-v-operating-permits/basic-information-about-operating-permits [https://perma.cc/LY8Q-KS7X] (explaining that most Clean Air Act permits are issued by state and local agencies); *NPDES State Program Authority*, U.S. ENV'T PROT. AGENCY (last updated Feb. 24, 2025), https://www.epa.gov/npdes/npdes-state-program-authority [https://perma.cc/U34V-TS9E] (indicating that forty-seven states operate a Clean Water Act NPDES program).

81. *See supra* note 80.

82. *See Filing a Discrimination Complaint Against a Recipient of EPA Funds*, ENV'T PROT. AGENCY (last updated July 31, 2025) https://www.epa.gov/external-civil-rights/filing-discrimination-complaint-against-recipient-epa-funds [https://perma.cc/7ZB8-WXDG] (describing the process for filing a Title VI complaint with the EPA).

83. *See* Alexander v. Sandoval, 532 U.S. 275, 285 (2001) (holding that there is no private right of action to enforce Title VI disparate impact regulations).

84. *Id.*

85. *Id.*

86. Jamie Smith Hopkins, *Facing Environmental Discrimination? Read This Before Complaining to EPA*, CTR. FOR PUB. INTEGRITY (Oct. 25, 2023), https://publicintegrity.org/environment/pollution/environmental-justice-denied/environmental-discrimination-epa-complaint-title-vi-civil-rights [https://perma.cc/7ZB8-WXDG].

2. Resolution Agreements and Remedies

Resolution agreements[87] between the EPA and the complained-against entity (usually a state agency) include a list of agreed-upon changes intended to mitigate disparate impact.[88] The agreements tend to impose procedural requirements, such as posting notices of non-discrimination,[89] establishing non-discrimination coordinator positions,[90] creating grievance procedures for processing discrimination complaints,[91] involving people with limited English proficiency in permitting processes,[92] or conducting community outreach and education programs about permit processes.[93] Although the EPA has the power to revoke funding from agencies or suspend permits for Title VI violations, it has never pursued these more substantive remedies.[94]

87. *Id.* (noting that resolution agreements include informal resolutions, alternative dispute resolutions, and voluntary compliance).

88. *See infra* notes 89–93 and accompanying text (providing examples of Title VI resolution agreements).

89. *See* W.V. Dep't of Health & Hum. Res. v. EPA, EPA Compl. No. 02NO-20-R3, at 3–6 (Informal Resol. Agreement Feb. 10, 2023), https://www.epa.gov/system/files/documents/2023-08/02NO-20-R3%20WVD HHR%20IRA%20Final.pdf [https://perma.cc/U2C9-32Y8] (requiring the West Virginia Department of Health and Human Resources to post notices of non-discrimination, establish a non-discrimination coordinator position, and implement new grievance procedures).

90. *See id.*

91. *See* Upper Miss. River Basin Ass'n v. U.S. EPA, EPA Compl. No. 02R-21-R5, at 3–7 (Informal Resol. Agreement Apr. 19, 2024), https://www.epa.gov/system/files/documents/2024-04/umrba-informal -resolution-agreement_02r-21-r5-umrba-signed_0.pdf [https://perma.cc/F5QY HZZJ] (requiring UMRBA to post notices of non-discrimination, establish a non-discrimination coordinator position, and implement new grievance procedures).

92. *See* Pima Cnty. v. U.S. EPA, EPA Compl. No. 01RNO-22-R9, at 11–13 (Informal Resol. Agreement May 31, 2023), https://www.epa.gov/system/files/documents/2024-06/informal-resolution-agreement-pima-county-file -no.-01rno-22-r9.pdf [https://perma.cc/VLQ9XGJN] (requiring PDEQ to have procedures and policies ensuring access to PDEQ services for those with limited English proficiency).

93. *See* Mich. Dep't of Env't, Great Lakes, & Energy (EGLE) v. U.S. EPA, EPA Compl. No. 01RNO-22-R5, at 6 (Informal Resol. Agreement Aug. 10, 2023), https://www.epa.gov/system/files/documents/2023-08/Resolution%20Letter%20 and%20Informal%20Resolution%20Agreement%2C%20EPA%20Complaint %20No.%2001RNO-22-R5%20%28MI%20EGLE%20Ajax%29.pdf [https://perma.cc/8SXJWQFU] (requiring EGLE to conduct community education and outreach to clarify the processes employed in its air permit program).

94. *See* Hopkins, *supra* note 86 ("A federal agency can withhold funding from recipients if it finds they're discriminating and isn't able to get compliance. But since the passage of Title VI, EPA has never taken that step, to

3. Chronic Underenforcement

Studies reveal that the EPA has minimally enforced the Regulations, leaving many communities without redress. For example, a 2016 report by the U.S. Commission on Civil Rights found that the EPA had never made a formal finding of discrimination, nor had it ever denied or withdrawn financial assistance from a recipient on the basis of Title VI.[95] The EPA did not issue its first formal finding of discrimination until 2017—nearly fifty years after the regulations were adopted.[96] Further, a 2015 study by the Center for Public Integrity found that the EPA had either rejected or dismissed more than ninety percent of Title VI complaints it received.[97] For the majority of rejected claims, the EPA did not even pursue further investigation.[98]

The EPA not only rejects most Title VI complaints but also responds to complaints with significant delay. A 2011 report revealed that, of the 247 Title VI complaints filed to that date, the EPA responded to only six percent within its twenty-day regulatory deadline.[99] At the time of the report, numerous Title VI

environmental justice advocates' frustration."); *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice*, U.S. COMM'N ON. C.R. 51–52 (Oct. 2003), https://www.usccr.gov/files/pubs/envjust/ej0104.pdf [https://perma.cc/9HKZZ4BC] (explaining that while the EPA has the power to revoke or suspend permits that violate Title VI, it has adopted a position that such measures are not an appropriate remedy for Title VI investigations).

95. U.S. COMM'N ON C.R., *supra* note 38, at 1–3 ("EPA's Office of Civil Rights has never made a formal finding of discrimination and has never denied or withdrawn financial assistance from a recipient in its entire history . . . EPA continues to struggle to provide procedural and substantive relief to communities of color impacted by pollution. EPA's deficiencies have resulted in a lack of substantive results that would improve the lives of people living in already overly burdened communities.").

96. Letter from Lilian S. Dorka, Dir., U.S. Env't Prot. Agency Off. of Gen. Couns., to Heidi Grether, Dir., Mich. Dep't of Env't Quality (Jan. 19, 2017) (finding discrimination in violation of Title VI twenty-five years after Schmitter's original complaint, made in December 1992).

97. Lombardi et al., *supra* note 38 ("More than nine of every 10 times communities have turned to it for help, the civil-rights office has either rejected or dismissed their Title VI complaints. In the majority, the office rejected claims without pursuing investigations. On the few occasions that it did, it dismissed cases more often than it proposed sanctions or remedies.").

98. *Id.*

99. *See Evaluation of the EPA Office of Civil Rights*, DELOITTE CONSULTING LLP 2 (Mar. 21, 2011), https://archive.epa.gov/epahome/ocr-statement/web/pdf/epa-ocr_20110321_finalreport.pdf [https://perma.cc/GKA4

complaints had been awaiting EPA action for more than four years—several for more than eight years.[100] In a striking example, the EPA's first formal finding of discrimination in 2017—regarding the Genesee Power Station in Flint, Michigan[101]—came twenty-five years after Father Phil Schmitter, a local pastor and community organizer, filed a Title VI complaint.[102] The response was so delayed that one of the key community leaders who organized the fight against the power station, Sister Joanne Chiaverini, passed away in the interim.[103] Perhaps unsurprisingly, the EPA's scant Title VI enforcement has made many environmental activists and affected communities lose hope that Title VI could offer relief, despite it being one of the few tools available.[104]

4. Biden-Era Improvements in Enforcement

Under the Biden-Harris administration, the EPA showed a renewed energy for environmental justice and Title VI enforcement. In January 2021, President Biden signed Executive Order 14,008, which emphasized the administration's commitment to environmental justice, established two new White House environmental justice councils, and directed agencies to prioritize

AN56] ("Only 6% of the 247 Title VI complaints have been accepted or dismissed within the Agency 20-day time limit. . . . OCR's backlog of Title VI cases stretches back to 2001. At the time of this report's publication, there were numerous cases that have been awaiting action for up to four years. Two cases have been in the queue for more than eight years."); *see also* 40 C.F.R. § 7.120(c), (d)(1)(i) (2025) ("Within twenty (20) calendar days of acknowledgment of the [Title VI] complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.") (requiring the EPA to acknowledge receipt of Title VI claims within five days).

100. *See* DELOITTE CONSULTING LLP, *supra* note 99, at 2.

101. Michigan state agencies sited the Genesee Power Station, a biomass power plant, in close proximity to an elementary school in a predominately Black neighborhood already burdened by several hazardous waste and industrial facilities. *See* GLICKSMAN, ET AL., *supra* note 43, at 12.

102. *See supra* note 96 and accompanying text.

103. *See* GLICKSMAN ET AL., *supra* note 43, at 12 (naming Sister Joanne Chiaverini as a lead organizer in the resistance to the Genesse Power Station); *see also* Bryn Mickle, *Flint-Area Voice for the Poor and Environmentalists Dies*, MICH. LIVE (June 6, 2008), https://www.mlive.com/news/flint/2008/06/flintarea_voice_for_the_poor_a.html [https://perma.cc/92D5-VR65] (announcing the death of Chiaverini).

104. *See* Lado, *supra* note 38, at 8.

environmental justice efforts.[105] Then, in September 2022, the administration created a new EPA office, the Office of Environmental Justice and External Civil Rights, which dedicated more than 200 staff members to environmental justice issues.[106]

The Office of Environmental Justice, charged with Title VI enforcement, established a Civil Rights Docket that tracked and made publicly available all complaints, as well as their current status.[107] The docket revealed that, as of 2024, the EPA had cleared most of its backlog, leaving only a handful of pre-2021 complaints remaining active in some fashion.[108] The EPA also started processing claims more promptly.[109] The degree to which these measures translated into substantive relief for overburdened communities is uncertain.[110] Nevertheless, increased transparency, timeliness, and responsiveness during the Biden administration marked an improvement in the EPA's Title VI enforcement.[111]

105. *See* Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021) (emphasizing the administration's commitment to environmental justice; establishing the White House Environmental Justice Interagency Council and White House Environmental Justice Advisory Council; and declaring it the policy of the administration "to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution").

106. *See EPA Launches New National Office Dedicated to Advancing Environmental Justice and Civil Rights*, ENV'T PROT. AGENCY (last updated Sept. 5, 2023), https://www.epa.gov/newsreleases/epa-launches-new-national-office-dedicated-advancing-environmental-justice-and-civil [https://perma.cc/645E 5VU6].

107. *See* Deborah A. Sivas, *The Future of Environmental Justice Claims Under Title VI: Can the "Sleeping Giant" Finally Be Awakened?*, 21 STAN. J. C.R. & C.L. 105, 112 (2025) (explaining that the Office of Environmental Justice and External Civil Rights "[a]s part of EPA's public commitment to increased accountability and transparency . . . now publishes and regularly updates" a Civil Rights Docket); *see also External Civil Rights Docket*, U.S. ENV'T PROT. AGENCY (last updated Aug. 11, 2025), https://www.epa.gov/external-civil-rights/external-civil-rights-docket-2014-present [https://perma.cc/4NR6-ND6F] (providing a docket with all civil rights complaints received since 2014).

108. *See* Sivas, *supra* note 107, at 121 (reviewing the EPA's civil rights docket).

109. *Id.*

110. *See id.* at 121–22 ("[I]t remains to be seen whether the agency will actually implement its revamped Title VI program in a way that provides meaningful relief to disadvantaged and historically overburdened communities.").

111. *See id.* at 121 ("The Biden Administration has reviewed and resolved Title VI complaints at a much faster clip than any prior administration. . . . A deeper dive into the docket suggests that EPA is, in fact, taking its Title VI

But recent legal and political developments are stunting progress. Legal challenges to the constitutionality of disparate-impact regulations (exemplified by *Louisiana v. EPA*) and the second Trump administration have halted Title VI enforcement and eliminated any hope for a federal environmental justice remedy that the Biden administration may have inspired.[112] Before discussing *Louisiana v. EPA*, the following Section provides a brief overview of the Fourteenth Amendment and Title VI case law at issue in *Louisiana v. EPA*.

C. THE SUPREME COURT'S FOURTEENTH AMENDMENT AND TITLE VI JURISPRUDENCE

The Supreme Court's Fourteenth Amendment and Title VI jurisprudence lie at the center of Louisiana's challenges to the Regulations in *Louisiana v. EPA*.[113] As this subsection explains, the Court has narrowed the scope and strength of the Fourteenth Amendment and Title VI over time, making it unlikely that plaintiffs can achieve relief under these laws.[114] But at least for

enforcement responsibilities more seriously than in the past – at least with respect to more expeditious processing of claims. . . . Because timeliness and certainty are important to complainants, EPA's efforts to ensure that complaints do not languish for years is a good first step.").

112. *See* Newkirk II, *supra* note 43 ("In response to the EPA's preliminary finding of a disparate racial impact of pollution in Cancer Alley, Louisiana's then-attorney general, Jeff Landry, filed a lawsuit in 2023 alleging that the agency had overstepped its civil-rights authority. . . . As Republican attacks and threats of vigorous litigation proliferated, the agency began to pull back on its civil-rights investigations. In June 2023, just over a year after it began the Cancer Alley proceedings, the EPA dropped the investigation, citing a procedural issue."); *Louisiana Court Permanently Stops Title VI Protections Statewide*, EARTHJUSTICE (Aug. 23, 2024), https://earthjustice.org/press/2024/louisiana-federal-court-permanently-stops-title-vi-protections-statewide [https://perma.cc/58VV-XZ4P] ("Although the [*Louisiana v. EPA*] ruling is limited to Louisiana, it may embolden other states to seek similar exceptions and create a chilling effect on civil rights enforcement by other federal agencies."); Sivas, *supra* note 107, at 126 (explaining that the EPA had negotiated a draft Informal Resolution Agreement (IRA) with Louisiana state agencies in response to several Cancer Alley Title VI complaints, which would have "committed Louisiana to sweeping substantive commitments," but that the IRA was never adopted and the EPA's investigation was dropped several days after Louisiana moved for a temporary injunction in *Louisiana v. EPA*); *see also supra* Part II.B.1 (discussing the impact of the second Trump administration on disparate impact regulations and environmental justice).

113. *See* Louisiana v. U.S. EPA, 712 F. Supp. 3d 820, 852–54 (W.D. La. 2024).

114. *See infra* notes 118–26 and accompanying text (describing Fourteenth Amendment and Title VI jurisprudence).

now, the Court has allowed Title VI *implementing regulations* to be more protective than Title VI or the Fourteenth Amendment, prohibiting not just intentional discrimination but also disparate impact.[115] *Louisiana v. EPA* concerned whether the Regulations could legitimately extend beyond the scope of their enabling statute, Title VI.[116]

The Supreme Court has significantly weakened the protections of the Equal Protection Clause and Title VI over time.[117] The Fourteenth Amendment's Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[118] In *Washington v. Davis* (1976), the Court held that discriminatory effects, absent a showing of discriminatory purpose, do not violate the Equal Protection Clause.[119] In other words, the Court established an intentional discrimination standard for the Equal Protection Clause.[120]

Several years later, in *Regents of University of California v. Bakke* (1978), the Court held that Title VI prohibits only the conduct that the Fourteenth Amendment prohibits (i.e., discriminatory purpose).[121] Then, a year later, in *Personnel Administrator of Massachusetts v. Feeney* (1979), the Court clarified its understanding of discriminatory purpose as "more than intent as volition[,] or intent as awareness of consequences . . . [i]t implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects."[122] As one can imagine, it is nearly

115. *See infra* note 124 and accompanying text (explaining that the Court held that while Title VI and the Fourteenth Amendment only prohibit intentional discrimination, regulations that implement Title VI may also prohibit disparate impact).

116. *See infra* note 161 and accompanying text.

117. *See infra* notes 119–26 and accompanying text (discussing cases where the Supreme Court has narrowed the protections of the Fourteenth Amendment and Title VI).

118. U.S. CONST. amend. XIV, § 1.

119. 426 U.S. 229, 239 (1976) (holding that discriminatory effects—absent a showing of discriminatory purpose—do not violate the Fourteenth Amendment's Equal Protection Clause).

120. *Id.*

121. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 287 (1978) ("Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment.").

122. Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979).

impossible for plaintiffs to prove that lawmakers chose a policy *because* of its discriminatory effects.[123]

Despite the narrowed scope of the Equal Protection Clause and Title VI, the Court has held that regulations *implementing* Title VI may grant broader disparate-impact protections.[124] In *Guardians Association v. Civil Service Commission of New York* (1983), five justices agreed that disparate-impact regulations are permissible under Title VI's enforcement provision, section 602, even if Title VI's general discrimination prohibition, located in section 601, only encompasses intentional discrimination.[125] The Court allowed this mismatch as an expression of agencies' enforcement powers, granted in Title VI's enforcement provision, which "authorize[s] and direct[s]" agencies that extend financial assistance "to effectuate the provisions of [Title VI] . . . by issuing rules, regulations, or orders of general applicability."[126] In effect, *Guardians* allows Title VI regulations to be more protective against discrimination than Title VI, the enabling statute.[127]

123. *See* GLICKSMAN ET AL., *supra* note 43 (explaining that the discriminatory purpose standard announced in *Davis* is very difficult to meet); Newkirk II, *supra* note 43 ("When it comes to environmental laws, permitting decisions, and industrial siting, unfavorable treatment rarely comes with outright declarations of bigotry. More typically, minority communities become de facto targets because they lack the political capital and other resources to challenge industrial polluters. Additionally, many communities inherit zoning laws, land-use ordinances, and hazardous sites that originated decades ago under more explicitly racist rationales.").

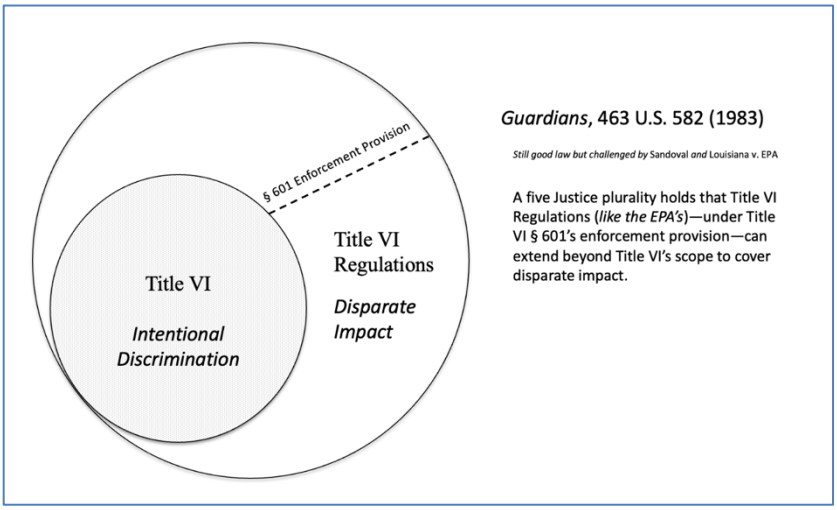
124. *See* Guardians Ass'n v. Civ. Serv. Comm'n of N.Y., 463 U.S. 582, 584 n.2 (1983) ("Justice STEVENS, joined by Justice BRENNAN and Justice BLACKMUN, reasons that, although Title VI itself requires proof of discriminatory intent, the administrative regulations incorporating a disparate impact standard are valid . . . . Justice MARSHALL would hold that, under Title VI itself, proof of disparate impact discrimination is all that is necessary. . . . I agree with Justice MARSHALL that discriminatory animus is not an essential element of a violation of Title VI. I also believe that the regulations are valid, even assuming *arguendo* that Title VI, in and of itself, does not proscribe disparate impact discrimination.").

125. *Id.*

126. *See* 42 U.S.C. § 2000d–1 (authorizing federal agencies to promulgate implementing regulations).

127. *Guardians Ass'n*, 463 U.S. at 584 n.2.

FIGURE 1: VISUALIZATION OF THE RELATIONSHIP BETWEEN TITLE VI AND TITLE VI REGULATIONS UNDER GUARDIANS



In *Alexander v. Sandoval* (2001), the Court cast doubt on *Guardians* and the validity of Title VI disparate-impact regulations.[128] Writing for the majority, Justice Scalia noted:

> We must assume for purposes of deciding this case that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601 . . . [t]hese statements are in considerable tension with the rule of *Bakke* and *Guardians* that § 601 forbids only intentional discrimination . . . but petitioners have not challenged the regulations here.[129]

While the *Sandoval* Court was poised to strike down Title VI disparate-impact regulations, it did not have the opportunity

128. Alexander v. Sandoval, 532 U.S. 275, 282 (2001) ("Third, we must assume for purposes of deciding this case that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601. Though no opinion of this Court has held that, five Justices in *Guardians* voiced that view of the law at least as alternative grounds for their decisions . . . . These statements are in considerable tension with the rule of *Bakke* and *Guardians* that § 601 forbids only intentional discrimination, but petitioners have not challenged the regulations here. We therefore assume for the purposes of deciding this case that the DOJ and DOT regulations proscribing activities that have a disparate impact on the basis of race are valid." (citations omitted)).

129. *Id.*

because the parties did not raise the issue.[130] Though mere dicta, this portion of *Sandoval* provides fodder for renewed efforts to invalidate Title VI regulations, including the Western District of Louisiana's decision in *Louisiana v. EPA*.[131]

* * *

So far, this Note has provided an overview of environmental racism, the EPA's Title VI Regulations, and case law necessary for understanding legal challenges to those regulations. Section A described how BIPOC communities are disproportionately exposed to a range of environmental harms, with profound effects on life, liberty, and health. These harms conflict with the protections nominally afforded by Title VI. Section B discussed the EPA's present and historic Title VI enforcement, which has been marked by delay, minimal investigations into complaints, and failures to impose substantive remedies. Finally, Section C overviewed the Equal Protection Clause and Title VI precedent relevant to *Louisiana v. EPA*. With this context in mind, Part II examines an emergent campaign against disparate-impact regulations, of which *Louisiana v. EPA* is an example.

II. THE CAMPAIGN AGAINST DISPARATE-IMPACT REGULATIONS AND OTHER RACE-BASED EQUITY MEASURES

This Part discusses the Western District of Louisiana's decision in *Louisiana v. EPA*, situating it within a larger movement to invalidate disparate-impact regimes and, indeed, any race-conscious government action. Section A examines *Louisiana v. EPA*, offering factual background and a summary of the opinion's legal conclusions. Then, Section B locates *Louisiana v. EPA* within a larger movement to invalidate race-based, equity-focused policies writ large.

A. *LOUISIANA V. EPA* HALTS PROGRESS AND CHALLENGES THE LEGITIMACY OF DISPARATE-IMPACT REGULATIONS

This Section discusses *Louisiana v. EPA* and provides factual background to give context to the case's holding and its consequences. The first Subsection explains that the State of Louisiana filed suit as a direct response to the EPA's Title VI

130. *Id.*
131. *Id.*

investigation into Cancer Alley.[132] *Louisiana v. EPA* stopped the EPA's investigation in its tracks, stunting progress and leaving people in Cancer Alley without relief.[133] The second Subsection summarizes *Louisiana v. EPA*'s legal grounds for concluding that the Regulations are invalid.[134]

1. Factual Background

Louisiana v. EPA arose in response to the EPA's investigation of various Title VI complaints concerning pollution in Cancer Alley.[135] Between January 20, 2022, and February 1, 2022, the EPA's Office of External Civil Rights Compliance (OECRC) received three Title VI complaints against Louisiana State Agencies regarding ongoing environmental injustice in Cancer Alley.[136] These included two complaints filed by Concerned Citizens of St. John and Sierra Club against the LQED[137] and the Louisiana Department of Health (LDH)[138] (collectively, the St.

132. *See infra* Part II.A.1

133. *Id.*

134. *See infra* Part II.A.2.

135. *See generally* Louisiana v. EPA, 712 F. Supp. 3d 820, 832 (describing the EPA investigations that prompted the lawsuit).

136. *See id.*; *see also supra* notes 2–9 (describing environmental injustice in Cancer Alley); Al Shaw & Lylla Younes, *The Most Detailed Map of Cancer-Causing Industrial Pollution in the U.S.*, PRO PUBLICA (Nov. 21, 2021), https://projects.propublica.org/toxmap [https://perma.cc/JK5H-QK3Z] (showing that St. John Baptist Parish and St. James Parish, the two communities out of which the complaints were brought, are located within Cancer Alley).

137. *See Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Regarding Civil Rights Violations by Louisiana State Agency Grantees and Environmental Injustice in St. John the Baptist Parish*, COUNS. FOR CONCERNED CITIZENS OF ST. JOHN & SIERRA CLUB 1 (2022), https://www.epa.gov/system/files/documents/2022-09/01R-22-R6%20Complaint_Redacted.pdf [https://perma.cc/FPE7-EQFZ] [hereinafter *St. John LDEQ Complaint*] (complaining, per EPA Complaint No. 01R-22-R6, that the LDEQ and LDH "have violated [Title VI] by subjecting Black residents of St. John the Baptist Parish to disproportionate air pollution and related harms from various facilities, including ethylene oxide from various sources and chloroprene from a neoprene production facility").

138. *See Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Regarding Civil Rights Violations by Louisiana State Agency Grantees and Environmental Injustice in St. John the Baptist Parish*, COUNS. FOR CONCERNED CITIZENS OF ST. JOHN & SIERRA CLUB 1 (2022), [hereinafter St. John LDH Complaint] https://www.epa.gov/system/files/documents/2022-09/02R-22-R6%20Complaint_Redacted.pdf [https://perma.cc/FPE7-EQFZ] (complaining, per EPA Complaint No. 02R-22-R6, that LDEQ and LDH "have violated [Title VI] by subjecting Black residents of St. John the Baptist Parish

John Complaints);[139] and a complaint filed by Stop the Wallace Grain Terminal, Inclusive Louisiana, RISE St. James, and the Louisiana Bucket Brigade against the LDEQ (the St. James Complaint).[140]

The St. John Complaints focus on LDEQ and LDH's role in concentrating toxic air pollution in St. John the Baptist Parish, Louisiana, with particular focus on the permitting of Denka Performance Elastomer LLC (Denka).[141] Denka owns a neoprene production facility (the Denka Facility) that operates with an expired Clean Air Act permit originally issued by LDEQ.[142] The expired permit means that there is no assurance that the facility is currently in compliance with Clean Air Act requirements.[143]

The Denka Facility produces dangerously high concentrations of carcinogenic air pollutants in St. John. For example, in 2021, the ambient air concentration of chloroprene was 11,000 times greater than the cancer risk value established by the EPA for community health protection.[144] It goes without saying that these carcinogen levels lead to severe health impacts such as respiratory ailments, cancer, reproductive failures, and death.[145]

to disproportionate air pollution and related harms from various facilities, including ethylene oxide from various sources and chloroprene from a neoprene production facility").

139. The two complaints are identical and were submitted on the same day, but the EPA's External Civil Rights Docket associates different agencies with the two complaints. *See External Civil Rights Docket, supra* note 107 (listing LDEQ as the "Named Entity" for Complaint No. 01R-22-R6 and LDH as the named entity for Complaint No. 02R-22-R6).

140. *Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 40 C.F.R. Part 7 Against the Louisiana Department of Environmental Quality for Lack of Environmental Justice Procedures in its Air Permitting Program and Resulting Discriminatory Decision on Formosa Air Permits*, TUL. ENV'T L. CLINIC 1 (2022) [hereinafter *St. James Complaint*], https://www.epa.gov/system/files/documents/2022-06/04R-22-R6%20Complaint%20Redacted.pdf [https://perma.cc/DYZ2-28T4] (complaining, per EPA Complaint No. 04R-22-R6, the LDEQ has systematically failed to address the disproportionate impact of its air permitting on Black Louisianians, and of a lack of meaningful involvement of these communities in permitting processes).

141. *See St. John LDEQ Complaint*, *supra* note 137, at 9 (focusing its discussion on the Denka facility).

142. *See id.* at 7 (explaining that all of Denka's Title V air permits are expired as of 2020 and that the LDEQ has not reviewed or acted on Denka's renewal applications).

143. *Id.*

144. *Id.* at 15.

145. *See id.* at 21–22 (detailing the adverse health impacts of the Denka facility on St. John Parish).

The Denka Facility is responsible for eighty-five percent of the air-pollution cancer risk in the surrounding census tract—a tract which is ninety-one percent Black.[146]

Like the St. John Complaints, the St. James Complaint centers around the disproportionate impact of LDEQ's air permitting decisions in Black communities. Specifically, LDEQ issued fourteen air permits to FG LA, LLC (Formosa), to build a 2,400-acre plastic-manufacturing complex in St. James Parish, Louisiana.[147] The Formosa complex, if constructed, would emit a significant amount of toxic and carcinogenic pollutants in a predominantly Black community already overburdened with industrial pollution.[148] While St. James as a whole is 49.5% Black, the census tract where LDEQ and Formosa have planned to build the complex is ninety percent Black.[149]

This is consistent with a greater trend: In the past forty-six years, no new petrochemical facilities have been built in St. James's majority-white communities, while LDEQ has permitted the construction of numerous heavy industrial facilities in its majority-Black communities.[150] The Formosa complex would nearly double the amount of carcinogenic air pollutants in St. James, which already ranks nationally as one of the communities most burdened by toxic air emissions.[151]

The EPA's response to the Complaints showed promise. In April 2022, the EPA launched an investigation into the complaints.[152] On May 18, 2023, the EPA and LDEQ exchanged an informal resolution agreement that would have required the LDEQ to adopt a variety of policies and procedures that would

146. *See id.* at 9–10 (explaining that the EPA tracks eighty-five percent of the cancer risk from air pollutants in census tract 708 to the Denka facility); *see also id.* at 22 (providing the racial composition of census tract 708).

147. *See St. James Complaint*, *supra* note 140, at 1–6 (describing the Formosa plant and LDEQ's involvement with the aforementioned).

148. *See id.* at 6–7 (explaining that census tract 204, where Formosa would be sited, is eighty-nine percent Black; that St. James Parish already ranks nationally as one of the communities most burdened by toxic air emissions; and that Formosa is projected to nearly double the amount of cancer-causing air pollution faced by St. James residents).

149. *Id.* at 29, 54.

150. HUM. RTS. WATCH, *supra* note 4, at 32.

151. *See St. James Complaint, supra* note 140, at 54.

152. Louisiana v. EPA, 712 F. Supp. 3d 820, 832 (2024).

have led to "meaningful reform."[153] These changes would have required the agency to address environmental racism through measures including, but not limited to, disparate-impact analyses, increased public comment requirements, and mitigation plans.[154]

But when then-Louisiana Attorney General Jeff Landry sued the EPA in federal court,[155] this progress was cut short. The *Louisiana v. EPA* complaint, filed in the U.S. District Court for the Western District of Louisiana in May 2023, alleged that the EPA's Title VI regulations are invalid and requested injunctive relief from the EPA's Title VI enforcement.[156] One month later, on June 27, 2023, the EPA closed its investigation of both the St. John and St. James Complaints.[157] Then, Judge James Cain, who is white, issued the *Louisiana v. EPA* order, where he declared that the EPA's regulations are invalid and granted an injunction to prevent enforcement.[158] The Subsection that follows provides an overview of Judge Cain's legal conclusions regarding the regulations in *Louisiana v. EPA*.

153. *See* Halle Parker, *Shuttered EPA Investigation Offered 'Meaningful Reform' in Cancer Alley, Documents Reveal*, LA. ILLUMINATOR (Aug. 30, 2023), https://lailluminator.com/2023/08/30/cancer-alley-investigation [https://perma.cc/K837-G49Y] (quoting Monique Harden, Director of Law and Policy at the Deep South Center for Environmental Justice).

154. *See* La. Dep't of Env't Quality v. EPA, EPA Compl. Nos. 01R-22-R6 & 04R-22-R6, at 6–41 (Informal Resol. Agreement May 18, 2023), https://acrobat.adobe.com/id/urn:aaid:sc:US:c9f2a23a-e1a9-4b03-b4d1-a821be0cd31f [https://perma.cc/7XRXEEG4] (requiring the LDEQ to perform a variety of substantive reforms aimed at addressing environmental racism and Title VI compliance).

155. *See* Complaint at 1, Louisiana v. EPA, 712 F. Supp. 3d 820 (W.D. La. 2024) (No. 23-00692).

156. *Id.* at 1–3 (arguing that the EPA's disparate impact regulations constitute an impermissible expression of authority under their enabling statute and requesting injunctive relief).

157. *See* Letter from Lilian S. Dorka, Deputy Assistant Adm'r for External C.R., Env't Prot. Agency, to Roger Gingles, Sec'y, La. Dep't of Env't Quality (June 27, 2023) (terminating the EPA's investigation into Complaint Nos. 01R-22-R6 and 04R-22-R6); Letter from Lilian S. Dorka, Deputy Assistant Adm'r for External C.R., Env't Prot. Agency to Stephen Russo, Sec'y, La. Dep't of Health (June 27, 2023) (terminating the EPA's investigation into Complaint No. 02R-22-R6).

158. *See* Louisiana v. U.S. EPA, 712 F. Supp. 3d 820, 820–21, 862–63 (W.D. La. 2024) (holding that the EPA's Title VI regulations exceed their statutory authority and enjoining the EPA from enforcing them).

2. Disparate-Impact Regulations: Analysis and Conclusions

In *Louisiana v. EPA*, the Western District of Louisiana struck down the EPA's disparate-impact regulations on several grounds. The court held that *Guardians*—where the Supreme Court held that Title VI may legitimately extend beyond Title VI's scope, to reach disparate impact[159]—"has no precedential effect" and that the Supreme Court erred in its analysis.[160] Contradicting *Guardians*, the Western District maintained that the EPA violates the Spending Clause by imposing disparate-impact conditions that "exceed what Congress has unambiguously provided in the statutory text" of Title VI.[161] In reaching this conclusion, the court drew on *Arlington Central School District Board of Education v. Murphy*, where the Supreme Court held that the Spending Clause prohibits the executive from imposing conditions that are not set out unambiguously in the statutory text.[162]

The court also reasoned that the decision to impose disparate-impact requirements is a "major question" under *West Virginia v. EPA*'s major questions doctrine.[163] Under *West Virginia v. EPA*, courts assume that, absent "clear congressional authorization," agencies' actions on matters of great "economic and political significance" are invalid.[164] The *Louisiana v. EPA* court maintained that the imposition of disparate-impact requirements is a major question, and that because—according to Judge Cain—Title VI's statutory language does not expressly prohibit disparate impact, the EPA's regulations impermissibly exceeded their statutory authority.[165]

159. Guardians Ass'n v. Civ. Serv. Comm'n of N.Y., 463 U.S. 582, 584 n.2 (1983).

160. *Louisiana*, 712 F. Supp. 3d at 862.

161. *See id.* at 837 (quoting Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 301 (2006)); *see also id.* at 862–63 (holding that the Regulations impose requirements that "are not unambiguously established in the statutory text" of Title VI, violating Spending Clause requirements).

162. *Louisiana*, 712 F. Supp. 3d at 862–63; Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 296 (2006).

163. *Id.* at 863.

164. West Virginia v. EPA, 142 S. Ct. 2587, 2614 (2022) (announcing the major questions doctrine).

165. *Louisiana*, 712 F. Supp. 3d at 863 ("The Court agrees with the State that the major questions doctrine is applicable here as to the imposition of disparate impact mandates under Title VI and as such, demands clear congressional authorization. . . . The Court finds that this is an extraordinary case, of

Declaring the Regulations invalid, the court issued a preliminary injunction against both the EPA and the Department of Justice (DOJ) to enjoin the agencies "from imposing or enforcing any disparate impact based requirements" in Louisiana.[166] In August 2024, the Western District of Louisiana granted Louisiana's motion for a permanent injunction, thereby extending its January injunction.[167] While the holding in *Louisiana v. EPA* only applies to the Western District of Louisiana, as discussed in the Sections that follow, disparate-impact regimes—both regulatory and statutory—face a broad and growing threat.

B. THE BROADER THREAT TO DISPARATE IMPACT

Louisiana v. EPA exists within a broader movement to eliminate disparate-impact liability—and, indeed, any race-conscious equity measures.[168] First, this Section discusses the second Trump administration's recent efforts to dismantle disparate-impact liability.[169] Then, it explains that not only disparate impact, but all race-based equity measures are facing increased scrutiny after *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (*SFFA*).[170] States and advocates must navigate this legal landscape in efforts to advance environmental justice—the focus of Part III.

1. Second Trump Administration

In the first six months of his second term, President Donald Trump dismantled environmental justice and disparate-impact programs, regulations, and policies.[171]

Trump, upon taking office, took swift action to dismantle environmental justice laws and programs.[172] In January 2025, he issued executive orders that revoked the environmental justice

economic and political significance. Defendants have constructed Title VI to allow it to regulate beyond the Statute's plain text and by doing go, invade the purview of the State's domain.").

166. *Id.* at 866.

167. *See* Louisiana v. EPA, No. 23-CV-00692, 2024 WL 3904868, slip op. at *3 (W.D. La. Aug. 22, 2024) (granting a permanent injunction).

168. *See infra* Part II.B.

169. *See infra* Part II.B.1.

170. *See infra* Part II.B.2; *see also* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141 (2023).

171. *See infra* notes 173–83.

172. *See id.*

executive orders of prior administrations.[173] Trump's orders eliminated the EPA's Office of Environmental Justice and directed agencies to cease all environmental justice work.[174] In April 2025, Trump initiated the termination of 450 EPA staffers whose work centered on environmental justice.[175]

The Trump administration also moved to eliminate disparate impact regulations.[176] On April 23, 2025, Trump issued an executive order directing federal agencies to revoke disparate-impact regulations.[177] The order, titled "Restoring Equality of Opportunity and Meritocracy," directs the Attorney General to repeal Title VI implementing regulations "for all agencies to the extent they contemplate disparate-impact liability."[178] Under the order, the Attorney General must also report all other federal regulations, rules, or orders that impose disparate-impact liability, detail steps for their repeal, and inform the President of all state-level laws or decisions that create disparate-impact liability.[179] The executive order also claims that disparate-impact regimes violate the Equal Protection Clause.[180]

The Trump administration's efforts to repeal disparate impact regulations and frame them as unconstitutional reflect a growing litigation campaign against race-based, remedial government action.[181]

2. *SFFA* and the Legality of Race-Conscious Remedial Policies

Recent developments in the Court's Fourteenth Amendment jurisprudence have called into question the constitutionality of

173. *See* ANGELA C. JONES, CONG. RSCH. SERV., IF2922, TRUMP ADMINISTRATION ENVIRONMENTAL-JUSTICE-RELATED EXECUTIVE ORDERS: POTENTIAL IMPLICATIONS FOR EPA PROGRAMS (2025).

174. *Id.*

175. *See* Nick Sobczyk, *EPA Fires or Reassigns Hundreds of Staffers*, AXIOS (Apr. 22, 2025), https://www.axios.com/2025/04/22/epa-fires-or-reassigns-hundreds-of-staffers [https://perma.cc/K837-G49Y] ("The Environmental Protection Agency plans to fire or reassign more than 450 staffers working on environmental justice issues, it said Tuesday.").

176. *See infra* notes 177–83.

177. *See* Exec. Order No. 14,281, 90 Fed. Reg. 17537 (Apr. 28, 2025) (ordering the Attorney General to repeal and amend Title VI disparate impact regulations).

178. *Id.*

179. *Id.*

180. *Id.* ("[Disparate-impact liability] runs contrary to equal protection under the law and, therefore, violates our Constitution.").

181. *See generally* Part II.

any race-based policies.[182] These developments contextualize recent challenges to disparate-impact regulations, revealing a larger project to invalidate race-based or race-conscious, remedial policies.[183] The Supreme Court's 2023 decision in *SFFA* has accelerated and provided doctrinal fodder for this movement.[184] Specifically, *SFFA* altered the constitutional analysis for race-based laws by further limiting the acceptable justifications for such laws under strict scrutiny.[185]

When a law or policy makes a race-based distinction, courts apply a "strict scrutiny" standard of review.[186] Under this standard, the law or policy must be "narrowly tailored" to achieve a "compelling government interest" to be constitutional under the Fourteenth Amendment.[187] The Supreme Court has recognized very few interests as "compelling" for the purposes of the Fourteenth Amendment: (1) remediating specific instances of discrimination adjudicated to have violated the Constitution or a statute; (2) avoiding imminent and serious risks to human safety in prisons, such as during a race riot; (3) and, until recently,[188] achieving diversity in education.[189] In *SFFA*, the Supreme Court held that diversity in education does not constitute a compelling

182. *See infra* notes 185–200.

183. *See infra* notes 187–99.

184. *See id.*

185. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2176 (2023) (holding that diversity in education is not a compelling government interest for the purposes of strict scrutiny).

186. *Id.* at 2150.

187. *See id.* at 2162 ("Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as 'strict scrutiny.' Under that standard we ask, first, whether the racial classification is used to 'further compelling governmental interests.' Second, if so, we ask whether the government's use of race is 'narrowly tailored'—meaning 'necessary'—to achieve that interest." (first citing Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 227 (1995); then citing Grutter v. Bollinger, 539 U.S. 306, 326 (2003); and then citing Fisher v. Univ. of Tex. at Austin, 570 U.S. 297, 311–12 (2013)).

188. *See id.* at 2148, 2176 (holding that university admissions policies that explicitly take race into consideration as a "plus," for the purposes of admissions, unconstitutionally violate the Fourteenth Amendment's Equal Protection Clause).

189. *Id.* at 2162 ("Outside the circumstances of these cases, our precedents have identified only two compelling interests that permit resort to race-based government action. One is remediating specific, identified instances of past discrimination that violated the Constitution or a statute.").

government interest, effectively ending affirmative action programs as they previously existed.[190]

The impacts of *SFFA*'s holding extend beyond higher education. *SFFA* jeopardizes any law that makes explicit race-based distinctions, even where those distinctions are made for the express purpose of remedying racial inequities.[191] This interpretation is problematic for disparate-impact regimes, which often necessitate that government policies explicitly consider race to avoid disparate impacts.[192]

In *Ricci v. DeeStefano* (2009), the Supreme Court spoke to this tension.[193] There, the Court held that an employer may only adopt race-conscious policies to avoid disparate-impact liability where there exists a "strong basis in evidence" that the employer

190. *See supra* note 185 and accompanying text.

191. *See* Olatunde C.A. Johnson, *The Remedial Rationale After* SFFA, 54 SETON HALL L. REV. 1279, 1293 (2024) ("The practical effect of *SFFA* is to render a range of programs vulnerable to legal challenge even if they do not involve higher education affirmative action. While *SFFA* by its terms does not address race-conscious programs beyond higher education admissions, well-funded, libertarian, and anti-affirmative action organizations have launched extensive litigation challenging a range of programs that seek to address racial inequality in employment, economic development, K-12 education, and housing."); *see also id.* at 1302–03 ("*SFFA* imperils a range of policies to address racial inequality. It is unlikely that the current Court will rethink its approach to the Equal Protection Clause by, for instance, adopting an antisubordination or anticaste conception."); Nino C. Monea, *Next on the Chopping Block: The Litigation Campaign Against Race-Conscious Policies Beyond Affirmative Action in University Admissions*, 33 B.U. PUB. INT. L.J. 1, 4 (2024) ("The Supreme Court recently ended university affirmative action. But the decision could have far-reaching implications for all types of race-conscious policies across the country.").

192. Aziz Huq, *Ending Affirmative Action May Be Just the Beginning*, POLITICO (June 29, 2023), https://www.politico.com/news/magazine/2023/06/29/affirmative-action-ending-00104189 [https://perma.cc/34DR-HSJH] ("The first, and the most likely, 'next shoe to drop' after [*SFFA*] is a decision invalidating what are called 'disparate impact' rules. . . . [*SFFA*'s] categorical ruling against race-based college admissions adds a powerful new weapon to [the Supreme Court's] repertoire. For it is impossible to talk of 'racially disparate impact' without talking of . . . race."); Samuel R. Bagenstos, *Disparate Impact and the Role of Classification and Motivation in Equal Protection Law After Inclusive Communities*, 101 CORNELL L. REV. 1115, 1115–16, 1146–47 (2016) (discussing the tension between disparate impact requirements and the Supreme Court's Fourteenth Amendment jurisprudence, and proposing that equalizing disparate impact should be considered a compelling government interest for the purposes of strict scrutiny to alleviate this tension).

193. *See infra* note 196.

would face liability absent such a policy.[194] *Ricci* signaled that the Court's skepticism of race-conscious policies extends even to those with the explicit goal of meeting disparate-impact obligations.[195] Justice Scalia famously discussed the friction between disparate-impact provisions and the Court's Equal Protection jurisprudence in his *Ricci* dissent, foreseeing that "the war between disparate impact and equal protection will be waged sooner or later."[196] His prediction seems to be coming true.

SFFA ignited a wave of renewed Fourteenth Amendment challenges to race-conscious policies.[197] There are currently over five dozen recent or ongoing Fourteenth Amendment challenges to race-conscious government policies.[198] The plaintiffs in a majority of these challenges are conservative and libertarian legal groups.[199] An organized and active effort is underway to invalidate all race-based, equity-focused policies.[200]

With this federal landscape in mind, Part III argues that advocates should turn their attention to state and local governments as venues for environmental justice.

194. *See* Ricci v. DeStefano, 557 U.S. 557, 563 (2009) (holding that an employer must demonstrate a strong basis in evidence that, had it not taken a race-conscious action, it would have been subject to disparate impact liability).

195. *See id.* (placing guardrails on disparate-impact measures to avoid a Fourteenth Amendment violation).

196. *See id.* at 594–96 (Scalia, J., concurring) ("[T]his dispute merely postpones the evil day on which the Court will have to confront the question: Whether, or to what extent, are the disparate-impact provisions of Title VII of the Civil Rights Act of 1964 consistent with the Constitution's guarantee of equal protection? . . . [T]he war between disparate impact and equal protection will be waged sooner or later, and it behooves us to begin thinking about how—and on what terms—to make peace between them.").

197. *See, e.g.*, Monea, *supra* note 191, at 4–67 (citing and discussing five dozen recent or ongoing Fourteenth Amendment challenges to race-conscious government policies); Nuziard v. Minority Bus. Dev. Agency, 721 F. Supp. 3d 431, 452–53, 509 (N.D. Tex. 2024) (holding that a Minority Business Development Agency policy which provides a presumption that members of listed minority racial groups are "socially or economically disadvantaged," and therefore eligible for financial assistance, violates the Equal Protection Clause); Strickland v. U.S. Dep't of Agric., 736 F. Supp. 3d 469, 475, 479–83 (N.D. Tex. 2024) (enjoining the USDA from administering a disaster relief program that allocated more funds to BIPOC farmers, describing the program as "likely" unconstitutional under the Equal Protection Clause).

198. Monea, *supra* note 191, at 5.

199. *Id.*

200. *See id.* (explaining that conservative and libertarian impact litigation groups are "orchestrated").

III. STATE-LEVEL ENVIRONMENTAL JUSTICE MEASURES: PROBLEMS AND POSSIBILITIES

As demonstrated in Part II, the EPA's disparate-impact regulations stand on shaky legal ground and face a hostile federal landscape.[201] Advocates and policymakers must remain both steadfast in their commitment to environmental justice and adaptive to legal realities. Instead of exhausting resources to fight a losing battle at the federal level, environmental justice advocates should pivot their attention towards state and local governments as venues for combating environmental racism. Many major environmental laws in the United States embrace a cooperative federalism model,[202] where states play a significant role in the implementation of federal environmental laws. For example, while the Clean Water Act and Clean Air Act are federal laws, the vast majority of states have elected to administer the Acts' permit programs (albeit with the approval and supervision of the EPA).[203] States exercise discretion in whether and to what degree they prioritize environmental justice therein.[204]

It is important to take stock of those state environmental justice laws already in existence to identify core policy issues and areas for improvement. To that end, Section A provides a brief overview of state environmental justice laws. It explains that a threshold issue for any environmental justice law is to define and delineate the communities that the policy will serve. States currently differ on their use (or nonuse) of race in these definitions.[205]

This divergence illustrates the problem that states face in addressing environmental injustice. On one hand, there is an undeniable correlation between environmental burden and race.[206]

201. *See generally supra* Part II.

202. *See supra* note 80 and accompanying text.

203. *See supra* note 80 and accompanying text (describing states' roles in administering major environmental statutes, such as the Clean Air Act and Clean Water Act).

204. *See infra* note 208 (demonstrating the variety of ways that states define disadvantaged communities for the purposes of state laws and policies that seek to redress environmental injustice). For an example of how a state may use its delegated authority under federal environmental laws, see N.Y. ENV'T CONSERV. LAW § 70-0118(3)(b) (McKinney 2025) (prohibiting issuing permits for proposed projects in "disadvantaged communit[ies]").

205. *See supra* note 204 and accompanying text (describing how state policies differ in addressing environmental injustices).

206. *See supra* Part I.

On the other hand, the explicit mention of race in any government program or policy is increasingly fraught and ripe for legal challenge.[207] To work through this problem, Section B explores the benefits and downsides of race-neutral environmental justice policies by examining the Biden administration's Justice40 Initiative.

Ultimately, this Note does not advocate for a one-size-fits-all solution for states with respect to implementing race-neutral or race-based laws. This policy decision must be made on a state-by-state basis, with BIPOC communities directing priorities and strategies. This Part aims to contribute to localized decision-making by taking stock of pre-existing laws, offering novel empirical evidence, and identifying advantages and disadvantages of race-neutral versus race-based approaches.

A. EXISTING STATE ENVIRONMENTAL JUSTICE LAWS: A BRIEF OVERVIEW

State lawmakers have embraced a wide variety of policies aimed at advancing environmental justice.[208] Common mechanisms for advancing environmental justice include: efforts to increase public participation in environmental decision making by disproportionately affected communities (public participation);[209] policies that require a consideration of cumulative impacts[210] in state decision making and permitting (cumulative

207. *See supra* Part II.

208. The online database, "Environmental Justice Law and Policy Database," created collaboratively by five law schools, compiles state environmental justice laws by type, maintains a state-by-state directory of environmental justice laws, and offers summary memoranda on emerging issues in environmental justice law, current as of November 2025. *See Environmental Justice Law and Policy Database*, ENV'T JUST. STATE BY STATE, https://ejstatebystate.org/law-policy-database [https://perma.cc/XK82-AGZ4].

209. *See, e.g.*, MASS. GEN. LAWS ANN., ch. 30, § 62J (West 2024) (requiring "meaningful public involvement" in proposed projects affecting the environment, including additional measures to involve "the environmental justice population" for proposed projects in those areas); OR. REV. STAT. § 182.542 (West 2025) (creating an "Environmental Justice Council," and requiring the council to advise state natural resource agencies on community concerns and public participation processes); CAL. PUB. RES. CODE § 71110 (West 2025) (requiring the California Environmental Protection Agency to "[e]nsure greater public participation in the agency's development, adoption, and implementation of environmental regulations and policies").

210. For a definition of "cumulative impacts," or "cumulative effects," see 32 C.F.R. § 651.16 (2025) ("[C]umulative effects . . . are the impact on the

impacts);[211] the establishment of environmental justice agency positions, advisory committees, and task forces (capacity building);[212] and the creation of mapping tools that identify disproportionately burdened, or "environmental justice" communities (mapping).[213]

environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."); see also Ana Isabel Baptista & Adrienne Perovich, *Understanding the Evolution of 'Cumulative Impacts' Definitions and Policies in the U.S.*, TISHMAN ENV'T & DESIGN CTR. (2022), https://ejstatebystate.org/wp-content/uploads/2023/07/CI-Memo_EJ-Law-Database-.pdf [https://perma.cc/XL9U-ZHVM] ("Understanding cumulative impacts require consideration of the complex interplay between socio-demographic, environmental, and public health factors that impact EJ communities. These communities are both more likely to be overburdened with pollution and more likely to suffer worse impacts from a given amount of pollution due to the socio-economic and other conditions in which they live.").

211. *See* MINN. STAT. ANN. § 116.065 (West 2025) (defining "cumulative impacts" as "the impacts of aggregated levels of past and current air, water, and land pollution in a defined geographic area to which current residents are exposed," and requiring a consideration of cumulative impacts in permitting); VA. CODE ANN. § 10.1-1186.2:1(A) (2025) ("The Department and the State Air Pollution Control Board have the authority to consider the cumulative impact of new and proposed electric generating facilities within the Commonwealth on attainment of the national ambient air quality standards."); 310 MASS. CODE REGS. 7.02(14)(a) (2025) ("The purpose of [cumulative impact analysis] is to protect environmental justice populations from the harms of air pollution by requiring cumulative impact analysis that includes meaningful public involvement of environmental justice populations, assessment of existing community conditions, and analysis of the cumulative impacts of new or modified sources of air pollution that may affect environmental justice populations.") Massachusetts Dep't of Env't Prot., *Cumulative Impact Analysis in Air Quality Permitting*, MASS.GOV, https://www.mass.gov/info-details/cumulative-impact-analysis-in-air-quality-permitting [https://perma.cc/LVK7-NLMZ] (explaining that the Massachusetts Department of Environmental Quality will incorporate cumulative impact analysis into its air permit and approval processes).

212. *See* Mich. Exec. Order No. 2019-06, § 1(f) (2019) (creating the Office of the Environmental Justice Public Advocate); Pa. Exec. Order No. 2021-07, § 2 (2021) (establishing the Office of Environmental Justice within the Pennsylvania Department of Environmental Protection); OR. REV. STAT. § 182.542 (West 2025) (creating an Environmental Justice "Council"); H. 3933, 117th Gen. Assemb., Reg. Sess., at 2 (S.C. 2007) (establishing an "Environmental Justice Advisory Committee").

213. *See Environmental Justice Map*, ARCGIS, https://www.arcgis.com/home/webmap/viewer.html?url=https%3A%2F%2Fgis.adem.alabama.gov%2Farcgis%2Frest%2Fservices%2FEJ_Map%2FMapServer&source=sd [https://perma.cc/HX39-X4XR] (dividing Alabama into four categories: Minority/Low Income; Low Income; Minority; and Non-EJ Areas); *AZ Counties Demographic and Environmental Dashboard*, ARIZ. DEP'T OF ENV'T QUALITY, https://adeq.maps.arcgis.com/apps/MapSeries/index.html?appid=cc0da69679c74b8ca25125c15651805a [https://perma.cc/V7VY-PT3Q]

Many of these measures aim to reduce the harm inflicted against, or increase the participation of, environmentally overburdened communities.[214] But what factors do and what factors *should* states consider in identifying these communities? What terminology do states use? And is race considered? The discussion below surveys existing state approaches to these questions.

State laws use a variety of terms to refer to communities overburdened by pollution—communities that are predominantly BIPOC and low-income. Some common terms include "disadvantaged community,"[215] "overburdened community,"[216] or "environmental justice community."[217]

States differ not only in the terminology they employ, but also in the criteria they use to define overburdened communities.[218] Some states consider racial demographics in defining overburdened communities, while others do not.[219] California and Connecticut do not consider race, whereas Pennsylvania, Minnesota, Colorado, New Jersey, Vermont, Virginia, Illinois, Massachusetts, Maryland, New York, and Oregon all do.[220]

(providing demographic and environmental data for each county in Arizona); *Understanding Environmental Justice in Minnesota*, MINN. POLLUTION CONTROL AGENCY (depicting "environmental justice areas as census tracts," defined as either at least 40% limited English proficiency, at least 40% "people of color," at least 35% of household at or below 200% of the federal poverty line, or "located within Indian Country").

214. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 30, § 62J (West 2024) (requiring state agencies to implement increased public participation measures if a proposed project affects an environmental justice community); N.Y. ENV'T CONSERV. LAW § 70-0118(3)(b) (McKinney 2025) (prohibiting the siting of new polluting projects "if [the responsible agency] determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on [a] disadvantaged community").

215. *See, e.g.*, N.Y. ENV'T CONSERV. § 75-0111 (McKinney 2025) (requiring the identification of "disadvantaged communities" by a "climate justice working group" created by the act).

216. *See, e.g.*, WASH. REV. CODE § 70A.02.010(11) (West 2025) (employing the term "overburdened community"); N.J. STAT. ANN. § 13:1D-157 (West 2025) (employing the term "overburdened communities").

217. *See, e.g.*, OR. REV. STAT. § 182.535(4) (West 2025) (employing the term "environmental justice community").

218. *See infra* notes 221–36.

219. *See infra* notes 221–36 (showing that some states employ race-based, while others use race-neutral, definitions).

220. *See infra* notes 221–36.

FIGURE 2: STATE DEFINITIONS OF ENVIRONMENTAL JUSTICE COMMUNITIES

State	Law/Policy/Program	Terminology	Race-Based?
California[221]	CAL. HEALTH & SAFETY CODE § 39711	"Disadvantaged Community"	No
Connecticut[222]	CONN. GEN. STAT. § 22a-20a	"Environmental Justice Community"	No
Pennsylvania[223]	4 PA. CODE § 5.1032, PennEnviroScreen	"Environmental Justice Area"	Yes
Minnesota[224]	MINN. STAT. § 116.065(e)	"Environmental Justice Area"	Yes
Colorado[225]	COLO. REV. STAT. § 24-4-109	"Disproportionately Impacted Community"	Yes

221. CAL. HEALTH & SAFETY CODE § 39711(a) (West 2025) ("[D]isadvantaged communities . . . shall be identified based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following: (1) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation. (2) Areas with concentrations of people that are of low income . . . ."); *Indicators Overview*, CA. OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, https://oehha.ca.gov/calenviroscreen/indicators-overview [https://perma.cc/Q9SV-NMBZ] (explaining the socioeconomic and pollution exposure indicators used by California's Office of Environmental Health Hazard Assessment—the implementing agency—to "disadvantaged communities," with race absent as an indicator).

222. CONN. GEN. STAT. ANN. § 22a-20a(a)(1) (West 2025) (defining "environmental justice community" as those census block groups where at least thirty percent of the population are low-income).

223. 4 PA. CODE § 5.1032 (2025) (directing the Office of Environmental Justice to develop a statewide definition of "environmental justice area"); Josh Shapiro, *Environmental Justice Policy and PennEnviroScreen*, PA. DEP'T OF ENV'T PROT. 13 (2023), https://files.dep.state.pa.us/Energy/Office%20of%20Energy%20and%20Technology/OETDPortalFiles/Climate%20Change%20Advisory%20Committee/2023/10-24-23/2023-09_AdvisoryBoards_EJPolicy_PennEnviroScreen.pdf [https://perma.cc/68UB-6ZNN] (defining an "environmental justice area" as one whose population is greater than thirty percent people of color or greater than twenty percent low income).

224. MINN. STAT. ANN. § 116.065(e) (West 2025) (defining "environmental justice area[s]," with reference to racial demographics, as census tracts that either are 40% or more nonwhite, 35% or more low income, 40% limited English proficiency, or located in "Indian Country.").

225. COLO. REV. STAT. ANN. § 24-4-109 (West 2025) (defining "disproportionately impacted communities" as those where the percent of low-income households or racial minorities exceed 40%, or "linguistically isolated" people exceed 20%, or housing cost burdened households exceed 50%).

New Jersey[226]	N.J. STAT.ANN § 13:1D-158	"Overburdened Community"	Yes
Vermont[227]	VT. STAT. ANN. tit. 3, § 6002	"Environmental Justice Focus Population"	Yes
Virginia[228]	VA. CODE ANN. § 2.2-234	"Environmental Justice Community"	Yes
Illinois[229]	415 ILL. COMP. STAT. 155/10(d)(4), Illinois EPA (IEP) Policy	"Area of Environmental Justice Concern"	Yes
Massachusetts[230]	MASS. GEN. LAWS ch. 30, § 62	"Environmental Justice Population"	Yes
Maryland[231]	MD. CODE ANN. ENV'T § 1-701(a)(8)	"Underserved Community"	Yes

226. N.J. STAT. ANN. § 13:1D-158 (West 2025) (defining "overburdened communit[ies]" as those which are either at least 35% low-income, 40% racial minorities, or 40% limited English proficiency).

227. VT. STAT. ANN. tit. 3, § 6002(4) (2025) (defining "environmental justice focus population" as those census blocks where "the annual median household income is not more than 80 percent of the State median household income; . . . Persons of Color and Indigenous Peoples comprise at least six percent or more of the population; or . . . at least 1 percent or more of households have limited English proficiency").

228. VA. CODE ANN. § 2.2-234 (West 2025) (defining "environmental justice community" as "any low income community or community of color" where "'community of color' means any geographically distinct area where the population of color, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth . . . .").

229. 415 ILL. COMP. STAT. ANN. 155/10(d)(4) (West 2025) (creating an environmental justice commission responsible for "develop[ing] criteria to assess whether communities in the State may be experiencing environmental justice issues"); *Environmental Justice (EJ) Policy*, ILL. ENV'T PROT. AGENCY (Oct. 2021), https://epa.illinois.gov/topics/environmental-justice/ej-policy.html [https://perma.cc/5LE8-PZTL] (explaining that the Illinois EPA defines "area of EJ concern" as a census block group "with a low-income and/or minority population greater than twice the statewide average").

230. MASS. GEN. LAWS ANN. ch. 30, § 62 (West 2024) (defining an "environmental justice population" as a neighborhood where "the annual median household income is not more than 65 per cent of the statewide annual median household income; . . . minorities comprise 40 per cent or more of the population; . . . 25 per cent or more of households lack English language proficiency; or . . . minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income").

231. MD. CODE ANN., ENV'T § 1-701(a)(8) (West 2025) (defining an "underserved community" as a census tract in which at least 25% of residents are low-income, at least 50% of residents are nonwhite, or at least 15% of residents have limited English proficiency).

New York[232]	N.Y. ENV'T CONSERV. LAW § 75-0111	"Disadvantaged Community"	Yes
Oregon[233]	OR. REV. STAT. § 756.010	"Environmental Justice Communities"	Yes

As Figure 2 illustrates, most states that adopted definitions of environmental justice communities currently use race in their definitions. States face a difficult decision about whether to continue using race in these definitions. Although race is highly correlated with exposure to environmental harms,[234] race-based measures face mounting challenges—both in the judiciary and the executive.[235] The Subsection that follows explores the advantages and disadvantages of race-neutral environmental justice laws, looking to Justice40, a Biden-era race-neutral environmental justice initiative, as a case study. Then, the Section presents an independent analysis of the correlation between Justice40's race-neutral metrics and racial demography.

232. N.Y. ENV'T CONSERV. LAW § 75-0111(c) (McKinney 2025) ("Disadvantaged communities shall be identified based on geographic, public health, environmental hazard, and socioeconomic criteria, which shall include but are not limited to . . . areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects; . . . areas with concentrations of people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination on the basis of race or ethnicity; and . . . areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effects.").

233. OR. REV. STAT. ANN. § 756.010(5) (West 2025) ("'Environmental justice communities' includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including but not limited to seniors, youth and persons with disabilities.").

234. *See supra* Part I.A.1 (demonstrating that BIPOC communities are disproportionately exposed to environmental harms and that pollution burden is significantly correlated with race).

235. *See supra* Parts II.A.1–2 (discussing the holding of *Louisiana v. EPA* and factors that make disparate impact regulations vulnerable to invalidation beyond Louisiana); *see also supra* Parts II.B.1–2 (providing evidence that race-conscious policies are vulnerable to invalidation at the Supreme Court and recission by the executive).

B. RACE-NEUTRAL METRICS OF ENVIRONMENTAL DISADVANTAGE: JUSTICE40 CASE STUDY

One of the Biden administration's major environmental justice initiatives, "Justice40," provides a useful case study for the problems and possibilities of race-neutral methods for defining environmental justice communities. The Subsection that follows (1) briefly describes the initiative and its methodology; (2) surveys arguments for and against the Justice40 model and race-neutral methods generally; and (3) presents independent analysis on Justice40 data.

1. The Justice40 Initiative and Climate & Economic Justice Screening Tool (CEJST)

In 2021, as part of Executive Order 14,008, *Tackling the Climate Crisis at Home and Abroad*, the Biden administration launched the Justice40 Initiative.[236] Justice40 set a goal that "[forty] percent of the overall benefits of certain [f]ederal climate, clean energy, affordable and sustainable housing, and other investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution."[237]

To define "disadvantaged communities," the Council on Environmental Quality (CEQ) developed the Climate & Economic Justice Screening Tool (CEJST), which uses a variety of "burden indicators" to identify disadvantaged communities at the census tract level.[238] There are thirty burden indicators—most of which

236. *See* Exec. Order No. 14,008, 86 Fed. Reg. 7619 (2021) (announcing the "Justice40 Initiative," which sets the "goal that 40 percent of the overall benefits [of certain Federal investments] flow to disadvantaged communities").

237. *What is the Justice40 Initiative?*, WHITE HOUSE, https://web.archive.org/web/20250120001559/https://www.whitehouse.gov/environmentaljustice/justice40 [https://perma.cc/CE53-K2HE] ("[T]he Federal government has made it a goal that 40 percent of the overall benefits of certain Federal climate, clean energy, affordable and sustainable housing, and other investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. President Biden made this historic commitment when he signed Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad* within days of taking office.").

238. *See Climate and Economic Justice Screening Tool: Frequently Asked Questions*, EXEC. OFF. OF THE PRESIDENT, https://web.archive.org/web/20250116093553/https://www.whitehouse.gov/wp-content/uploads/2022/02/CEQ-CEJST-QandA.pdf [https://perma.cc/YL2Q-RYQF] (explaining that the CEJST was developed to implement Justice40); *Methodology,* CLIMATE

require that a community is both at or above the sixty-fifth percentile in the nation for low income, and at or above the ninetieth percentile nationally for factors related to projected climate change impacts, energy, health, housing, legacy pollution, transportation, water and wastewater, and workforce development.[239] If a census tract meets the threshold for at least one indicator, it is considered a "disadvantaged" community for purposes of Justice40.[240]

Race is conspicuously absent from CEJST's methodology,[241] despite the well-established correlation between racial demography and environmental burden.[242] Justice40's omission of race prompted heated debate among legal scholars and environmental justice advocates.[243]

The Subsection that follows discusses some of the arguments made for and against CEJST's race-neutral methodology.

2. Arguments For and Against CEJST's Race-Neutral Methodology

CEJST's race-neutral methodology elicited a variety of criticisms.[244] Debates around race-neutral methods can be

& ECON. JUST. SCREENING TOOL, https://web.archive.org/web/20250119133315/https://screeningtool.geoplatform.gov/en/methodology [https://perma.cc/B4RA-VC2E] (describing the methodology used by the CEJST in defining disadvantaged communities).

239. *See supra* note 238 and accompanying text.

240. *See supra* note 238 and accompanying text.

241. *See Climate and Economic Justice Screening Tool*, *supra* note 238 (omitting race as a burden indicator).

242. *See supra* Part I.A (discussing the link between race and environmental burden).

243. *See, e.g.*, Naveena Sadasivam & Clayton Aldern, *The White House Excluded Race from its Environmental Justice Tool. We Put it Back In*, GRIST (Feb. 24, 2022), https://grist.org/equity/climate-and-economic-justice-screening-tool-race [https://perma.cc/M6UZ-AW5U].

244. *See, e.g.*, *id.* ("The Biden administration has come under fire from environmental justice advocates for excluding racial demographics . . . [in its CEJST] tool . . . ."); Thomas Frank, *How the White House Found EJ Areas Without Using Race*, E&E NEWS: POLITICO (Jan. 24, 2023), https://www.eenews.net/articles/how-the-white-house-found-ej-areas-without-using-race [https://perma.cc/4B86-LLB5] ("The White House was widely criticized a year ago for not using racial demographics to identify disadvantaged communities that would be targeted for extra climate aid. The nation's leading advocates for environmental justice were furious, saying that race must be considered because biased policies like redlining had forced minorities into heavily polluted neighborhoods that are vulnerable to climate impacts."); Dean Scott, *Environmental*

categorized into three general and overlapping buckets: dignitary, legal, and practical. This Note discusses these three strands of arguments in turn.

First, dignitary arguments consider a policy's effect on a person's or group's sense of dignity.[245] Some environmental justice advocates identify a dignitary harm in race-neutral methods: omitting race, they argue, disrespects people of color by failing to acknowledge that many harms are inflicted on BIPOC communities *because* of race.[246] "There are some things that happen to us just because we are Black . . . [CESJT] will miss the mark completely if it doesn't include race[,]" said Beverly Wright, founder and director of the Deep South Center for Environmental Justice.[247] LaTricea Adams, founder and CEO of Black Millennials for Flint, described the omission of race in CEJST as

Advocates Press for Changes to Biden's Equity Tool, BLOOMBERG L., (May 19, 2022), https://news.bloomberglaw.com/environment-and-energy/environmental-advocates-press-for-changes-to-bidens-equity-tool [https://perma.cc/B9TQ-PQYK] ("[Justice40's race-neutral] approach flies in the face of data showing health impacts from extreme heat made worse by rising global temperatures continue to 'disproportionately impact communities of color,' such as in the Phoenix area, said Vania Guevara, a public lands fellow with Chispa Arizona, which advocates for Latino communities. 'To remove race as a factor when making these decisions is upholding a system of discriminatory practices upholding white supremacy' . . . .").

245. For a definition of "dignitary harm," see *supra* note 49 (explaining that, in the legal context, "dignitary harm" refers to an injury to a person's autonomy, liberty, personhood, or sense of dignity).

246. *See* Stephen Lee, *White House Advisers Denounce Race Exclusion from Equity Tool*, BLOOMBERG L. (Mar. 31, 2022), https://news.bloomberglaw.com/environment-and-energy/white-house-advisers-denounce-race-exclusion-from-equity-tool [https://perma.cc/8HBU-8VPL] ("LaTricea Adams, founder and CEO of Black Millennials for Flint, said the exclusion of race is 'disrespectful and a slap in the face to every Black and brown person that has been advocating for decades, for us to get to this point where literally they tell Black and brown people that we don't matter.'"); *id.* ("'There are some things that happen to us just because we are Black,' said Beverly Wright, founder and director of the Deep South Center for Environmental Justice, and a member of the White House Environmental Justice Advisory Council."); Casey Hellman, *The Biden Administration's New Tool to Address Environmental Injustice*, GEO. ENV'T L. REV. BLOG 1, 3 (2022), https://www.law.georgetown.edu/environmental-law-review/blog/the-biden-administrations-new-tool-to-address-environmental-injustice [https://perma.cc/XDS6-ME7F] ("Although the communities designated as disadvantaged in the current methodology are primarily non-white communities, the methodology does not account for the reality that many non-white communities are polluted not because they are poor but *because* they are non-white."),

247. Lee, *supra* note 246.

"disrespectful" and "a slap in the face" to Black communities.[248] These dignitary criticisms should not be minimized. They should also be considered in tandem with other legal and practical evaluations.

Second, legal analyses focus on the degree to which environmental justice laws can avoid and withstand legal challenges. Legal analyses also consider the cost and resource demands of litigation. Many legal experts maintain that race-neutral methods, like Justice40's, minimize litigation risk and fortify policies against invalidation in the courts.[249] "The bottom line is, the Supreme Court is very hostile to any attempt to use race as a basis for giving benefits," said Erwin Chemerinsky, Dean of the University of California, Berkeley School of Law.[250] Race-neutral methods, according to Chemerinsky, are the best means for ensuring environmental justice policies survive in the current legal context.[251] Similarly, Toni M. Massaro, a professor at the University of Arizona James E. Rogers College of Law, noted that "'[t]here's campaign talk and there's write-the-law talk" and that race neutrality is a constraint that must be heeded for policies survive judicial review.[252] The creators of Justice40 seem to have shared these concerns for the legality of race-based measures: Brenda Mallory, chairwoman of Biden's White House Council of Environmental Quality, described the administration's intention as "set[ting] up a framework and a tool that will survive."[253] These legal analyses are well-grounded in current case law and emergent litigation projects. As discussed in Part II, race-

248. *See* Lee, *supra* note 246 (quoting LaTricea Adams).

249. Lisa Friedman, *White House Takes Aim at Environmental Racism, but Won't Mention Race*, N.Y. TIMES (Feb. 15, 2022), https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html [https://perma.cc/AM9L-R6ZE] (quoting multiple legal scholars who classify race-neutral policies as being more resistant to legal challenges).

250. *Id.*

251. *See id.* ("The administration stands a better chance of keeping its environmental justice policies intact without being explicit." (internal quotations omitted)).

252. *Id.*

253. *See id.* ("[A]dministration officials said they were designing a system to help communities of color even without defining them as such. 'We are trying to set up a framework and a tool that will survive, and one that still connects to what the on-the-ground impacts are that people are experiencing,' said Brenda Mallory, chairwoman of the White House Council of Environmental Quality, which is designing the system. 'I feel that we can do that based on race-neutral criteria.'").

conscious laws stand on shaky legal ground post-*SFFA* and are also explicit targets of the new presidential administration and a nationwide conservative litigation campaign.[254]

It is worth acknowledging that the underlying goal of avoiding litigation may be contested. Litigation aversion (that is, crafting policies with the goal of safeguarding against legal challenge) prioritizes resource-saving and substantive successes in court that leave policies unscathed.[255] To those ends, race-neutral policies are a more effective means than race-based policies. However, scholars have noted that social actors may strategically engage in litigation not because they expect to win in court, but because court battles can draw public attention to issues and build support for movements.[256] Adopting this lens, commitment to race-conscious policy, even if it invites litigation and will likely be invalidated, could serve legitimate environmental justice goals if strategically deployed as part of a larger campaign. Ultimately, this Note does not take a position on whether the goal of litigation aversion should be embraced. Rather, it suggests that decision makers should be conscious of—and honestly discuss—their fundamental assumptions about the purpose and effects of litigation to foster more strategic decisions.

Finally, practical debates consider the extent to which race-neutral models, like Justice40, offer a practical remedy for environmental racism.[257] Supporters of CEJST maintain that, because of the strong correlation between environmental burden, race, and income, race-neutral methodologies can effectively reach communities of color while reducing the risk of lawsuits

254. *See generally* Part II.

255. *See supra* notes 249–56.

256. *See, e.g.*, Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, GEO. J. LEGAL ETHICS 447, 458 (2018) ("[L]itigation may be deployed for its indirect effects on political mobilization and public opinion rather than as a tool to make change directly."); Douglas Nejaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 941 (2011) ("[C]onfiguring judicial defeat for internal movement purposes, sophisticated advocates may use litigation loss (1) to construct organizational identity and (2) to mobilize constituents."); Gwendolyn M. Leachman, *From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda*, 47 UC DAVIS L. REV. 1667, 1698 (2014) ("[S]tudies of social movement litigation suggest that litigation receives more media coverage than other social movement tactics.").

257. *See supra* notes 249–53.

and invalidation in the courts.[258] On the other hand, some have voiced concerns about the effectiveness of race-neutral tools, maintaining that environmental racism can never be fully addressed without explicit consideration of race.[259]

Relatively few empirical studies exist to support or refute these claims.[260] However, those that have been conducted tend to support the idea that race-neutral methods are effective in reaching BIPOC communities.[261] For example, a 2022 analysis of CEJST found that as the percentage of BIPOC people in a census tract increases, so does the likelihood that the tract is identified as "disadvantaged" within the model.[262] One analysis found that 77% of majority Black census tracts and 83% of majority Hispanic tracts are identified as disadvantaged

258. *See, e.g.*, Friedman, *supra* note 249 ("The bottom line is, the Supreme Court is very hostile to any attempt to use race as a basis for giving benefits, ... The administration stands a better chance of keeping its environmental justice policies intact without being explicit . . . . Given the correlation between race and poverty in our society, they can get at what they want but in a way that's race-neutral." (internal quotations omitted) (quoting Erwin Chemerinsky, Dean of the University of California, Berkeley School of Law)); Sadasivam, *supra* note 243 ("[O]fficials say the tool is designed in such a way that it can still prioritize communities of color (and do so without becoming a target for legal challenges). A Grist analysis suggests that there is strong evidence behind the administration's reassurances: The tool appears to implicitly account for race in its selection of disadvantaged communities."); Frank, *supra* note 244 ("[CEJST's] colorblind approach has succeeded at prioritizing minority neighborhoods, an E&E News analysis shows . . . census tracts with large numbers of minority residents are much more likely to be listed by the White House as disadvantaged communities than largely white tracts.").

259. *See* Friedman, *supra* note 249 ("'When you look at the most powerful predictor of where the most industrial pollution is, race is the most potent predictor,' said Robert Bullard, a professor of urban planning and environmental policy at Texas Southern University and a pioneer in the environmental justice movement. 'Not income, not property values, but race. If you're leaving race out, how are you going to fix this?' . . . Dr. Bullard said an honest discussion of environmental justice must recognize that race is a factor. Anything else is 'disingenuous,' he said."); Lee, *supra* note 246 ("Miya Yoshitani, executive director of the Asian Pacific Environmental Network, noted that, while tools such as the CEQ's can be tailored to capture racial markers without doing so explicitly, 'you can never actually attain what you would be able to attain by including race.'").

260. *See* Dave Owen & Gaby Salazar Kitner, *Mapping Environmental Justice*, 110 MINN. L. REV. (forthcoming Apr. 2026) (manuscript at 60) (on file with the *Minnesota Law Review*) (explaining that the few studies that have been conducted on the effectiveness of race-neutral mapping tools have found that race-neutral tools are highly correlated with race and are not significantly different than race-conscious methods).

261. *Id.*

262. Sadasivam, *supra* note 243.

communities by CEJST.[263] Another analysis found that while white people made up 60.1% of the U.S. population in 2019, only 36.3% of white people lived in CEJST disadvantaged communities.[264]

More empirical evidence is needed on the practical effectiveness of race-neutral models. Choosing between race-neutral and race-based policies, policymakers and advocates must weigh a variety of dignitary, legal, and practical concerns against one another. This calculus cannot be maximally effective without more evidence about the practical effects of race-neutral models. The following Subsection seeks to bolster this information gap by providing novel empirical analysis on the correlation between CEJST's non-racial metrics and the racial demography of a census tract.

3. Data Analysis of Burden Indicators and Racial Demographics

This Subsection analyzes the relationship between the number of CEJST burden indicators satisfied and the racial demographics of a census tract, using data from the now-rescinded[265] CEJST website. I conducted this data analysis with the assistance of Dr. Michael S. Johnson, a professional data analyst and statistician. Consulting Dr. Johnson with my research questions and analytic goals, he implemented the analysis in R and generated the resulting charts.[266] R is a programming language used for statistical computing and data visualization.[267]

As previously discussed, CEJST functioned as a binary.[268] The CEJST model identified census tracts as "disadvantaged" if they met at least one burden criterion, regardless of the number

263. Frank, *supra* note 244.

264. Emma Rutowski et al., *Justice40 Initiative: Mapping Race and Ethnicity*, RHODIUM GRP. (Feb. 24, 2022), https://rhg.com/research/justice40-initiative-mapping-race-and-ethnicity [https://perma.cc/Y8U6-KAPA].

265. *[Rollback]: CEQ's Climate & Economic Justice Screening Tool (CEJST) Removed*, HARV. L. SCH. ENV'T & ENERGY L. PROGRAM (last updated Apr. 15, 2025), https://eelp.law.harvard.edu/tracker/ceqs-climate-economic-justice-screening-tool-removed [https://perma.cc/LM44-45JH] (preserving the CEJST data and explaining that the Trump administration deleted the CEJST website).

266. Data and analysis programs available from the author on request.

267. Gregor Stiglic & Roger Watson, *R You Ready? Using the R Program for Statistical Analysis and Graphics*, 42 Res. Nursing & Health 494, 495 (2019).

268. *See Methodology*, *supra* note 237 (describing CEJST's methodology).

of burden criteria satisfied.[269] Studying degrees of disadvantage, however, can provide a better sense of the extent to which racial demographics can be captured by and correlated with non-racial metrics.

To this end, our analysis gives a census tract a "point" for each burden metric satisfied, yielding an overall burden score. The overall burden scores vary between 0 and 17 for the 73,047 census tracts in the data set. Then, we analyzed the relationship between burden score and BIPOC composition—calculating BIPOC composition by subtracting the "Percent White" value for a given census tract from 100. We conducted this analysis for all fifty states.

I include graphs for Louisiana and Minnesota below as examples. Appendix F provides graphs for all states. In these graphs, each dot represents a single census tract. The horizontal axis shows the tract burden score; the vertical axis displays the percentage of the tract population that is BIPOC. The regression line (solid) summarizes the association between these two variables. The positive slope of a regression line indicates a positive correlation between burden score and racial demographics—meaning that as a tract's burden score increases, its percentage of BIPOC residents rises as well. The dashed horizontal line marks the overall percentage of BIPOC residents in a state. Finally, diamonds show the average BIPOC percentage at each burden score.

269. *See Explore the Map*, CLIMATE & ECON. JUST. SCREENING TOOL, https://edgi-govdata-archiving.github.io/j40-cejst-2/en [https://perma.cc/MS7UQXBL] (depicting a map of the United States divided into either disadvantaged or not-disadvantaged communities).

FIGURE 3: LOUISIANA BURDEN SCORE AND RACIAL DEMOGRAPHICS

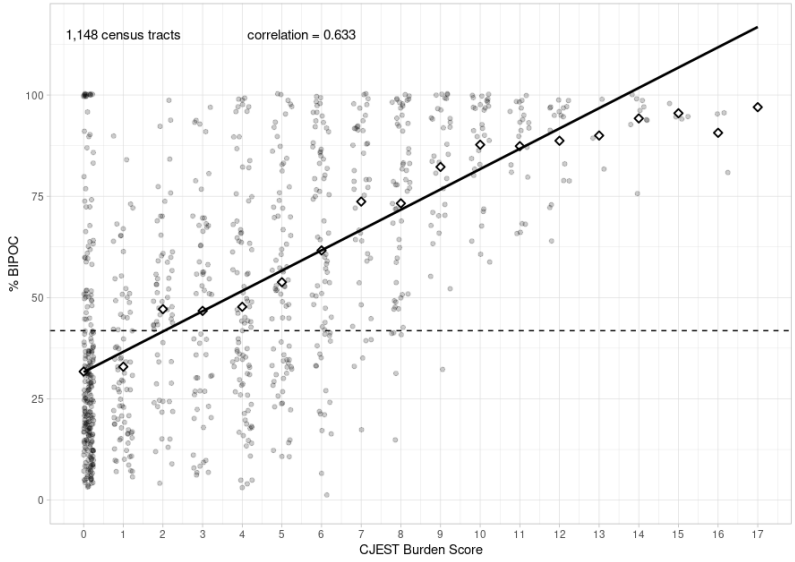
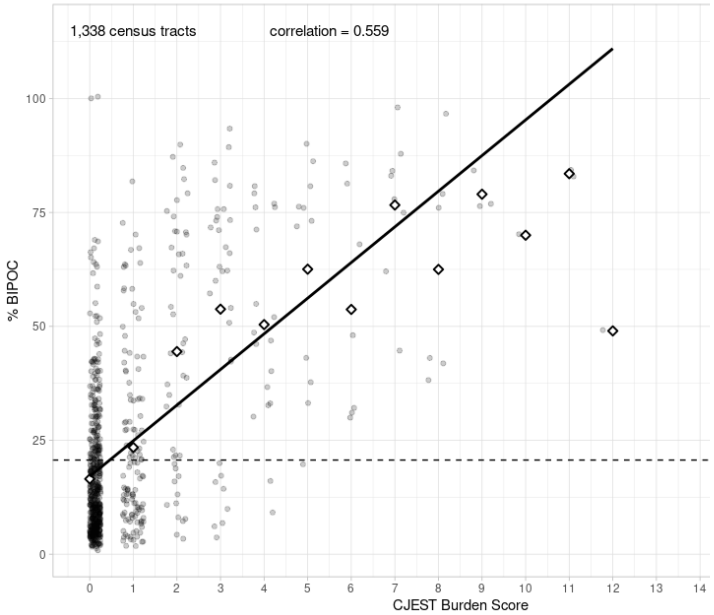


FIGURE 4: MINNESOTA BURDEN SCORE AND RACIAL DEMOGRAPHICS



Our analysis shows a strong correlation between burden score and average BIPOC population of a census tract.[270] For context, in political and social science research, correlation coefficients of 0.5 and higher are generally considered strong.[271] Correlations of 0.7 and higher are relatively uncommon and demonstrate a very strong correlation.[272] In Louisiana, the correlation between burden score and BIPOC composition is 0.633.[273] In Minnesota, it is 0.559.[274]

If there were no association between race and burden score, we would expect the average percentage BIPOC at each burden level to roughly match that of the state average. In Minnesota and Louisiana, BIPOC residents are consistently overrepresented compared to their overall share of the population starting at a burden score of two.[275] In Minnesota, CEJST data indicates that BIPOC residents make up 21% of the state population.[276] But for tracts with a burden score of two and above, the average BIPOC percentage ranges from 48% to 84%, more than double to four times the state average.[277] Likewise, in Louisiana, BIPOC residents compose 42% of the state, but burden levels of two and above range from 48% to 96% BIPOC.[278]

270. *See infra* Appendix B (demonstrating a majority of correlation coefficients .5 or greater).

271. *See, e.g.*, Haldun Akoglu, *User's Guide to Correlation Coefficients*, 18 TURKISH J. EMERGENCY MED. 91, 92 tbl.1 (2018) (noting that correlation coefficients of 0.5 and above are considered strong in political science); James W. Loewen, *Levels of Political Mobilization and Racial Bloc Voting Among Latinos, Anglos, and African Americans in New York City*, 13 CHICANO-LATINO L. REV. 38, 46 n.15 (1993) ("[Correlation coefficients] of 0.5 are considered strong in most areas of social science research."); Scott F. Norberg & Stephanie J. Garcia, *Reducing Debt and Increasing Access to the Profession: An Empirical Study of Graduate Debt at U.S. Law Schools*, 69 J. LEGAL EDUC. 720, 729 n.24 (2020) ("[A] coefficient value greater than 0.5 is large/strong.").

272. *See* David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, *in* REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 83, 136 (2d ed. 2000) ("Moderate associations are the general rule in the social sciences; correlations larger than say, 0.7 are quite unusual in many fields."); Ira Mark Ellman, *Divorce Rates, Marriage Rates, and the Problematic Persistence of Traditional Marital Roles*, 34 FAM. L.Q. 1, 10 (2000) (explaining that 0.76 is "a very high correlation for a social science statistic").

273. *See infra* Appendix B.

274. *See id.*

275. *See infra* Appendices C–D.

276. *See infra* Appendix C.

277. *See id.*

278. *See infra* Appendix D.

These results reflect the national trend. In the United States overall, the average tract-level correlation between race and burden score is 0.51.[279] Our analysis shows a correlation at or above 0.5 in thirty-two states (identified by light grey in Appendix B), and a correlation at or above 0.7 (marked with dark grey) in six states.[280] Like Minnesota and Louisiana, in the United States as a whole, BIPOC residents become notably over-represented at a burden score of two and above.[281]

This analysis suggests that CEJST's race-neutral burden metrics would identify similar census tracts as those captured using race-based criteria. An example is illustrative here. Say that State A defines an environmental justice community as a census tract that is 40% BIPOC or greater. In State A, census tracts with burden scores of two are, on average, 40% BIPOC, with the percentage of BIPOC increasing as burden score increases. State A is concerned because State B, which has a similar race-based law, has been sued, and its environmental justice efforts are on hold as it fends off costly legal challenges. State A could amend its law to define an environmental justice community as one that meets two or more burden metrics. In doing so, State A has now protected its law from legal challenge, while presumably reaching many of the same communities. To confirm this hypothesis, further state-level empirical studies would be needed to compare the census tracts captured by a race-based law and those captured by a race-neutral law.

Further, important questions remain unanswered. First, without the explicit use of race, how can policymakers ensure that the benefits of an environmental justice program do not disproportionately flow to the white populations identified as disadvantaged? If this is a problem, is it unique to race-neutral modeling? Does the risk of disproportionate benefit allocation exist even when race is used in defining overburdened communities? If so, how, why, and to what extent?

Second, what number of burden indicators should a census tract need to meet to count as an environmental justice community? Who gets to decide? If policymakers are particularly concerned with remedying racial disparities, could they delineate the target community at the burden score where people of color

279. *See infra* Appendix B.

280. *See id.*

281. *See infra* Appendix E.

become overrepresented for their share of the state population? Could this decision-making calculus open them to Equal protection challenges and liability, even if the law ultimately adopted does not include race?

Third, given that BIPOC people are increasingly overrepresented as burden score increases, would race-neutral policies that account for a spectrum of disadvantage be more likely to achieve anti-racist goals? For example, a policy could impose stricter protections as burden score increases, with a categorical prohibition of new polluting projects in the most disadvantaged communities, and heightened environmental review for lesser, but still overburdened communities.

Finally, if race-neutral methods are employed, how can policymakers and advocates ensure that realities of racism are still expressed and acknowledged in public discourse?

While it may be tempting to propose a universal answer to these questions, such an endeavor is unlikely to be effective in furthering the goals of environmental justice and racial equity. As Elinor Ostrom observes, "[p]olicymakers sometimes want to learn the precise formula that will solve a particular problem. Extensive research has shown, however, that no blueprints exist that can reliably be used to solve collective action problems, either within or across sectors."[282] Local knowledge, offered by individuals who are impacted by policies, is crucial for solving social problems.[283]

282. Elinor Ostrom, *Understanding Collective Action*, *in* COLLECTIVE ACTION AND PROPERTY RIGHTS FOR SUSTAINABLE DEVELOPMENT 2 (Ruth S. Meinzen-Dick & Monica Di Gregorio eds., 2004), https://doi.org/10.22004/ag.econ.16031.

283. *See, e.g.*, *id.* ("Imposing top-down, detailed prescriptions for 'solving' collective action problems by policymakers located far from particular collective action problems has rarely been a successful strategy."); Josephine M. Wildman et al., *'What Works Here Doesn't Work There': The Significance of Local Context for a Sustainable and Replicable Asset-Based Community Intervention Aimed at Promoting Social Interaction in Later Life*, 27 HEALTH & SOC. CARE CMTY. 1102, 1108 (2019) ("Local solutions rely on specificity, local ownership and the ability of groups to tailor solutions to the particular local context . . . 'top-down' centrally led initiatives often fail when problems are closely linked to how people live their lives."); Scott L. Cummings & Doug Smith, *Policy by the People, for the People: Designing Responsive Regulation and Building Democratic Power*, 90 FORDHAM L. REV. 2025, 2040 (2022) ("Effectively supporting a people-centered movement for transformative policy change requires that lawyers unlearn and challenge traditional notions of 'expertise.' Lawyers understand the nuts and bolts of policy and the legal framework for policy adoption. But the

After all, if one of the root causes of environmental racism is the exclusion of affected BIPOC communities from political decision-making, it would be incongruent to frame a prescriptive, top-down solution, offered by a white legal professional, as the environmental justice panacea. That said, this Note contributes to the literature by identifying core legal and practical considerations for environmental justice advocacy amidst an increasingly hostile federal climate and hopes to inform decisions that must ultimately be made on a state-by-state basis and led by affected communities.

CONCLUSION

This Note examined the emerging threat to the EPA's Title VI disparate-impact regulations represented by *Louisiana v. EPA*. It discussed environmental racism, the EPA's present and historic enforcement of Title VI, and *Louisiana v. EPA*. The Note positioned *Louisiana v. EPA* within a broader threat to not only the EPA's regulations, but also to any race-based government policy that exists to remedy white supremacy. Given the hostile federal environment and shaky legal ground of the EPA's Title VI regulations, the Note proposed that advocates shift attention to states as venues for environmental justice.

Surveying existing state laws, this Note identified the use or exclusion of race in defining environmental justice communities as a central concern. To this end, the Note turned to the Justice40 Initiative as a case study for a race-neutral environmental justice approach. After analyzing arguments for and against race-neutral methodology, the Note presented data analysis of the correlation between CEJST's burden indicators and racial demography. This study revealed that, at the national level, CEJST's burden indicators are strongly correlated with race, suggesting they could serve as effective substitutes for race in policy design. Further studies are needed, however, and important questions remain unanswered. Ultimately, whatever strategy a state selects, legislators and policymakers must listen to and be led by directly impacted BIPOC communities.

people understand the practical and historical implications of policy in ways that most lawyers cannot comprehend. For instance, residents of historically disinvested neighborhoods know how to advance inclusive development because they have done the work of building community against the odds, without the benefit of resources or investment. These forms of expertise are important and must work in tandem.").

APPENDICES

A. JUSTICE40 BURDEN INDICATORS

Climate and Economic Justice Screening Tool (CEJST) Burden Indicators[284]	
Burden Indicator	**Required Thresholds**
Agriculture Loss	At or above 90th percentile for agriculture loss and at or above 65th percentile for low income
Expected Building Loss Rate	At or above 90th percentile for expected building loss rate and at or above 65th percentile for low income
Expected Population Loss Rate	At or above 90th percentile for expected population loss rate and at or above 65th percentile for low income
Projected Flood Risk	At or above 90th percentile for projected flood risk and at or above 65th percentile for low income
Energy Cost	At or above 90th percentile for energy cost and at or above 65th percentile for low income
PM2.5 in Air	At or above 90th percentile for pm2.5 in air and at or above 65th percentile for low income

284. *See Methodology*, *supra* note 238.

Asthma	At or above 90th percentile for asthma and at or above 65th percentile for low income
Diabetes	At or above 90th percentile for diabetes and at or above 65th percentile for low income
Heart Disease	At or above 90th percentile for heart disease and at or above 65th percentile for low income
Low Life Expectancy	At or above 90th percentile for low life expectancy and at or above 65th percentile for low income
Historic Under Invest-ment	At or above 90th percentile for historic under investment and at or above 65th percentile for low income
Housing Cost	At or above 90th percentile for housing cost and at or above 65th percentile for low income
Lack of Green Space	At or above 90th percentile for lack of green space and at or above 65th percentile for low income
Lack of Indoor Pluming	At or above 90th percentile for lack of indoor plumbing and at or above 65th percentile for low income
Lead Paint	At or above 90th percentile for lead paint and at or above 65th percentile for low income

Abandoned Mine Land	Has at least one abandoned mine land and at or above 65th percentile for low income
Formerly Used Defense Sites	At or above 90th percentile for formerly used defense sites and at or above 65th percentile for low income
Proximity to Hazardous Waste Facilities	At or above 90th percentile for proximity to hazardous waste facilities and at or above 65th percentile for low income
Proximity to Superfund sites	At or above 90th percentile for proximity to superfund sites and at or above 65th percentile for low income
Proximity to Risk Management Plan facilities	At or above 90th percentile for proximity to risk management plan facilities and at or above 65th percentile for low income
Diesel Particulate Matter Exposure	At or above 90th percentile for diesel particulate matter exposure and at or above 65th percentile for low income
Transportation Barriers	At or above 90th percentile for transportation barriers and at or above 65th percentile for low income
Traffic Proximity and Volume	At or above 90th percentile for traffic proximity and volume and at or above 65th percentile for low income

Underground Storage Tanks and Releases	At or above 90th percentile for underground storage tanks and releases and at or above 65th percentile for low income
Wastewater Discharge	At or above 90th percentile for wastewater discharge and at or above 65th percentile for low income
Linguistic Isolation	At or above 90th percentile for linguistic isolation and more than 10% of people ages 25 and older do not have a high school diploma
Low Median Income	At or above 90th percentile for low median income and more than 10% of people ages 25 and older do not have a high school diploma
Poverty	At or above 90th percentile for poverty and more than 10% of people ages 25 and older do not have a high school diploma
Unemployment	At or above 90th percentile unemployment and more than 10% of people ages 25 and older do not have a high school diploma

B. TRACT-LEVEL CORRELATION BETWEEN PERCENT BIPOC AND BURDEN SCORE

State	Total # Census Tracts	Tract-Level Correlation
Alabama	1,181	0.62
Alaska	167	0.50
Arizona	1,526	0.56
Arkansas	686	0.44
California	8,057	0.47
Colorado	1,249	0.47
Connecticut	833	0.70
Delaware	218	0.52
District of Columbia	179	0.59
Florida	4,245	0.48
Georgia	1,969	0.46
Hawaii	351	0.06
Idaho	298	0.22
Illinois	3,123	0.67
Indiana	1,511	0.60
Iowa	825	0.50
Kansas	770	0.54
Kentucky	1,115	0.20
Louisiana	1,148	0.63
Maine	358	0.04
Maryland	1,406	0.33
Massachusetts	1,478	0.64
Michigan	2,813	0.68
Minnesota	1,338	0.56
Mississippi	664	0.66
Missouri	1,393	0.58
Montana	271	0.53
Nebraska	532	0.70
Nevada	687	0.48
New Hampshire	295	0.36
New Jersey	2,010	0.63
New Mexico	499	0.52
New York	4,919	0.51
North Carolina	2,195	0.52
North Dakota	205	0.74
Ohio	2,952	0.65
Oklahoma	1,046	0.51
Oregon	834	0.14
Pennsylvania	3,218	0.68
Rhode Island	244	0.71
South Carolina	1,103	0.59
South Dakota	222	0.70
Tennessee	1,497	0.47
Texas	5,265	0.54
Utah	588	0.54
Vermont	184	0.15
Virginia	1,907	0.29
Washington	1,458	0.34
West Virginia	484	0.16
Wisconsin	1,409	0.73
Wyoming	132	0.37
United States	*73,047*	*0.51*

C. MINNESOTA BIPOC POPULATION BY BURDEN SCORE

Burden Score	# of Tracts	Total Population	BIPOC Population	% BIPOC
0	1,077	4,595,490	764,951	17%
1	126	482,624	117,773	24%
2	47	193,958	92,281	48%
3	31	101,204	56,964	56%
4	18	61,561	32,897	53%
5	11	34,853	23,200	67%
6	7	16,960	8,954	53%
7	8	20,164	14,624	73%
8	6	29,497	17,821	60%
9	3	9,365	7,361	79%
10	1	10,024	7,017	70%
11	2	4,674	3,912	84%
12	1	3,004	1,472	49%
13	0	0	0	0%
14	0	0	0	0%
15	0	0	0	0%
16	0	0	0	0%
17	0	0	0	0%
All Minnesota	*1,338*	*5,563,378*	*1,149,224*	*21%*

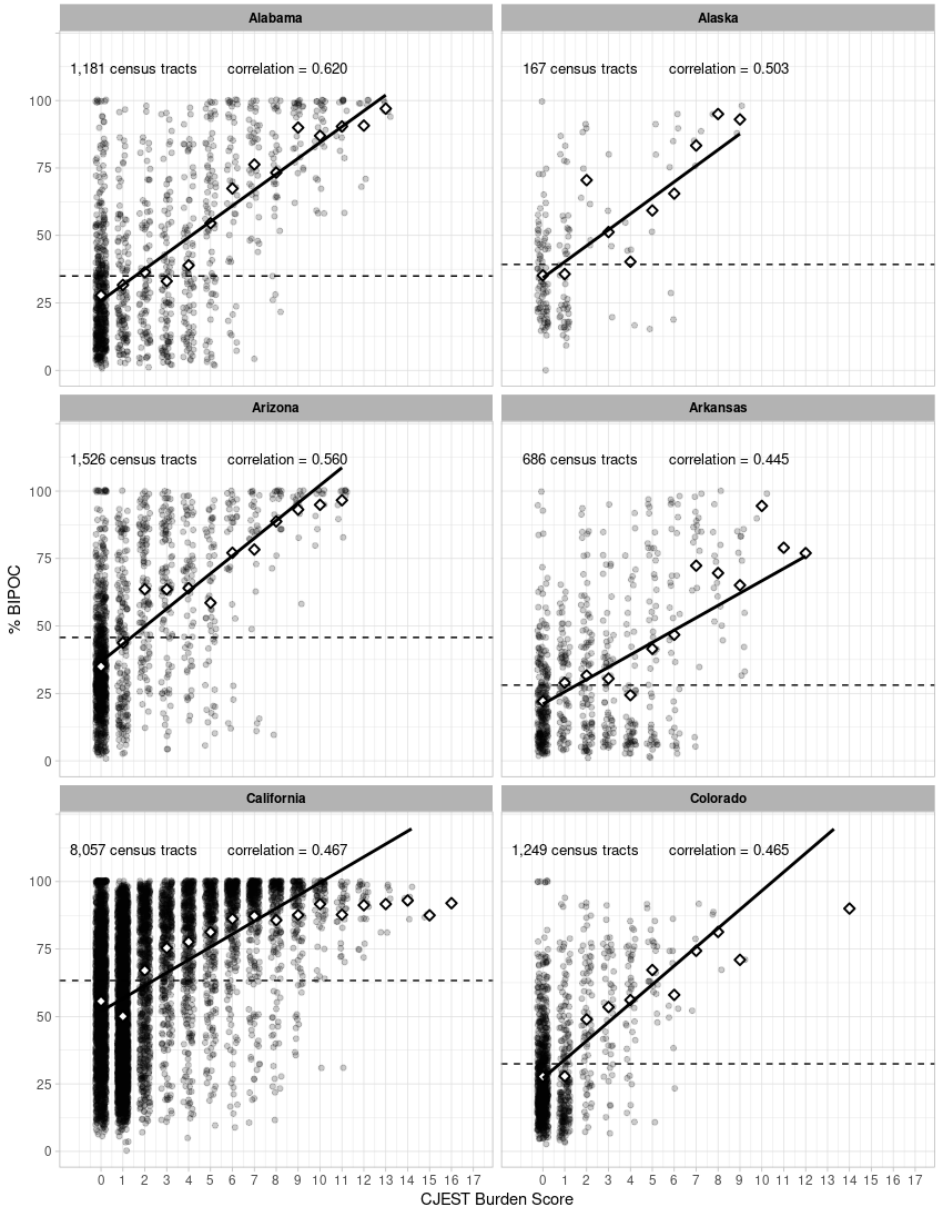
D. LOUISIANA BIPOC POPULATION BY BURDEN SCORE

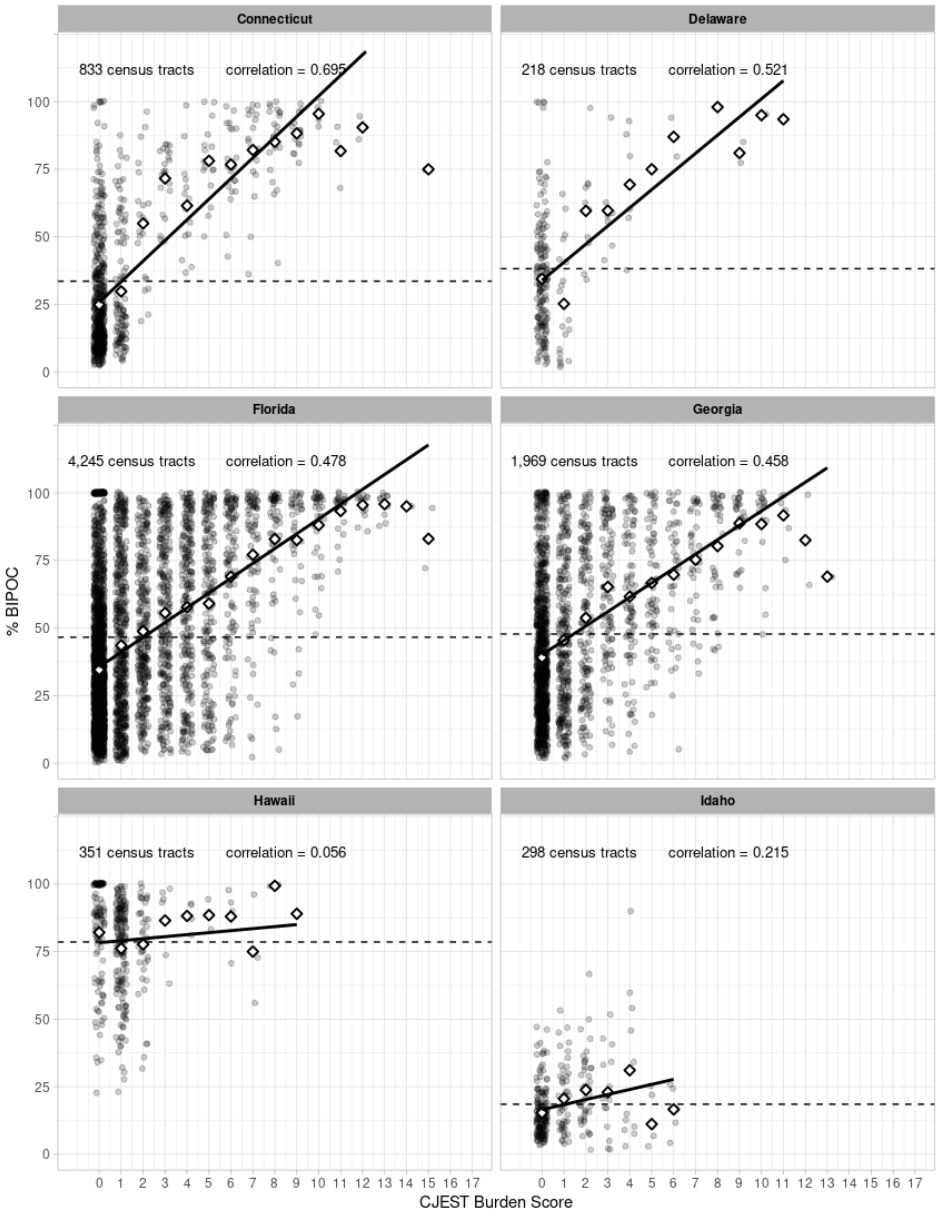
Burden Score	# of Tracts	Total Population	BIPOC Population	% BIPOC
0	500	2,356,887	662,450	28%
1	80	336,887	114,760	34%
2	59	264,726	126,028	48%
3	58	250,834	117,297	47%
4	87	362,267	176,719	49%
5	76	281,690	148,432	53%
6	70	227,272	145,655	64%
7	42	126,100	90,084	71%
8	55	165,184	117,718	71%
9	32	90,790	73,510	81%
10	30	88,929	77,067	87%
11	21	50,463	44,398	88%
12	17	27,564	23,953	87%
13	3	6,888	6,428	93%
14	9	14,001	13,243	95%
15	4	6,459	6,174	96%
16	3	4,102	3,694	90%
17	2	3,319	3,196	96%
All Louisiana	*1,148*	*4,664,362*	*1,950,807*	*42%*

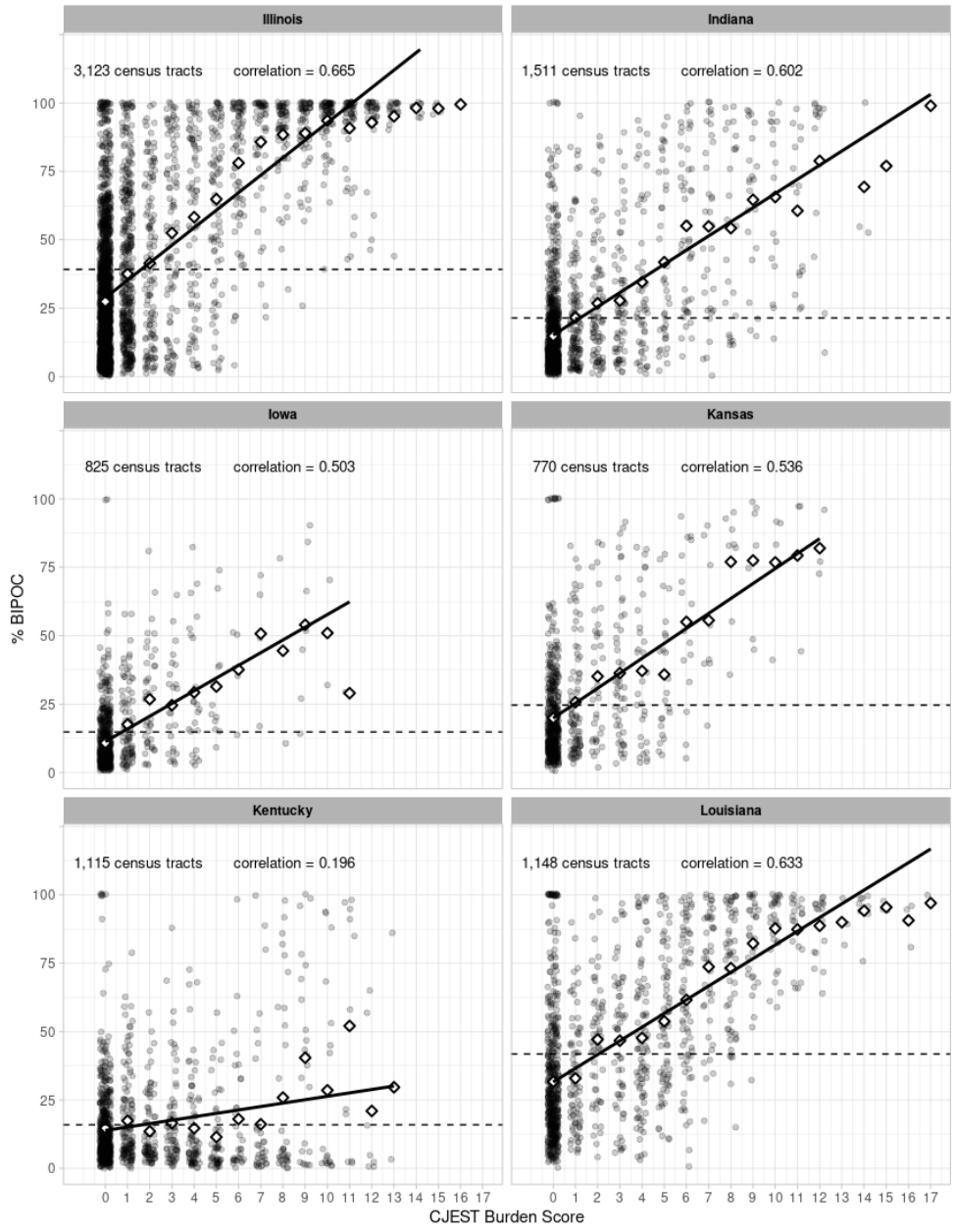
E. UNITED STATES BIPOC POPULATION BY BURDEN SCORE

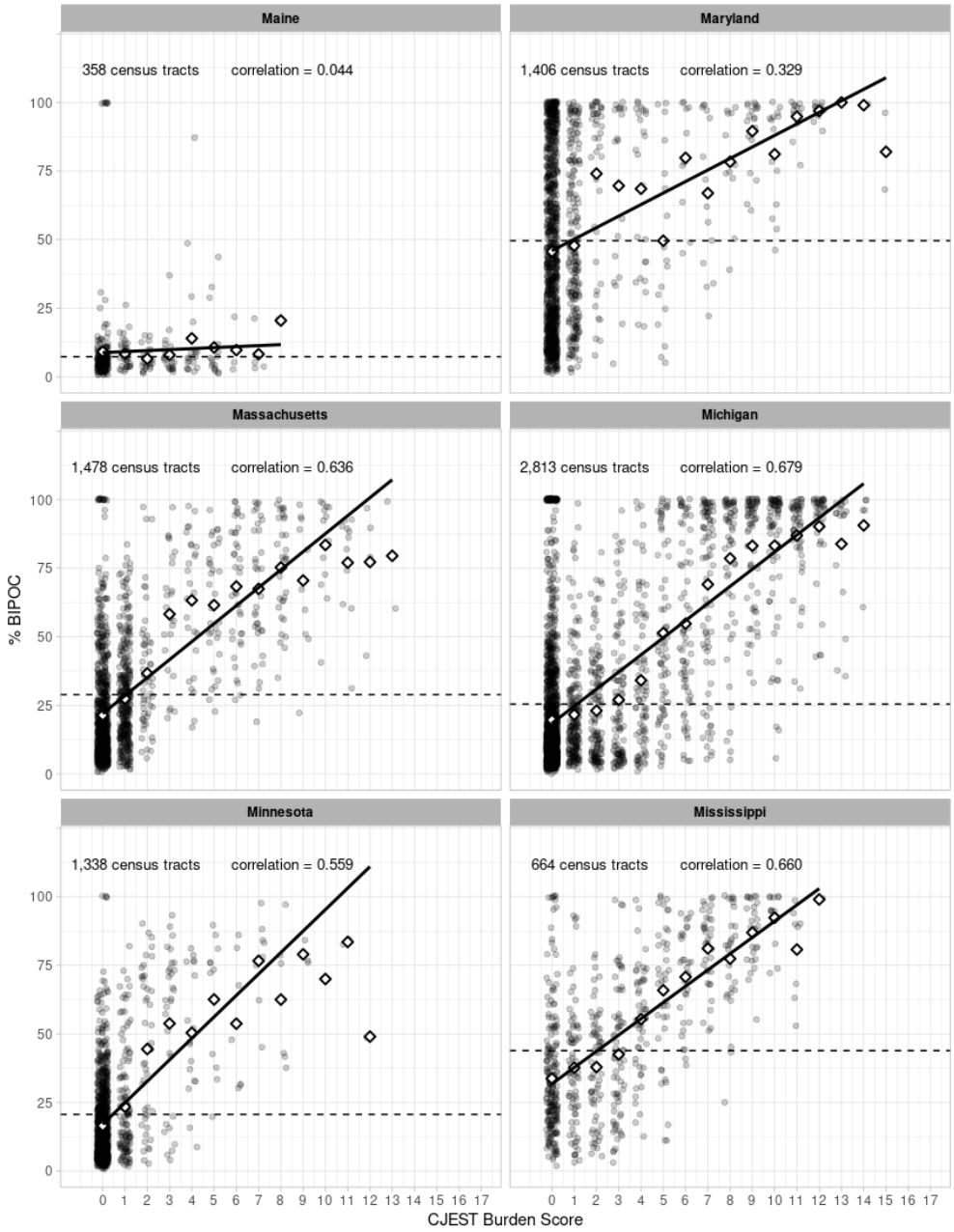
Burden Score	# of Tracts	Total Population	BIPOC Population	% BIPOC
0	39,468	184,984,317	53,779,652	29%
1	12,011	54,637,936	22,448,070	41%
2	4,705	20,757,135	10,386,003	50%
3	3,535	15,223,548	8,331,548	55%
4	3,028	12,562,767	7,307,446	58%
5	2,465	9,683,596	6,212,487	64%
6	1,934	7,424,600	5,242,523	71%
7	1,635	5,938,839	4,551,196	77%
8	1,299	4,515,019	3,518,400	78%
9	1,100	3,453,610	2,796,915	81%
10	813	2,454,404	2,056,810	84%
11	529	1,491,710	1,281,731	86%
12	318	897,117	769,266	86%
13	120	329,227	289,222	88%
14	54	140,697	122,109	87%
15	20	45,280	39,539	87%
16	10	29,468	27,421	93%
17	3	4,827	4,689	97%
All United States	73,047	324,574,097	129,165,028	*40%*

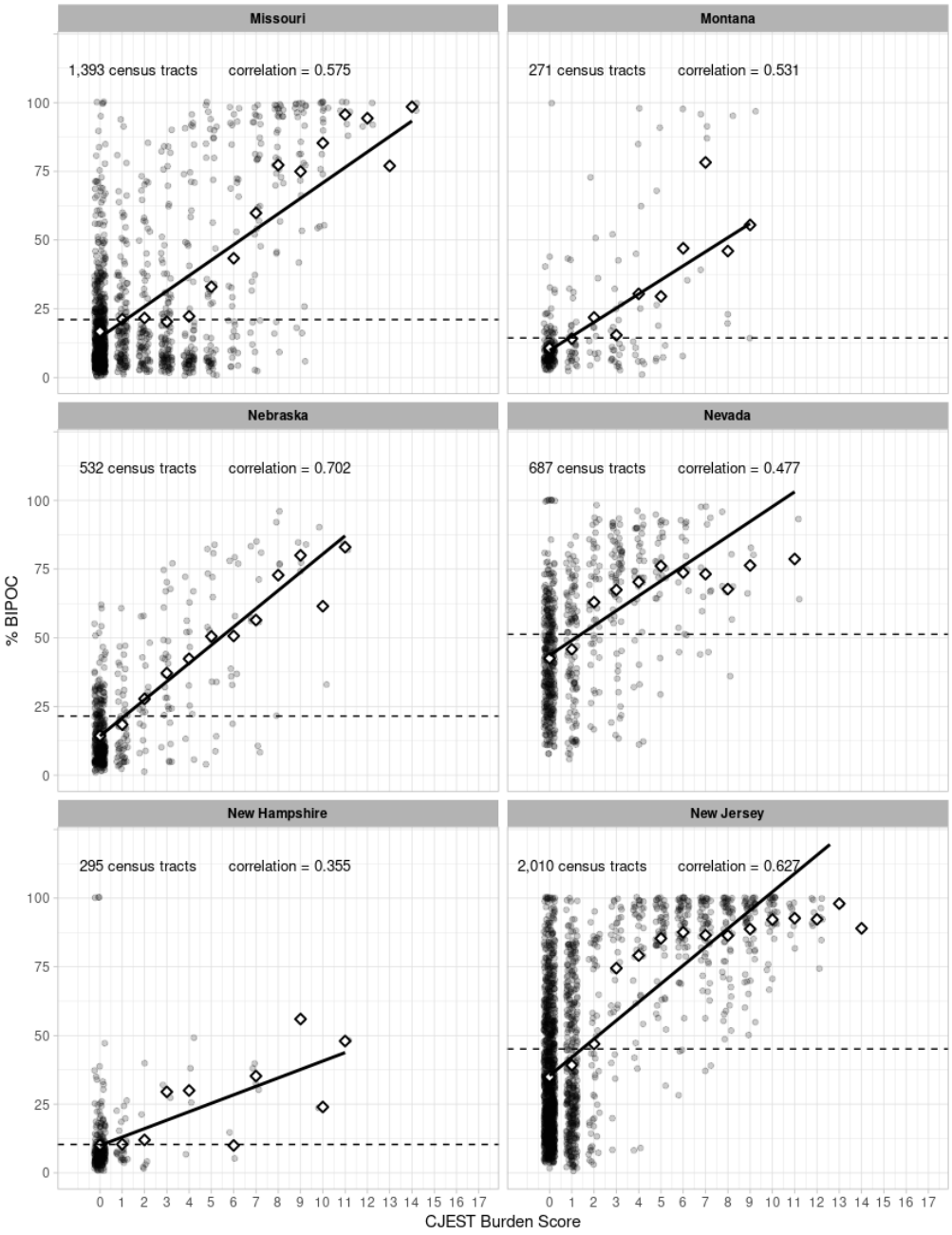
F. BURDEN SCORE AND RACIAL DEMOGRAPHICS: FIFTY STATE ANALYSIS

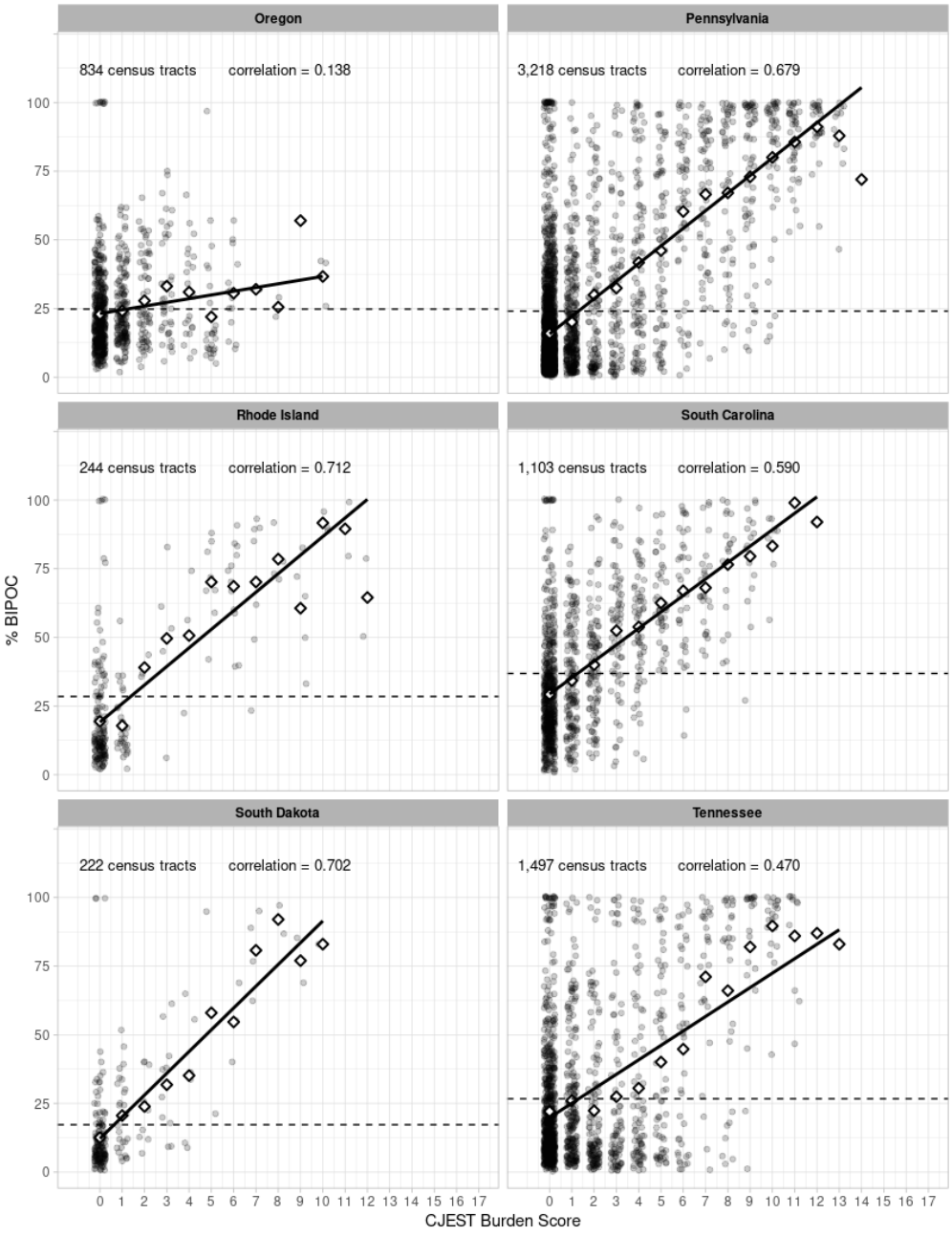


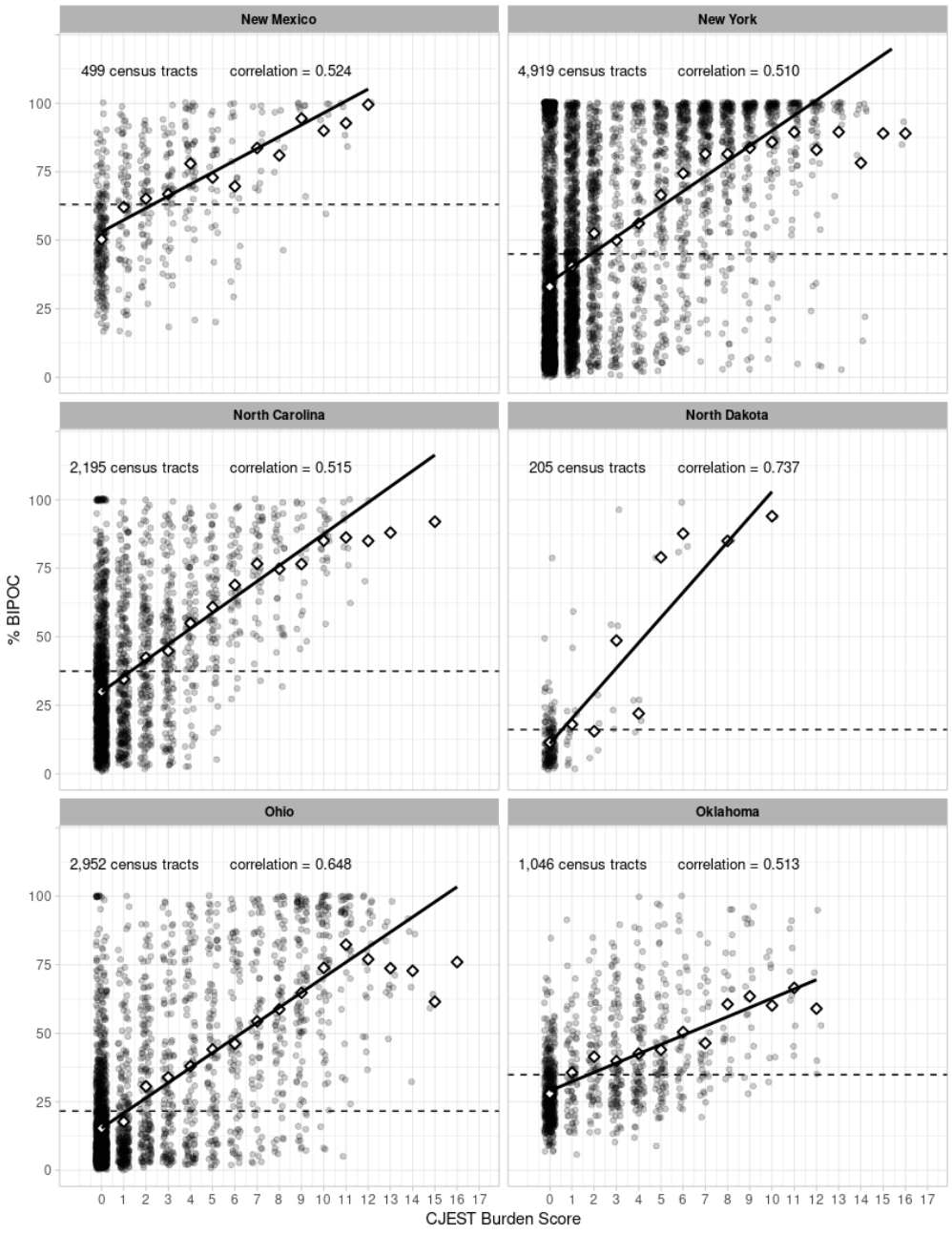

Connecticut
833 census tracts
correlation = 0.695
Delaware
218 census tracts
correlation = 0.521
Florida
4,245 census tracts
correlation = 0.478
Georgia
1,969 census tracts
correlation = 0.458
Hawaii
351 census tracts
correlation = 0.056
Idaho
298 census tracts
correlation = 0.215
% BIPOC
0
25
50
75
100
0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17
CJEST Burden Score

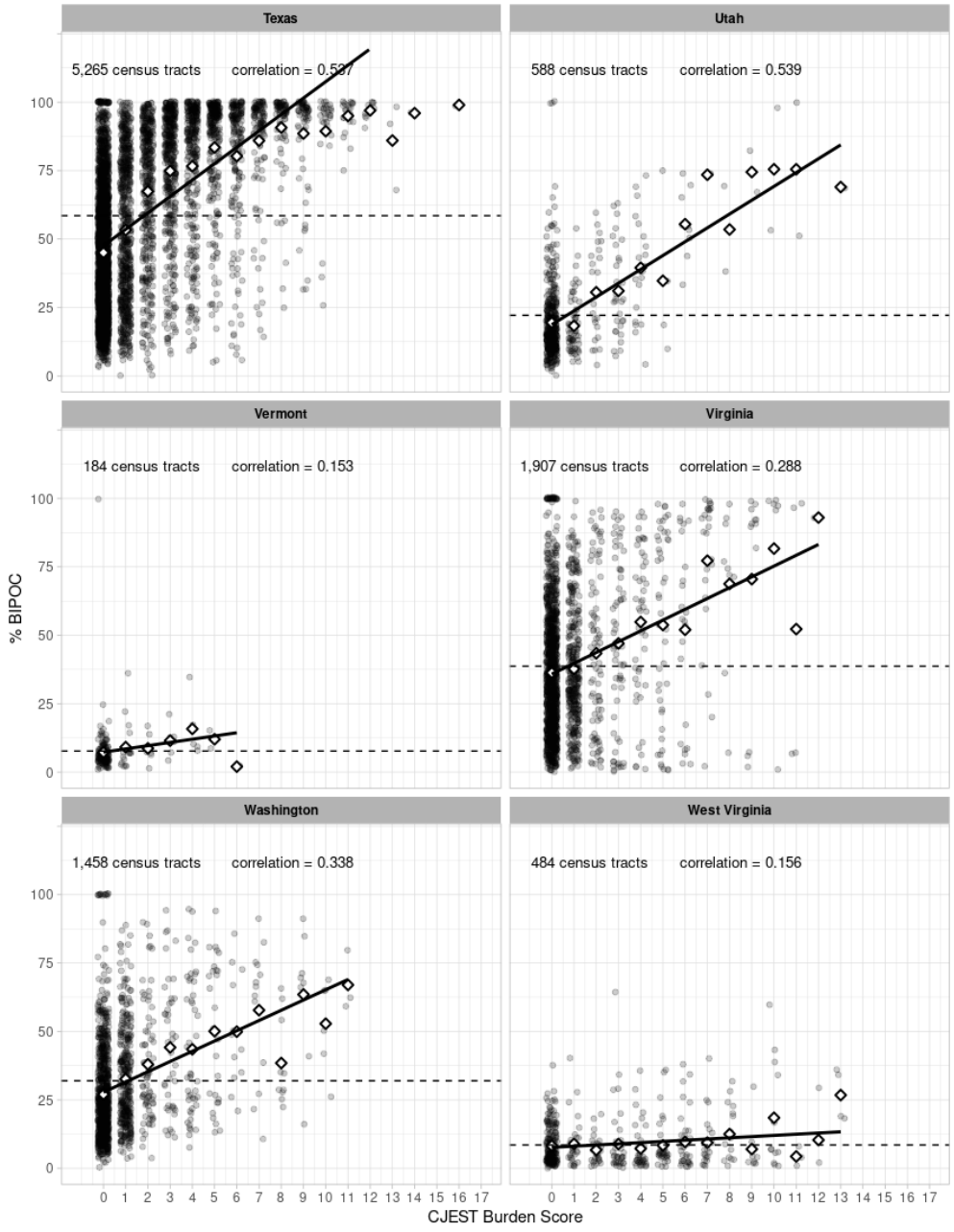

Illinois
3,123 census tracts
correlation = 0.665
Indiana
1,511 census tracts
correlation = 0.602
Iowa
825 census tracts
correlation = 0.503
Kansas
770 census tracts
correlation = 0.536
Kentucky
1,115 census tracts
correlation = 0.196
Louisiana
1,148 census tracts
correlation = 0.633
% BIPOC
CJEST Burden Score

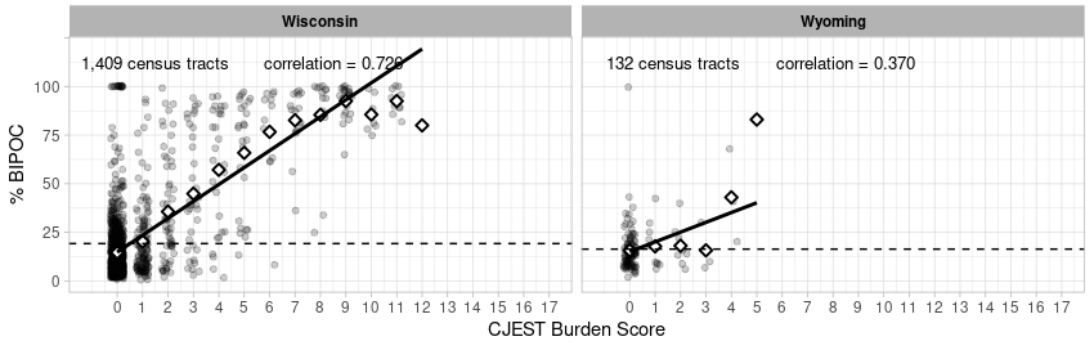

Maine
358 census tracts
correlation = 0.044
Maryland
1,406 census tracts
correlation = 0.329
Massachusetts
1,478 census tracts
correlation = 0.636
Michigan
2,813 census tracts
correlation = 0.679
Minnesota
1,338 census tracts
correlation = 0.559
Mississippi
664 census tracts
correlation = 0.660
% BIPOC
CJEST Burden Score


Missouri
1,393 census tracts
correlation = 0.575
Montana
271 census tracts
correlation = 0.531
Nebraska
532 census tracts
correlation = 0.702
Nevada
687 census tracts
correlation = 0.477
New Hampshire
295 census tracts
correlation = 0.355
New Jersey
2,010 census tracts
correlation = 0.627
% BIPOC
CJEST Burden Score


Oregon
834 census tracts
correlation = 0.138
Pennsylvania
3,218 census tracts
correlation = 0.679
Rhode Island
244 census tracts
correlation = 0.712
South Carolina
1,103 census tracts
correlation = 0.590
South Dakota
222 census tracts
correlation = 0.702
Tennessee
1,497 census tracts
correlation = 0.470
% BIPOC
CJEST Burden Score


New Mexico
499 census tracts
correlation = 0.524
New York
4,919 census tracts
correlation = 0.510
North Carolina
2,195 census tracts
correlation = 0.515
North Dakota
205 census tracts
correlation = 0.737
Ohio
2,952 census tracts
correlation = 0.648
Oklahoma
1,046 census tracts
correlation = 0.513
% BIPOC
CJEST Burden Score


Texas
5,265 census tracts
correlation = 0.537
Utah
588 census tracts
correlation = 0.539
Vermont
184 census tracts
correlation = 0.153
Virginia
1,907 census tracts
correlation = 0.288
Washington
1,458 census tracts
correlation = 0.338
West Virginia
484 census tracts
correlation = 0.156
% BIPOC
CJEST Burden Score


Wisconsin
Wyoming
1,409 census tracts
correlation = 0.726
132 census tracts
correlation = 0.370
% BIPOC
CJEST Burden Score