

ARTICLE

STRATEGIES FOR IMPLEMENTING
THE ENVIRONMENTAL JUSTICE
VISION

*CLIFFORD RECHTSCHAFFEN**

I. INTRODUCTION

The environmental justice movement has accomplished much over the past twenty-five years. There is widespread recognition among policy-makers that achieving environmental justice is an important issue. An Executive Order on Environmental Justice was adopted in 1994;¹ over thirty-five states now have some type of environmental justice policy or strategy,² and a few businesses, such as Pacific Gas & Electric (PG&E),³ have their own environmental justice policies.

But in other important ways the movement has lost some of its cutting edge. While there have been many individual victories, and many public declarations of support for environmental justice concepts, to a

* Professor (on leave), Golden Gate University School of Law, Special Assistant Attorney General, California Department of Justice. This article is based on a talk delivered by Professor Rechtschaffen at the University of Colorado Law School conference on "The Climate of Environmental Justice: Taking Stock," on March 17, 2007. The views expressed here are those of the author, and not the California Department of Justice. Thanks to Golden Gate law students Holly Bressett and David Zizmor for their helpful research assistance.

¹ Exec. Order No. 12,898, 3 C.F.R. 859 (1994), *reprinted in* 42 U.S.C. § 4321 (1994).

² SECTION OF INDIVIDUAL RIGHTS & RESPONSIBILITIES, ABA & PUB. LAW RESEARCH INST., HASTINGS COLLEGE OF LAW, ENVIRONMENTAL JUSTICE FOR ALL: A FIFTY-STATE SURVEY OF LEGISLATION, POLICIES, AND INITIATIVES, at iv, 13, 31, 47 (2004), *available at* <http://www.abanet.org/irr/committees/environmental/statestudy.pdf>.

³ *See* PG&E Corporate Environmental Justice Policy, http://pge.com/includes/docs/pdfs/about_us/environment/pge_ej_policy.pdf (last visited Nov. 14, 2007).

large extent the transformative changes in environmental policy and decisionmaking envisioned by the movement have not yet occurred. As the U.S. Civil Rights Commission concluded in 2003, “[federal a]gencies have begun work in protecting minority and low-income communities, but much more needs to be done Environmental justice will not become a reality as long as the issue remains an optional exercise by agency staff, an afterthought to existing programs, or an abstract policy statement that does not change conditions in affected communities.”⁴

California is a good example. With a progressive legislature that includes a powerful Latino caucus, the state has passed over a half-dozen environmental justice statutes in recent years;⁵ a California Environmental Protection Agency (Cal/EPA) environmental justice advisory committee has suggested many far-reaching reforms for achieving environmental justice;⁶ and the California Air Resources Board (CARB) has adopted an impressive environmental justice strategy.⁷ But there has been limited progress in translating broad themes into actual, hard, enforceable law. Cal/EPA has yet to adopt any substantive environmental justice regulations. CARB has not used its oversight role over local air districts that enforce most of the state’s air quality laws to aggressively promote environmental justice. The California Energy Commission has yet to refuse permission to build any power plant based on environmental justice concerns. And when the going got tough—during the 2000-01 “energy crisis”—environmental justice got bypassed,

⁴ U.S. CIVIL RIGHTS COMM’N, NOT IN MY BACKYARD: EXECUTIVE ORDER 12,898 AND TITLE VI AS TOOLS FOR ACHIEVING ENVIRONMENTAL JUSTICE 162-63 (2003) (analyzing how the Environmental Protection Agency, Department of Transportation, Department of Housing & Urban Development, and the Department of Interior have implemented Executive Order 12,898 and Title VI of the Civil Rights Act); *see generally* ROBERT D. BULLARD ET AL., TOXIC WASTES AND RACE AT TWENTY: GRASSROOTS STRUGGLES TO DISMANTLE ENVIRONMENTAL RACISM IN THE UNITED STATES (2007), available at <http://www.ejrc.cau.edu/TWARTreport.htm>.

⁵ *See* California Environmental Protection Agency (Cal/EPA), Legislation: Environmental Justice Program, <http://www.calepa.ca.gov/EnvJustice/Legislation/> (last visited Sept. 23, 2006), available at http://web.archive.org/web/*/http://www.calepa.ca.gov/EnvJustice/Legislation/ (cached version of the page); *see also* Ellen M. Peter, *Implementing Environmental Justice: The New Agenda For California State Agencies*, 31 GOLDEN GATE U. L. REV. 529, 543 (2001).

⁶ *See* RECOMMENDATIONS OF THE CAL/EPA ADVISORY COMMITTEE ON ENVIRONMENTAL JUSTICE TO THE CAL/EPA INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE (2003), <http://www.calepa.ca.gov/EnvJustice/Documents/2003/FinalReport.pdf>. The committee’s ideas included establishing buffer zones around significant sources of risk; requiring that new facility applicants in heavily impacted areas prepare pollution prevention analyses; requiring schools and municipalities to reduce toxic pesticides, cleaners, inks, and other products; and requiring businesses and municipalities to phase out toxic pollutants and pollution sources that present the highest risks to children.

⁷ *See* CAL. AIR RES. BD., POLICIES AND ACTIONS FOR ENVIRONMENTAL JUSTICE (2001), <http://www.arb.ca.gov/ch/programs/ej/ejpolices.pdf>.

with dirty “peaker” plants sited disproportionately in communities of color, particularly Latino communities.⁸

Moreover, there has been an overall retreat from directly confronting the role of race in society’s environmental inequities. EPA, most saliently, has attempted to write out race as a relevant issue by redefining environmental justice to mean “environmental protection for everyone,” rather than a special focus on communities of color and low-income communities, and arguing that the agency is foreclosed from using race as a basis for making any decisions.⁹ Some state agencies have followed EPA’s lead and similarly argue that they cannot consider race in remedying environmental disparities. EPA’s approach reflects a broader societal wariness of race-conscious remedies and a desire to make racial considerations disappear.

II. THE WAY FORWARD

There nonetheless are a number of strategies that can and should be exploited to advance environmental justice goals in the years ahead. This essay highlights several of these approaches.

A. DON’T RETREAT FROM RACE

Race remains central to understanding environmental injustices. The empirical evidence that race is the single most important determinant for proximity to environmental bads in our society is arguably even stronger today than in the 1990’s.¹⁰ The reality, however, is that race-conscious

⁸ See POWER AGAINST THE PEOPLE? MOVING BEYOND CRISIS PLANNING IN CALIFORNIA ENERGY, A REPORT OF THE LATINO ISSUES FORUM (2001), http://www.lif.org/download/power_rpt.pdf.

⁹ See generally OFFICE OF INSPECTOR GENERAL, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA), EVALUATION REPORT, EPA NEEDS TO CONSISTENTLY IMPLEMENT THE INTENT OF EXECUTIVE ORDER ON ENVIRONMENTAL JUSTICE 17-18 (2004), available at <http://www.epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf> (criticizing EPA for redefining environmental justice in 2001 to mean environmental protection for everyone and de-emphasizing need to focus special attention on minority and low-income populations, in manner that is inconsistent with intent of Executive Order); U.S. EPA, DRAFT ENVIRONMENTAL JUSTICE STRATEGIC PLAN (June 16, 2005), available at <http://www.epa.gov/compliance/resources/publications/data/planning/strategicplan/ej/index.html> (defining environmental justice as being achieved “when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards”); OFFICE OF ENFORCEMENT & COMPLIANCE ASSURANCE, U.S. EPA, ENVIRONMENTAL JUSTICE STRATEGIC PLAN, THEMATIC RESPONSE TO COMMENTS (Oct. 26, 2005), available at http://www.nawo.org/ej_epa_reply.html (stating that “EPA’s use of racial classifications as a basis for making decisions would raise significant legal issues”).

¹⁰ See, e.g., Paul Mohai & Robin Saha, *Racial Inequality in the Distribution of Hazardous*

approaches will be difficult to adopt, both politically and legally. Some substitute approaches, such as EPA's Environmental Justice Smart Enforcement Assessment Tool (EJSEAT), can serve as reasonable proxies for race or overburdened communities in agency decisionmaking.¹¹ But it nonetheless is important to continue to press for race-conscious tools to deal with environmental inequities, such as providing a private right of action to enforce Title VI's discriminatory-impact regulations,¹² and for state-law analogues, such as California's anti-discrimination statute,¹³ for two reasons. One, these tools can provide remedies for broader societal discrimination not addressed by other statutes. Two, they empower communities by identifying the problem of environmental injustice for what it is—a civil rights violation.

Waste: A National-Level Reassessment, 54 SOCIAL PROBLEMS 343 (2007) (in a national study of the distribution of hazardous waste facilities, using 2000 census data and more sophisticated "distance-based" methodology, racial disparities in populations living near hazardous waste facilities are greater than previously reported; people of color are not only concentrated in greater percentages than those found in general population, but are a majority of those living in host neighborhoods within 1.8 miles of nation's hazardous waste facilities); Rachel Morello-Frosch & Bill M. Jesdale, *Separate and Unequal: Residential Segregation and Estimated Cancer Risks Associated with Ambient Air Toxics in U.S. Metropolitan Areas* 114 ENVTL. HEALTH PERSPS. 386 (2006), available at http://cjtc.ucsc.edu/docs/bay_final.pdf (increasing levels of racial/ethnic residential segregation linked with increased cancer risk from ambient air toxics; effect persists across income categories, and racial disparities widen with increasing levels of segregation); Susan M. Bernard & Michael A. McGeehin, *Prevalence of Blood Lead Levels >5 µg/dL Among US Children 1 to 5 Years of Age and Socioeconomic and Demographic Factors Associated With Blood of Lead Levels 5 to 10 µg/d L*, *Third National Health and Nutrition Examination Survey, 1988–1994*, 112 PEDIATRICS 1308 (2003) (African-American children are seven times more likely to have elevated blood lead levels than white children); MANUEL PASTOR ET AL., *STILL TOXIC AFTER ALL THESE YEARS: AIR QUALITY AND ENVIRONMENTAL JUSTICE IN THE SAN FRANCISCO BAY AREA* (2007), available at http://cjtc.ucsc.edu/pub_reports.html (in San Francisco Bay Area, communities of color are more likely to live near Toxic Release Inventory facilities and face higher health risks from air toxics, even after controlling for income and other factors).

¹¹ U.S. EPA, ENVIRONMENTAL JUSTICE SMART ENFORCEMENT TOOL (2005), available at <http://www.epa.gov/compliance/resources/policies/ej/ej-seat.html>.

¹² See 40 C.F.R. § 7.10 (implementing Title VI of the 1964 Civil Rights Act). In *Alexander v. Sandoval*, 532 U.S. 275 (2001), the Supreme Court held that there is no private right of action to enforce Title VI's regulations. *Id.* at 285-86.

¹³ CAL. GOV'T CODE § 11135 (Westlaw 2007); CAL. CODE REGS. tit. 22, § 98101 (Westlaw 2007). California's statute provides a private right of action to enforce its provisions; see Clifford Rechtschaffen, *Using California's Anti-Discrimination Law to Remedy Environmental Injustice*, *Environmental Justice Committee Newsletter*, ABA Section of Individual Rights and Responsibilities (Fall 2003), available at <http://www.abanet.org/irr/committees/environmental/newsletter/dec03/Civilrights.html>.

2007]

IMPLEMENTING THE EJ VISION

325

B. REFORM EXISTING LAWS

1. *Pollution Control Laws*

Our environmental pollution control laws suffer mostly from a “mindset” problem. As has been exhaustively documented, there is no lack of authority in environmental statutes to address environmental justice concerns, but there is a lack of will and imagination.¹⁴ State officials continue to retreat behind claims of lack of authority to take more proactive steps. Or they do the “Environmental Justice Shuffle,”¹⁵ arguing that environmental justice is really a problem for another regulatory body (e.g., environmental agencies contend a problem is out of their jurisdiction and must be addressed by land-use agencies, which in turn contend that the problem is within the environmental agencies’ authority).

Nonetheless, our environmental laws should be reworked to explicitly authorize and require consideration of cumulative impacts in making decisions such as granting facility permits. Despite extensive discussion of this problem, virtually all environmental laws still authorize decisions on a facility-by-facility basis, or even a source-by-source basis, without requiring consideration of other similar facilities, unpermitted sources, mobile sources, or the wide range of additional factors that contribute to higher health risks for residents in overburdened communities. Some activists have proposed ideas such as “community risk caps,” or designating “areas of critical environmental concern,” to protect overburdened communities from further degradation.¹⁶

2. *Land-Use Controls/Environmental Review*

Local communities and activists have pushed a number of creative ideas for using the land-use process to achieve environmental justice. These include community-driven planning and redevelopment efforts, adoption of buffer zones and limits on siting near sensitive receptors, amortization ordinances to phase out nonconforming uses, greater

¹⁴ See, e.g., Richard J. Lazarus & Stephanie Tai, *Integrating Environmental Justice Into EPA Permitting Authority*, 26 *ECOLOGY L.Q.* 617 (1999); Tobie Bernstein, *ENVTL. L. INST., OPPORTUNITIES FOR ADVANCING ENVIRONMENTAL JUSTICE: AN ANALYSIS OF U.S. EPA STATUTORY AUTHORITIES* (2001).

¹⁵ Coined by Professor Eileen Gauna.

¹⁶ See Daniel R. Faber et al., *Solving Environmental Injustices in Massachusetts: Forging Greater Community Participation in the Planning Process*, 3 *PROJECTIONS*, 109-32 (2002) (discussing areas of critical concern).

participation in comprehensive land-use plans, and so forth.¹⁷

One additional promising idea is to require that agencies evaluate the health impacts of land-use decisions.¹⁸ There is a growing recognition that land-use decisions and the “built environment”¹⁹ can have major impacts on the health of the population—factors such as open space and parks, access to public transportation, proximity to farmers’ markets and grocery stores selling healthy food, closeness to major roadways and freeways that create elevated air-toxics risks, housing conditions, access to jobs that match the skills of neighborhood residents, and others.²⁰ This type of information is critical to planning for the development of healthier communities, a central goal of the environmental justice movement, but typically is not required by most environmental impact assessment laws.²¹ So-called “health-impact assessments” are required in a number of countries,²² and the proposed federal “Healthy Place Act of 2006” would have required federal agencies to support such assessments, but it was never enacted.²³ The health-impact assessment process has the added benefit of often soliciting qualitative evidence from the community about the ways in which the surrounding physical

¹⁷ See generally Patricia E. Salkin, *Intersection Between Environmental Justice and Land Use Planning*, 58 PLANNING & ENVTL. L. 3 (2006); Tony Arnold, *Planning for Environmental Justice*, 59 PLANNING & ENVTL. L. 3 (2007); see, e.g., NAT’L ACAD. OF PUB. ADMIN., ADDRESSING COMMUNITY CONCERNS: HOW ENVIRONMENTAL JUSTICE RELATES TO LAND USE PLANNING AND ZONING (2003).

¹⁸ For general discussion, see E. Jacob Lubarsky, *Highway to Health: Exploring Legal Avenues to Connecting General Plans and Public Health Standards in California*, 1 GOLDEN GATE U. ENVTL. L.J. 403 (2007).

¹⁹ The term “built environment” refers to buildings, streets, and other human-made improvements/ infrastructure, as opposed to natural features.

²⁰ CENTERS FOR DISEASE CONTROL & PREVENTION, NAT’L CENTER FOR ENVTL. HEALTH, CREATING A HEALTHY ENVIRONMENT: THE IMPACT OF THE BUILT ENVIRONMENT ON PUBLIC HEALTH 5-8 (2000), available at <http://www.cdc.gov/healthyplaces/articles/Creating%20A%20Healthy%20Environment.pdf>; Howard Frumkin, *Health, Equity and the Built Environment*, 113 ENVTL. HEALTH PERSP. 290, 291 (2005); City & County of San Francisco, Dep’t of Pub. Health, Health Impact Assessment for Land Use and Transportation Planning: Tools to Support Healthy Cities and Neighborhoods, Frequently Asked Questions 1-3, http://www.humanimpact.org/HIA_SFDPH_FAQ.doc (last visited Nov. 3, 2007).

²¹ Brian L. Cole et al., *Prospects for Health Impact Assessment in the United States: New and Improved Environmental Impact Assessment or Something Different?*, 29 J. HEALTH. POL. POL’Y & L. 1153, 1155-56 (2004); Andrew L. Dannenberg et al., *Growing the Field of Health Impact Assessment in the United States: An Agenda for Research and Practice*, 96 AM. J. PUB. HEALTH 262, 266 (2006), available at http://www.rwjf.org/files/research/AJPH_PrincetonHIApaper_proof_1Dec2005.pdf.

²² Cole et al., *supra* note 21, at 1154-55.

²³ See Healthy Places Act of 2006, S. 2506, 109th Cong. (2006) (introduced Apr. 6, 2006), available at <http://www.govtrack.us/congress/bill.xpd?bill=s109-2506>; see also California Healthy Places Act of 2008, A.B. 1472 (Cal. 2007) (introduced Feb. 23, 2007), available at http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1472_bill_20070830_history.html.

2007]

IMPLEMENTING THE EJ VISION

327

environment affects residents' health.²⁴

C. ADOPT A PRECAUTIONARY APPROACH

Even with a shift to cumulative-impact or health-impact analysis, industrial facilities will continue to pose residual health and environmental risks and create other social, psychological, and economic harms. There also remains the unfairness of making the last actor (facility) on the scene bear the costs of addressing the cumulative risks borne by overstressed communities. Land-use reforms, moreover, can only go so far—industrial facilities still will have to be located in some communities.

The limits of these approaches suggest that we need to shift to some type of precautionary paradigm to better achieve environmental justice—an approach that focuses more on preventing harmful activities whenever possible and searching for safer alternatives.²⁵ This could be implemented in any number of ways, including laws that require agencies to conduct a “precautionary” assessment²⁶ or an “alternatives impact analysis” that asks fundamental questions about the need for a given activity and the availability of less harmful substitutes, and requires that agencies select the least harmful product/activity/approach.²⁷ When fewer hazards are created, environmental justice communities—which bear the brunt of these hazards—benefit. A precautionary approach also could provide the environmental justice movement with broader potential political appeal. The movement often has been characterized, unfairly, as another form of NIMBYism (“Not in My Backyard”)—even though it always has championed pollution reduction rather than redistribution.

D. EMPHASIZE STATE AND LOCAL INITIATIVES

The focal point for environmental justice activism and progress in

²⁴ See Dannenberg et al., *supra* note 21, at 266; County of San Francisco, Frequently Asked Questions, *supra* note 20.

²⁵ See Rachel Morello-Frosch et al., *Integrating Environmental Justice and the Precautionary Principle in Research and Policy Making: The Case of Ambient Air Toxics Exposures and Health Risks Among Schoolchildren in Los Angeles*, 584 ANNALS AMER. ACAD. POL. & SOC. SCI. 47 (2002).

²⁶ See Steven G. Gilbert, *Precautionary Assessment: Getting Out of the Risk Assessment Box* (2006), available at <http://www.lhwmp.org/IRAC/resources/publication-details.aspx?DocID=230>.

²⁷ See MARY O'BRIEN, MAKING BETTER ENVIRONMENTAL DECISIONS: AN ALTERNATIVE TO RISK ASSESSMENT 143-48 (2000).

the years ahead likely will be at the state and local level. This, after all, is where the vast majority of decisions are made. States implement 75% of major federal environmental programs, conduct 80-90% of inspections, and carry out 80-90% of enforcement activities.²⁸ Local and state governments also are responsible for virtually all land-use decisions. Moreover, even under a favorable Clinton Administration, there were limits to what EPA and other federal agencies were willing to do to promote environmental justice. EPA did not incorporate environmental justice principles into the core design of its regulatory programs and activities,²⁹ and its record on Title VI enforcement was very disappointing.³⁰

Moreover, at this particular political moment, grassroots environmental justice groups appear to have a greater ability to influence policy at these levels. Nearly 40 states have adopted environmental justice policies, strategies, or regulations. They vary considerably, from procedural and public participation requirements, to special brownfields development initiatives, demographic, cumulative-impact, or alternative site analysis requirements, and “anti-concentration” laws for hazardous waste or solid waste facilities.³¹ As yet, most of these initiatives are not truly “transformative”—they do not change the fundamental paradigm of environmental decisionmaking—but there has been much more recent activity at the state rather than federal level.

E. FOCUS ON EXPANDING BENEFITS

There should be increased attention to remedying disparities in environmental benefits, not just the burdens. There is less empirical research documenting such inequities, although scholarship in this area is increasing.³² There also is likely to be less political resistance to remedying disparities in environmental benefits, since the focus is on “expanding the pie” rather than redistributing it.

²⁸ CLIFFORD RECHTSCHAFFEN & DAVID L. MARKELL, REINVENTING ENVIRONMENTAL ENFORCEMENT AND THE STATE/FEDERAL RELATIONSHIP 19, 143 (2003).

²⁹ See Denis Binder et al., *A Survey of Federal Agency Responses to President Clinton's Executive Order 12898 on Environmental Justice*, 31 ENVTL. L. REP. 11133 (2001).

³⁰ See Bradford Mank, *Title VI and the Warren County Protests*, 1 GOLDEN GATE U. ENVTL. L.J. 73, 78 (2007).

³¹ See generally SECTION OF INDIVIDUAL RIGHTS & RESPONSIBILITIES, ABA & PUB. LAW RESEARCH INST., HASTINGS COLLEGE OF LAW, ENVIRONMENTAL JUSTICE FOR ALL: A FIFTY-STATE SURVEY OF LEGISLATION, POLICIES, AND INITIATIVES, at iv, 13, 31, 47 (2004), available at <http://www.abanet.org/irr/committees/environmental/statestudy.pdf>.

³² See, e.g., Paul Stanton Kibel, *The People Down the Hill: Parks Equity in San Francisco's East Bay*, 1 GOLDEN GATE U. ENVTL. L.J. 331, 336-339 (2007) (citing various studies).

Obtaining equitable transportation funding is one critical issue, since affordable transportation is a key link to creating healthy communities with access to jobs. There is nascent litigation to try and equalize transportation funding in some urban areas. In the San Francisco Bay Area, for example, advocates are litigating a Title VI claim against the regional Metropolitan Transportation Commission because subsidies provided to buses in Alameda County, whose passengers are poor and overwhelmingly people of color, are far lower than those provided to the regional subway and commuter rail lines, whose passengers are not.³³

Another emerging and important issue is access to parks, open spaces and green areas. Poor communities and communities of color have less access to public parks and open spaces than other communities.³⁴ They also suffer disproportionately from obesity and inactivity, and numerous studies show that time spent outdoors is the most powerful correlate of physical activity.³⁵ There have been a few important successes in recent local campaigns to provide urban residents with more public parks,³⁶ and Los Angeles mayoral candidate Antonio Villaraigosa made equitable park siting a key component of his successful 2006 mayoral race.³⁷

A final critical area is the fight against global warming. Although

³³ See *Darensburg v. Metro. Transp. Comm'n*, No. C-05-01597 EDL, 2006 WL 167657 (N.D. Cal. Jan. 20, 2006); see also COMMUNITIES FOR A BETTER ENVIRONMENT ET AL., MTC, WHERE ARE OUR BUSES?: CHALLENGING THE BAY AREA'S SEPARATE AND UNEQUAL TRANSIT SYSTEM (2006), available at <http://www.publicadvocates.org/docs/MTC-Where%20Are%20Our%20Buses.pdf> (finding that Metropolitan Transportation Commission subsidies to Alameda County Transit bus service, whose passengers are 20.6% white and predominantly low income, were \$2.78 per passenger; that subsidies to the regional subway system, the Bay Area Rapid Transit (BART), whose passengers are 43.3% white, were \$6.14 per passenger; and that subsidies to the commuter rail line, CalTrain, whose passengers are 60% white, were \$13.79 per passenger).

³⁴ See Robert García et al., *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning*, 31 *FORDHAM URB. L.J.* 1267, 1280-81 (2004); Robert García & Aubrey White, *Warren County's Legacy for Healthy Parks, Schools and Communities: From the Cornfield to El Congreso and Beyond*, 1 *GOLDEN GATE U. ENVTL. L.J.* 127, 140-41, 144-45 (2007); Paul Stanton Kibel, *The People Down the Hill: Parks Equity in San Francisco's East Bay*, 1 *GOLDEN GATE U. ENVTL. L.J.* 331, 395, 403 (2007) (study of largest regional park system in San Francisco Bay Area found that majority of parks are located in hills near wealthy, white neighborhoods; that only small percentage of low-income minority residents visit hillside parks; and that hillside parks are often inaccessible to low-income minority residents because of limited public transit options).

³⁵ García et al., *Healthy Children, Healthy Communities*, *supra* note 34, at 1274-76, 1279.

³⁶ See Paul Stanton Kibel, *Los Angeles' Cornfield: An Old Blueprint for New Greenspace*, 23 *STANFORD ENVTL. L.J.* 275 (2004) (describing successful efforts to convert Cornfield area in downtown Los Angeles into public park); García & White, *Warren County's Legacy*, *supra* note 34, at 135-37 (describing successful efforts to create four urban parks in Los Angeles).

³⁷ See Kibel, *The People Down the Hill: Parks Equity in San Francisco's East Bay*, *supra* note 32, at 339.

low-income communities and communities of color generate less global warming pollution than other groups, they will bear a disproportionate share of the impacts of climate change—they will suffer more heat-wave-related deaths, be exposed to more unhealthy air, and have fewer resources with which to adapt to disruptions that will occur.³⁸ At the same time, large-scale investments in renewable, clean energy sources and energy efficiency can provide important benefits to overburdened communities, in addition to reducing global warming. Such programs will result in less pollution from conventional air pollutants, fewer worker deaths, and lower energy prices, and will create millions of new, safe jobs for blue collar workers, since renewable energy is more labor-intensive than coal and oil production.³⁹

III. CONCLUSION

Twenty-five years after the environmental justice movement catapulted into national consciousness, the need to redress persistent environmental inequalities remains strong. As this brief essay suggests, we have the tools to address these disparities. What we most need are the will and courage to move forward.

³⁸ See CONG. BLACK CAUCUS FOUND. INC. & REDEFINING PROGRESS, AFRICAN AMERICANS AND CLIMATE CHANGE: AN UNEQUAL BURDEN 1-3 (2004), available at http://www.rprogress.org/publications/2004/CBCF_REPORT_F.pdf; REDEFINING PROGRESS, CLIMATE CHANGE IN CALIFORNIA: HEALTH, ECONOMIC AND EQUITY IMPACTS 3-5 (2006), available at http://www.rprogress.org/publications/2006/CARB_ES_0306.pdf.

³⁹ See EBAN GOODSTEIN, FIGHTING FOR LOVE IN THE CENTURY OF EXTINCTION: HOW PASSION AND POLITICS CAN STOP GLOBAL WARMING 100-101 (2007); see also Van Jones, *Vanity Fair: The Unbearable Whiteness Of Green*, HUFFINGTON POST, May 17, 2007, available at <http://www.ellabakercenter.org/page.php?pageid=41&contentid=258>.