



REIMAGINING THE FEDERAL
ROLE IN CLIMATE AND
ENVIRONMENTAL JUSTICE:
FULL REPORT

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TABLE OF CONTENTS

EXECUTIVE SUMMARY..... 2

INTRODUCTION..... 4

KEY TERMS..... 6

PROPOSAL 1: REDESIGNING THE CIVILIAN CLIMATE CORP..... 7

PROPOSAL 2: SPECIALIZED ENVIRONMENTAL DIVISIONS..... 14

PROPOSAL 3: REVITALIZING EJ INTERAGENCY WORKING GROUP..... 20

PROPOSAL 4: FEDERAL REPRESENTATION FOR FUTURE GENERATIONS..... 26

SUMMARY..... 32

CONCLUDING REMARKS & ACKNOWLEDGEMENTS..... 33

REFERENCES..... 34

EXECUTIVE SUMMARY

Addressing longstanding and deep-rooted challenges posed by the climate crisis and environmental injustice requires programmatic, legal, interagency collaboration, and political representation reform in ways that empower affected communities and enhance the capacity of governmental institutions and organizations. We propose four recommendations that support such reform and address the call to action in Executive Orders 13990 and 14008 recently signed by President Biden:

1. *Programmatic reform: Redesigning the Civilian Climate Corps (CCC)*: In its current form, the recently proposed CCC follows a pattern of top-down governance and action which fails to include affected communities in its design and implementation. Furthermore, this program misses an opportunity to build community capacity to address climate change. Our CCC proposal strategically embeds public participation, recruiting, and knowledge sharing in ways that enhance community capacity, climate resilience, and environmental justice over the long-term. Resources necessary include funding for climate capacity building projects, training, and the time and expertise from state environmental agency members. Impact could be measured using new tools to track and evaluate participation, and state-specific climate capacity.
2. *Legal reform: Creation of special environmental divisions within state courts*: The current court system does not provide the knowledge and technical expertise required to make fully-informed decisions on the environment. We recommend creating specialized environmental divisions within state trial courts that employ judges with expertise in environmental science, technology, and law. This will provide improved decisions in environmental litigation and provide more direct access to legal recourse on environmental injustice, especially for those in overburdened communities. Impacts would be in reduced costs and increased efficiency, with impact measured based on claim and decision evaluation, process clarity and responsiveness to need.
3. *Interagency collaboration reform: Revitalizing the Interagency Working Group on Environmental Justice (EJ IWG)*: The 16 member agencies of the federal EJ IWG have not met their obligations to improve their program policies and activities. We propose revitalizing this program by stronger coordination with clear, specific, actionable goals, new accountability to House and Senate committees, and the development of robust reporting and measurement best practices. Resources necessary would include larger budgets for dedicated EJ staff, administrative support, and program development and implementation.
4. *Political representation reform: Establishing formal representation for future generations*: Policy and legal decisions made today can impact the environment and climate over many, many decades. We recommend creating a designated role for a future generations advocate within the Office of Management and Budget and Council on Environmental Quality in the Executive Office of the President, as well as a seat for a non-voting delegate to the House of Representatives. With funding necessary only

for staff, impact could be measured using new frameworks of futures thinking, natural resource availability for future generations, and the integrity of ecosystems over long time horizons.

Together, these proposals represent the culmination of a full semester of earnest and methodical work not only by the students, but our professor and course sponsors as well. We are inspired by countless others working tirelessly toward environmental justice and climate action. We hope that our proposed reforms will advance these efforts in the future.

INTRODUCTION

The purpose of this set of proposed reforms is to reimagine the role of the federal government and build capacity in addressing climate change and environmental justice. Specifically, we have focused on how to achieve select goals set forth in President Biden's Executive Order (EO) 14008, *Tackling the Climate Crisis at Home and Abroad*. The EO tasks the new administration with both delivering environmental justice and taking swift action to mitigate and adapt to the effects of climate change. Relevant goals from this EO include:

- Launching opportunities to create well-paying union jobs to build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050
- Holding polluters accountable for their actions
- Taking progressive action that combines the full capacity of the Federal Government with efforts from every corner of our nation
- Creating a Civilian Climate Corps to mobilize the next generation of conservation and resilience workers and maximize the creation of accessible training opportunities and good jobs.
- Ensuring 40 percent of the overall benefits of federal investments flow to disadvantaged communities

While these are ambitious goals, there are several potential challenges that may hinder their realization, which we have outlined in the following section.

Challenges

Through background research, guest lectures, and first-hand insight shared by the sponsors of this course, we identified key challenges to the federal government's capacity to meaningfully advance environmental and climate justice. Each proposal within this report will address one or more of these challenges.

- **A lack of consideration for overburdened communities in environmental policymaking.** The federal government does not consistently provide sufficient information, tools, and resources needed by overburdened communities to effectively participate in regulatory and policy-making decisions that affect their communities.
- The modern **court system** – the primary space for overburdened communities to address challenges with environmental policies – is **not reliably equipped with the requisite environmental knowledge to make fully informed judgements.** Furthermore, environmental policy is stalled by legal disputes. The federal government has **failed to take accountability for ensuring environmental justice is integrated into all policymaking and implementation.** For example, only 25% of agencies in the Interagency Working Group on Environmental Justice submitted reports on EJ in 2017, despite their mandate to report annually (GAO, 2019).

- The **short-term view in policymaking has neglected consideration for future generations**, who will bear the brunt of climate impacts. Future generations have no voice in the decisions that affect their lives.

In response, we offer four proposals to the federal government, which could not only mitigate these challenges, but also enhance the efficacy of federal environmental governance in the future. The remainder of this report reviews key terms, details each proposed reform, and offers concluding remarks and acknowledgements. Each proposal includes a brief summary; a description of the core problem it addresses and its current state; additional challenges; the proposed reform or solution; and resources needed to implement the reform.

KEY TERMS

Environmental Justice:

- EPA definition: the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- Bunyan Bryant¹ definition: “Environmental justice refers to cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities, where people can interact with confidence that their environment is safe, nurturing, and protective” (Bryant, 1995).

These definitions differ in scope, level of implementation, and vision. The EPA’s definition focuses on problems that lead to environmental injustice, namely the unfair treatment of people based on certain characteristics. It is operationally restrictive and emphasizes the prevention of problems. In contrast, Bryant’s definition focuses on problem solving and normative thinking, offering an uplifting and positive vision for the future in which environmental justice is achieved and practiced. For the purpose of this report, we rely on Bryant’s definition because it offers a future vision for which we aim with our proposed reforms and emphasizes the importance of community well-being as an integral part of a sustainable future.

Overburdened Communities:

- A community that experiences, or is at risk of experiencing, higher or more adverse human or environmental effects.

Discourse on environment and climate justice often includes terms like marginalized, disadvantaged, disproportionately impacted, and overburdened communities, all of which are used almost interchangeably. Though their specific definitions may vary, each of these words are used to establish what communities have the greatest need. For the purpose of this report, we use the term “overburdened communities.” We would like to note that many of these communities are low-income, minority, and/or have limited English speaking proficiency, but acknowledge, through our definition, that these are not the only characteristics that matter. Unlike the other terms, “overburdened communities” moves beyond personal characteristics of people who have been systematically disadvantaged and opens the door to highlight how regulatory pressures can exacerbate challenges faced by these communities.

¹ Bunyan Bryant is a leading pioneer and scholar in the environmental justice movement.

PROPOSAL 1: REDESIGNING THE CIVILIAN CLIMATE CORP

PROPOSAL SUMMARY

President Biden’s Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, conveys an urgent need to enhance our nation’s resilience to climate change while meeting the demands for environmental justice (2021). One strategy for meeting this change is the establishment of Civilian Climate Corps (CCC) modeled after President FDR’s Civilian Conservation Corp. The new CCC will help construct essential climate-resilient infrastructure across the US. However, its current design neglects opportunities to serve environmental justice, improve public participation, and bolster long-term community climate resilience. We propose a strategic approach to better: 1) integrate environmental justice into the CCC mission, 2) maximize community input into the design and implementation of the program, 3) build local climate capacity, and 4) increase the exchange of knowledge between communities and government.

Proposal 2: Challenges & Reforms

Challenges	Reforms
CCC lacks clear justice framing	CCC mission centers on environmental justice
<i>Lack of sufficient:</i> Public participation Agency in govt aid & decision-making	Emphasis community capacity-building & choice CCC has state government mentors CCC member as advocate
Youth disempowerment & exclusion	Empower youth with intensive professional training, experience, and support networks

IDENTIFIED PROBLEM

The EPA states that environmental justice requires the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies” (EPA, 2021). Unfortunately, environmental programs at the federal level have been known to fall short of facilitating such “meaningful involvement,” otherwise known as procedural justice (Sampson et al, 2014; Clayton, 1998).

Conventional efforts to engage the public in environmental policymaking fail to provide the information, tools, and resources overburdened communities need to effectively participate (Miller, 2021; Noonan 2015; Harrison 2017). Further research on how to engage the public in environmental decision-making revealed that many agencies rely on conventional public commentary for proposed rules or rule-changes via the Federal Register as their main engagement tool, rather than dialogue and collaboration with community members (EPA, 2021). Public commentary is not widely used, well-known, or accessible to all citizens, particularly those from overburdened communities. As a result,

environmental policy design and implementation do not adequately serve those disproportionately impacted by environmental harms. Without direct input from a diverse group of stakeholders, agencies may have limited understanding of what resources, rules, and investments will have the greatest impact on underserved communities (EPA, 2014).

A lack of civic engagement is problematic for present-day communities, as well as future generations. Youth (children and young adults) are stakeholders in environmental justice and climate change; decisions made today will directly affect their future health, work, and livelihood opportunities (UN Office of the Secretary-General's Envoy on Youth, n.d). However, youth are not formally considered in public decision-making, nor do they have the opportunity to shape policy. This exclusion may be due to a) limited experience in and motivation for engaging youth and b) inaccurate perceptions of youth capacity to lead and participate (Chuck Elkins, personal communications, Spring 2021; Checkoway, 2011; OECD, 2017). Youth should be included in shaping the world they will inherit. Without representing youth and future generations in decision-making, we will fail to meet the goals of sustainable development: to meet the needs of the present without endangering the ability of future generations to meet their needs (OECD, 2020).

As explained below, the Civilian Climate Corps (CCC) is one program with the potential to address issues of public participation and youth representation in environmental decision-making *if* designed with environmental justice in mind.

CURRENT STATE

Almost 80 years ago, FDR established the Civilian Conservation Corps and Works Progress Administration. These programs were designed to engage citizens in paid public service while rapidly developing public infrastructure and recreation spaces. Since that time, public service efforts have increased and expanded to include multiple programs under the Corporation for National and Community Service for meeting critical needs in local communities.

Continuing this legacy, President Biden's Civilian Climate Corps (CCC) is billed as an effort to create jobs, conserve public lands, and improve community resilience to climate change in partnership with existing service programs (e.g., AmeriCorps, Youth Conservation Corps, Urban Youth Corps, & Indian Youth Service Corps). The recently released draft of the Civilian Climate Corps Act recognizes the need to hire a diverse workforce and direct the benefits of federal investments to the communities most vulnerable to pollution and climate risks. The Act also states that CCC projects will "prioritize efforts to assist disproportionately impacted communities" in their role (2021). There is no indication that disadvantaged communities will have a voice in what projects, skills, and benefits will flow to them via the CCC.

That said, the federal government openly acknowledges the importance of including and listening to overburdened communities in order to achieve environmental justice (EJ). For instance, when discussing EJ communities, Gina McCarthy states "Our first role will be to listen before we ask ourselves to act. It's those communities that have not been listened to before" (Brugger, 2021). Echoing this call are over 40 EJ academics, grassroots

organizational leaders, and experts recently convened by the Center on American Progress. Participants in these convenings identified “allowing communities to speak for themselves” as an important part of determining investment priorities and environmental policymaking of the Justice40 initiative (The Center for American Progress, 2021).

The Civilian Climate Corp, as currently designed, does not make environmental justice an explicit outcome of climate projects. Accordingly, the CCC is not required to solicit community input into the design and implementation of climate projects. This missing participation component has the potential to perpetuate an existing challenge to environmental governance described above: a top-down approach that does not sufficiently engage communities, especially those facing disadvantages stemming from race, income, and language barriers.

Furthermore, this program is modeled after traditional Conservation Corps programs, which often support short-term infrastructure projects. The infrastructure projects recommended by the Biden administration are essential for building climate resilience, but they do not address community resilience in the form of local capacity. According to The World Economic Forum, local capacity is an essential component of addressing the climate crisis and supporting local sustainability (Jackson & De Coninck, 2019). In response to this insight, we ask, How can we re-envision the CCC so that it builds long-term climate resilience in the communities it is meant to serve?

PROPOSED REFORMS

Our proposed re-design of the CCC calls for an enhanced mission, community-driven placement and projects, new training and responsibilities for Corps members, and a mentorship program with state government agencies.

Enhanced Mission

According to the draft Civilian Climate Corps Act (CCCA) released on April 1, 2021, the CCC is intended to “meet State and local employment, environmental, and recovery needs... and create conservation and resilience jobs that emphasize accessible training opportunities to help a generation of workers develop robust professional skills” (Sec. 2, par. 12-13). Executive Order 14008 and the CCCA suggest the type of work in which participants might engage. Among these are reforestation, improving access to outdoor recreation, building community resilience through environmental restoration, and addressing climate change with renewable energy projects. However, the CCCA does not make environmental justice an explicit outcome of climate projects. Indeed, the word “justice” does not appear in the draft CCCA at all.

An institution’s mission and vision guide its design and the strategies it employs (John et al, 2015). Including environmental justice as a core aspect of the CCC’s mission will ensure that strategies for recruiting and training participants, selecting host organizations, and determining project goals will align with principles of environmental justice. Without environmental justice as an express aim of the CCC, this institution could fail to adequately distribute the benefits of federal investment into disproportionately impacted

communities, as mandated by EO 14008. Furthermore, it may perpetuate the past shortcomings of similar programs. Therefore, we suggest that the CCC adopt a mission to restore public lands, address climate change, and develop a skilled workforce with the express intent to bring about environmental justice.

Recruitment

In order to address concerns of intergenerational justice, as well as the disproportionately high rate of unemployment for young adults in the wake of the COVID pandemic (Grandoni, 2020), we recommend that this program target recruitment for young people aged 18-25. Young adults have the knowledge and will to address climate change, but often lack opportunities to apply their knowledge constructively; participation in the CCC will provide pathways to meaningful action. It will also help create a future workforce with the professional skills and experience to continue work in climate mitigation and adaptation in the coming decades.

In addition, the CCC intends to recruit members "(1) ... from economically, geographically, and ethnically diverse backgrounds; and (2) veterans, individuals with disabilities, and people of various sexes, sexual orientations, and gender identities are represented" (CCCA, 2021). Along with these priorities, we recommend that CCC programs hire applicants who represent the communities they serve. This outcome could be achieved by encouraging communities who apply for a CCC member (referred to as "hosts") to **nominate** local applicants for the position. This practice can enhance community choice and build trust in the CCC program. Local hiring preference would also address the need to build local capacity *within* communities, thus maximizing investment in the CCC's priority communities.

Community-Driven Placement and Projects

Biden's EO 14008 states that 40% of benefits from federal investment in projects related to climate and infrastructure should flow toward disadvantaged communities. The CCCA also states that projects should "prioritize efforts to assist disproportionately impacted communities" (Sec. 5, par. 1A). We recommend that 1) CCC hosts are instead placed in areas with disproportionately low **climate capacity** (the ability to mitigate and adapt to the effects of climate change) and 2) that the primary outcome of CCC work is increased climate capacity.

According to researchers at the OECD, capacity building "focuses on enabling all members of the community, including the poorest and the most disadvantaged, to develop skills and competencies so as to take greater control of their own lives and also contributes to inclusive local development" (OECD/Noya & Clarence, 2009). Local government officials often face barriers to building capacity due to a lack of time, training, and knowledge of available resources; they serve limited terms and suffer from frequent turnover (Chicago Metropolitan Area for Planning, 2021). These barriers apply to general capacity-building as well as climate capacity. Thus, an abundance of federal and state resources may be *available* to communities for building climate resilience, but without local-level capacity to

access and implement those resources, the resources have limited impact (Adam Wells, personal communication, 2020).

Climate Corps members should help communities develop the “skills and competencies” for local resilience to climate change and environmental justice. To accomplish this goal, hosts should have significant input into what projects and skills are brought to their communities. By working with hosts to identify needs, CCC members will be able to ensure that their activities bring the greatest benefit to the community. Example skills might be fundraising, grant writing, or community surveys. California’s Civic Spark program serves as a superb model. The express outcome of Civic Spark’s activities is an enhanced community capacity to mitigate and adapt to climate change at the local level (Civic Spark, 2021). Following this model, the CCC can enable *communities* to determine what resources will enhance their climate capacity.

Training and Responsibilities for a CCC Member

TRAINING: The Peace Corps program exemplifies how competency-based, pre-service training can build trust with communities. Peace Corps training ensures that volunteers have the skills to deliver on project(s) requested by the community and build community capacity to deal with future challenges on their own (The Peace Corps, 2021). We recommend the CCC follows a similar model, in which CCC members undergo a module-based pre-service training catered to community requests. To ensure these modules align with community needs, partnering organizations hosting a CCC member should be able to select from a set of modules they deem the most helpful for building capacity to meet their environmental and climate justice needs. We recommend that these skills go beyond the basic training offered in traditional Conservation Corps programs to include financial and technical assistance to local government. For example, a CCC member could be trained on how to apply to federal grants that support climate resilience or use technical resources like surveys and mapping to support locally-determined goals.

ADVOCACY: In recognition of the challenges faced by the federal government to meaningfully engage overburdened communities in environmental decision-making, CCC members should also serve as an advocate for their host communities. This could be accomplished by connecting CCC members with federal- and state-level employees who have influence over policy-making processes. To formally forge this connection, we recommend creating a mentoring program between CCC and state-level environmental agencies (details in next section). This structure would ensure that knowledge, perspectives, and needs of community members are transferred up the chain of command in government. These efforts would support the goal of “listening to communities” that Justice40 advocates, the EPA, and Gina McCarthy identify as integral to achieving EJ.

CAPACITY-BUILDING: CCC members should also be responsible for hosting workshops within EJ communities that accomplish the following goals: 1) build capacity of communities to share their comments, concerns, and perspectives at environmental policy-making public engagement events; 2) establish partnerships for continued action; and 3) learn about the public engagement practices offered by the federal/local

government. These workshops will build the agency of communities to meaningfully participate in environmental policymaking from the ground up, giving them a larger voice in the process over time.

CLIMATE ACTION PLANNING: Lastly, CCC members should end their terms by creating or updating long-term climate action and EJ plans with their communities. Because the current model for CCC emphasizes short-term infrastructure projects, such as wetland restoration, it does little to build community self-sufficiency and social resilience. By requiring future planning as an end goal, CCC members can better assist communities in managing their own climate resiliency in the future.

Mentorship

In order to address concerns over the maturity and capacity of young Corps members, we recommend appointing mentors to help support CCC projects. In this program, CCC members would be paired with a mentor who is based within their district or state and has political decision-making power. At a broad level, the mentor's goal would be to help their CCC mentee build climate capacity within their host community. More specifically, mentors could provide additional advice/technical assistance to their CCC mentee, oversee projects, and gather insight from mentees on community capacity needs. For example, a Corps member might help facilitate community input and visioning for a 10-year strategic plan. Their mentor could provide technical expertise for identifying and including climate risk in the plan. During this process, the mentor would help their mentee assess the community's capacity to address those risks. The mentor's experience in this process would improve government insight into what resources communities *actually* need to adapt to a changing climate. Furthermore, CCC members would have a formal connection to government officials through their mentor, through which they could advocate for their community's needs.

Adding a mentorship feature to CCC creates more direct, human links between Corps members, government, communities, and resources. It strengthens the credibility and impact of Corps member contributions, while offering a new avenue of community connection to policy-making processes. An additional benefit would be to the Corps members themselves: mentorship within a state agency would increase professional development and career opportunities. Long-term, this relationship could contribute to more diverse representation in environmental governance.

RESOURCES REQUIRED

Grist reports that approximately \$10 billion of the American Jobs Plan will be allocated to the Civilian Climate Corps as currently imagined (Simon, 2021). Our guidelines for this program would require significantly more time and resources to be invested in the CCC so that Corps members are better equipped to help communities. These include increased time for training, mentorship, and climate action planning. It also requires staff at state agencies to dedicate time and expertise to CCC mentees and the communities they serve. Finally, it will require substantial time, effort, and coordination to garner public participation from target communities. CCC managers must solicit community advice into

what training should be available to Corps members and their host communities. This should be a continuous process of community feedback and program improvement over time. We believe these resources are justified, in that they are designed to help communities achieve better self-sufficiency, and increase the benefits gained by Corps members by offering more stable and gainful employment.

MEASURING IMPACT

Short-term impacts could be measured using the total number of Corps members recruited, capacity-building workshops hosted, community members engaged, and community events held. Long-term, this program will also increase local climate capacity. Several states (e.g., New York and California) have metrics for assessing climate capacity, which could be used as models for others. Impacts must be reported and shared with the public as a built-in accountability mechanism for the CCC to deliver on its promises to host communities.

Another facet of this program's intended impact is to "create conservation and resilience jobs that emphasize accessible training opportunities to help a generation of workers develop robust professional skills" (CCCA, 2021). Corps members' job skills and competencies could be assessed before and after this program as a proxy measure of robust professional skills. To measure the impact of this program on employment opportunities, the number of alumni working in the field post-program could be measured as well.

NEXT STEPS

Accomplishing this proposed reform will require political leaders to advocate for stronger consideration of environmental justice within the mission, requirements, and responsibilities of the CCC. We recommend a thorough review and redesign of the CCC that includes voices from key stakeholders, including environmental justice advocates (such as the Equitable and Just National Climate Platform) and representatives from target communities. Considering the pressing need for both climate-resilient infrastructure and job opportunities for unemployed youth, the CCC should begin accepting nominations for Corps members within one year of gaining stakeholder feedback and design input.

PROPOSAL 2: SPECIALIZED ENVIRONMENTAL DIVISIONS IN STATE TRIAL COURTS

PROPOSAL SUMMARY

An important part of promoting government accountability and sustainable development is access to environmental justice (Kerdeman, 2018). Courts play a major role in enforcing environmental laws and increasing justice for those most affected by negative externalities. However, our current justice system is not equipped to sufficiently enforce environmental law and deal with climate change and environmental issues. Establishing environmental divisions in state-trial courts across the U.S. will increase access to the judicial system for disadvantaged communities and ensure the adequate protection of the environment in the future.

Challenges	Reforms
Lack of expertise among judges hearing environmental cases	Creation of environmentally-focused courts staffed with expert judges
Lack of meaningful access to litigation opportunities for members of overburdened communities	Pro-bono clinics focused on environmental matters to increase access to the justice system for overburdened communities

IDENTIFIED PROBLEM AND CURRENT STATE

Sustainable development stems, in part, from good environmental governance (Pring & Pring, 2009). Under many federal environmental protection laws, citizens can sue polluters or the government to enforce alleged violations. For example, Section 304 of the Clean Air Act authorizes citizen suits against violators of emissions standards and against the EPA Administrator for failing to perform non-discretionary duties. Environmental groups like the Sierra Club, Defenders of Wildlife, and others consistently sue the administrator with varying degrees of success. However, the judges who hear these cases do not always have the capacity or knowledge to fairly adjudicate disputes. Federal environmental litigation is argued in federal district courts with judges who are not experts in environmental law and may have no experience with judging environmental disputes. Additionally, most environmental lawsuits are initiated in state courts (Elmendorf, 2001). Environmental litigation is often technical, and cases can turn on the difference between 2 parts per million and 2.5 parts per million. These scientific considerations cannot be effectively made by a judge who has a diverse caseload and must be sufficiently knowledgeable in a wide variety of subjects.

PROPOSED REFORMS

While there are many potential solutions to this problem, the most effective is the creation of an environmental-focused court. There are over 1200 environmental courts in 44

different countries. Some of the best examples come from Australia, India, and Kenya. These courts, coupled with the UN's research on best practices, can serve as models for implementing an environmental court system in the US. Currently, EPA has an Environmental Appeals Board to hear certain administrative complaints. The board hears appeals of permit decisions and some Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reimbursement claims. This board consists of environmental law experts but is limited in scope and is inaccessible to most people.

Under the current US judicial system, environmental issues, especially environmental justice, are not given sufficient consideration. There are many factors that play into this, one of which is the lack of specific environmental knowledge on the part of judges and other decision makers. Establishing environmental-focused courts, as many other countries already have, would ensure judges have specific environmental law and science knowledge and that justice issues are granted more consideration. Using the UN framework on environmental courts, we recommend establishing a new division in each state trial court to hear claims under environmental laws and justice claims related to environmental and land use issues.

We recommend creating a model state statute and report that states legislatures can use in formulating their own environmental court divisions. A group of experts and experienced judges should convene to create this document.

IMPLEMENTATION

To determine where an environmental court/division will be most effective, factors including type of forum, decisional level, and geographic area must be considered. Additionally, a court's jurisdiction will define which cases can be heard by its judges. Below we lay out three important decisions to make in creating these divisions, though many more must be considered in the future.

Type of Forum, Decisional Level, and Geographic Area

As most environmental lawsuits are civil suits heard in the "first instance" at the state trial court level, we propose that an environmental division within the courts be created to address any environmental or environment-related claims. A specialized environmental division would not require an organic act to create, as it would fall within the current state trial system. It would operate under the trial court budget and would host judges that are experts on environmental matters. This division would fall under the judicial branch and would remain independent from the other government branches.

To streamline the process and reduce costs, we propose first instance environmental cases be heard by a trial court level environmental adjudicatory body. Ensuring that the first time a case is heard it is reviewed by environmental experts will "maximize both judicial competence and speed of decision-making" (Pring & Pring, 2009). Additionally, we propose first piloting environmental courts/divisions on a state level. Initiating this idea on a federal level would make it more difficult to access the court and achieve justice. State level divisions would increase overburdened communities' access to justice.

Types of Disputes and Legal Jurisdiction

“Environmental cases can involve non-environmental issues and non-environmental cases may have a subsidiary environmental issue” (Pring & Pring, 2009). As a division within a state-trial level court, the types of cases reviewed would include civil suits involving environmental and environment-related disputes. For example, if a party were to challenge a regulation passed by the Arizona Department of Environmental Quality, they would be able to bring their suit to the Environmental Division in the Arizona state-trial court. Disputes under state environmental laws would be adjudicated in the first instance through this specialized division. Examples below of the Vermont Environmental Division and the Arizona model illustrate environmental cases which would fall within the proposed division’s jurisdiction.

Pro Bono Clinics

Access to justice is another concern across the judicial system, especially in the environmental context where disadvantaged communities may not have the resources to fight against wealthy polluters. In response, many attorneys offer pro bono (free) services to potential plaintiffs (or defendants) in the public interest. Pro bono services are commonly offered in areas of practice like immigration and criminal defense, where clients often cannot afford an attorney. There are many environmental pro bono clinics at law schools across the country, and nonprofits often offer low-cost litigation of environmental claims.

Any state court-level Environmental Division should also include a pro bono component. Local attorneys with environmental law experience can volunteer time to the clinic. Many law firms require attorneys to meet a minimum number of pro bono hours every year, so there are existing incentives for experienced attorneys to volunteer. State bars may also offer incentives such as financial assistance to the pro bono program or allowing participants to use pro bono hours to meet continuing education requirements for their bar license. This program would help address limited access to justice by allowing anyone access to expertise and present the best possible case before the court. Combining knowledgeable judges with knowledgeable attorneys optimizes their decisions.

Costs

Cost is a fundamental factor in the justice system. Expenses include not only the cost of litigation, but the cost to run the court. These costs include attorney fees, judge compensation, travel expenses, trial time, and expert witnesses, just to name a few. By providing a forum for environmental lawsuits to be reviewed by expert environmental judges, the process would be streamlined and reduce costs. To provide a comparison to a specialized court budget such as this one, the U.S. Tax Court requested a budgetary allocation of around \$59 million in 2020, while the Vermont Judicial Branch had a \$50 million budget (*Congressional Budget Justification - Fiscal Year 2021, 2020 & Vermont Judicial Branch FY 2019 Budget*). As a benefit of operating under an existing system, the creation of an environmental division in a state-trial court may only slightly increase the court’s total budget, including litigation and operation costs.

Arizona as a Model

As an example, a version of this court division in Arizona would be created by the Model State Act mentioned above and would operate within Arizona's Superior Court. The division's jurisdiction would include the following:

- Appeals from city and county zoning boards, especially environmental related decisions or those which invoke issues of environmental justice.
- Challenges brought under Arizona state environmental laws, including those promulgated by Arizona Department of Water Resources (ADWR), Arizona Department of Environmental Quality (ADEQ), Arizona Department of Public Health (ADPH), Arizona Game and Fish Department (AZGFD), and U.S. EPA Offices in Arizona.
- Review of ADEQ permits, including challenges by environmental groups to proposed permits.
- Municipal enforcement actions

This Arizona division model would be a multi-judge bench that only hears environmental suits. These judges would be appointed by the governor and selected from the vast pool of experienced environmental attorneys in Arizona. The exact structure of the division would differ by state but looking to examples of existing court systems can provide the basis for its development.

CASE STUDIES

Vermont Superior Court Environmental Division

The Vermont Superior Court Environmental Division was the first of its kind in the United States. It was created to improve enforcement of the state's environmental laws. The Division is one of six specialized sections of the state's superior court, and has limited jurisdiction over specific environmental matters, including appeals of municipal decisions and Natural Resources enforcement actions. The division also reviews land use and development permits appeals based on environmental concerns under Vermont's Act 205. Two judges with significant environmental law experience sit on the court and are tasked with solely hearing environmental suits. Appeals from the division are governed by special procedural rules for environmental appeals (Vermont Judiciary, 2021).

A major part of the environmental division is supporting mediation and other alternative dispute resolutions (ADR) of cases. Resolving litigation outside of the courtroom is less expensive than traditional trials and can provide a more equitable outcome. The division provides resources to help parties engage in mediation and find mediators with a background in environmental and land use issues. In addition to reducing costs and increasing resources through ADR, access is also addressed by the mobility of the judges. Judges will travel to local courtrooms in the areas where the suits arise (Vermont Judiciary, 2021).

The Division has been hailed as a model of an effective environmental division. Some of the best practices used in the court include flexible procedural rules specified for the environmental matters; acting as a "one-stop shop" for all environmental litigation, making filing easier; and an Advisory Committee on Mediation which reviews

environmental qualifications for mediators (Pring & Pring, 2016). Although small, this division provides a promising example of the possibilities of establishment of environmental divisions across the country.

State of Queensland, Australia Planning and Environment Court

Another model for this type of court is the State of Queensland, Australia's Planning and Environment Court (P and E Court). This court also operates as an independent court and it has its own legislated authority. Similar to our proposal, this court is located on the state-trial court level and shares administrative staff with its host court (Pring & Pring, 2009). Court judges are appointed from the full court judge roster and are competent to hear a broad range of environmental and non-environmental cases. The P and E Court hears matters related to fisheries, nature conservation, planning and development, environmental protection, and other environmental matters. The P and E Court also has jurisdiction over proceedings such as appeals from decisions of the Development Tribunal, appeals about infrastructure charges, and appeals against decisions on development applications (State of Queensland, 2017).

Similar to the Vermont Court, the P and E Court encourages ADR and provides these services free of charge. The court makes an effort to include local residents by allowing them to "observe proceedings that affect their community whenever possible" (State of Queensland, 2017). The P and E Court model has empowered Queensland to address its environmental matters in a dedicated court "with little additional cost and with the opportunity for communication, case discussion, mentoring, collegiality with peer generalist judges, a broad judicial career path, and the flexibility to develop independent rules and practices and respond to changes in caseload volume and complexity" (Pring & Pring, 2009).

EXPECTED OUTCOMES

This new legal reconfiguration would have a profound effect on the outcomes of environmental litigation. There are four main impacts the change would have:

Modern, fair, accessible, effective and timely dispute resolution. The new court can focus on making environmental justice litigation more accessible and open to plaintiffs. Filing of lawsuits will be easier, and pro bono lawyers would help.

Consistent procedures and outcomes. Currently, each state and federal district court has slightly different ways of addressing environmental claims. Moving toward a more consistent set of environmental courts ensures that environmental justice is more equally distributed at state and federal levels.

An evolving development of the law. Decisions from judges who have extensive experience in environmental law will hold more weight and address the actual issues rather than holding for judicial deference. Thus, environmental common law will continue to evolve, and future practices will be more consistent.

Outcomes that are in the public interest. The foundation of the environmental court will be in environmental justice. Judges that have an understanding of environmental justice

issues and how to address them in judicial decisions can make decisions that are more in the public interest.

MEASURING IMPACT

Impacts would be measured through an evaluation of case decisions coming out of the courts. In 2016, the United Nations published a report: "Environmental Courts & Tribunals: A Guide for Policy Makers." This report offers best practices from existing international environmental courts, including recommendations on selecting judges and creating evaluation procedures. These examples provide a basis for a more detailed court design and long-term measurement of impact.

Furthermore, the effectiveness of specialized environmental divisions can be evaluated based on factors such as the type of claims reviewed in the court, accountability and accessibility, the expeditious and timely manner in which cases are reviewed, whether the process is understandable to those who use it, and the responsiveness to user needs.

NEXT STEPS

Accomplishing this proposal would require political leadership on the state level. A national blueprint of best practices should be developed to assist state leaders in establishing an environmental division.

PROPOSAL 3: REVITALIZING THE EJ INTERAGENCY WORKING GROUP

PROPOSAL SUMMARY

The Interagency Working Group on Environmental Justice (EJ IWG) is comprised of sixteen federal agencies including and convened by the EPA that are tasked with identifying and addressing “disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations” (EO 12898). The member agencies are not following through with their commitments to the EJ IWG and are not improving their programs, policies, and activities. As a result, overburdened communities bear the brunt of existing and new issues related to climate change and pollution. While the EJ IWG has had notable successes in the past, it could further benefit overburdened communities with clear goals and renewed commitment from agencies. Such commitments could include dedicated staff and funding, administrative support and accountability mechanisms for EJ agency employees, and the development of best practices for reporting and measurement.

Proposal 1: Challenges & Reforms

Challenges	Reforms
EJ IWG goals are not specific or actionable	Facilitate coordination with clear, specific, actionable goals
Limited resources have been allocated to EJ initiatives	Renewed resources to fulfill agency commitments
Member agencies have not followed through with commitments	Coordinated enforcement among member agencies
Weak accountability mechanisms	EJ IWG accountable to Environment and Public Works and the CEQ
Employees tasked with EJ projects face material and cultural barriers	Administrative support for agency employees tasked with EJ projects
Assessment methods for identifying problems and reporting on progress are under-developed	Develop robust reporting and measurement best practices

IDENTIFIED PROBLEM

The Environmental Justice Interagency Working Group (EJ IWG) is comprised of sixteen federal agencies including and convened by the EPA. It is tasked with identifying and addressing “disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations” (EO 12898). Member agencies are not following through with their commitments to the EJ IWG and are not improving their programs, policies, and activities, so overburdened communities bear the brunt of existing and new issues related to climate change and pollution.

CURRENT STATE

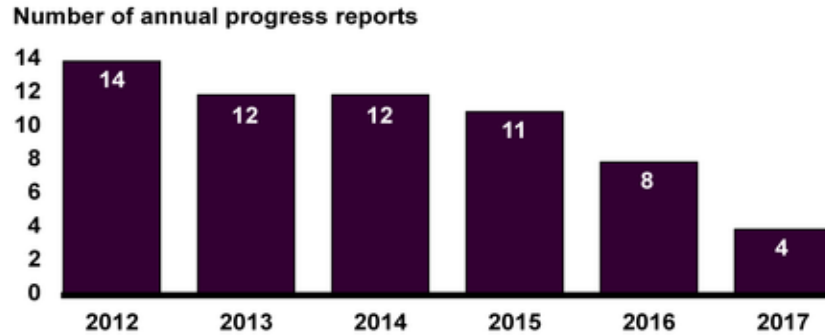
In 1993, the U.S. EPA created an Office of Environmental Equity, later called the Office of Environmental Justice (EJ). In 1994, President Clinton issued Executive Order 12898 directing all federal agencies to integrate EJ principles set forth in the Report on the National Performance Review into regulatory practice (Harrison, 2019) by creating the Interagency Working Group on Environmental Justice (EJ IWG) convened by the EPA. The order states that "Federal agencies must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations" (EO 12898). The implementation of EJ principles through agency-specific programs, policies, and activities are supported by EJ staff or working groups. Often these staff must fight, with little support, for personnel and resources against other agency priorities (Harrison, 2019). The EJ IWG coordinates and oversees "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (EO 12898). The eleven original working group agencies and six additional agencies signed a memorandum of understanding (MOU) in 2011 that establishes agencies' commitment to the EJ IWG and its activities.

Each of the sixteen member agencies is responsible for creating, updating, and reporting progress towards their agency's specific environmental justice strategic plan. Progress is tracked in a report by the U.S. Government Accountability Office (GAO). The EJ IWG serves as a clearing house and provides technical assistance and coordination between the various agencies covered by the memorandum. The working group is chaired by the EPA administrator and consists of members from the sixteen member agencies. The EJ IWG has four standing committees: Public Participation, Regional Interagency Working Groups, Strategy and Implementation Progress Report, and Title VI Implementation. The EJ IWG planned for five special committees from 2016-2018: Native American/Indigenous Peoples, Rural Communities, Impacts from Climate Change, Impacts from Commercial Transportation (Goods Movement), and National Environmental Policy Act (NEPA). Since it was established in 2011, the EJ IWG has been successful in the following:

- 1. Framework for commitment and collaboration:** The EJ IWG has written a MOU and established a Framework for Collaboration, which serve as tools to carry out its directive
- 2. Initial steps taken:** Most agencies take some action to further EJ like creating data tools, developing policies or guidance, and building community capacity through small grants or training.
- 3. Integration into policies:** The EPA, DOJ, Homeland Security, and DOI developed policies or guidance to analyze EJ issues during environmental reviews and enforcement
- 4. Allocated funds and staff:** The EPA and DOE provided funds (\$8.3M in FY18) and staff specifically for environmental justice.

CHALLENGES

Since 2011, when the Memorandum of Understanding was signed by sixteen federal agencies, the number of agencies providing progress reports and updating strategic plans has declined (see figure below). In 2012, all but two agencies completed the progress reports and in 2017, only a quarter of the agencies submitted any update.



Source: GAO review of agency environmental justice progress reports. | GAO-19-543

Figure 1: Number of annual environmental justice progress reports 2012-2017

We have synthesized a list of challenges identified by the GAO, Dr. Jill Harrison, the NRDC, and Megan Haberle. These challenges include:

Unspecific Goals

GAO has found that collaborative mechanisms, such as the working group, benefit from clear goals, but the working group's organizational documents do not contain clear strategic goals aligned to address the order. According to Harrison (2019), EJ is treated as a separate regulatory work area from core programs such as water and air and lacks regulatory coordination.

Limited Resources

Most agencies supported EJ efforts with some funds and staff from related programs, but only two of the sixteen agencies dedicated funds and staff. Even these lack top-level support that lends authority. Dr. Jill Harrison's study of federal agency EJ-focused employees describes this dearth of resources, "...EJ at U.S. EPA was marginalized: situated in a small office and given few resources or authority over the rest of the agency" (Harrison, 2019, pg. 15).

Accountability to Commitments

Progress is hard to gauge without updated strategic plans, reports on progress, and methods to report progress. See Figure 1 for the number of progress reports submitted following the 2011 MOU where agencies agreed to submit plans and reports. Agencies such as the U.S. Department of Housing and Urban Development (HUD) updated their last report in 2017. The Department of Transportation (DOT) last reported in 2018. Clearly, some agencies have the leeway to not comply with EJ obligations and they are not being kept accountable nor reprimanded for their actions. According to a US Commission Civil Rights report, "enforcement activities have long been severely inadequate, with lengthy backlogs, limited staff capacity, insufficient investigations, and weak penalties" (Haberle,

2017, p. 274). As a result, EPA has failed to adequately protect overburdened communities.

Weak Accountability Mechanisms

The EJ IWG must change to whom agencies are reporting (Harrison, 2021). The EJ IWG encourages all Federal agencies to implement EO 12898. As stated on in their website, “the Working Group comprises the heads of executive agencies and offices, or their designees and must report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy” (Georgetown Climate Center, 2016). Therefore, accountability changes with the priorities of the Office of the President.

Cultural Barriers

Agency personnel do not see EJ as a core component of their work. Further, resistance to EJ reforms within agencies is an element of workplace culture stimulated by implicit bias and “colorblind” narratives (Harrison, 2021).

Under-Developed Assessment Methods

Few agencies have measures or methods for assessing progress, and the working group has not provided guidance to help agencies with such assessments. Additionally, agencies lack tools for identifying communities that need the most help (Harrison, 2021).

PROPOSED REFORMS

The EJ IWG has some notable successes and could have further benefits for overburdened communities with clear goals, renewed commitment from agencies including dedicated staff and funding, administrative support for EJ agency employees including new accountability mechanisms, and the development of report and measurement practices. The agencies that are part of the EJ IWG need to be more reliable in reviewing their annual reports. In addition, the working group must have the necessary resources available to help those agencies to reach their goals. We propose the following reforms:

Facilitate Coordination with Clear Goals

The EPA administrator, with support from the member agencies, should set clear, measurable goals for carrying out EO 12898 and EO 14008, and update the Framework for Collaboration among member agencies.

Interagency Coordination and Enforcement

Better communication and coordination between EPA and other agencies are needed in order for each of these agencies to know, for example, when subsidized housing residents are living in contaminated areas, so that they may take concrete measures to respond. Building the growing momentum behind interagency programs is a strategy for community revitalization and the promotion of civil rights. However, this has mainly taken place on the level of pilot programs and demonstrations, without strong requirements for further action. We recommend extending these pilots into larger programs like the Sustainable Communities Initiative. Megan Haberle writes “the Sustainable Communities Initiative, a joint endeavor of HUD, EPA, and the Department of Transportation (DOT),

supported regional, community-participation-intensive Fair Housing Equity Assessments, which served as test pilots for development of the Affirmatively Furthering Fair Housing (AFFH) rule (Haberle, 2017, pg. 274).

Renewed Material Agency Commitments

The EPA administrator should author a new MOU that calls for renewed commitment from agencies to the implementation of EJ principles. Additionally, the administrator should call for material commitments (staff and funding) to EJ from agencies and from the congressional appropriations committee.

Administrative Support for EJ Agency Employees

The EJ IWG and agency administrators will provide EJ staff with the delegated authority and resources that they need to be successful. Additionally, we recommend consulting the research on challenges faced by employees carrying out EJ projects like Dr. Jill Harrison's book *From the Inside Out: The Fight for Environmental Justice within Government Agencies*. Staff also disparage EJ reforms by using prejudiced arguments that working-class and racially marginalized communities targeted by EJ programs or undeserving of them, and by asserting the environmental inequalities or not serious, that the agencies' decision-making process already aligned with EJ principles, and that limited resources in regulatory authority preclude discussion or implementation of EJ reforms (Harrison, 2019, pg.201). Throughout, Dr. Jill pointed out various practices that undermine efforts of agencies' EJ staff.

EJ IWG Accountable to Congress

Because the priority of EJ issues for the President's Office changes term to term, we suggest having the EJ IWG report to the Office of the President as well as appropriate congressional committees to maintain more consistent accountability.

Development of Report and Measurement Practices

The EPA administrator, with support from the member agencies, should develop guidance on methods used to measure and assess performance towards agency EJ goals, what to include in strategic plans and reports, and how to implement EJ principles. This guidance should take into account common pitfalls that can perpetuate environmental injustice like utilitarian aggregated measures (Harrison, 2019, pg. 9), and account for diverse data sources like citizen science and self-reporting.

In conclusion, sixteen agencies are committed to implementing EJ principles in their programs, policies, and activities. A Framework for Collaboration is in place to carry out these commitments, but a lack of clarity and resources are barriers to follow through. Our belief is that the executive branch could make an incredible impact by supporting the sixteen committed agencies in consistently carrying out their commitments to identifying and addressing "disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations" (EO 12898).

RESOURCES REQUIRED

We suggest that each agency should have at least one dedicated EJ employee with the resources available to them to carry out the planning, reporting, and policy and process consulting needed to carry out the agency's commitments to the EJ IWG. The EPA, as the convening authority, should have dedicated teams in their Office of Environmental Justice to support member agencies through measurement best practices, coordination of knowledge sharing, and keeping member agencies accountable. We focus on *mechanisms*, as we believe each agency will have different needs and know those needs better than we can.

NEXT STEPS

To follow through on these commitments, we are asking the EPA, as the convenor, and the working group to increase their support for member agencies to set and achieve their goals. There is desire, but with an unclear path, under resourced EJ employees struggle to follow through. We also suggest making the working group accountable to the Senate Environment and Public Works Committee and the CEQ as well as the Office of the President, so that there is consistency between presidential terms. Finally, member agencies and the federal government must allocate implementation resources through dedicated funds and personnel.

PROPOSAL 4: FEDERAL LEVEL REPRESENTATION FOR THE INTERESTS OF FUTURE GENERATIONS

PROPOSAL SUMMARY

Currently, the generations of Americans that will comprise our nation at the end of the century do not have a voice in policymaking decisions. Hawaii, Montana, and Illinois have made mention of future generations in their state constitutions, yet future generations still lack proper representation at the federal level (Raffensperger et al, 2008). Based on the current rate of environmental degradation it appears that many government systems in the United States have been operating as if future generations are less important than the generations currently living. Several nations have begun to tackle this problem by creating government representatives or infusing future design principles into policies and legislation to address the interests of future generations. By creating a designated representative for the future, these governments hope to shake up the current structures that have led us down the all too familiar path. The proposed revisions to the existing structure are designed to not only preserve natural capital for generations to come but create thriving communities now and far into the future. We propose a two-pronged approach to address this problem, consisting of one career appointed advocate in the Executive Office of the President, with a separate mechanism to elect a non-voting congressional representative for the future.

Proposal 4: Challenges & Reforms

Challenges	Reforms
Diminishing resources necessary for future generations to meet their needs	Meaningful advocacy for interests of future generations within the federal government Meaningful representation for interests of future generations within the legislature
Lack of meaningful representation for the interests of citizens who will be alive in 50-100 years	
Short-term view in policymaking	

IDENTIFIED PROBLEM AND CURRENT STATE

The indicators associated with global climate change have continued to escalate over time as the earth begins to reach some commonly accepted tipping points (Lenton, 2011). While we can see some effects already, many effects are expected to worsen over time. For many of us, this means that we may not be around to see the final results of the actions that we are taking today. However, for the youngest members of our citizenry and the generations to follow, these are deeply important concerns that must be addressed if they are to experience a world still capable of meeting their resource needs. These

resources include not only the most basic resources for survival like air and water, but also the resources and opportunities necessary to experience a fulfilling and enjoyable life. Future generations whose natural inheritance is being destroyed by shortsighted actions taken today do not have a voice in these high-stakes decision processes. In order to protect the interests and intergenerational equity of the future population, we propose that they should be meaningfully represented.

Currently, in the United States, there is not any official representation for future generations, and it is assumed that unless drastic changes are made that the condition of the environment will be worse in 2050 than it is now (Gramlich, 2019). One arena in which we frequently observe shortsighted decision-making is public investment. For example, many voters and representatives continue to resist investment in infrastructure, such as high-speed rail, climate-resilient buildings or advanced wastewater treatment systems, because of the high short-term costs and long wait to see a return on investment, despite improvements to these systems being well overdue. In order to meet the objectives of creating intergenerational equity and ensuring future generations a healthy planet, we can utilize future generations' representation in current decision-making. By helping communities invest in these types of infrastructure projects, before problems occur, money could be allocated much more effectively and purposefully. Across the United States there are countless overburdened communities. In many of these communities, there is a disproportionate amount of pollution, infrastructure issues, and in many cases an overall lower quality of life. A future generation representative could be an initial step into addressing the issues that many of these communities face because of their commitment to providing social and environmental justice to future generations. By introducing future generations as a relevant stakeholder group, it not only provides an opportunity for a seat at the metaphorical table, but an opportunity for the federal government to make sure its decisions promote equality and fairness far into the future. By thinking about governance more as a long-term endeavor, or with future generations in mind, the short sidedness of many current pieces of legislation could be addressed.

To some this may sound far-fetched or not plausible, but several nations have recognized this need for representation and advocacy of those who will inhabit the future. Most notably, Wales in 2015 enacted the "Well-being of Future Generations Act," which created a position of a Future Generations Commissioner. The commissioner is tasked with acting as a "guardian for the interests of future generations", and their scope includes advising, reviewing, making recommendations, and publishing a regular report on their work (Welsh Government, 2015). While Wales is the first to elect an actual representative for future generations, there are many other countries taking similar actions under different names. Some countries like Germany and Canada do this under the guise of sustainable development, while New Zealand has a Parliamentary Commissioner for the Environment, and Hungary's Ombudsperson for Future Generations is housed in the Office of the Commissioner for Fundamental Rights. Japan is taking an entirely different route and introducing Future Design Principles as a new policymaking tool for future generations. "If there is no one to protect the interests of future generations, then designate people to 'take on the role of future generations' and have them stand in for future generations,"

(Kobayashi, 2019). Could representing future generations be done by simply role playing as “imaginary future persons?” This would be a very economical way to incorporate future thinking principles into America’s current governmental policymaking.

Most of the countries mentioned are part of the Network of Institutions for Future Generations (NIFG, n.d.), whose “primary goal is the sharing of knowledge and dissemination of best practices of its member institutions engaged in the promotion of responsible, long-term governance,” (NIFG, n.d.). The World Future Council has identified five characteristics that support effective and successful future generations representation: independence, transparency, legitimacy, access to information, and accessibility (Göpel & Pearce, 2018). As we propose our solutions, we will keep these as foundational principles. Made evident by the countries, organizations, and councils already working to incorporate future generation, environmental representation, and sustainable development into their governance, this is not a new or radical idea. It should be viewed as a launching point, an opportunity, to add environmental justice and future oriented thinking into American governance structures. A political component is the next logical step to build off of the economic, legal, and theoretical actions that support considerations for the future. By adding future design principles and/or future generation representation into decision making processes we can support and alter how we think about the future in a way that truly benefits all Americans.

PROPOSED REFORMS

PART I: Congressional Representation for Future Generations

Following the creation of a position at OMB for a future advocate, additional highly transparent, publicly supported representation is necessary to legitimize the needs of future generations (Göpel & Pearce, 2018). We propose the addition of a non-voting delegate to the U.S. House of Representatives, representing the needs of future generations. This would create a formalized position in the U.S. Congress for a delegate whose obligations are to serve the interests of future generations to the best of their ability. While the delegate would not be able to vote on legislation, they could debate on the floor to raise awareness of decisions that disproportionately harmfully impact future generations. The delegate should also be able to introduce legislation and serve on committees as the other non-voting delegates are eligible to do (2 U.S.C. § 25a, 48 U.S.C. § 1715).

Presently, the average age of members of congress was 57.6 years for the House of Representatives and 62.9 years for the senate (FastStats, 2021). The average Congressperson does not have a realistic expectation that they will be alive in 50 years, much less 100. Due to the pervasiveness of strictly economic thinking in this country, which discounts the future exponentially, the needs of future generations are not well represented in the current legislative and policymaking process.

Taking a step back for a moment, first we propose creation of a Future Generations Caucus. This caucus would be composed of ten regional representatives of future needs –

one for each of the Standard Federal Regions defined by OMB. These ten regional representatives would only be eligible to serve from ages 18-35 and would serve a two-year term. Election of the regional representatives would be expanded to voters in their district aged 14 years of age and up. The representatives elected to these ten regional representative positions would be responsible for acting as a think tank or working group concerned with promoting a sustainable future for the U.S. They should promote research and scholarship to support legislative proposals, while also raising awareness and support for a more future-thinking society on a national scale.

Election of the non-voting congressional representative would follow the establishment of a Future Generations Caucus. The ten elected members of this caucus would then vote to elect one of their members to the position of congressional delegate. Given the age limit for eligibility to vote or hold the office, we predict that the delegate would experience greater ability to focus on the principles of protecting natural resources and promoting equity for future generations.

We propose several stipulations around the duties and eligibility requirements of the delegate. To begin with, we believe that the youngest generations who are least represented in politics should have a voice in selection of the future generations delegate. To this end, we believe that eligibility for the delegate position should be capped at age 35. This has the additional benefit of building in a term limit for the position. Should the representative turn 35 during their term, they should be allowed to finish the term but would not be eligible to serve again.

The caucus and delegate format have the potential to benefit all facets of society, not only future generations. Much of the time, policies which are far-sighted and beneficial for future generations also result in better outcomes for those present today. For example, efforts to curtail carbon emissions can be associated with less toxic air pollution which harms the health and well-being of countless Americans. Efforts to combat and build resiliency to climate change can result in efforts which both preserve the natural world for the future, but also provide tangible benefits like improved infrastructure in the relative short term. The goal is that through this type of representation, historically overburdened communities will not be overlooked in future planning and will instead be prioritized as key spaces where climate resiliency and environmental justice must be incorporated into policy design.

PART II: Future Generations Advocate within the Executive Office of the President

While a congressional delegate is a good place to start for future representation, we believe that future generations should be explicitly represented in non-elected positions of the government as well. We believe that a representative or advocate for future generations should be placed within the Executive Office of the President (EOP), either in the Office of Management and Budget (OMB) or within the Council on Environmental Quality (CEQ) or both. Each of these offices have several advantages and disadvantages which will be explored in this section relative to the success criteria of a future generations representative laid out by the World Future Council (Göpel & Pearce, 2018). A

final recommendation for placement of the representative within the federal government will be part of the future work of this team.

The first two criteria to evaluate are independence and transparency (Göpel & Pearce, 2018). Both offices, being located within EOP, are subject to changing priorities under different administrations and are subject to new politically appointed leadership with these changes. However, CEQ does appear to have slightly greater independence from political influence thanks to the legislation surrounding its creation and mandating a fairly narrow and specific mission (Yannacone, 1970). In contrast, the president can use OMB in a number of different ways to influence actions and impart policy on more distant agencies. This influence on OMB and the way that it impacts downstream agencies through the President's budget has been notoriously lacking in transparency not only to the public, but also to Congress (Pasachoff, 2016). CEQ on the other hand is required to enforce that agencies produce environmental impact reports around their activities that creates a greater degree of transparency and accountability surrounding CEQ's actions (CEQ, 1979).

Next, we have legitimacy and access to information as essential criteria (Göpel & Pearce, 2018). For both offices, to provide some insulation from political influence, we propose that the ultimate advocate for future generations be a career based position rather than a politically appointed position. Especially because we are proposing a political delegate in Congress as a complement to a relatively less political position within the EOP. Both offices additionally enjoy wide access to information from agencies. While OMB may have more comprehensive access to agency information regarding actions and policies, CEQ has much more targeted access to specifically environmental information required to serve its mandate (Pasachoff, 2016; Yannacone, 1970). Given how closely the needs of future generations seem to be tied to preservation of natural systems, an advocate within CEQ could be more effective since their scope is much more focused on the environmental concerns of agency actions than OMB, which must account for all agency actions through the budget.

The final consideration is accessibility to the public (Göpel & Pearce, 2018). Neither of these offices is particularly accessible to the public in their current forms. NEPA does require that agencies "encourage and facilitate public involvement in decisions", but this is a burden placed on agencies and enforced by CEQ rather than direct accessibility to CEQ itself (CEQ, 1979). However, once again, this characteristic of a future generations representative might be better served by the proposed congressional delegate in the previous section.

Some additional considerations can also be taken into account when comparing these two offices with regard to where to locate an advocate for future generations. To begin with, OMB has a much larger operating staff and budget than CEQ does. OMB also appears to have much greater ability to ultimately influence agency actions and outcomes through their control of the budget (Pasachoff, 2016). Both offices are mentioned in President Biden's EO 14008 as having a role to play in the transition toward greater environmental justice and climate change mitigation. Having established a connection between these issues and the needs of future generations, this could provide a timely opportunity to

create a position for a future generations representative or advocate into one of these offices.

Expected Outcomes

Ultimately, through the addition of a non-voting congressional delegate we hope to see several changes. Within the position, we hope to see an increase in the legitimacy and authority of the future generations representative and passing of legislation written or sponsored by the delegate in support of sustainable futures. We anticipate a reduction in legacy environmental justice issues affecting communities thanks to the obligation of the future generations representative to represent all members of the future generation and not only one specific geographic location. We anticipate that this representative might facilitate greater volume and success of certain types of federal projects that promote the well-being of future generations, such as infrastructure and environmental protection.

The anticipated outcomes resulting from these activities span several areas. One expected outcome is greater priority for projects that support preservation of natural resources like air, water, and soil, which are essential for baseline survival of future generations. Additional outcomes that we would expect to see include mitigation and resolution of practices which historically increase the negative environmental burden of overburdened communities. While this work is already underway in many areas, part of the goal of this proposal is to accelerate and expand this work while more explicitly considering the needs of future generations in a wider segment of agency activities.

In order for any of this to come to fruition, legislation would need to be passed to create a position for this additional delegate, and infrastructure to support the regional representative structure would need to be created and codified. Creation of these positions would require time, expertise, and political will in addition to financial resources to pay salaries for the delegate and associated staffers. Finally, this position cannot exist without the involvement of young people in political, legal, and environmental fields to name a few.

RESOURCES REQUIRED AND NEXT STEPS

The next steps required for this proposal would first be to determine whether the office of OMB or CEQ would be more appropriate for a future generations advocate and work out the finer details. Following that step, these positions in Congress and in EOP would need to be created either through executive order or congressional legislation so that they might have staying power between changing administrations. In addition to the legal basis for these positions, salaries for individuals to occupy these positions would be required. The salary of a single individual within EOP would necessarily be much less than the funds required to create the structure for the Future Generations Caucus, run elections for the ten members of the caucus, and provide for their salaries as well as any required support staff for the ultimate congressional delegate. Of equal importance is the public support required for these positions. This can be accomplished through a campaign designed to inform the public and garner support through the opening phases of implementation of these proposals.

SUMMARY

To bring environmental governance into the 21st Century, we must prioritize climate change while advancing environmental justice, bearing this in mind: that society cannot thrive without the environment, and that environmental governance fails if it does not consider the rights and needs of people.

Building on decades of research and activism, and seizing this period of recovery from the COVID-19 pandemic, the US government has the opportunity to deliver on the promises for environmental justice made nearly thirty years ago. The proposals within this document incorporate the accumulated wisdom of our course sponsors and the work of leading researchers and practitioners in climate and environmental justice. With their guidance, we identified a set of core, overarching problems facing environmental governance today:

- Weak accountability to commitments to improving environmental justice from federal agencies;
- Absence of meaningful public participation, particularly from those communities which would benefit most from environmental protection;
- A judicial system that lacks the expertise, efficiency and capacity to appropriately adjudicate environmental cases; and
- Short-sighted approaches to governance that hinder justice and sustainability for future generations

Redesigning the federal government's approach to the Civilian Climate Corps could transform the provision of climate resilience assistance so that it is community-driven and invests in long-term capacity, while also preparing the next generation to work in a zero-carbon world. An environmental division for state court systems would ensure that legal professionals are accessible and sufficiently experienced to manage environmental disputes and deliver environmental justice. Institutional changes to the current EJ IWG will enhance resources and accountability so that EJ is integrated into all aspects of the executive branch, with appropriate measures for accountability and enforcement. Tangible representation of future generations in governance will encourage policy-makers to think in longer time horizons and reframe decision-making so that it "meets the needs of the present without compromising the ability of future generations to meet their own needs" (Our Common Future, Brundtland Commission). Together, these solutions comprise institutional changes that enhance both the performance of government and the meaningful engagement of citizens. Ultimately, we believe these changes will better prepare the federal government to deliver on the promise of environmental justice, especially in the context of a changing climate.

CONCLUDING REMARKS

As we conclude this report, we reflect on Bunyan Bryant's 1995 definition and vision of environmental justice:

Environmental Justice refers to those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities where people can interact with confidence that the environment is safe, nurturing, and productive. Environmental justice is served when people can realize their highest potential, without experiencing the "isms." Environmental justice is supported by decent paying and safe jobs; quality schools and recreation; decent housing and adequate healthcare; democratic decision-making and personal empowerment; and communities free of violence, drugs, and poverty. These are communities where both cultural and biological diversity are respected and highly revered and where distributive justice prevails (Bryant, 1995).

Bryant's vision reminds us of the intimate connection between ecological and social systems. By following the ideas shared in our proposal today the federal government could support a society in which: citizens have agency to shape their own futures; government is responsive and accountable to social and environmental needs; justice is accessible to all; society is resilient to threats like climate change, and has the ability to mitigate its effects; our shared environment is clean, bountiful, and thriving; and where everyone, including future generations, can benefit equally from natural resources.

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