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Report

# The Big Squeeze:

## How Biden's Environmental Justice Agenda Hurts the Economy and the Environment

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## Executive Summary

From its first week in office, the Biden administration has described “environmental justice” as one its top priorities. The environmental justice (EJ) movement began in the 1980s as an effort to make sure environmental rules were fairly enforced in poor and minority communities. But Biden’s EJ agenda goes far beyond that reasonable approach.

The administration asserts that certain communities are unfairly burdened by pollution and “on the frontlines of the climate crisis” based mostly on socioeconomic factors. In response, the White House has launched the “Justice40 Initiative,” a policy mandating that 40% of the benefits from climate and environmentally oriented programs must flow to these “EJ communities.”

The amount of spending that is subject to Biden’s 40% rule is enormous: For example, roughly half of the \$1.2 trillion Bipartisan Infrastructure Bill is earmarked for projects that are arguably environment- or climate-related.

In a series of sweeping executive orders, the White House describes its EJ agenda as an “all-of government” reform that will change the focus of virtually every federal agency. But details about how the program will be implemented—in particular, what constitutes a “benefit” and how to satisfy the 40% rule—remain vague. Nonetheless, it is possible to anticipate the following problems:

1. Biden’s EJ agenda diverts spending and administrative resources away from traditional environmental priorities—such as reducing air and water pollution and lowering greenhouse gas emissions—and directs them toward amorphous social goals.
2. The EJ agenda also makes government programs less focused and less effective across the board.
3. Ironically, the inefficiencies imposed by EJ policies will be particularly burdensome for environmental and infrastructure projects.

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# Introduction

On January 27, 2021, his seventh day in office, President Joseph Biden signed Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.”<sup>1</sup> The order committed his administration to an array of policies aimed at pushing the U.S. toward economy-wide, “net-zero” greenhouse gas emissions by 2050. The document also created a new guideline, known as the “Justice40 Initiative,” specifying that 40% of the benefits from climate and environmentally oriented programs must flow to specific disadvantaged communities known as “environmental justice communities.” Biden’s order states: “It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.”<sup>2</sup>

To help implement this agenda, the order created the White House Environmental Justice Advisory Council, consisting largely of representatives from community-based activist groups, and elevated an existing interagency working group to become the Environmental Justice Interagency Council, which includes more than a dozen Cabinet secretaries, along with other key administration officials. Together with seven additional executive orders<sup>3</sup> and related announcements, Biden’s EO 14008 represents a profound realignment of federal programs and spending priorities, all set in motion without congressional approval and with almost no public debate.

For most Americans, the general notion of “environmental justice” sounds reasonable. If communities are unfairly burdened with pollution due to discrimination, it seems appropriate for the government to intervene. Like other calls for “equity” and “fairness,” Biden’s environmental justice (EJ) agenda receives little pushback or scrutiny in the media. Yet the policies launched with EO 14008 require virtually all federal agencies to embrace a new set of priorities that reshuffle—and, in some cases, undermine—the goals that those agencies were established to pursue. Not surprisingly, these sweeping policies are already spreading confusion and inefficiency throughout the federal bureaucracy. Moreover, while they employ the language of environmentalism, Biden’s EJ policies attempt to replace traditional environmental objectives—such as saving habitats or reducing greenhouse gas emissions—with a much broader set of progressive social goals.

The administration’s EJ initiatives build on a philosophical and legal movement that dates back to the 1980s. The movement’s pioneers—positing that minority communities were more likely to be chosen as sites for toxic-waste repositories and subjected to higher levels of air and water pollution—developed the concept of environmental racism<sup>4</sup> to explain the disparity. These arguments informed President Clinton’s 1994 Executive Order 12898,<sup>5</sup> and they have since been marshaled in efforts to implement EJ principles at the state level in roughly two dozen states.<sup>6</sup>

But the Biden administration’s policies go significantly further, and they have less basis in the existing scholarly literature. While there is at least some scientific research to suggest that pollution disproportionately affects minorities and the poor, the White House’s new “climate justice” agenda is premised on the claim that these same communities are invariably “on the frontlines of climate change”—which can be supported only by tendentious interpretations of spotty evidence.

In addition to adopting a broader conception of the EJ mission, the current administration also has vastly more money to spend on these initiatives. Under Biden, liberals in Congress have had spectacular success in passing major spending bills. Roughly half of the \$1.2 trillion Bipartisan Infrastructure Bill is earmarked for projects that are arguably environment- or climate-related.<sup>7</sup> At the time the Inflation Reduction Act (IRA) passed, the Congressional Budget Office estimated that bill’s climate and energy provisions would cost \$392 billion over 10 years. But a recent report



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from Goldman Sachs estimates that IRA's various green subsidies will cost as much as \$1.2 trillion over that period, due to uncapped tax credits for electric vehicles, green energy manufacturing, and other green technologies.<sup>8</sup> Assuming that this and future administrations execute these policies in accordance with Justice40 guidelines, that would mean that hundreds of billions in future federal spending will be subject to the 40% rule.

Biden's EJ policies have generally rolled out more slowly than the administration initially promised. But as his presidency enters the final third of its current term, several EJ milestones have been passed: In May 2021, the White House Environmental Justice Advisory Council<sup>9</sup> (WHEJAC) issued its initial recommendations,<sup>10</sup> which range from pragmatic (reducing urban air pollution; replacing lead pipes for drinking water) to wildly unrealistic ("100% renewable electricity by 2030"). The following year, the White House launched a Climate and Economic Justice Screening Tool (CEJST),<sup>11</sup> which designates 37% of U.S. census tracts as "disadvantaged communities." The White House also promised a periodically updated Environmental Justice Scorecard to keep track of how federal agencies are complying with the Justice40 mandates. After several delays, the EJ Scorecard<sup>12</sup> was unveiled on April 21, 2023, alongside a new Executive Order titled "Revitalizing Our Nation's Commitment to Environmental Justice for All."<sup>13</sup> That most recent order established a new White House Office of Environmental Justice and placed further demands on federal agencies to meet EJ goals. "Environmental justice will be the mission of the entire government woven directly into how we work with state, local, tribal and territorial governments," the president said.<sup>14</sup>

According to the White House, the Justice40 Initiative "seeks to address the intersectionality of underinvestment, environmental injustice, and the climate crisis."<sup>15</sup> But crucial details about this revolutionary, government-wide policy shift remain vague. For example, the executive order mandates that 40% of the "benefits" of federal environmental programs must flow to designated communities. But the concept of benefits is only loosely defined. In one major sticking point, would nationwide reductions in greenhouse gas emissions satisfy the requirement? Or would EJ rules imply that 40% of the money allocated to mitigating pollution should be spent *within* the designated districts? The latest executive order and the recently unveiled EJ Scorecard aim to hold federal agencies accountable for complying with the 40% requirement. But the metrics used to evaluate the agencies' performance remain fuzzy, as do the mechanisms by which compliance will be enforced.

Judging by its executive orders and public statements, the White House envisions environmental justice as a sweeping reform that will change the focus of virtually every federal agency. As of today, however, Biden's EJ agenda exists mostly in three forms: concrete spending plans included in the Inflation Reduction Act and Bipartisan Infrastructure Bill; a set of general instructions to federal agencies laid out in a series of executive orders; and various notional goals articulated by White House staffers and EJ advisors. Only a few of the administration's EJ initiatives currently exist as ongoing programs with measurable results.

One policy area that is changing rapidly is EPA's program awarding grants to not-for-profit community groups for local environmental initiatives such as air-quality monitoring and green jobs training. That process has been put on steroids. EPA's budget has quadrupled since fiscal year 2021,<sup>16</sup> and the eventual sum earmarked for nonprofits is enormous. The Inflation Reduction Act<sup>17</sup> alone sets aside \$3 billion for "environmental and climate justice block grants." What standards are being used to select these grassroots organizations? What sorts of oversight will be in place to guard against fraud, abuse, or simply the inefficient use of funds? Republicans in Congress recently raised concerns that EPA grants programs might become a "slush fund for far-left organizations."<sup>18</sup>

It is true that some of Biden's EJ policies will bring tangible benefits to poor and neglected communities. For example, the administration frequently cites programs to cap toxic leaks from abandoned mines in rural and tribal regions and to replace lead drinking-water pipes in communities, including Flint, Michigan. But those and similar programs could easily exist



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without sweeping executive orders—in fact, they do. The Bipartisan Infrastructure Bill allocates \$50 billion to upgrading drinking-water systems around the U.S., including \$15 billion dedicated to replacing lead pipes.<sup>19</sup> That bill also earmarks \$11 billion for cleaning up abandoned mines.<sup>20</sup> Those programs can move forward as Congress has mandated, whether or not they are described as part of an EJ agenda.

If other similar problems exist, they, too, can be addressed by Congress. In short, one can easily accept that certain communities have suffered disproportionate environmental harms without concluding that the only solution is to reorganize the entire government around a poorly defined goal of “environmental equity.”

At the same time, advocates for an across-the-board EJ agenda tend to discount the burdens that these policies will impose. In addition to the costs that it places on taxpayers, the EJ project threatens to damage the economic prospects of poor communities and undermine some key environmental goals that EJ supporters claim to support. Overall, Biden’s EJ agenda will potentially have negative impacts that far exceed any modest benefits. Even as many details of the policy remain loosely defined, it is possible to anticipate the following problems:

- Biden’s EJ agenda diverts spending and administrative resources away from straightforward environmental goals, such as reducing air and water pollution and lowering greenhouse gas emissions. Under the mandate that 40% of program “benefits” must specifically help marginalized communities, agencies will be forced to prioritize programs in those districts even if the favored projects are only loosely connected with traditional environmental priorities.
- The EJ agenda also makes government programs less focused and less effective across the board. Even the Department of Defense and other agencies involved in national security are now required to “embed environmental justice into all aspects of their work.” This process requires diverting staff, resources, and executive focus away from critical missions and toward “stakeholder consultation,” “report[ing] data on the benefits directed to disadvantaged communities,” and similar tasks.<sup>21</sup>
- Ironically, the inefficiencies imposed by EJ policies will be particularly burdensome for environmental and infrastructure projects. New recordkeeping requirements and greater public engagement are adding layers of bureaucracy and red tape to existing programs. Obtaining permits for infrastructure projects will become even more time-consuming. Moreover, EJ policies restrict where projects can be located and include myriad cost-boosting demands, such as incentives that favor union workers. These provisions will make clean energy and other projects more expensive and delay their completion. At a time when this administration insists that the world is in a “climate emergency,” its own EJ policies will slow down progress toward meeting emissions objectives. EJ policies will also raise new hurdles to private industry, restricting job opportunities, particularly in poor communities.

In assessing this agenda as a whole, it is important to note that today’s EJ movement has two wings. On one side is what we might call “practical EJ.” This group focuses on tangible disparities in environmental harm: higher levels of particulate pollution in poor neighborhoods, say, or pesticide exposure among low-income farmworkers. They tend to favor pragmatic solutions. The other group could be characterized as “extreme EJ.” These activists have their roots in an older far-left worldview, one that aims for radical social change and regards the traditional environmental movement with skepticism. These activists see pollution and climate change as manifestations of a racist, exploitative society. In its more extreme form, the EJ movement embodies a set of progressive beliefs, including the claim that “systemic racism” continues to shape all aspects of American society, that the “lived experiences” of marginalized people are a better guide to policy than scientific data, and that capitalism is at the root of most social and environmental problems. As a result, they tend to be less interested in incremental environmental improvements. Instead,



they aim to fundamentally change our underlying political and economic systems. These changes would include shutting down what they call the “extractive economy,” and launching a “just transition”<sup>22</sup> to a kind of postcapitalist society in which energy and food are produced locally and businesses are communally owned.

The two wings of the movement overlap considerably, and both are part of Biden’s EJ coalition. While the most extreme forms of EJ are fully embraced by only the most progressive flank of Biden’s coalition, his EJ policies give these advocates for radical change more power both inside and outside the government, including on WHEJAC. Through its EJ grant program, the administration is also in the process of handing out billions in funding that is likely to go to community nonprofits involved in political advocacy, in addition to local environmental projects. Most Americans support broad environmental goals.<sup>23</sup> But under the anodyne banner of “environmental justice,” some radical activists hope to remake U.S. society along a collectivist model that few Americans support. Nonetheless, the Biden administration has invited many of these activists to play a central role in shaping U.S. policy.

This report will outline the history and philosophy of the EJ movement in both its practical and extreme forms. It will document the high costs and risks of organizing U.S. environmental, energy, and infrastructure policies on the EJ model. And it will argue that environmental and climate issues are best addressed through pragmatic, results-oriented policies, not a vague and politically driven EJ framework.

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# The Birth of a New Environmental Paradigm

The environmental justice movement first came to national attention in Warren County, North Carolina, in 1982. State officials, grappling with the cleanup of PCB-laden soils, had chosen the poor, black-majority district as the location for a toxic-waste landfill. NAACP and other civil rights groups joined local residents in protesting the facility. Over a period of six weeks, more than 500 people were arrested trying to stop trucks from unloading their materials at the site.<sup>24</sup>

The protests didn’t stop the landfill, but they helped bring the concept of “environmental racism” into mainstream discourse. Activists, academics, and policymakers began taking seriously the claim that the impact of toxic wastes, air pollution, and other environmental harms falls disproportionately on poor, minority communities. The Warren County activists’ immediate claims were vindicated when state engineers later determined that the landfill threatened to contaminate groundwater and would itself need to be remediated.<sup>25</sup>

More broadly, Warren County’s travails with toxic waste came to be seen as paradigmatic. The protests spurred a wave of studies examining the relationship between the siting of toxic-waste facilities and the racial and socioeconomic makeup of the surrounding communities. In 1983, in response to a request by Walter E. Fauntroy, a black pastor who was Washington, DC’s nonvoting delegate to the House of Representatives, the General Accounting Office studied the demographics of the areas surrounding four Southern toxic-waste sites, finding that blacks made up the majority of the population near three of the four sites studied.<sup>26</sup> This was followed by a national study from the United Church of Christ’s Commission for Racial Justice, “Toxic Wastes and Race in the United States,” which found, based on zip codes, significantly higher percentages of minority residents in communities with commercial hazardous-waste facilities.<sup>27</sup>



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Another milestone was sociologist Robert D. Bullard's 1990 publication of *Dumping in Dixie: Race, Class, and Environmental Quality*, which studied the overrepresentation of environmental hazards in minority communities.<sup>28</sup> Considered the “father of environmental justice,” Bullard has published dozens of books on the topic and won many awards for his activism.<sup>29</sup> He is a member of WHEJAC. In 2021, he told Houston Public Media that he hopes that Biden's policies “do not just make environmental justice a footnote, but make it a headline.”<sup>30</sup>

In response to concerns about environmental inequities, President George H. W. Bush established the Environmental Equity Working Group in 1992. Two years later, President Bill Clinton issued Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which required every federal agency to “make achieving environmental justice part of its mission” by promoting more equitable enforcement of statutes, improving public participation, and conducting research.<sup>31</sup>

Studies over the past two decades have produced a more nuanced picture of the relationship between poverty, race, and pollution. But on the whole, they confirm that levels of pollution are higher in disadvantaged communities. For example, one 2018 study looked at fine-particulate pollution and found that poor people were more exposed in general: “Blacks, specifically, had 1.54 times higher burden than did the overall population.”<sup>32</sup> But the causes for these patterns are less well understood.

In a 2019 paper, economists from Georgia State University, the University of Kentucky, and Duke University reviewed a wide swath of EJ research examining possible causal mechanisms. The authors identified four:<sup>33</sup>

- “Disproportionate siting on the firm side”: Firms decide to site their noxious activity in poor/minority neighborhoods from a disregard or malevolence toward the group, a desire for inexpensive land or to be near low-wage laborers or transportation networks that are also characteristic of these neighborhoods, or because they are steered there through government incentives.
- “‘Coming to the nuisance’ on the household side”: Lower-income households can't afford housing in cleaner environments and end up near polluted sites. Conversely, when such sites are cleaned up, housing prices rise, leading to so-called environmental gentrification.
- “Market-like coordination of the two”: This model assumes a process of Coasean bargaining<sup>34</sup> between firms and disadvantaged communities, in which residents are willing to put up with some amount of pollution and not assert environmental rights—for example, the right to clean air—in return for compensation from the polluter, in the form of “cash transfers, . . . local jobs, investments in parks and community centers, and so forth.”
- “Discriminatory politics and/or enforcement”: The authors cite a number of studies showing that government action against polluters is most strongly associated with the “political power of local communities” but not necessarily with income or race.

The authors conclude, in other words, that the cause of disparities in pollution exposure is multivariate. “Which came first,” the authors ask, “the siting of facilities in a poor, non-white neighborhood, or the sorting of such households near pollution? . . . [T]his problem has proven difficult to unscramble.” Simplistic policy solutions based on preconceived notions of blame for environmental problems are somewhat beside the point. Assuming that antidiscrimination laws are being enforced, racialized explanations—whether involving individual bias or systemic racism—might be empowering for activists, but they do little to address the underlying problems.



A more straightforward approach is to track pollution levels more closely, and then focus enforcement and remediation on the areas at highest risk. This is an approach that some states and cities have used to detect high levels of lead exposure among children.<sup>35</sup> One such project in New York City's Williamsburg neighborhood, for example, identified lead hot spots affecting the city's Hasidic Jewish community, among others.<sup>36</sup> If the EJ paradigm is correct, such monitoring will detect higher pollution levels in poor and minority communities, and those problems can be promptly addressed. If the relationship between pollution and population distribution is more nuanced, a monitoring-based approach will allow scarce remediation resources to be targeted more accurately. It is not clear that most EJ activists would endorse this approach, however. As we will see below, many activists see environmental funding as a form of economic and political empowerment for their communities; reducing levels of specific pollutants is only one among many goals.

A 1998 book by Brookings Institution senior fellow Christopher H. Foreman, *The Promise and Peril of Environmental Justice*, offered a compelling case, from a mainstream liberal perspective, that "environmental justice" may be more harmful than helpful to community goals. Foreman brings a unique perspective to the issue. As a black Harvard Ph.D. specializing in public health, Foreman is sympathetic to the goal of protecting health in minority communities. He observes that, for many activists, EJ claims "are mostly about accountability and political power rather than the more technical issue of environmental risks facing communities."<sup>37</sup> "Empirical support for claims of disproportionate pollution impacts and discriminatory regulatory enforcement is actually much weaker than environmental justice advocates usually admit,"<sup>38</sup> he writes. As a result, Foreman concludes: "Environmental justice advocacy probably directs community attention away from those problems posing the greatest risks and may therefore have the ironic effect of undermining public health in precisely the communities it endeavors to help."<sup>39</sup>

Twenty-five years later, Foreman's analysis still rings true. While the EJ literature includes many examples of rigorous research, many of the movement's leading activists tend to focus more on compelling narratives of environmental victimization. These narratives endure even when their factual foundations are shaky. For example, discussions of the impact of highway construction on minority communities invariably mention New York's "Power Broker," Robert Moses. In a 2020 interview with Democracy Now!, Congresswoman Alexandria Ocasio-Cortez described the Cross Bronx Expressway as "a notorious project of racism by Robert Moses."<sup>40</sup> Transportation Secretary Pete Buttigieg described the bridges on Long Island parkways designed by Moses as being too low to accommodate buses "carrying mostly black and Puerto Rican kids to a beach," which "obviously reflects racism that went into those design choices."<sup>41</sup>

Yet both stories about New York's highways are myths. The population of the South Bronx was two-thirds non-Hispanic white in 1950, just before Moses began work on the Cross Bronx Expressway;<sup>42</sup> and there were bus and other public transportation routes to Jones Beach and other Moses-built beaches.<sup>43</sup> Other urban highway design choices, such as Interstate 375 in Detroit, may have been influenced by racist decision-making;<sup>44</sup> but the fact that leaders continue to cite environmental racism where none existed shows how compelling the narrative remains. Both stories reinforce the moral dimension of the EJ paradigm: the claim that pollution exposure isn't merely an artifact of living in a poor neighborhood but a "targeted," deliberate, racist imposition.<sup>45</sup>

After Clinton's Executive Order 12898, federal EJ policy initially leaned toward the practical side, focusing on cases where discriminatory policies led to the siting of pollution sources in minority communities or on lax enforcement of environmental rules. This commonsense approach to EJ had bipartisan support. But the policy shifted during Clinton's second term, when EPA adopted a new rule applying a "disparate impact" standard to the environmental permitting process. As *Reason* magazine stated in 1998, under the previous standard, in order to prove that a permit had been granted in violation of federal civil rights law, litigants would have to show that the decision to locate a facility in a minority community was done deliberately and with "discriminatory intent." Now, it was enough to show that a facility would have a "disparate impact" on minorities.



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As *Reason* pointed out, the rule gave “fringe activist groups a potential veto over any future or existing industrial future or existing industrial facility that needs federal permitting. ‘All it takes is a postcard,’” one critic of the policy said.<sup>46</sup>

The EPA move empowered activist groups to oppose a host of projects on EJ grounds, including some that might have provided jobs and opportunity—with minimal environmental costs—in minority communities. The *Reason* report documented how a proposed chemical plant in impoverished Romeville, Louisiana—one that met all emissions requirements and promised to hire local workers—ran afoul of EPA’s new rule. “The EPA has blocked Shintech from building its plant in poor and black Romeville because Romeville is ... poor and black,” the magazine concluded.<sup>47</sup>

Over the next two decades, advocates for a more radical EJ approach gained ground ideologically, especially at the grassroots. Boosted by the Occupy Wall Street movement and further elevated during Bernie Sanders’s presidential campaigns, progressive ideas gained traction through the aughts and teens. At the same time, concerns about climate change were growing. Many left-leaning activists—including Swedish climate activist Greta Thunberg<sup>48</sup> and Canadian writer Naomi Klein<sup>49</sup>—argued that capitalism and economic growth were the main culprits. Grassroots activists wove those threads together, launching regional and national groups that combined calls for tackling climate and environmental issues with demands for social and economic “justice.” These groups included Texas Environmental Justice Advocacy Services (or T.E.J.A.S.), the Just Transition Alliance, the Climate Justice Alliance, and many more. Many of these organizations combine projects fighting local pollution with expansive progressive goals. In their literature, the term “environmental justice” serves to describe a much broader agenda. As the Brookings Institution’s Foreman noted, the EJ paradigm “provides a rubric under which to reiterate familiar economic redistributive claims and to propose new avenues of redress.”<sup>50</sup> The Climate Justice Alliance, for example, describes its mission as working for “regenerative economic solutions and ecological justice—under a framework that challenges capitalism and both white supremacy and hetero-patriarchy.”<sup>51</sup> Among that group’s top priorities is the fight against what opponents call “Cop City,” a planned Atlanta, Georgia, law-enforcement training center that became a magnet for Antifa and other violent, far-left protesters in 2023.<sup>52</sup>

When it came time to seek advice on implementing its EJ policy, the Biden administration reached out to this network of established organizations. WHEJAC’s list of members reads like a Who’s Who of longtime EJ activists, including leaders of the three groups mentioned above.<sup>53</sup> The committee includes an admirable diversity of ethnic, tribal, and socioeconomic backgrounds, and many of its members are highly credentialed leaders in the field. But the White House seemingly made no attempt to seek ideological diversity in recruiting advisors: the group includes no economists, no members of mainstream labor organizations, no for-profit business leaders, and certainly no skeptics of EJ policies in general.

Despite this outreach, not all the Biden administration’s moves have pleased the EJ activist community. One of the White House’s thorniest problems has been defining which Americans—and which communities—qualify as “disadvantaged.” While EJ activists have long focused on race as the paradigmatic focus of environmental injustice, the administration’s CEJST<sup>54</sup> took a non-race-based approach. (The decision to avoid using race as a CEJST metric was likely made in expectation that the Supreme Court would overturn affirmative action in the *Students for Fair Admissions* case, which it did in June 2023.<sup>55</sup> While that case concerned college admissions, legal experts believe that the ruling will make other race-based policies more vulnerable to legal challenges.)<sup>56</sup>

The screening tool—which was finally released in February 2022 and revised in November of that year—applies dozens of criteria to each of the country’s 74,000-plus census tracts (as delineated in the 2010 census) to determine whether a tract qualifies as disadvantaged.<sup>57</sup> These include proximity to hazardous-waste facilities; exposure to airborne particulates; traffic volume; income and education levels; rates of asthma, diabetes, and heart disease; and whether a community



appeared on “redlining” maps from the 1930s. The tool puts significant portions of most U.S. cities in the disadvantaged category, as well huge swaths of rural America, including most of Oregon and West Virginia. (Federally recognized tribal lands are automatically designated disadvantaged.) In all, 37% of census tracts and 33.2% of residents—109 million Americans in all—fall under the screening tool’s “disadvantaged” banner.<sup>58</sup>

According to an analysis by the climate-advocacy site *Grist*, CEJST metrics do function as a rough proxy for race: the higher the percentage of nonwhite residents in a tract, the more likely it is to be identified as disadvantaged.<sup>59</sup> Nonetheless, many EJ activists were displeased that the screening tool does not focus explicitly on race. Movement icon Bullard told the *New York Times*: “When you look at the most powerful predictor of where the most industrial pollution is, race is the most potent predictor... Not income, not property values, but race. If you’re leaving race out, how are you going to fix this?”<sup>60</sup> Bullard and others worry about the racial composition of the designated tracts, as detailed by *Grist*: “While tracts with a higher percentage of nonwhite residents are more likely to be flagged by the tool, the system also flags about 3,500 tracts where 20 percent or fewer residents identify as non-white. Likewise, the tool leaves out more than 2,200 tracts where 80 percent or more of the population identify as non-white.”<sup>61</sup>

The decision to exclude race from the screening tool dismayed members of WHEJAC. After reviewing a prepublication draft of the report, 10 members of the group wrote to the White House, asking, “Will this skew results away from, for example, African Americans?” “We need to get assurances,” WHEJAC member Elizabeth Yeampierre, cochair of the Climate Justice Alliance in New York, told a *Greenwire* reporter: “We continued to have concerns about the lack of transparency. Our communities have to be more than poster children to an agenda.”<sup>62</sup>

In April 2023, the administration released the first phase of the Environmental Justice Scorecard, presenting results from 24 agencies—which range from heavy hitters such as EPA and the Departments of Agriculture and Transportation to small-budget entities, including the Denali Commission and the Appalachian Regional Commission. The Scorecard is intended “to provide transparency for the public, and to increase accountability for federal agencies.”<sup>63</sup> In truth, it provides, at best, a fuzzy picture of how EJ priorities are affecting various agencies’ programs. The agencies’ reports included a mix of tangible metrics, such as budget numbers, and amorphous jargon. If it is true that this administration is putting environmental justice “at the center of the federal government’s work,” as the White House said in 2022,<sup>64</sup> it is high time that policy analysts, members of Congress, and the public take a harder look at what that means in practice.

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## The Case Against Environmental Justice Policies

The philosophical weakness of the EJ cause is not obvious at first. As noted above, there is legitimate evidence that poor and minority groups are exposed to higher levels of many pollutants.<sup>65</sup> The movement’s initial focus—ensuring that pollution regulations are enforced as aggressively in minority communities as they are in mostly white regions—was straightforward and in keeping with American legal tradition: when it comes to laws regarding pollution, all citizens should be treated equally.

Over the decades, however, the focus of the EJ movement evolved. The evolution can be seen clearly in EPA’s adoption, in the late 1990s, of a “disparate impact” standard for challenging new projects, described above. The rule meshed with a growing sense among EJ advocates that all pollution exposure in minority communities should be presumed to be the result of racism. Under this



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paradigm, it isn't necessary to look as closely at pollution levels or health impacts, or to weigh the complex factors that contribute to pollution exposure. Pollution is simply defined as a *form* of racism. And—since racism is ubiquitous in American society, as this view maintains—we can assume that, as a rule, minorities suffer unfair exposure to pollution. Therefore, the modern EJ framework concludes, minority communities are entitled to targeted benefits as a matter of course.

Biden's EJ policies take this worldview a step further, in claiming that certain communities are “on the front lines of climate change” and are therefore entitled to special programs and funding meant to address that claimed disparity. But unlike the earlier era of EJ policies, which had some scientific backing, these claims have little empirical support.

Climate activists make a reasonable claim that some of the world's poorest people—residents of low-lying Bangladesh, or farmers in sub-Saharan Africa—are more vulnerable to rising temperatures and sea levels. The same case might be made for Alaska's tribal populations. But extrapolating similar claims to America's poor and minority communities in general remains mostly conjecture. These arguments also typically involve generous cherry-picking of examples. For example, activists often point out that many of Houston's minority neighborhoods are built on low-lying terrain that is more vulnerable to flooding.<sup>66</sup> They are less likely to mention that some of America's most expensive real estate—including estates in the Hamptons, Florida condos, and Malibu beach houses—also sits in potential flood zones.

Only a handful of studies have examined how those same communities might be affected by climate change. A 2021 EPA study looked at “social vulnerability” in the event of a 2°C increase in global temperature. It found that, on average, minorities are less likely than nonminorities to suffer property damage from either inland or coastal flooding. The most dramatic disparity broken out in the report's executive summary was merely that “minorities are 41% more likely than nonminorities to currently live in areas with the highest projected increases in traffic delays from high-tide flooding.”<sup>67</sup>

In truth, much talk of “climate impacts” today is a mix of speculative long-range predictions and present-day exaggeration intended to rally support for climate-friendly policies. While the media and green activists—and even some scientists—tend to blame all hurricanes, tornadoes, wildfires, and similar phenomena on climate change, the evidence connecting today's extreme weather events to global warming remains in contention.<sup>68</sup>

There is reason to believe that continued warming will lead to bigger storms in the future, and it may be contributing to heavier rainfall events today. But tornadoes, wildfires, and hurricanes caused havoc long before today's focus on climate. People living in substandard housing or in former wetlands have always been at greater risk from tornadoes or flooding. The urban poor living without air conditioning have always been at risk from heat waves. These are principally problems of poverty or poor development planning. Extreme weather events may worsen over coming decades; but for the past century, deaths from weather disasters have actually fallen dramatically.<sup>69</sup>

Predictably, the Biden administration treats the claim of climate vulnerability as a foundational truth, one that doesn't require scientific support or nuanced policy discussions about how best to address the problem. Prior to issuing Executive Order 14008, the administration held no public meetings on the issue. It empaneled no fact-finding commission. It shared no research identifying the areas where pollution can be clearly correlated with racial or other forms of bias or determining the most effective solutions to those inequities. Biden's EO 14008 and subsequent EJ policies simply take the foundational claims of the EJ movement as axiomatic—and have made them the foundation not only for policies related to air and water pollution, but also for climate policy. As a result, the administration's EJ agenda is less scientifically based and more a leap of green faith.



The lack of a serious effort to back up these claims is not surprising because EJ activists typically do not focus on highly technical climate predictions or debates over energy infrastructure; they tend to see warming in political, rather than scientific, terms. Many describe climate change less as a global atmospheric phenomenon and more as a form of economic exploitation. Yeampierre, cochair of the Climate Justice Alliance, expresses this view forthrightly: “Climate change is the result of a legacy of extraction, of colonialism, of slavery,” she told *Yale Environment 360*.<sup>70</sup> Under this framework, almost any form of economic inequity or social hardship can be redefined as an impact of climate change.

In short, the EJ movement has evolved from one that sought to protect minority communities from environmental discrimination into one that asserts that the government must discriminate in favor of these communities on the basis of vague, unsubstantiated claims. As Christopher Foreman noted in the 1990s: “A major reason why one simply cannot accept advocacy claims of risk at face value is that they are often anchored, ultimately, not in the dangers posed by a site or substance ostensibly at issue, but rather in a desire for transformed power relationships to be achieved on behalf of politically energized and engaged communities.”<sup>71</sup>

It is important to acknowledge that these energized and engaged communities—and the groups that advocate for them—have achieved real victories in improving environmental conditions. Many issues that activists have raised—from water quality in Flint, Michigan, to chemical exposure among farmworkers—deserve attention. At the same time, Foreman recognized that the EJ movement could effectively harness environmental issues to achieve what activists believe are even more important objectives: gaining political power and resources for their communities.<sup>72</sup> It is hard to fault activist groups for using any tool available to help their communities. But it is up to policymakers to develop programs that are based on concrete data and aim for measurable results. The modern EJ paradigm, especially in its extreme form, makes that increasingly difficult.

In reality, pollution levels and racial discrimination have both been significantly reduced since the early days of the EJ movement. According to EPA, between 1970 and 2020, the combined emissions of six key air pollutants (fine and coarse particulates, sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, and lead) have fallen by 78%.<sup>73</sup> Meanwhile, the assertion that poor and minority communities are uniquely exposed to climate risks remains poorly supported. Nonetheless, the Biden administration is attempting to base the nation’s entire environmental and infrastructure policy on the claim that pollution and climate impacts are severe and that both must be fundamentally understood as examples of racism and injustice.

As we’ve seen, the EJ paradigm is a flawed foundation for environmental policy. But the problems with the EJ agenda are not just ideological. They also introduce a host of pragmatic problems—greater costs, delays, and bureaucratic hurdles—that interfere with the smooth functioning of both government and the private sector. The policies threaten to be especially harmful in four main areas.

### **Justice40 shifts resources away from traditional environmental goals.**

Since the 1960s, U.S. environmental policy has focused on clear-cut goals: preserving open space and habitat; reducing pollution (for the benefit of both humans and wildlife); and—especially in recent decades—cutting the greenhouse gas emissions that contribute to climate change. In other words, environmental policies centered on the environment. But the modern environmental justice movement—and this administration’s EJ policies—broaden that agenda to include a sweeping array of social and economic priorities. President Biden’s Executive Order 14008 states:

To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well-paying union jobs, turning disadvantaged communities—historically marginalized and



overburdened—into healthy, thriving communities.... It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.<sup>74</sup>

The executive order makes clear that securing clean air, clean water, and lowering greenhouse gas emissions are not the administration's only—and perhaps not even its primary—goals. Instead, the White House says that it intends to use these programs as tools to bolster unions, build “healthy, thriving communities,” and fix problems with housing, transportation, and health care. It is not the purpose of this report to argue that those social welfare goals are illegitimate. But the Biden EJ plan redefines social problems as examples of environmental injustice and maintains, in turn, that equitable environmental programs will simultaneously address poverty, housing shortages, and other social ills. In other words, the plan asserts—without evidence—that a single policy can solve both environmental and social problems.

That claim, in turn, rests on a large, but only vaguely articulated, assumption: that costly programs to address pollution and climate change will also spur a social and economic revival in marginalized communities. John Podesta, longtime advisor to Presidents Clinton and Obama, serves as this administration's Senior Advisor to the President for Clean Energy Innovation and Implementation. After passage of the Inflation Reduction Act, his team produced a report titled *Building a Clean Energy Economy*.<sup>75</sup> In a cover letter to that report, Podesta writes that IRA's goal is to “create good-paying, high-quality jobs and shared economic growth,” adding that “Congress and President Biden designed these programs to benefit working families and parts of the United States that are too often overlooked and underserved.”<sup>76</sup>

In fact, the economic benefits of transitioning from a fossil-fuel-based energy system to one that relies mostly on clean energy are very much in dispute. California, Massachusetts, and some other states making aggressive transitions to renewable energy<sup>77</sup> also have some of the country's highest electricity prices,<sup>78</sup> creating burdens on businesses and consumers. (Over the past three years, California has lost 500,000 residents as its citizens leave for other, less expensive, states.)<sup>79</sup>

President Biden maintains that phasing out fossil-fuel vehicles in favor of EVs will generate “one million new jobs in the American automobile industry.”<sup>80</sup> Industry analysts disagree. EVs contain fewer parts and take less labor to build than internal combustion vehicles. One study suggests that, globally, some 80,000 jobs in auto manufacturing and supply chains have already been lost in the transition to EVs.<sup>81</sup> Another study predicts that the switch to EVs could cost the U.S. 75,000 automotive jobs by 2030.<sup>82</sup>

In short, claims that the administration's policies will simultaneously boost economic opportunities while slashing emissions are far from proven. The “Clean Energy Economy” that the White House touts will bring an unpredictable mix of costs and benefits, with no guarantees that they will revitalize poor and minority neighborhoods. If the predicted benefits from clean energy investments don't naturally flow to the designated communities, future administrations will be pressed to enforce EO 14008's 40% commitment more aggressively. The IRA and Bipartisan Infrastructure Bill already have prevailing wage and domestic content incentives intended to raise the wages of U.S. blue-collar workers. Biden's executive orders also instruct agencies to locate more projects within EJ communities and to take similar steps to ensure that any economic windfalls reach marginalized groups. In every federal environmental or infrastructure program, the environmental benefits of a project—such as how many tons of CO<sub>2</sub> it will displace—will need to be balanced against EJ goals. The entire thrust of Biden's Justice40 agenda is to ensure that federal agencies tilt that balance toward social and economic benefits. But when those goals are in conflict, environmental objectives will suffer.



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The Justice40 initiative will also force conservation-oriented agencies to juggle competing agendas. For example, the Department of the Interior has a host of programs designed to protect endangered species, preserve wild habitats, and support outdoor recreation. Many of these programs already overlap with EJ goals. For example, the Outdoor Recreation Legacy Partnership promotes recreation projects in economically underserved areas, while other programs support initiatives in tribal regions.<sup>83</sup> But other programs, such as the Bureau of Land Management's Land and Water Conservation Fund, protect many remote habitats far from population centers.<sup>84</sup> Under the Justice40 rule, future conservation projects of this sort may struggle to prove that 40% of their benefits flow to EJ communities.

More broadly, Justice40 requires environmental policy in general to shift its ethical focus. Traditionally, American environmental policy has put a value on wildlife and wilderness that transcends their economic utility to humans. But Justice40 demands that environmental initiatives must not only show concrete benefits to humans but also help “secure an equitable future,” as EO 14008 puts it.<sup>85</sup> How will efforts to save the endangered sage grouse, for example, or to protect a pristine river, pass muster under such a requirement?

The White House has one powerful tool to ensure that federal resources flow directly to designated EJ communities: issuing grants to local nonprofit organizations. After the Inflation Reduction Act passed in August 2022, EPA administrator Michael Regan told reporters: “We’re going from tens of thousands of dollars to developing and designing a program that will distribute billions.”<sup>86</sup> IRA includes \$2.8 billion in grant money that must specifically target disadvantaged communities. It also sets aside \$200 million for “technical assistance” related to the grants. The eligible recipients are limited to community-based nonprofit organizations, partnerships of the same, or partnerships between such organizations and “an Indian tribe, a local government, or an institution of higher education.”<sup>87</sup>

This combined \$3 billion is an extraordinary amount of money to funnel through nonprofit groups accustomed to operating on relatively tiny budgets. Moreover, there is a time limit: IRA designates that the funds will be available only until September 30, 2026, making it imperative for these agencies to get grants out the door. EPA has devised two programs to expedite the awarding of grants.

First, it has designated 16 entities to serve as Environmental Justice Thriving Communities Technical Assistance Centers (EJ TCTACs), each of which will be responsible for assisting eligible organizations to navigate the federal grant application process for both EPA and Department of Transportation grants.<sup>88</sup> These institutions, which include universities, such as the University of Connecticut and University of Arizona, and nonprofits, such as West Harlem Environmental Action and Deep South Center for Environmental Justice, will each receive \$10 million (with a few receiving \$12 or \$13 million) over five years for their roles in expediting the grant process.<sup>89</sup>

Second, in order to distribute so-called small grants (those up to several hundred thousand dollars), EPA has devised an EJ Thriving Communities Grantmaking program for groups to receive government money without undergoing the cumbersome federal grant application process. The program will select up to 11 “Grantmakers”—eligible organizations and partnerships (with a preference for Minority Serving Institutions)—that will themselves be empowered to award such subgrants, up to a total of \$550 million. Each Grantmaker is charged with designing its own outreach, application, project management and support, and evaluation processes for its grants.<sup>90</sup>

The grant language in IRA is extraordinarily general. Under “eligible activities,” it includes “community-led air and other pollution monitoring, prevention, and remediation, and investments in low- and zero-emissions and resilient technologies and related infrastructure and workforce development that help reduce greenhouse gas emissions and other air pollutants.”<sup>91</sup> EPA gives little sense as to how activities such as “pollution monitoring” or “workforce development” might fit



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into nationwide goals or plans. Quite the contrary: the administration has repeatedly insisted that local groups know better than the federal government how to address environmental problems in their communities.

There are several problems with this grant-making approach to environmental problems.

First, it is likely to have a scattershot impact, at best. The grant model assumes, or at least professes to assume, that the nation's climate goals can be advanced by funding the relatively small goals and projects of local groups. Many in the Biden administration have embraced this “wisdom lies in the community” philosophy. Vice President Kamala Harris said in September 2022, when EPA established its Office of Environmental Justice and External Civil Rights: “The establishment of a new office dedicated to advancing environmental justice and civil rights at EPA will ensure the lived experiences of underserved communities are central to our decision-making while supporting community-driven solutions.”<sup>92</sup> Of course, many EJ activists say that the most important benefit of such projects is building political and economic power in their communities. Some even describe direct funding of community projects as a form of reparations.

Second, the grant model lacks accountability. Under the current program, many organizations new to the federal grant process will need to apply for and collectively spend up to \$2.8 billion in grant money before the end of September 2026. How is EPA to monitor whether the money has been spent as intended—never mind whether it has achieved the intended results? This question was raised in a well-publicized February 2023 letter from James Comer, chairman of the House Committee on Oversight and Accountability, to EPA administrator Michael Regan. Comer first noted the uncertain results in four programs highlighted in EPA's own document, “Case Studies from the Environmental Justice Collaborative Problem-Solving Program,”<sup>93</sup> and then stated:

Along with ill-defined issuance metrics for grant programs, the sheer volume of money flowing through the EPA prompts review of the agency's ability to properly manage its rapidly inflated budget. The EPA's total budgetary resources in FY2021 were approximately \$17.2 billion, skyrocketing to \$76.5 billion in FY2022. The agency must account for its ability to effectively prevent waste, fraud, and abuse of funding that has more than quadrupled within the span of a year.<sup>94</sup>

Third, the model sends the wrong message about EPA's responsibility and mission. Is EPA's mission to “protect human health and the environment”—and especially the health and environment for the most vulnerable among us—best achieved through the inefficient process of issuing grants? For example, many environmental nonprofits receive EPA grants to conduct programs to monitor air quality in their neighborhoods.<sup>95</sup> Sending quickly trained workers into the streets with air-monitoring equipment might be helpful in raising awareness about air-quality issues. But do these collected samples contribute scientifically useful data? One recent \$498,401 grant was awarded to the Atlanta-based Center for Sustainable Communities for “deploy[ing] air sensors in 11 minority communities, located in the region of South Atlanta, Georgia, where there is concern over potential health impacts due to the proximity of these neighborhoods to heavily traveled transportation corridors, and for which there is no existing air quality monitoring capability.”<sup>96</sup>

Shouldn't EPA upgrade its own air-quality monitoring instead? If the federal government wants to reassure EJ communities that their interests are its top priority, why ask a community to monitor its own air quality? Cynically, one might ask whether these programs are intended not to solve problems but to give the appearance of solving problems while appeasing community groups clamoring for funding.



### **Justice40 will hamper government functions across the board.**

The Biden administration's EJ agenda does more than reshuffle the priorities of environmental programs. If the administration's rhetoric is to be believed, it hopes to implement "fundamental and sweeping reforms to the ways in which the Federal government operates." What these sweeping reforms will actually mean, however, is vague. In particular, the concept of a "benefit"—the heart of the Justice40 program—remains virtually undefined.

In July 2021, the Office of Management and Budget, the Council on Environmental Quality, and the National Climate Advisors issued interim implementation guidance for the Justice40 initiative. The document did little to clear up confusion as to the meaning of key terms. "The determination of what constitutes a 'benefit' will vary by covered program," the document stated. Each agency was tasked with developing its own "metrics ... to measure covered program benefits." But first, agencies would have to hold public meetings to ensure that "community stakeholders are meaningfully involved in [defining] what constitutes the 'benefits' of a program." The letter describes an open-ended, never-ending process of community engagement that will be repeated for each new program. In some cases, the requirement to engage with the public will not even be limited to the community in which the project in question is located. Presumably, if an emissions-reduction project in an affluent area will lower pollution levels in a distressed neighborhood downwind, "the disadvantaged community should be consulted" before the project's benefits can be assessed.<sup>97</sup>

In short, every agency—indeed, every program administered by those agencies—will employ its own unique definition of what constitutes a benefit, and those definitions will vary from community to community. Yet all these mercurial benefits will somehow be subject to the administration's strict 40% requirement. And every project must be delayed until the requisite "stakeholder consultations" have occurred. Agencies are also urged to incorporate recommendations from WHEJAC and admonished to follow provisions of the Civil Rights Act of 1964, the Rehabilitation Act, "other relevant law, regulation, or guidance," and, of course, "the Paperwork Reduction Act."<sup>98</sup>

The Environmental Justice Scorecard is intended to be "the first-ever government-wide assessment of what the federal government is doing to advance environmental justice." But it is also a snapshot of how much time and money federal agencies are being forced to spend on priorities other than their primary missions. Overall, 18 federal agencies provided specific monetary amounts to the Scorecard (six did not report numbers). Those added up to a not inconsiderable \$92 billion in claimed expenditures that arguably meet the administration's malleable conception of an EJ benefit. In a phone interview, the Manhattan Institute asked Matthew Tejada, director of EPA's Office of Environmental Justice,<sup>99</sup> how his agency defines the term. "We are struggling with that, too," he said. "Justice40 is looking at hundreds, if not thousands, of existing programs, and it's not just talking about 40% of the revenue from those programs or the funds of those programs; it's talking about the benefits of those programs," Tejada continued. "So that takes it into a much weedier, more detailed, nuanced conversation and understanding about what the policy implementation actually looks like."

In producing their Scorecard reports, many agencies appear to reframe routine procedures as constituting a benefit to EJ communities. Under "Phase One Scorecard metrics and highlights" the Department of Defense included: "The Navy selected multiple transportation options for the Pearl Harbor dry dock to help manage traffic, which minimizes impacts on historically overburdened communities."<sup>100</sup> The fact that the Navy's effort to reduce Honolulu traffic can't be numerically quantified does not mean that it has no value. But it does highlight the absurdity of trying to measure every such accommodation by the administration's 40% metric.

The Scorecard's tortured language also reveals the necessity for federal agencies to demonstrate fluency in EJ jargon. The Department of Health and Human Services, for example, spends a paragraph describing a single workshop bringing together "regional and local community leaders



involved in environmental justice advocacy networks to discuss best practices for community engagement when addressing racism as a public health issue through the lens of environmental health disparities and environmental justice.”<sup>101</sup> Overall, the Scorecard documents the way the Justice40 initiative creates new workload burdens for agency officials attempting to demonstrate compliance with vaguely specified requirements.

### **EJ policies will undermine both environmental and economic progress.**

Ironically, Biden’s EJ agenda is a particular threat to the very priorities that EJ advocates claim to value most: fighting climate change and alleviating poverty. The flaw of the administration’s approach is an example of what *New York Times* columnist Ezra Klein has called “everything-bagel liberalism.” The key to a perfect bagel, he writes, is to add just the right amount of extra ingredients. But liberal policymakers too often can’t stop adding new ingredients to their programs. Klein continues:

You might assume that when faced with a problem of overriding public importance, government would use its awesome might to sweep away the obstacles that stand in its way. But too often, it does the opposite. It adds goals—many of them laudable—and in doing so, adds obstacles, expenses and delays. ... [I]t tries to accomplish so much within a single project or policy that it ends up failing to accomplish anything at all.<sup>102</sup>

This administration’s EJ agenda is a perfect example of this trap. Biden has repeatedly said that “climate change is an emergency.”<sup>103</sup> And the White House describes environmental inequities as a problem so severe that it requires an “all-of-government” solution. But the administration’s EJ agenda is so smothered in rules, requirements, and competing goals that it will be unlikely to achieve many of its objectives. In fact, it is likely to slow progress on reducing greenhouse gas emissions.

In his letter celebrating the implementation of the Inflation Reduction Act, White House advisor John Podesta wrote that IRA will “accelerate the deployment of clean energy, clean vehicles, clean buildings, and clean manufacturing.” And the bill will favor “projects that are located in low-income communities or energy communities, pay prevailing wages and use registered apprentices, or meet certain domestic content requirements—all with the goal of creating good-paying, high-quality jobs and shared economic growth.”<sup>104</sup>

Podesta’s framing implies that these goals can all be achieved as happy complements to the administration’s ambitious climate and environmental policies. In truth, of course, many of these objectives are antagonistic to one another. For example, clean energy projects receiving enhanced IRA tax credits will be required to pay the “prevailing wage,” a floor on wages and benefits that is calculated for given regions and that typically mirrors union pay, benefits, and work rules. Studies differ on how much prevailing wage rules increase infrastructure costs. The left-leaning Center for American Progress maintains that the rules “produce good value for taxpayers.”<sup>105</sup> But various studies find that prevailing wage requirements boost infrastructure costs. The New York think tank Empire Center for Public Policy has calculated that that state’s prevailing wage requirements drive public works construction costs up by 13%–25%, depending on the region.<sup>106</sup> In this case, the goal of raising worker wages is clearly at odds with Biden’s ambitious climate targets. If a wind farm being developed with IRA subsidies faces 20% higher labor costs due to the prevailing wage requirement, the result will be fewer wind turbines. But the White House tends to ignore this issue. Indeed, the administration maintains the fiction that EJ and clean energy goals can both be achieved without trade-offs.

Ironically, it is not even clear that the administration’s prevailing wage requirements will actually help the presumed beneficiaries of EJ policies: minority workers. “Historically, prevailing wage legislation has been a disaster for minority construction workers,” writes David Bernstein, a professor at George Mason University’s Antonin Scalia Law School, in a 2017 survey of research



on the racial impact of prevailing wage laws. Until recently, “construction labor unions have been among the most vociferously exclusionary entities in the United States,” the author notes. While labor unions are less openly discriminatory today, he writes, minorities remain underrepresented in many unions. “Given that prevailing wage laws tend to operate to exclude nonunion labor in favor of union labor,” Bernstein concludes, “this works to the detriment of minority workers who are subject to union discrimination.”<sup>107</sup>

This proliferation of new offices, rules, and reporting requirements not only creates bureaucratic hurdles for federal and state agencies; it also burdens the private sector. Biden’s ambitious climate plans aim to incentivize massive public and private investments in transmission lines, renewable energy, and other infrastructure. Policy experts who support the White House plan say that executing this huge construction campaign will require relaxing the onerous National Environmental Policy Act (NEPA) review process.<sup>108</sup> But rather than streamlining project approvals, the latest EO requires that NEPA reviews are carried out with even stricter attention to the “direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns.” The order also ratchets up the requirements for “early and meaningful” community involvement.<sup>109</sup>

In addition, Biden’s order introduces a subtle but potentially consequential change in official language. Clinton’s EO 12898 required agencies to address “disproportionately high and adverse” environmental impacts.<sup>110</sup> Biden’s order swaps in the simpler but broader phrase “disproportionate and adverse.” As the *National Law Review* notes, “this change could effectively lower the bar for what stakeholders or federal agencies consider significant impacts.”<sup>111</sup> In other words, at a time when the White House promised voters an unprecedented clean energy building spree, it is adding new hurdles and delays to the already-tortuous NEPA process.

### **Justice40 embeds a far-left worldview within federal agencies.**

In a 2021 op-ed in *The Hill*, WHEJAC cochair Richard Moore explained how his career in activism—which started as a member of the New Mexico Black Berets, who were modeled on the Black Panthers<sup>112</sup>—gradually evolved to include environmental problems.<sup>113</sup> “For us, environmental issues were—and are—inseparable from the larger struggle for social justice,” he wrote. In a roundtable discussion sponsored by the Center for American Progress and hosted by John Podesta, Moore gave a vivid account of what he believes he and his fellow activists are up against. “When we look at our sisters and brothers, not only throughout this country, but in Puerto Rico and Alaska, and other locations, we very clearly are experiencing the impact of not only cumulative impact, but climate injustice, environmental racism, and environmental genocide.”<sup>114</sup>

When the EJ movement’s most respected leaders see environmental issues in such apocalyptic terms, it’s easy to understand why they believe that the true problem is much bigger than particulate levels or lead pipes. Many EJ activists see racism and capitalism as the intertwined root causes of all environmental woes. “Systematic racism and social injustice are at the root of the environmental problems we are trying to address,” Earthjustice president Abigail Dillen told *Politico*. Attacking those problems “is mission critical.”<sup>115</sup> While the fight to reduce pollution is important, these activists believe, it must be seen as a means to that greater end.

As an alternative to today’s market economy, many EJ activists embrace what they call a “Just Transition,” a pivot away from “extractive industries” (such as fossil fuels) and toward a more communally based economy. The Climate Justice Alliance advocates for a “Just Transition away from extractive systems of production, consumption and political oppression, and towards resilient, regenerative and equitable economies. We believe that the process of transition must place race, gender and class at the center of the solutions equation.” The solution to environmental oppression, the group argues, requires “collective worker and community control of land, water, and food resources.”<sup>116</sup>



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Just Transition advocates describe urban neighborhoods transformed into neo-pastoral collectives in which food is grown via “regenerative agriculture” in community gardens, energy is produced in locally controlled, renewable power grids, and wealth is somehow spontaneously generated and equitably shared. While the extreme form of this idea might seem a socialist fantasy, anyone who enjoys shopping at farmers’ markets can appreciate the emotional appeal of this general vision. As the Brookings Institution’s Foreman wrote a quarter-century ago, the environmental justice movement’s “ultimate roots lie in the eternal yearning for a more democratic and egalitarian society composed of livable communities.”<sup>117</sup>

These communitarian ideals are not just hazy visions of the future. For many EJ activists, these notions of a “postcapitalist economy” help shape which environmental policies (and technologies) they embrace or reject today. WHEJAC submitted its initial list of recommendations in May 2021. The document provides an eye-opening summary of the kinds of fundamental transformations that these EJ activists believe to be possible and desirable. A cover letter, written by Moore and cochair Peggy M. Shepard, demands: “Justice40 must include taking bold action to sunset investment by 2030 in fossil fuels, plastics, dangerous chemicals and nuclear energy and to set requirements for 100% renewable electricity by 2030.”<sup>118</sup>

WHEJAC recommendations include a long list of technologies, policies, and infrastructure projects that these White House advisors oppose. (Much of the list is copied directly from New York representative Alexandria Ocasio-Cortez’s Green New Deal bill.) Under “Examples of the types of projects that *will not* benefit a community,” the memo predictably includes existing transportation and energy sources, recommending against “Road improvements or automobile infrastructure,” “Fossil fuel procurement, development, [or] infrastructure repair,” and investments in transmission lines that might carry electricity produced by fossil fuels. But the document also inveighs against many technologies and policies advocated by leading climate advocates, including carbon capture and storage, nuclear power, systems that would directly capture carbon dioxide from the atmosphere, and carbon markets (including cap and trade programs). For good measure, the list also warns against “research and development.”<sup>119</sup>

By the standards of traditional environmentalism, WHEJAC’s list of unacceptable climate remedies is stunningly ideological. It suggests that the memo’s authors don’t believe that the fight against climate change is as important as their battles against our high-tech, market-based economy. On the other hand, the group uncritically embraces all manner of communitarian solutions: subsidies for local food cooperatives and community gardens; grants and training programs for “Black organic & regenerative farmers”; “comprehensive wage replacement” for dislocated workers; free broadband; plans to forgive unpaid utility bills; and more.

WHEJAC does, however, embrace some new technology when it calls for locally based solar power. The WHEJAC report recommends that the departments of Energy and Housing and Urban Development “deploy at least 3 gigawatts of local solar on HUD assisted housing by 2025.” The report also calls for funding “rooftop/on-site/localized solar and battery energy storage systems,” rewiring urban power systems into community “microgrids,” and the “decentralization of grid ownership.” The idea of community-controlled microgrids is popular among progressive activists. The concept is based on microgrid systems in Texas and elsewhere that combine power production and distribution in small regions that can be made independent from the larger power grid in the event of a blackout. This approach can be useful for some specialized applications, such as college campuses.<sup>120</sup> But the operation of microgrids entirely on renewable power and battery storage remains in the early research phase and far from economic feasibility.<sup>121</sup>

For activists, however, the concept of locally produced and distributed power meshes with Just Transition philosophy: it promises community control and independence from presumably exploitative corporations. NAACP, for example, supports initiatives “aimed at improving solar energy access to marginalized communities.” Jacqueline Patterson, director of that group’s



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Environmental and Climate Justice Program, told *Scientific American* that clean energy “is just another dimension of social justice.” Local renewable power, she added, “puts us in control of our energy.”<sup>122</sup> The activists’ goals are clear: they want local empowerment, control, and funding. In their view, if the federal government is subsidizing grid-scale solar farms in the countryside, those solar panels should go on low-income rooftops instead.

These EJ goals are in conflict with efforts to reduce greenhouse gas emissions as rapidly as possible. The Biden administration has set a target to have the U.S. electric grid be entirely carbon-free by 2035.<sup>123</sup> Yet studies indicate that utility-scale solar panel systems generate power at a much lower cost than do residential rooftop panels: about one-third lower, according to a study of first-quarter 2022 prices by a U.S. Department of Energy laboratory.<sup>124</sup> In other words, federal policies focused on promoting residential rooftop solar would conceivably spend about 50% more to produce a given level of electricity. Even in an era of trillion-dollar federal programs, money is not infinite. The Inflation Reduction Act contains a number of tax credits and incentives that can be applied to distributed energy resources (DERs) and microgrids.<sup>125</sup> Continued research into the concept could yield improved grid reliability in the future. But in the near term, a focus on distributed power is likely to delay, rather than facilitate, the goal of rapid decarbonization.

The Biden administration has muddied the waters on this policy question. Is the ultimate goal achieving a net-zero power grid? Or is it empowering marginalized communities and hiring workers to install solar panels on public housing? By encouraging the fiction that economic equity and emissions reductions go hand in hand, the Justice40 framework makes it difficult to weigh these conflicting goals. But clearly, when the federal government is investing hundreds of billions in clean energy, determining the efficiency of different approaches is paramount. For WHEJAC and other EJ activists, of course, efficiency of federal programs is a footnote, at best. To EJ activists, success will be measured by ideological metrics—as well as by how much money and influence flows to their communities—not emission reductions. And, as they continually stress, the activists’ goals go far beyond reducing pollution; they want environmental programs to spin off benefits in the realms of housing, employment, and other objectives. In a sense, therefore, the activist community favors projects that are as *inefficient* as possible: from their perspective, the best projects are not the ones that most effectively reduce emissions but those that spend the most money and hire the most workers in EJ communities.

The WHEJAC committee has no official or permanent role in setting U.S. policy. Quite possibly, its more extreme recommendations will be politely ignored by administration officials. (The White House has not moderated its strong support for nuclear power, for example.) But it is more than plausible that the extreme EJ worldview that WHEJAC espouses will filter into the federal bureaucracy and quietly influence the implementation of federal programs. The administration’s EJ grant program also seems likely to prioritize funding of highly ideological local groups. The White House has already recruited several groups espousing an extreme EJ agenda to advise grant applicants and distribute grants. Many of the local groups likely to receive grants do useful projects. But money is fungible. Skeptics of the program have a right to ask what political activities these groups are also engaged in. In their letter to EPA administrator Regan, Congressmen James Comer and Pat Fallon asked whether EPA’s EJ grant program might become “a slush fund for far-left organizations.” That language might raise hackles, but the question is valid.

White House officials often repeat a platitude used by EJ activists: residents of marginalized communities know better than the federal government how to address environmental problems in their neighborhoods. On one level, respect for the voices of people in poor communities is a good thing; no one wants the federal government running roughshod over the concerns of residents. But living in a poor region does not confer automatic expertise in which technologies most effectively reduce emissions, or how best to run the power grid. Such decisions require technical know-how and should be either relegated to markets (which typically do a better job of allocating resources) or made by qualified policymakers implementing clear policies that reward concrete results.



## The Big Squeeze

Justice40 is anything but a clear policy. By muddling the contradiction between environmental and social welfare priorities, it gives activists more flexibility to favor their progressive goals, even at the cost of undermining the administration's stated green agenda.

The Manhattan Institute asked the EPA's Tejada about how EJ concerns might force a trade-off between green projects that provide more benefits to marginalized communities and those that deliver faster reductions in greenhouse gas emissions. He answered candidly:

I've heard folks talk about this a lot, "We've got to solve climate change; all this equity and justice stuff isn't going to matter if we don't solve climate change," and we in the EJ movement say, "We don't care if you all solve it if we get left behind again, right?" So you have to understand what *our* needs are. You have to understand that maybe the thing that I'm most focused on is helping my community not burn up every summer and, you know, all of our vulnerable folks just perish in their hot apartments and homes because they can't pay for AC all summer. And that's not going to immediately help your CO<sub>2</sub> issue, but that's what we need to see happen right now.

In a world of finite federal resources, there is an inescapable conflict between the economic needs of poor and minority communities and the goals of reducing pollution and greenhouse gas emissions. The Justice40 initiative attempts to obscure that conflict behind the fiction that the same programs can seamlessly address both concerns. Tejada is refreshingly honest in acknowledging that meeting EJ goals might require delaying the administration's net-zero targets.

The public deserves an honest debate about how to strike a balance between social welfare and environmental concerns. The Justice40 initiative obscures the stark trade-offs involved in environmental policy. Instead, by muddling the distinctions between environmental and social programs, it gives progressive activists leeway to divert funding away from concrete environmental goals and shift it to vaguely defined social objectives. If the progressive wing of the Democratic Party wants to make the case that the country needs to massively expand social welfare programs, it is free to make that case to voters. But converting environmental and infrastructure programs into stealth wealth-transfer campaigns is undemocratic. It is also poor social policy, in that it attempts to empower poor communities through wildly roundabout and scattershot methods.

Biden's muddled EJ agenda will make every environmental project more expensive and less effective. By miring infrastructure projects in endless permitting delays, it will thwart his administration's aggressive emissions goals. And by making it harder for private industry to expand, it will limit job growth. All too predictably, those setbacks in economic opportunity will hit poor and minority communities the hardest. The next administration should roll back Biden's ill-considered executive orders. The best way to fight local environmental problems is to measure where pollution is most severe and to focus on those regions first. The best way to fight climate change is to remove barriers to developing nuclear and other forms of clean energy infrastructure. An "everything-bagel" approach that attempts to solve all problems at once will wind up solving none of them.



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