

Evaluating Environmental Justice: How Federal Courts Overlook the Effects of Environmental Policy on Communities of Color

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ABSTRACT

Environmental issues are at the forefront of ensuring the security of our planet. The protection of environmental rights and the establishment of beneficial policies have encountered numerous obstacles within federal courts in recent years. While federal courts have attempted to address these hurdles in past decades, environmental justice is a subject they have failed to confront thoroughly. This paper explores rulings on environmental justice within our federal court system, highlighting how federal courts have neglected individual rights and failed to uphold the constitutional principle of equality. Our research delves into the extent to which federal courts overlook racial disparities when considering the effects of environmental policies on communities of color. Judicial rulings in cases such as *Alexander v. Sandoval* (2001), *West Virginia v. EPA* (2022), and *Arizona v. Navajo Nation* (2023) exclude mention of blatant racial discrimination. These rulings' lack of consideration for the harm done to these communities has increased environmental racism. This oversight highlights that while the disparities between the effects of environmental policies on people of color and their white counterparts are prevalent, the difficult process of proving discriminatory intent has interfered with the federal court system's ability to combat environmental racism.

Introduction

A community represents belonging, acceptance, and the sense of unity that the American nation is supposed to embody within its morals. Over two hundred plastic plants, oil refineries, and chemical facilities steal those principles away from thousands of African American residents occupying the region of "Cancer Alley." Cancer Alley, or the region along the Mississippi between Baton Rouge and New Orleans in the River Parishes of Louisiana, contains unusually large amounts of refineries and chemical plants (Younes, Shaw, and Perlman 2019), accounting for nearly a quarter of national petrochemical production. These plants pollute the air and water, considered necessities, causing increased rates of cancer, respiratory diseases, and various other health problems. Consequently, elevated cancer rates among its population have led to its other name, "Death Alley." The community here is predominantly African American and subject to each detrimental impact of these chemicals. According to the United Nations, this is an extreme form of environmental racism that deprives African American residents of their "right to equality and non-discrimination, the right to life, the right to health, right to an adequate standard of living and cultural rights" (United Nations News 2021). Furthermore, this deprivation of rights is only worsening due to the lack of awareness regarding this region. In 2018, the Saint James Parish Council approved the "Sunshine Project," a plan to industrialize toxic chemical plants and

create one of the world's most extensive plastics facilities in this very area. According to United Nations experts, this new petrochemical plant would more than double the cancer risks in Cancer Alley. Much of the risk associated with being diagnosed with cancer stems from inhaling ethylene oxide. This carcinogen is especially known to cause breast cancer and lymphoma. Thirteen plants in Cancer Alley emit ethylene oxide, leaving the surrounding population to face extremely high risks of cancer. It is estimated 1 in 210 people in those regions are diagnosed with cancer, which is forty-seven times what the American nation deems as an acceptable risk (Parker, Russell 2021). Knowing these risks and seeing how the United Nations acknowledge them perplexes us as to why nothing has changed through the federal court system. While digging deeper into this topic, we observed just how far this societal issue extends and how the only solutions to this prevalent issue exist through environmental justice.

Environmental justice is a concept that started in the early 1960s when a group of Hispanic farm workers fought for their rights to work under healthy conditions, which included protection from harmful pesticides in the farm fields of California's San Joaquin Valley. In 1967, African American students went on the street in Houston to protest the city's waste disposal site dump in their community that had claimed a child's life. Although these wars against the local construction companies failed in the end, they undoubtedly marked a historical starting point for the effort for environmental justice. Cases like these only increased throughout history, especially in a fast-developing world. In the past few decades, numerous plaintiffs leveled suits related to environmental justice, but the ignorance towards these issues, especially in the United States Federal Courts, has also increased, leading to growing environmental harm to communities of color. This leads us to the question of how and to what extent federal courts overlook the effects of environmental policy on communities of color. The topic of environmental policy harming these communities sheds light on a cycle of discrimination, health issues, and poverty. With the analysis provided in this paper, we hope to reveal the major causes that prevented environmental justice-related cases from reaching the Supreme Court. Here, we will review relevant sources.

Literature Review

Scholars have analyzed federal courts' approach to forming environmental policies after Title VI of the Civil Rights Act. The journal article "Environmental Racism: Recognition, Litigation, and Alleviation" by Pamela Duncan in the Tulane Environmental Law Journal details how waste disposal sites and industrial pollution force communities of color to experience increasing environmental problems. The journal discusses how the judiciary's continued use of the color-blind theory in its decisions limits the enforcement of environmental policies that require consideration of their impact on racial groups. In another scholarly journal, "Environmental Racism Claims Brought Under Title VI Of The Civil Rights Act," the author Michael Fisher focuses on how people of color have used Title VI to combat environmental racism. Both journals prove that race indicates environmental threats more effectively than poverty. Additionally, both entries describe Supreme Court cases such as *Washington v. Davis* (1976) and *Village of Arlington Heights v. Metropolitan Housing Development Corp* (1977) but were published in the early 1990s, preventing them from addressing more modern cases.

There are a multitude of studies that analyze hazardous waste. The study by Robert Bullard, Paul Mohai, Robin Saha, and Beverly Wright titled "Toxic Wastes and Race at Twenty" examines the disproportionate impacts of toxic waste sites on people of color from the years 1987 to 2007. This study declares that the current environmental protection system, under Title VI of the Civil Rights Act or Environmental Justice Executive Order 12898, fails to provide equal protection to people of color. Marianne Lavelle and Marcia Coyle are the authors of a similar entry in the National Law Journal titled "The Federal Government in its Cleanup of Hazardous Sites and its Pursuit of Polluters Favors White Communities Over Minority Communities Under Environmental Laws Meant to Provide Equal Protection for All Citizens." This journal determined

that penalties for violating hazardous waste laws in areas with a greater white population were five times greater than at sites with a greater minority population. In an additional scholarly article titled “Is There Environmental Racism? The Demographics of Hazardous Waste in Los Angeles County”, the authors J. Tom Boer, Manuel Pastor, Jr., James Sadd, and Lori Snyder examined the differences in how potential hazard, harmful treatment, storage, and disposal facilities (TSDFs) in Los Angeles County existed between races, supporting what the preceding journals have stated.

Similarly, in “‘I Can’t Breathe’: Examining the Legacy of American Racism on Determinants of Health and the Ongoing Pursuit of Environmental Justice,” the authors Jennifer Roberts, Katherine Dickinson, Marccus Hendricks, and Viniece Jennings write about the well-documented issues of environmental racism, and include Cancer Alley, a predominantly African American area in Louisiana infamous for its pollution and carcinogens, as a case study. They also mention how environmental racism affects green space availability. However, this source fails to touch on Supreme Court cases’ influence on environmental justice, as well as specific Supreme Court cases or precedents that led to this.

In the scholarly article, “Local Risks, States’ Rights, and Federal Mandates: Remedying Environmental Inequities in the U.S. Federal System,” the authors Evan Ringquist and David Clark analyze intergovernmental issues regarding environmental justice, concluding that federal governments are not as effective as state legislations, which make solutions hard to implement. This article also provides evidence to prove the inequality in the distribution of environmental hazards and discusses the unilateral federal policy or actions undertaken by the federal government without requiring the consent, cooperation, or agreement of other governmental entities in the area of environmental justice. The article focused on the presidential, congressional, and administrative actions of such policy. However, this article did not mention recent cases, such as *Alexander v. Sandoval* (2001), lacking current information.

“Environmental Justice Litigation: Few Wins, Still Effective” is a scholarly journal in which authors Douglas Henderson, Cynthia Stroman, and Joseph Eisert dissected *Bean v. Southwest Waste Management Corp.* (1979), a case from the U.S. District Court for the Southern District of Texas, and its relation to the difficulties of proving discriminatory intent. They also highlighted the importance of President Clinton’s Executive Order in 1993 and Title VI under the Civil Rights Act. Most cases regarding environmental justice are shut down before they even reach the Supreme Court. This document does not delve into any specific Supreme Court cases.

In the government document, “Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice Chapter 4: Environmental Justice Litigation and Remedies: The Impact of Sandoval and South Camden”, the U.S. Commission on Civil Rights talks about two key cases in establishing civil rights and environmental justice precedent. *Alexander v. Sandoval* (2001) was a critical case, as it ruled that private citizens could no longer bring claims of disparate impact to the court. *South Camden Citizens in Action v. The New Jersey Department of Environmental Protection* (2003) barred private individuals from bringing disparate impact cases to court. One aspect this document does not mention is the future impacts of these rulings and how the precedents they set affected other environmental justice cases.

Findings

How Has This Issue Emerged?

The modern world is developing at an extraordinarily rapid pace, causing many to wonder about the environment’s capacity to support the population surge. The increase in population has been accompanied by a rise in the number of factories, hazardous waste disposal sites, and other facilities that directly contribute to the environmental detriment. This phenomenon has raised questions about which communities these establishments should specifically reside in. In examining the national demographics of the population residing within 1.8

miles, or 3 kilometers, of toxic waste disposal facilities, results showed that it primarily consists of people of color (Bullard et al. 2007). These neighborhoods that contain one or more commercial hazardous waste facilities, also known as host neighborhoods, are a relevant example of how the location of environmentally harmful structures near communities of color perpetuates racial disparities.

Before examining the effects and future implications of the federal court's role in environmental justice, various federal court cases regarding this topic, or discrimination as a whole, have originated from Title VI of the Civil Rights Act of 1964. This piece of legislation prohibits agencies that receive federal funding from discriminating based on race, color, or national origin in any of their programs or activities (United States Department of Justice, 1964). In past precedents set by federal cases, violations of Title VI include segregation in schools or the workplace, racial harassment, or denial of language services to English learners. Various federal court cases regarding environmental justice brought violations of Title VI to light.

Numerous studies and journals have examined the disparities raised by toxic waste disposal sites and manufacturers with high levels of greenhouse gas emissions against various communities of color. While these studies should have notified the American legal system of this issue, multiple federal case rulings disregard this information by establishing that disproportionate impact does not constitute discrimination without evidence of discriminatory intent or a confirmed previous history of discriminatory actions. This was first established through *Washington v. Davis* (1976). Although not an environmental case, the Supreme Court ruling in *Washington v. Davis* set a precedent for future environmental policies for decades by discouraging communities of color from seeking justice based on the disparate effects of the changing environment, such as the health risks that accompany living near toxic waste disposal sites or oil refineries.

Two African American plaintiffs, George Harley and John D. Sellers, who were applicants for positions in the Washington D.C. police department, sued Mayor Walter E. Washington in 1976 after being rejected. They chose to sue under the Due Process Clause of the Fifth Amendment instead of the Equal Protection Clause of the Fourteenth Amendment, as the Supreme Court had formerly ruled that the Fifth Amendment contains an equal protection component in *Bolling v. Sharpe* (1954). Due to the disproportionate failing rate of African American applicants, Harley and Sellers claimed that Test 21 of the department's hiring practices, also known as the verbal skills test, constituted employment discrimination. Additional evidence demonstrated that the number of African American police officers was unreasonably lower than the city's population and that a higher percentage of African American applicants failed the test than their white counterparts. Test 21 was also shown to be invalid in its ability to measure job performance. Initially, the United States District Court for the District of Columbia ruled in favor of the police department. Later, the United States Court of Appeals for the District of Columbia reversed the decision under the statutory standards of *Griggs v. Duke Power Co.* (1971), which states that Title VII of the Civil Rights Act of 1964 prohibits an employer from using tests that exclude racial groups unless the procedure is substantially related to the job's requirements. The court considered the lack of discriminatory intent of Test 21 to be irrelevant, holding that the critical factor in the case was that four times as many African Americans as white people failed the test. However, the Supreme Court reversed that ruling, declaring that under the Equal Protection Clause in the Fourteenth Amendment of the Constitution, "a law or other official act, without regard to whether it reflects a racially discriminatory purpose, [is not] unconstitutional solely because it has a racially disproportionate impact" (*Washington v. Davis* 1976).

Village of Arlington Heights v. Metropolitan Housing Development Corporation (1977), decided by the U.S. Supreme Court on January 11, 1977, is another relevant federal case. The Village of Arlington Heights (Arlington) contracted out to the Metropolitan Housing Development Corp. to build low-income and moderate-income housing that was racially integrated. However, when Metropolitan Housing Development Corp. applied for the zoning permits necessary for the project, they requested a switch from a single-family to a multifamily complex. When Arlington's planning commission denied authorization for the switch, the Metropolitan Housing Development Corporation

brought a case on behalf of several African-American members of the community. Initially receiving an adverse ruling from the District Court, the United States Court of Appeals for the Seventh Circuit reversed the decision. The Supreme Court questioned whether the denial of the zoning request violated the Fourteenth Amendment's Equal Protection Clause and was, therefore, racially discriminatory. However, it reversed the United States Court of Appeals for the Seventh Circuit's decision, holding that the plaintiffs failed to prove the racially discriminatory purpose or intent of Arlington, even though the Court admitted that the African American community "stood to suffer direct and measurable injuries from Arlington's denial" (*Village of Arlington Heights v. Metropolitan Housing Development Corporation* 1977). This confirms the precedent set by *Washington v. Davis* and serves as the basis for *East-Bibb Twiggs Neighborhood Association, Robert Moffett and Roscoe Ross v. Macon-Bibb Planning & Zoning Commission and Mullis Tree Service* regarding the limited value of disproportionate impact as evidence in federal court rulings.

For a governmental policy to pass, a court has to approve it through a review. This review can be through rational basis, intermediate scrutiny, or strict scrutiny from easiest to hardest in terms of passing. The best chance for environmental racism cases to win is to send the construction plans to strict scrutiny, where the court asks the developers to prove both the compelling purpose and the narrowly tailored means of their plans. In this case, the aforementioned cases created difficulties for people to prevent governmental policies from passing since most of the cases can only prove the laws causing disparate impact, which is only qualified for the rational basis review, making it a lot easier for developers to win the case (Cornell Law School).

The U.S. Court of Appeals for the Eleventh Circuit ruled on a later case, *East-bibb Twiggs Neighborhood Association, Robert Moffett and Roscoe Ross v. Macon-Bibb Planning & Zoning Commission and Mullis Tree Service* (1989) in a similar manner. The plaintiffs, the residents of Macon-Bibb County, sued when Georgia County granted the Mullis Tree Service the permit to locate a landfill under four conditions. The county engineer and applicable state and federal agencies approved these conditions. Despite restrictions on dumping of putrescible materials, the Macon-Bibb Planning & Zoning Commission's approved the final site. The plaintiffs, claiming intentionally unequal protection, brought a case against the Macon-Bibb Planning & Zoning Commission and the Mullis Tree Service since the community chosen for the landfill had a prominent African American population. The District Court ruled that the Commission did not deprive the equal protection of the residents, and the appellate court affirmed. This case outlined the evidence required for an environmental racism case to stand, as mentioned in the scholarly journal "Remedying Environmental Racism" by the author Rachel D. Godsil.

Before discussing racism, courts typically ask for evidence to prove that the hazardous sites near them harmed the plaintiff. This practice confirms the destruction caused by the construction companies. When evaluating this element, the courts mainly discuss whether the company could foresee and acknowledge the effects it would bring to the nearby communities and whether this impact is fair and justifiable for the completion of the purpose of the constructed facility. This is usually the hardest part to deny for plaintiffs since companies need a permit for their construction. When granting a permit, federal agencies such as EPA approve construction plans, meaning that knowledge of the harm it brings to the nearby neighborhoods is spread. Construction plans with such permits prove that they foresee and acknowledge the potential harm the plan will bring to the nearby neighborhoods and have approval from the federal agency. Because the accusation will not hold up if the plaintiffs sue the defendants before they even begin their construction as it wanders too far into the hypothetical, plaintiffs typically file lawsuits against the businesses or governmental entities that construct these hazardous sites after the plan has received federal agency approval, making the former's argument harder to stand. Although federal agencies may seem like they are out of the picture once they grant the permit, they share part of the duty since these permits extend the responsibility of environmental racism to the federal agencies that grant them.

The courts also require the affected community to compare themselves with other communities to demonstrate whether or not there is evidence of a disparate impact on specific racial groups. Disparate impact is probably one of the most important components of an environmental racism case. It means the adverse effects that one group of people of a protected characteristic received more than another, making it the core of the accusation that makes a plaintiff's argument reasonable. In *East-bibb Twiggs Neighborhood Association, Robert Moffett and Roscoe Ross v. Macon-Bibb Planning & Zoning Commission and Mullis Tree service*, the United States Court of Appeals for the Eleventh Circuit ruled in favor of the planning and zoning commission because of the lack of evidence in such disparate impact. One of the reasons why it is increasingly difficult for plaintiffs to receive a favorable ruling is that proof of disparate impact requires further evidence of discrimination intent or a long history of discrimination to be valid. The plaintiffs have to show that the site will burden their community more than the white community due to the presence of other pollutants, such as uncontrolled toxic waste sites, solid waste landfills, or polluting industries.

The last requirement is a legislative or administrative history, which means that plaintiffs must show evidence of the defendant's discriminatory record. Such discriminatory records include housing segregation history and underrepresentation of people of color in government. This requirement aims to use these records as references to prove potential discrimination. However, federal courts do not usually weigh this history as heavily when considering disparate impact cases since a government's history of discrimination cannot always prove discriminatory intention for the current construction plan. If a federal court will not weigh a piece of evidence in a significant manner, is it still necessary evidence? From the *East-Bibb Twiggs* case, we can see that the court ruled that decisions made by government agencies other than the Planning and Zoning Commission "shed little if any light upon the alleged discriminatory intent of the Commission" (*East-Bibb Twiggs Neighborhood v. Macon-Bibb Planning & Zoning Commission* 1989).

Intention to discriminate constitutes crucial evidence to win a case that involves equal protection or environmental justice claims, despite evidence that these harmful corporations and industries treat or consider different communities differently based on race, socioeconomic status, gender, etc. The lack of claim is mainly due to the hardship for the plaintiffs to prove all four of these requirements for discriminatory intentions. Furthermore, federal courts may also require or demand proof of a pattern of the operation having a racially biased background, preventing discrimination from being cut off from the beginning, as most landfill construction operations are relatively new. In these cases, federal courts made it difficult to prove discrimination, despite the disproportionate impact of greenhouse gas emissions, toxic waste disposal, and pollution on people of color. Since the process of proving discriminatory intent is exceedingly difficult, environmental justice cases have rarely had the opportunity to be heard in the Supreme Court.

These three cases have all set the same precedent regarding environmental justice cases: disproportionate impact does not constitute discrimination without proven intent or an established history of racially biased actions. The result is the perpetuation of environmental racism in communities with prevalent minority populations that have resulted through past discrimination and segregation, as seen in locations such as Cancer Alley. With these precedents, the start of a vicious cycle emerged.

What Has the Federal Response Been to This Issue?

The Supreme Court set a harmful precedent that was specifically detrimental to private citizens and litigants through *Alexander v. Sandoval* (2001), which prevented private petitioners from seeking relief through the federal court system and held that there was no private right to action under disparate impact regulations. This meant that private parties were unable to take action against recipients of federal funds who have discriminatory practices, including federal agencies such as Alabama's Department of Public Safety and the Environmental Protection Agency. Instead, federal courts have directed communities of color to federal agencies to challenge decisions that exacerbated their disproportionate environmental burdens. As a result of this federal

ruling, these parties have to rely on the federal agencies and, by extension, the government through Title VI to act on their behalf to fix the racial injustices of other federal agencies. By preventing the right to private action, the process for communities of color to receive adequate and thorough aid for the preservation of environmental justice or even to prevent themselves from being subject to racial disparities by federal agencies became exceedingly more difficult and lengthy through the ruling on *Alexander v. Sandoval*.

However, there is a significant issue with leaving these matters in the hands of federal agencies. According to the U.S. Commission on Civil Rights (2016), a study they conducted concluded that the Environmental Protection Agency (EPA), which is a federal agency, failed to effectively meet its environmental justice objectives, leaving many sensitive communities at risk. The Commission concluded that the EPA had never made any formal finding of discrimination or withdrawn funding because of civil rights violations. (U.S. Commission on Civil Rights 2016) Furthermore, according to Earthjustice (2016), a report from NBC and the Center for Public Integrity discovered that the EPA rejects or dismisses more than 90% of Title VI cases brought to them. Although there have been hundreds of Title VI complaints over the past 20 years, the EPA's Office of Civil Rights found that civil rights have not been violated in all of these instances. Many communities have filed complaints and have waited decades, never to receive a response. Those who have received responses have noted that the reaction to the growing environmental issues within the community has been too late to make a large effect or that the extent of the EPA's intervention, even after acknowledging the problem, was minimal. Relying on federal agencies like the EPA is ineffective, especially as a long-term solution, as communities of color continue to be disproportionately harmed by the environment, as none of their complaints are being heard or addressed. Even if the EPA did find concrete evidence of discrimination, the most they can do is withhold federal funds, meaning polluting facilities can continue to run and harm people of color as long as they have sufficient economic funds.

Additionally, Lombardi, Buford, and Greene (2015) state that after analyzing many complaints over at least two decades, the EPA has failed to enforce Title VI to its full extent. After analyzing hundreds of cases, they only found 13 complaints accepted for investigations, many of which remain incomplete today, the oldest originating in 1996. Having a case open for almost 20 years without resolution is simply unacceptable and displays the level of disregard for environmental justice by the EPA's Office of Civil Rights. With environmental cases that are actively harming communities of color, a wait that long means more chemicals mixing with the water, more air being polluted, and ultimately, more deaths. While Former Administrator Gina McCarthy gave a speech in 2015 boasting about the agency's promotion of environmental justice, she failed to mention the agency's Civil Rights Office and did not provide any statistics to back up her claims (Lombardi Buford and Greene 2015). In fact, over the past few decades, there have been several investigations that all reached the same conclusion that the EPA was failing to respond to Title VI claims. A Deloitte Consulting Report from 2011 concluded that the office moved extremely slowly to process complaints. They found that "[only] 6% of the 247 Title VI complaints have been accepted or dismissed within the Agency's 20-day time limit", highlighting how inefficient the EPA is in addressing and recognizing these concerns (Deloitte Consulting Report 2011 9). This is not just a more recent problem; it has stretched back for several decades, with the backlog of cases starting in 2001. Without proper action from the federal courts and the EPA, these communities have no option other than to keep filing complaints in the hope that one of them is eventually accepted. The Supreme Court's solution to this problem is not working to the extent necessary to combat environmental racism and is only further harming these people of color by no longer allowing them to raise their concerns and advocate for concrete change through the United States federal court system. Instead, they are being sent to the EPA Office of Civil Rights, which has had an inadequate response to many of these complaints and cases.

Without proper government intervention and action to recognize environmental law, these issues will persist and only negatively impact more communities of color. If federal courts do not consider the environmental factors of a case as important, they do not analyze the impact their decision will have on the environment and the future. Without looking at what communities these decisions will impact and what part of the

environment will be affected, the court will be much less likely to make decisions that are in favor of the environment. Environmental law needs to be its own category because these issues affect more than just our nation; they affect the globe.

However, this will likely not occur in the Roberts Court because, according to Johnson (2010), they are extremely hostile towards environmental justice cases, often ruling on them as “administrative law, statutory law, or constitutional law” (Johnson 2010 317) rather than considering environmental law its own category. Considering these cases as environmental law is important in combating climate change, global warming, and environmental racism, which are all prevalent issues that require acknowledgment. The Roberts Court’s tendency to resolve most environmental cases through “general doctrines of administrative law and statutory interpretation” (Johnson 2010 321) burdens those suffering from environmental racism who attempt to bring up their concerns, as there is no Supreme Court precedent that lower courts can rely on to rule in favor of those being discriminated against. After they studied fourteen environmental law cases, they observed that 10 of the 14 cases, or 71% of the cases, utilized statutory interpretation instead of considering constitutional law or other issues. Furthermore, “[s]eventy-one percent of the Court’s decisions reversed lower court decisions”, reinforcing the claim that “the Court’s selection of cases implied a skepticism of lower court rulings favorable to environmentalists” (Johnson 2010 325). Furthermore, the journal also states that “the court eroded environmental law through the use of (1) textualism; (2) importation of common law causation analysis into statutory schemes; and (3) the selective invocation of federalism principles to inform statutory interpretation” (Johnson 2010 325). All of these statistics show that the Roberts Court is using a variety of methods to eliminate environmental law cases, including the usage of statutory interpretation and other forms of law. As a result, it has become increasingly difficult for lawsuits about environmental concerns actually to rise through the federal court system, as Roberts Court seems to consider evidence of environmental disparities “merely incidental factual evidence” (Johnson 2010 322), refusing to consider it as its own category of law, and set precedents that would fight against climate change, and help suffering communities.

While it is difficult to classify the Roberts Court in an overall category as anti-environment or pro-environment, “there does seem to be a clear ‘pro-government’ trend” (Johnson 2010 332), where the court has ruled in favor of the federal, state, or local government in two-thirds of the analyzed environmental decisions. The Roberts Court seems to be more in favor of keeping the government’s power and control, even at the cost of the environment. However, there are still many environmental precedent trends that we can see. Johnson (2010) goes on to analyze a series of anti-environment and pro-environment decisions and states that “Looking beyond the numbers, the “anti-environment” decisions appear to be bigger losses for the environment than the “pro-environment” decisions are wins” (Johnson 2010 330). The article also highlights multiple anti-environment decisions from the Roberts Court, including *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council* (2009), which excluded discharged mining waste and several other categories of waste from being regulated under technology-based controls by the Clean Water Act. This precedent is detrimental because it undermined the EPA’s ability to regulate certain harmful forms of pollution, like mining runoff, which harms both the environment and those living around mining sites. *Winter v. NRDC* (2008) was another damaging decision where the Roberts Court weakened precedent that allowed lower courts to issue warnings and orders to require compliance with environmental laws. This weakened environmental law as a whole because it is now harder for courts to make companies and factories follow regulations, making the enforcement of environmental law more difficult. In *Burlington Northern & Santa Fe Railway Co. v. United States* (2009), the scope of liable parties under Superfund law decreased, and the funds available for Superfund cleanups declined as well. Superfund sites are polluted locations all across the United States, often landfills or mines that need a long-term response to clean up chemicals and contaminants. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 established these sites. There are approximately 1,336 Superfund sites on the National Priorities List in the US and its territories. This precedent is especially harmful to communities of color because they are the ones who typically live much closer to

Superfund sites. Most Superfund sites are “within one mile of federally funded housing” (Ross 2021), and a disproportionate amount of the families living in federally funded housing are people of color. According to a study done by the EPA, the population around Superfund sites is “more minority, low income, linguistically isolated” (EPA 2020 1). They also reported that 50% of those living near Superfund sites are minorities, which is extremely disproportionate when compared to the overall population demographics of the region (EPA 2020 1). Because of this precedent, it makes it much harder for companies to be held liable for the chemicals they spill into the water and soil as the scope of liable parties is decreased, and also makes it harder to help these communities because of the reduction in funds. Finally, one extremely detrimental precedent is the one set by *Exxon Shipping Co. v. Baker* (2008), where the court created limits for the amount of monetary compensation awarded for oil spill pollution. This decision certainly adds insult to injury. Not only do these communities of color lose their healthy lifestyles as oil spills go into groundwater, but they also are now no longer able to even gain financial compensation.

Often, the Court dismisses these cases or makes rulings based on alternative factors. The Court’s indifference and hostility towards environmental cases prevents environmental protection goals from being reached, “resulting in substantial losses in environmental quality and public health and welfare” (Johnson 2010 322). Consequently, it is highly unlikely that the current Roberts Court will choose to change or overturn precedents like *Alexander v. Sandoval* (2001) or reach any environmental goals without major reforms or changes to how they approach these cases. Increasing hostility from the federal courts on these environmental law cases displays a clear trend that they will not resolve these cases with the best interests of the environment and minorities living nearby in mind.

West Virginia v. Environmental Protection Agency (EPA) (2022) is another notable case that more recently told us the court’s stance on the issue of environmental regulation and climate change. This case started after nineteen states and several public power corporations sued the EPA for similar claims that the Clean Power Plan did not grant the EPA the power to devise overall emissions caps. The Supreme Court consolidated these cases into one, known as *West Virginia v. EPA*. This entire case resulted from the Trump Administration replacing the 2015 Clean Power Plan with the Affordable Clean Energy Rule (ACE), which limited the EPA’s power to establish guidelines for state carbon emissions. To provide some background on these two pieces of legislation, the Obama Administration introduced the 2015 Clean Power Plan, setting the first carbon emission limits on United States Power Plants, which was and still is a large source of pollution in our country. The Clean Power Plan was issued under the Clean Air Act, and it set workable standards that allow states to design their own solution to transition to more sustainable, cleaner energy sources. Enforceable carbon pollution limits would start in 2022 and slowly increase until they are in full effect in 2030. However, the ACE Rule replaced the Clean Power Plan and therefore limited establishing emissions guidelines down to restrictive carbon dioxide emissions from coal-fired power plants in states, severely limiting the power of the EPA to control overall carbon emissions from the U.S. Power sector. The U.S. Court of Appeals for the D.C. Circuit overruled the ACE Rule for lacking clear reasoning. The EPA then interpreted this to mean that the D.C. Appeals Circuit reinstated the 2015 Clean Power Plan to give the EPA the power to regulate state carbon emissions.

The precedent from this lawsuit introduced a new form of statutory interpretation known as the “Major Questions Doctrine.” The Major Questions Doctrine stated that a governmental agency had to show clear congressional authorization when claiming authority from a statute. The Major Questions Doctrine restricts the power of federal agencies and repeatedly diminishes the power of federal agencies like the EPA so states and companies can continue to pollute the atmosphere and harm communities of color. This doctrine also states that courts should assume that Congress does not delegate issues with major political or economic significance to executive agencies. In a 6 to 3 decision, the Supreme Court ruled that the EPA did not receive clear congressional authority to create state emissions caps and instead got authorization from the D.C. Appeals Circuit. The dissent, written by Justice Kagan, stated that the court’s intervention shows how the Supreme

Court is attempting to appoint itself as a decision-maker on environmental policy without “a clue” about climate change.

The effect of this precedent means that the EPA can no longer set emissions caps for states and can only regulate individual power plants and try to shift energy generation to low-emitting sources indirectly. This decision also makes it much harder for the EPA to issue any regulations on power plants to shift towards renewable energy and makes it much harder to curb global warming because they can no longer regulate around 25% of the US’s greenhouse gas emissions (Hurley and Volcovici 2022). This case displays how states and corporations try to slowly cut down on the EPA’s powers to regulate carbon emissions and help the environment. The precedent makes it more troublesome to control major sources of carbon emissions as the United States Congress is not exactly in agreement over issues on the climate. By making it harder to curb global warming and limit carbon emissions through the EPA, this precedent also harms communities of color. According to Clark, Millet, and Marshall (2014), the national average of nitrogen dioxide concentrations are 4.46 parts per billion higher for the non-white population than their white counterparts. Even after considering economic factors, nonwhites face more exposure to residential outdoor nitrogen dioxide air pollution than whites. This shows the clear disparate impact that these emissions have on communities of color. This means that the new Supreme Court ruling on *West Virginia v. EPA*, which no longer lets the EPA regulate greenhouse gas emissions as extensively, will lead to more communities of color being harmed through the disproportionate impact of these emissions. While predominantly white communities also face these emissions, the extent of their detriment is much lower when examined alongside communities of color. The Supreme Court is not taking action towards aiding environmental justice and instead limiting the power of the EPA and harming communities of color in expanding economic growth.

After considering all of these studies, cases, and data, it is clear that the federal courts’ response to this issue is dismissive, as they are ignoring these issues and instead pushing them down to ineffective federal agencies, like the Environmental Protection Agency’s Office of Civil Rights. Without beneficial federal court and agency jurisdiction being contributed, it is becoming increasingly difficult to take any action and for many communities of color to overcome environmental struggles. The federal response to societal implementations of environmental racism is inadequate in proportion to the enormity of the increasingly harmful issue.

Discussion

These case decisions form a pattern, one that establishes a vicious circle that the American judicial system cannot resolve unless the federal courts truly focus on the discrimination aspect of these environmental racism cases. The start of the cycle began with America’s long-standing but unsolved problem of racial discrimination and the difficulties that the federal courts have been adding to communities of color. The issue lies with most minority communities facing challenges posed by governments and developers that have built landfills, toxic waste disposal sites, and other dangerous facilities in these regions. These communities, in turn, have failed to find a viable solution despite numerous attempts, as they are “more likely to be poor and politically powerless” (Godsil 1991 399). Still, most of these minorities have decided to fight back by seeking judicial support, leading to numerous environmental justice cases. Due to the limitation established in *Washington v. Davis* (1976), most District and Circuit Court cases relating to environmental racism were shut down before even reaching the Supreme Court. Furthermore, it is almost impossible to prove discriminatory intention due to the ambiguity surrounding the extensive requirements for such a statement to appear reasonable to the court.

The four aforementioned requirements include not only proof of actual harm that communities of color receive but also evidence of the difference between the destruction a minority community receives and one that a white community receives, which is extremely hard to prove. Even worse, the policy established in the *Alexander v. Sandoval* (2001) decision banned all private parties’ rights to sue companies for disparate impact (*Alexander v. Sandoval* 2001). As a result, the accusations of such racial disparities were no longer

considered valid. Additionally, the interpretation of the history requirement was well-illustrated in *Arizona v. Navajo Nation* (2023). This was a case decided by the U.S. Supreme Court after the Navajo Nation sued the federal government in 2003 for breaching their trust obligation to provide enough water rights to support their way of life from the Colorado River System, which the Department of the Interior manages. In 2021, the United States Court of Appeals for the Ninth Circuit decided the case in the Navajo Nation's favor. The federal government and the intervenor states, including Arizona, Colorado, and Nevada, successfully requested a U.S. Supreme Court review, and a 5 to 4 decision reversed the case's outcome (*Arizona v. Navajo Nation* 2023). According to Justice Kavanaugh's opinion, the 1868 treaty creating the Navajo Reservation reserved the water necessary to fulfill that reservation's goals but did not call for the United States to take proactive measures to secure water for the Tribe (*Arizona v. Navajo Nation* 2023). The Navajo Nation case exemplifies how an interpretation of the history of the legislation in light of past precedents prevents Native Americans from being granted, in this case, enough protection under their rights. In this way, the court seems to rule in favor of the government regardless of the disparate impact each racial group is receiving.

Continuing with the cycle, all these difficulties that the federal courts added to the communities of color would most likely lead to the courts ruling in favor of the developers due to the lack of proof for the discriminatory intention that the plaintiffs have for the construction plans. Because federal court decisions are influential, the developers would use these decisions as precedents to justify their future actions, including building landfills near communities of color for racial reasons. What this will lead to is a deterioration of the situation, where more and more construction plans will appear to disproportionately affect people of color. This cycle has been continuing to happen in the past few decades, and it is, in fact, still working now, but is this all we can do? The answer is no.

With decisions like the aforementioned precedents, it is increasingly more difficult for these environmental racism and environmental justice cases to be resolved due to no solid governmental action. This means that future generations will go through the issues of climate change and the effects of global warming because these courts are pushing these responsibilities onto federal agencies instead of properly addressing these issues head-on. However, the youth have a chance to change that to ensure that we can stay on our planet. *Juliana v. United States* (2018) is an ongoing climate-related lawsuit filed by twenty-one youth plaintiffs, represented by a non-profit organization called Our Children's Trust, against the United States and several executive branch officials. The plaintiffs asserted that the government has knowingly violated their due process rights of life, liberty, and property as well as the government's duty to protect public grounds by encouraging and permitting the combustion of fossil fuels (*Juliana v. United States* 2018). While this lawsuit may not have been as successful as we expected since it has been going on for eight years now, it marked an important step in showing a collective voice. Although we discussed the restrictions that the federal courts have been putting on citizens, they do not prevent us from speaking about this issue. *Juliana v. United States* is a perfect example to show such an expression of passion. All these people, shown in this picture, are using their voices to attract federal courts' attention. The Supreme Court is indeed the highest court on this land, and it possesses lots of power, but that does not strip a citizen's power to raise their voice and advocate for their desires.

Conclusion

The United States Declaration of Independence, which first established the American nation, specifically states that life, liberty, and the pursuit of happiness are unalienable rights. The government cannot deprive any individual of these three fundamental rights. However, federal court rulings over the past decades have failed to display the preservation of these principles by indirectly perpetuating environmental discrimination on a national level. Through their lack of consideration for the disproportionate impact on various racial groups, numerous federal court cases such as *Washington v. Davis*, *East-Bibb Twiggs Neighborhood Association*, *Robert Moffett and Roscoe Ross v. Macon-Bibb Planning & Zoning Commission* and *Mullis Tree service, Village of*

Arlington Heights v. Metropolitan Housing Development Corporation, and *Alexander v. Sandoval* have established precedent for the challenge of proving discriminatory intent to be necessary to constitute an act of discrimination that is actionable. More recent cases, such as *West Virginia v. EPA* and *Arizona v. Navajo Nation*, have demonstrated how these precedents shape current environmental policies and regulations that continue a pattern of racial discrimination through disproportionate impact that has persisted for nearly half a century.

Climate change is an ongoing issue, but racism accompanies it with equal or greater significance. Although the federal courts focus on the environmental protection part of these cases, the majority overlooks the discriminatory aspect. The Court's response to this issue is no longer helping the residents of the United States, instead ignoring their voices and refusing to hear their complaints and cries for help. Federal courts determine how society will view situations akin to these as environmental justice cases increase. Since changing criteria is never easy, it would be challenging for the courts to take that first step, but a break in the vicious cycle is required to alleviate or even eliminate environmental racism, which should be what the courts need to focus on along with the global warming issue. Discriminatory intention can be hard to prove because denial can simply absolve people from the accusation. It is undoubtedly a challenge for federal courts to make the right and fair judgment for such cases, and that is why the four requirements mentioned above can be fair tools for jurisdictions related to environmental justice only if implemented effectively. However, they should not be the tools for federal courts to neglect the essence of the accusation, which is usually the discriminatory treatment that a community of color receives compared to a white community. Time should not be the only solution people rely on to solve racism, which is a large issue that requires both the people's and the government's willingness and wisdom. In this vicious cycle, the federal courts play a crucial role in preventing such issues from prevailing in modern society by setting values. In other words, if developers see cases like the ones previously mentioned, which set a precedent for federal courts to rule in their favor, they will assume that such behavior will not cause many problems for them or even consider them as appropriate moves to take. Although city development demands construction like landfills and factories, it should never be their excuse to implement such plans near minority communities solely due to their vulnerability.

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Author Contribution Statement

A.R., E.T., and J.Y. contributed to the research design and implementation, A.R., E.T., and J.Y. conducted research and analyzed the sources and results, A.R., E.T., and J.Y. collaborated in the writing of the document. All authors reviewed the manuscript.

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