

**NEVER HAD A CHANCE: UNDERSTANDING THE HISTORY
OF HOW LOW-INCOME AND PREDOMINANTLY BLACK
UNINCORPORATED COMMUNITIES EVOLVED TO BECOME
ENVIRONMENTAL JUSTICE COMMUNITIES THROUGH
STATE ANNEXATION LAWS AND PROCEDURES**

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INTRODUCTION

For most Black Americans, the late nineteenth century into the early twentieth century was an era marked by segregation and Black resistance to that segregation. Whether it was the need for a white passenger to grant permission to ride the streetcars or the non-existent freedom of movement, Black Americans consistently found themselves at odds with their white counterparts.¹ Segregation was not just with streetcars, restaurants, water fountains, and theaters; entire communities, cities, and towns were also segregated.² Throughout the entire country, Black Americans and other people of color began constructing their own communities and neighborhoods on the outskirts of predominantly white cities and towns.³ Often, these communities were developed on environmentally unsafe sites due to *de jure* segregation.⁴ These communities lacked basic municipal services such as clean water, proper sewage treatment, storm drains, sidewalks, and streetlights.⁵

While communities of color faced these horrendous conditions, white communities—often within sight or short walking distances—did not have these shameful conditions. During this time, white communities thrived—and expanded economically while offering a wide range of public services.⁶ In contrast, residents of low-income unincorporated communities and neighborhoods of color could not vote because they were literally mapped out of democracy.⁷ Daily life in most unincorporated communities consisted of overflowing backyard pits, strong odors from leaking septic systems,

1. John Hope Franklin, *Racial Desegregation and Integration—The Background: History of Racial Segregation in The United States*, 304 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 2–3, 6–7 (1956); Alana Semuels, *Segregation Had to Be Invented*, ATLANTIC (Feb. 17, 2017), <https://www.theatlantic.com/business/archive/2017/02/segregation-invented/517158/>.

2. Franklin, *supra* note 1, at 5, 7–8.

3. See *Segregation in the United States*, HISTORY.COM, (Feb. 4, 2021) <https://www.history.com/topics/black-history/segregation-united-states> (explaining the history of segregation within communities in the United States); See Semuels, *supra* note 1 (explaining how Black communities were displaced to the outer edges of town).

4. David D. Troutt, *Localism and Segregation*, 16 J. AFFORDABLE HOUS. & CMTY. DEV. L. 323, 323–24 (2007).

5. Bernice Yeung, *Unincorporated Communities Lack Basic Services*, SFGATE (Aug. 6, 2012), <https://www.sfgate.com/news/article/Unincorporated-communities-lack-basic-services-3465042.php>; see Hannah Gordon Leker & Jacqueline MacDonald Gibson, *Relationship Between Race and Community Water and Sewer Service in North Carolina, USA*, PLOS ONE, Mar. 21, 2018, at 1–3, 12–16, e0193225 (finding racial disparities in community water and sewer services).

6. Leker & Gibson, *supra* note 5; HISTORY.COM, *supra* note 3 (“The [Housing Act of 1949] subsidized housing for whites only, even stipulating that Black families could not purchase the houses even on resale.”).

7. See generally Michelle W. Anderson, *Mapped Out of Local Democracy*, 62 STAN L. REV. 931, 933 (2010) (discussing the methods in which unincorporated communities are mapped out of democracy).

household greywater collection, and flooded streets.⁸ While the Civil Rights Movement began to provide a voice for residents of low-income unincorporated communities (residents who were forced to call these places home), the ability to exclude evolved to make it impossible for them to have adequate living arrangements.⁹ Segregation began to appear as a rational, inescapable economic reality.¹⁰

This research paper will discuss the history of low-income unincorporated communities; analyzing the roles that annexation laws and procedures played in the continued impoverishment and disenfranchisement of people of color. Analyzing unified development patterns and underlying legal dynamics, this paper seeks to expose the impact annexation had in perpetuating structural oppression of an already oppressed group. This paper will also explore the roles annexation procedures and local government structures played in creating current environmental justice communities. To provide sufficient context, this paper will begin with a historical overview of slavery, including the establishment of Freedman communities, the impact of Reconstruction, the history of the Great Migration, as well as examining past and present Native and Latinx low-income unincorporated communities.

I. HISTORY OF SLAVERY

A. *Slave Codes and the Organizational Structure Creating the Separation of Blacks and Whites in Residential Areas.*

Exactly when the first African slaves arrived in the United States remains a debated topic.¹¹ Some say it was as early as the 1400's, while others believe the Dutch carried the first African slaves to the shores of what would become the United States in 1619.¹² The status of indentured servitude meant that Africans in America had the same status as white

8. See generally Yeung, *supra* note 5 (explaining the various hardships residents of unincorporated communities in California have endured).

9. Anderson, *supra* note 7, at 933, 936.

10. *Id.* at 936.

11. See Ciara Torres-Spelliscy, *Everyone is Talking About 1619. But That's Not Actually When Slavery in America Started*, WASH. POST (Aug. 23, 2019), <https://www.washingtonpost.com/outlook/2019/08/23/everyone-is-talking-about-thats-not-actually-when-slavery-america-started/> (discussing slavery in America began with Spanish-speaking black slaves that arrived in 1511 rather than in 1619).

12. *The Slave Trade, Exploration, American Beginnings: 1492-1690*, NAT'L HUMAN. CTR., <http://nationalhumanitiescenter.org/pds/amerbegin/exploration/text7/text7read.htm> (last visited Jan. 23, 2023).

servants.¹³ Next, what came was court sanctioned customary law that developed the slave status.¹⁴ In 1662, Virginia enacted the first slave codes.¹⁵

After Virginia established slaves codes, multiple states followed suit; restricting interracial marriages and banishing white women who carried African children.¹⁶ By 1860, Virginia and Maryland began to see changes in the organization of slavery.¹⁷ Large landowners and slave owners divided their estates into smaller units, upon which Africans worked to raise crops under the control of white men.¹⁸ At that time, these white men were seen more as foremen rather than slave masters.¹⁹ However, it was as early as this period that residential segregation moved to the forefront.²⁰ Often, cities and towns with a high population of Africans would be contained in small areas—away from the white residential areas.²¹ These self-contained areas often lacked rudimentary structures and facilities—typically available in white residential communities.²²

After years of growth, the free Black American population began to decline as the Civil War approached.²³ Lasting from 1861 to 1865, the Civil War began largely because of the enslavement of Black people.²⁴ On January 1st, 1863, President Abraham Lincoln issued the Emancipation

13. *Virginia's Slave Codes*, PBS, <https://www.pbs.org/wgbh/aia/part1/1p268.html> (last visited Jan. 23, 2023) (“The status of blacks in Virginia slowly changed over the last half of the 17th century. The black indentured servant, with his hope of freedom, was increasingly being replaced by the black slave.”); E. FRANKLIN FRAZIER, *FREE NEGRO FAMILY: A STUDY OF FAMILY ORIGINS BEFORE THE CIVIL WAR 1* (1932); see IBRAM X. KENDI, *STAMPED FROM THE BEGINNING* 66–67, 120 (2016) (highlighting the status of Black Americans as indentured servants in the colonies).

14. *1600-1774: Colonial Authority*, NBC NEWS (May 27, 2008), <https://www.nbcnews.com/id/wbna24714556> (Massachusetts legalized slavery in 1641, followed by Connecticut in 1650).

15. *Id.*

16. *Id.*; CARTER G. WOODSON, *FREE NEGRO HEADS OF FAMILIES IN THE UNITED STATES IN 1830*, 9 (The Association of the Study of Negro Life & History, Inc. 1925); *Colonial Laws*, PBS, <https://www.pbs.org/wgbh/aia/part1/1h315.html> (last visited Jan. 23, 2022) (“Maryland, 1664: The first colonial “anti-amalgamation” law is enacted [amalgamation referred to ‘race-mixing’]. Other colonies soon followed Maryland’s example. A 1691 Virginia law declared that any white man or woman who married a ‘Negro, mulatto, or Indian’ would be banished from the colony forever.”).

17. FRAZIER, *supra* note 13, at 6.

18. ULRICH B. PHILLIPS, *PLANTATION AND FRONTIER DOCUMENTS: 1649–1863*, at 89 (1909).

19. *Id.*

20. Daniel C. Vock et al., *How States and Cities Reinforce Racial Segregation in America*, GOVERNING.COM (Jan. 23, 2019), <https://www.governing.com/topics/public-justice-safety/gov-segregation-main-feature.html>.

21. *Id.*

22. *Id.*

23. FRAZIER, *supra* note 13, at 6.

24. *Slavery: Cause and Catalyst of the Civil War*, U.S. DEP’T INTERIOR, NAT’L PARK SERV., <https://www.nps.gov/cuga/learn/historyculture/upload/SLAVERY-BROCHURE.pdf> (last visited Jan. 23, 2022).

Proclamation.²⁵ While over 4 million Black slaves were given their freedom after the enactment of the Emancipation Proclamation and the Thirteenth Amendment, the southern states did not comply without a fight.²⁶ In many areas, slavery continued—it was business as usual. Meanwhile, whites elsewhere prepared for the free Black Americans to infiltrate their communities by creating laws called the “Black Codes” to control the labor and behavior of former slaves and other Black Americans.²⁷ These Black Codes played a significant role in the increased separation between blacks and whites in residential areas.²⁸

B. History of Freedmen Settlements

After emancipation and the enactment of the Thirteenth Amendment, many former slaves were faced with basic questions like where to reside, how to provide for themselves and their families, and how to endure the uncertainty that awaited them.²⁹ More often than not, they remained on plantations working as sharecroppers.³⁰ Many freedmen traveled from white neighborhoods to develop their own settlements away from white control.³¹ They also established their own places of worship and civic organizations.³² Freedmen’s communities had a greater measure of security from the direct effects of Jim Crow.³³ “Such places were defensive communities, where Black property owners had circled the wagons against outsiders, a ‘fortress without walls.’”³⁴ “Freedmen’s settlements were Black enclaves that kept to

25. *The Emancipation Proclamation*, NAT’L ARCHIVES.GOV, <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation#:~:text=President%20Abraham%20Lincoln%20issued%20the,and%20henceforward%20shall%20be%20free.%22> (last visited Jan. 23, 2022).

26. See *Reconstruction*, HISTORY.COM, <https://www.history.com/topics/american-civil-war/reconstruction> (last updated Jan. 23, 2022) (discussing the historical context after the Civil War and Emancipation Proclamation).

27. See *id.* (discussing Black Codes passed by southern states to enslave African Americans during Radical Reconstruction).

28. FREEDOM TO THE FREE 1863–1963 CENTURY OF EMANCIPATION: A REPORT TO THE PRESIDENT BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS 60 (1963).

29. *The African American Odyssey: A Quest for Full Citizenship Reconstruction and Its Aftermath*, U.S. LIBR. CONG.: EXHIBITIONS, <https://www.loc.gov/exhibits/african-american-odyssey/reconstruction.html> (last visited Jan. 23, 2022).

30. Spencer R. Crew, *The Great Migration of Afro-Americans: 1915–40*, 110 MONTHLY LAB. REV. 34, 35 (1987).

31. *Id.*; *Freedman*, MERRIAM-WEBSTER.COM (2019) <https://www.merriam-webster.com/dictionary/freedman>. Freedman is defined as, a person freed from slavery, *id.*

32. Crew, *supra* note 30.

33. THAD SITTON & JAMES H. CONRAD, FREEDOM COLONIES: INDEPENDENT BLACK TEXANS IN THE TIME OF JIM CROW 178 (Univ. Texas Press 2005).

34. *Id.*

themselves and until the end of Jim Crow, few whites wished—or dared—to live there.”³⁵

Freedmen’s settlements were frequently described as independent rural communities of Black American landowners.³⁶ Often referred to as “freedom colonies,” by those that occupied the space, these were dispersed communities.³⁷ These “freedom colonies” were unplotted and unincorporated, and usually only unified by sparse community services, and “residents’ collective belief that a community existed.”³⁸ The communities established themselves in these areas because the land was either cheap, neglected, or wilderness areas.³⁹ Many southern historians ignored freedmen’s settlements, therefore data is scarce, but numbers were not needed to recognize that all across the South, similar communities continued to form.⁴⁰ When the federal government reneged on their promise to provide “40 acres and mule,” these communities took matters into their own hands and moved to new lands.⁴¹

Unfortunately, many of these communities never fully developed—often times due to community members’ inability to generate enough wealth and invest in their newly formed communities.⁴² Outsiders looking in might not think a community existed in these areas as many of them remained dispersed, and poorly focused areas.⁴³ Freedmen settlements “remained especially remote, informal, and unofficial.”⁴⁴ As a result, these communities went largely unnoticed by whites.⁴⁵ The records of freedmen’s settlements were poorly recorded, and as a result modern historians have little to trace their history.⁴⁶ Freedmen settlements were communities of avoidance and self-segregation, maintaining “a culture of dissemblance” to adapt to the Jim Crow era.⁴⁷ It is not uncommon for Freedmen’s settlements to practice “austerities of landownership, hard work, independence, neighborly cooperation, subsistence farming and avoidance of debt.”⁴⁸ Many residents and their descendants stayed on the land to this day.⁴⁹

35. *Id.*

36. *Id.* at 1–2.

37. *Id.* at 2.

38. *Id.*

39. *Id.* at 3.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 4.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 4–5.

49. *Id.* at 5.

*C. Reconstruction and the Great Migration Led to the Surge of Freeman
Towns*

Shortly after the end of the Civil War, the Reconstruction Era began.⁵⁰ In 1867, during Radical Reconstruction, newly enfranchised Blacks gained a voice in government for the first time in American history; winning elections to southern state legislatures and even to the United States Congress.⁵¹ Less than a decade later, racist and discriminatory forces, including the Ku Klux Klan, overturned the transformations created by Radical Reconstruction in a violent backlash that rejuvenated white supremacy in the South.⁵² These actions, in addition to World War I creating industrial jobs, led to what became known as the Great Migration.⁵³ From 1916-1970, over 6 million Blacks moved from the rural southern states to the urban northern states including those in the Midwest.⁵⁴

Due to this intense migration of Black Americans, freedmen communities began to expand geographically.⁵⁵ Older freedmen settlements were mostly located on Southern rural pieces of land.⁵⁶ Due to migration *en masse*, one began to find freedman settlements in the West, Midwest, and across the eastern seaboard.⁵⁷ Though the locations differed, the conditions of these communities did improve.⁵⁸ These communities, lacking basic services (such as sewage, sidewalks, streetlights, etc.), and legally defined limits, became known as unincorporated communities.⁵⁹

II. UNINCORPORATED COMMUNITIES

While it is true that low-income unincorporated communities have existed throughout human existence across the globe, this paper focuses on the Black experience and how slavery forced many Black Americans to reside in low-income unincorporated communities created by Freedmen. Simply stated, unincorporated communities are settled places not within city

50. Crew, *supra* note 30, at 34–35.

51. *Reconstruction*, ENCYC. BRITANNICA (Nov. 05, 2021), <https://www.britannica.com/print/article/493722>.

52. *Id.*

53. Crew, *supra* note 30, at 34.

54. *The Great Migration, 1910 to 1970*, U.S. CENSUS BUREAU (Sept. 13, 2012), <https://www.census.gov/dataviz/visualizations/020/>.

55. *The Great Migration*, HISTORY.COM (June 28, 2021), <https://www.history.com/topics/black-history/great-migration>.

56. *Id.*

57. *Id.*

58. Isabel Wilkerson, *The Long-Lasting Legacy of the Great Migration*, Smithsonian Mag. (Sept. 2016), <https://www.smithsonianmag.com/history/long-lasting-legacy-great-migration-180960118/>.

59. Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 U.C.L.A. L. REV. 1095, 1126 (2008).

limits; they are not legally included under the laws of the state in which they are located.⁶⁰ An unincorporated community is not governed by its own local municipal corporation, but rather as part of a larger governmental division, such as a township, county, city, or state.⁶¹

Unincorporated communities can be found throughout the United States, and though often economically tied to a larger town or city, are excluded from participatory rights such as voting.⁶² Additionally, these unincorporated communities find themselves victims of disproportionate environmental injustices.⁶³ The disproportionately high number of landfills, utility plants, freeways, and other toxic chemical-producing entities in these communities can no longer be ignored.⁶⁴ These negative impacts profoundly affect low-income unincorporated community members' health and their ability to increase or maintain housing and land values.⁶⁵ These communities, and their lack of basic rudimentary needs, exist in part, because of the laws which govern the distribution of power among agencies and governmental entities at the local, state, and federal level.⁶⁶

A 2007 study, *Unincorporated Communities in the San Joaquin Valley*, identified more than 125 such communities in eight counties (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare) in the state of California.⁶⁷ The Mississippi Delta has close to 20% of the total Black population and nearly 40% of the Black rural non-farm population living in low-income unincorporated communities in 1980.⁶⁸ Additionally, in 20 of the 22 municipalities with a sizable fringe population,⁶⁹ more Black Americans live in low-income unincorporated communities than those who live in cities.⁷⁰ The study researched and verified the existence of low-income unincorporated communities in Texas, North Carolina, Florida, Mississippi, California, and multiple states across the Southwest.⁷¹ Many low-income unincorporated communities have remained predominantly Latino or Black

60. Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L. J. 1364, 1368 (2012); Anderson, *supra* note 59, at 1101.

61. Anderson, *supra* note 60, at 1368; Anderson, *supra* note 59, at 1101.

62. Anderson, *supra* note 7 at 933.

63. Anderson, *supra* note 59, at 1124.

64. *Id.* at 1098.

65. *Id.* at 1099, 1101.

66. *Id.* at 1114.

67. VICTOR RUBIN ET AL., UNINCORPORATED COMMUNITIES IN THE SAN JOAQUIN VALLEY: NEW RESPONSES TO POVERTY, INEQUITY, AND A SYSTEM OF UNRESPONSIVE GOVERNANCE 8 (2007).

68. See Anderson, *supra* note 7; Charles S. Aiken, *Race as a Factor in Municipal Under bounding*, 77 ANNALS ASS'N AM. GEOGRAPHERS 567 (1987).

69. *Fringe Community Definition*, LAW INSIDER, <https://www.lawinsider.com/dictionary/fringe-community> (last visited Jan. 23, 2022).

70. Aiken, *supra* note 69.

71. Anderson, *supra* note 7, at 937.

American—often having a history of *de jure* and *de facto* segregation.⁷² “Lying just beyond incorporated city and town lines, these neighborhoods remain unincorporated and dependent on county government.”⁷³

A. Native Americans

Prior to the struggles that Black Americans faced living in low-income unincorporated communities—Native Americans were also forced to reside in unincorporated communities.⁷⁴ The courts played a significant role in designating native individuals and the land they reside on as unincorporated.⁷⁵ The Lands in Severalty Act of 1887 conferred full and absolute citizenship to Natives.⁷⁶ As stated in Dudley O. McGovney’s, *Part II. Unincorporated Peoples and Peoples Incorporated with Less than Full Privileges*, “Indian allottee passes out of the status of ‘ward of the nation’ and over his person the nation Government ceases to have any peculiar jurisdiction.”⁷⁷ McGovney continues by stating, “[h]e becomes by virtue of the act, as it declares, ‘a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens,’ and becomes ‘subject to the laws, both civil and criminal, of the State or Territory in which...’ he resides.”⁷⁸ This means that Native peoples are incorporated, and receive the rights and privileges granted to them by the constitution. But what of their lands?

Worcester v. Georgia was the seminal case that decided whether native communities should be regarded as unincorporated.⁷⁹ Although Native country is geographically located within a State’s boundaries, it is not incorporated into the State. Therefore, the State could not extend its laws over the Native country, which at the time remained under the exclusive jurisdiction of the National Government.⁸⁰ In a more complex sense, reservations today are still considered unincorporated.⁸¹ Native reservations suffer from the same health, wealth, and environmental issues that plague

72. Troutt, *supra* note 4.

73. Anderson, *supra* note 7, at 937.

74. Dudley O. McGovney, *American Citizenship. Part II.*, 11 COLUM. L. REV. 326, 331 (1911).

75. *See id.* at 327 (illustrating how the court’s interpretation of *Elks* caused Native Americans to be considered unincorporated).

76. *Id.* at 331, 332.

77. *Id.* at 332.

78. *Id.*

79. *Worcester v. Georgia*, 31 U.S. 515 (1832).

80. McGovney, *supra* note 74 at 333.

81. *Id.*

Black and Latinx low-income unincorporated communities across the United States.⁸²

B. Latinx Communities

California is recognized as one of the most agriculturally rich regions in America.⁸³ “During World War I, migration to the U.S. from Europe declined, which increased the demand for Mexican labor to fill the void.”⁸⁴ To address this, the guest worker program was established, and brought more than 70,000 Mexican workers into the United States.⁸⁵ With this influx of workers, communities were developed to house them; often times these communities were unincorporated.⁸⁶ According to a study completed by California Rural Legal Assistance, Inc and California Rural Assistance Foundation:

Among the poorest and most isolated of these communities are places outside of city limits that lack the most basic features of a safe, healthy, sustainable neighborhood—potable drinking water, sewer systems, safe housing, public transportation, parks, sidewalks, and streetlights. People of color make up 54 percent of those living in the San Joaquin Valley, and make up a disproportionate number of those living in underinvested neighborhoods. Historically, these communities have been home to mostly African American and Latinos, and a growing Southeast Asian population. Governed by counties, which were not set up to provide services to dense urban areas, and lacking the representation of a city council, they are systematically underserved in the overall allocation of public resources and are frequently left out of local decision-making processes. Concentrated poverty, institutional and individual racism, and California’s systems of public finance and land use

82. Judith Bell & Mary M. Lee, *Why Place & Race Matter: Impacting Health Through a Focus on Race and Place*, at 19, POLICYLINK (2011), https://www.policylink.org/sites/default/files/WHY_PLACE_AND_RACE%20MATTER_FULL%20REPORT_WEB.PDF.

83. GREAT VALLEY CENTER, *ASSESSING THE REGION VIA INDICATORS: THE ECONOMY 1999–2004*, at 26, (2005).

84. *Timeline of Agricultural Labor in the U.S.*, NAT’L FARM WORKER MINISTRY, <http://nfwm.org/farm-workers/farm-worker-issues/slider-test/> (last visited Jan. 23, 2022).

85. *Id.*

86. *See id.* (showing that a large number of workers came into the state of California).

regulation exacerbate the plight of disadvantaged unincorporated communities.⁸⁷

Often, unincorporated communities in California, (especially San Joaquin Valley) were used purposefully to exclude Mexican and minority workers from participating in matters such as local elections.⁸⁸ These tactics placed Mexican migrant workers in very difficult living conditions.⁸⁹ The effect of these tactics can still be seen today—2.8 million Californians are “living in unincorporated communities not recognized by the 2000 census.”⁹⁰ These communities were not recognized by the census due to the fact they were not characterized as Census Designated Places.⁹¹ In California, people of color are disproportionately represented in low-income unincorporated communities in comparison to cities, counties, and other census-designated places.⁹² 65% of the population living in low-income unincorporated communities are of color.⁹³

C. Pros and Cons of being Unincorporated

While this paper highlights the disparities faced by low-income unincorporated communities; for a select few communities, unincorporated status provides certain freedoms. The author uses his personal knowledge to infer that the usual benefits associated with living in unincorporated communities are by far, unavailable to persons living in low-income unincorporated communities. For a community to take advantage of the benefits that being unincorporated provides, it must be able to economically afford such benefits.⁹⁴ Consequently, economic inadequacies cause these benefits to be beyond the reach of many a low-income unincorporated community.⁹⁵ The correlation of a community being low-income and mostly minority is one that cannot be ignored.⁹⁶ One major benefit of being

87. CHIONE FLEGAL ET AL., POLICY LINK, CALIFORNIA UNINCORPORATED: MAPPING DISADVANTAGED COMMUNITIES IN THE SAN JOAQUIN VALLEY 7 (2013) http://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf.

88. *See id.* at 9–10 (discussing the history of exclusion in San Joaquin Valley).

89. NAT'L FARM WORKER MINISTRY, *supra* note 84.

90. FLEGAL ET AL., *supra* note 88 at 9.

91. *Id.*

92. *Id.*

93. *Id.*

94. Anderson, *supra* note 59, at 1112.

95. Danielle M. Purifoy, *Living Unincorporated*, DUKE HUM. RIGHTS CTR. FRANKLIN HUMANITIES INST., <https://humanrights.fhi.duke.edu/living-unincorporated/> (last visited Jan. 23, 2022).

96. *Id.*

unincorporated is that state regulations do not regulate unincorporated areas.⁹⁷

Often corporations benefit more from a community being unincorporated than the actual community itself.⁹⁸ Corporations tend to take full advantage of this loophole in regulations.⁹⁹ Uniontown, Alabama, is an example of this trend.¹⁰⁰ While Uniontown itself is incorporated, some of its surrounding areas are not. Therefore, resident corporations are able to site pollute and/or conduct toxic operations adjacent to this lower-income Black community with minimal state pushback.¹⁰¹

Being unincorporated allows community members to live off the grid. For example, an unincorporated community can live 100% sustainably through energy generated by purchased or leased solar panels.¹⁰² However, taking full advantage of this right is something that only occurs in more affluent neighborhoods. From the writer's personal experience working for Tesla, Inc. in California, communities of color have a difficult time affording solar panels out-right; these communities cannot take advantage of this benefit due to how expensive the transition can be. Often, the costs include much more than the solar system itself. Roof upgrades and trenching are just a few ways the costs of going solar can increase to an unattainable point for many low-income communities.¹⁰³

Affluent unincorporated communities are not bothered by the cons of being unincorporated: their streets are paved and in good shape; sidewalks are present; streetlights work properly; they have access to clean drinking water; and they can afford contracted health care and therefore be independent of local emergency services.¹⁰⁴ They also are not bothered by not having a local governmental structure.¹⁰⁵ The author interprets this to mean that affluent unincorporated communities maintain as much or even more political clout as incorporated communities. However, this is not the case in low-income unincorporated communities of color.

97. *Id.*

98. *See id.* (discussing the higher cost of living in unincorporated communities)

99. *See, e.g.,* Marianne Engelman-Lado, et al., *Environmental Injustice in Uniontown, Alabama, Decades after the Civil Rights Act of 1964: It's Time for Action*, AM. BAR ASS'N (Apr. 13, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--44--no-2--housing/environmental-injustice-in-uniontown--alabama--decades-after-the/ (discussing the loopholes Arrowhead Landfill used in Uniontown).

100. *Id.*

101. *Baker v. Carr*, 369 U.S. 186 (1962).

102. *Id.*

103. Jenny Heeter et al., *Affordable and Accessible Solar for All: Barriers, Solutions, and On-Site Adoption Potential*, at 2, Nat'l Renewable Energy Lab'y (2021), <https://www.nrel.gov/docs/fy21osti/80532.pdf>.

104. Purifoy, *supra* note 95.

105. *Id.*

By contrast, the cons of being unincorporated are more prevalent for most low-income unincorporated communities with a high population of people of color.¹⁰⁶ Lack of local emergency services, such as emergency vehicles and fire departments, is more the norm than the exception.¹⁰⁷ The lack of such services ends up making costs even more exorbitant for individuals when they do require them.¹⁰⁸ Maintenance of local streets is commonly infrequent or nonexistent. Systemic oppression plays a role in the fact that these low-income unincorporated communities end up paying higher insurance rates on homes, cars, and health care due to their community status.¹⁰⁹ This further perpetuates the oppressive tactics that keep these communities in poverty.¹¹⁰ Lastly, due to a lack of state regulations, these unincorporated communities are consistently at risk of exposure to pollution.¹¹¹ The effect of these disadvantages leads to the communities' inability to generate an increase in property value, in return, making them appear less attractive to the communities they would like to be annexed to.¹¹² Unfortunately, these inequalities though fought in the past through the civil rights movement continue today.

D. Spatial Inequality

Without a path for unincorporated communities to gain wealth and increase property values, they will continually find themselves victims of inequality.¹¹³ “Spatial inequality” means “inequality in economic and social indicators of wellbeing across geographical units within a country.”¹¹⁴ In the 20th century, local political economies, lack of enforced anti-discrimination protections, and annexation kept these communities in very similar conditions as in the 19th century.¹¹⁵ Unfortunately, in the 21st century we have inherited the issues of spatial inequality in low-income unincorporated

106. *Id.*

107. *Id.*

108. *Id.*

109. Julia Marie Naman & Jacqueline MacDonald Gibson, *Disparities in Water and Sewer Services in North Carolina: An Analysis of the Decision-Making Process*, 10 AM. J. OF PUB. HEALTH 24 (2015) (describing the impacts on unincorporated communities).

110. Danyelle Solomon et al., *Systemic Inequality: Displacement, Exclusion, and Segregation*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>.

111. Bell & Lee, *supra* note 82, at 16, 24.

112. Anderson, *supra* note 59, at 1101, 1129.

113. *Id.* at 1130.

114. Ravi Kanbur & Anthony J Venables, *Spatial Inequality and Development: An Overview of UNU-WIDER Project*, GOVERNANCE & SOC. DEV. CTR. (2005) <https://gsdrc.org/document-library/spatial-inequality-and-development-an-overview-of-unu-wider-project/>.

115. See Anderson, *supra* note 7, at 934. (discussing the twentieth-century problem of spatial inequality in unincorporated communities).

communities across the country. Finance-driven local economies make growth management and annexation extremely difficult.¹¹⁶ Courts, on multiple occasions, have been reluctant to mandate the movement of local borders, which created the exploitative ability of towns and cities to discriminate against communities of color as it concerns annexation.¹¹⁷

III. ANNEXATION

Low-income unincorporated communities have a very difficult time becoming incorporated, which would allow them to receive rudimentary services and increase their quality of life.¹¹⁸ Annexation presents a significant obstacle for these communities; “municipal annexation is the process of legally including within the corporate limits of a city or town an unincorporated area that is outside the municipality.”¹¹⁹ This process has often been abused and unfairly granted to avoid involving communities of color.¹²⁰ Annexation is an important process for communities of color because of the benefits it can provide. When granted, annexation provides service improvements to communities deprived of basic services throughout their existence. Bringing unincorporated communities into a city or town that already has municipal services triggers certain requirements for those cities and towns to provide adequate health and safety services to their annexed areas.¹²¹ Additionally, annexation grants voting rights to residents who did not have them previously, increasing political clout and representation for community members of color.¹²² Annexation would require accountability of local governments to formerly low-income unincorporated communities, forcing them to support habitability improvements.¹²³

A. Annexation Procedures

Because there are no federal regulations specific to annexations happening within state boundaries, annexation is regulated at the state

116. *Id.*

117. *Id.* at 960.

118. See generally, CARL VINSON INSTITUTE OF GOV'T: THE UNIV. GA., A BRIEF SUMMARY OF MUNICIPAL INCORPORATION PROCEDURES BY STATE <https://www.senate.ga.gov/committees/Documents/CarlVinsonSummaryMunicipalIncorporationProceduresbyState.pdf> (listing complex procedures for incorporation) (last visited Jan. 22, 2022).

119. THE MARYLAND MUNICIPAL LEAGUE, MUNICIPAL ANNEXATION HANDBOOK 3 (2013) <https://www.md-municipal.org/DocumentCenter/View/978/Annexation-Handbook-2013-for-Website?bidId=>.

120. Anderson, *supra* note 7, at 943–44.

121. *Id.*

122. *Id.* at 938.

123. *Id.* at 944, 948.

level.¹²⁴ There are also no federal regulations that prohibit cities or towns from disapproving an annexation based solely on the wealth of the unincorporated inhabitants.¹²⁵ Some state laws encourage or mandate cities and towns to strongly consider a neighborhood's taxable property wealth before annexation.¹²⁶ Laws that encourage economic value to be at the forefront of deciding whether to annex a petitioning low-income unincorporated community creates unjustifiable burdens. Economically, a low-income unincorporated community usually has a very difficult time demonstrating to an incorporated community that granting annexation will create benefits for said incorporated community.¹²⁷ Note, the factors mentioned earlier: toxics siting; low housing values; pollution; lack of basic services; and possibly high crime rates—are the reasons why a community may petition to be annexed. Therefore, these factors should not count against them in the process.¹²⁸ Whatever minimal political pressure low-income unincorporated communities might apply, residents are ultimately at the mercy of the city and regional decisionmakers to assess the desirability of an annexation.¹²⁹

Unincorporated communities that desire to be annexed and willing to go through the process have three ways of doing so: the unincorporated community can petition the city or town directly for annexation; the unincorporated community can lobby the town or city to initiate and approve an annexation; and/or the unincorporated community can lobby the county to pressure the town or city to undertake annexation.¹³⁰ Each state has its own regulations regarding the specific procedures necessary for annexation. This paper references the Maryland Municipal League's Municipal Annexation Handbook for guidance.¹³¹ Maryland's annexation handbook was chosen because it is comparable to other models, in addition to being straightforward and accessible.¹³²

Maryland requires eight (8) procedural steps to be completed for an annexation to be approved and officially recognized:¹³³

1. Minimum Prerequisites: In order to be annexed to an existing municipality, an area must be contiguous and adjoining to the existing municipal corporate area and may not be located within

124. *Id.*

125. *Id.*

126. *Id.*, at 952.

127. Anderson, *supra* note 59, at 1147–48.

128. *Id.*

129. Anderson, *supra* note 7, at 953.

130. *Id.* at 950.

131. MUNICIPAL ANNEXATION HANDBOOK, *supra* note 119, at 4.

132. *Id.*

133. *Id.*

another incorporated municipality. Also, annexation of the area may not create an enclave of unincorporated area that would be surrounded on all sides by land within the municipality upon completion of the annexation.¹³⁴

2. **Annexation Petition/Consent:** An annexation petition signed by at least 25% of the qualified voters along with the owners of 25% of total assessed property in the area to be annexed may be filed with the municipal legislative body. Alternatively, the legislative body may initiate an annexation by obtaining the consent of a like percentage of qualified voters and property owners.¹³⁵
3. **Annexation Resolution:** Upon verification that the annexation petition signatures meet the requirements of law and that all other prerequisites of the law have been met, the elected body should promptly introduce a resolution proposing the annexation.... The resolution should describe the area to be annexed together with any conditions or circumstances applicable to the proposed annexation.¹³⁶
4. **Annexation Plan:** A municipal governing body must prepare, adopt and make available to the public a plan detailing (1) the proposed land use or uses in the area to be annexed, (2) available land that could be used for anticipated public facilities that may be needed, (3) a schedule for extending municipal services to the area to be annexed, and (4) anticipated means of financing the extension of services. The plan must be provided at least 30 days prior to holding the public hearing required by law for an annexation to the county in which the municipality is located as well as to the Maryland Department of Planning and any regional and state planning agencies having jurisdiction within the county.¹³⁷
5. **Proposed Annexation Publication, Hearing and Resolution Passage:** After introduction of the resolution, a municipality must publish at least four times at a minimum of weekly intervals in one or more newspapers of general circulation a notice of the proposed annexation; notice of the time and place of a hearing on the resolution must also appear in the newspaper advertisements. A copy of the public notice must be provided to the county governing board and regional and state planning

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

agencies as soon as it is initially published. At the hearing itself, the county and planning agencies must be afforded first right to be heard, after which the general public may make comment....¹³⁸

6. Petitions to Referendum: Within the 45 days prior to the effective date of the resolution, any of three groups may petition the annexation resolution to referendum. At least 20% of the registered voters in the existing municipality or in the area to be annexed may petition the resolution to referendum; alternatively, a minimum of two-thirds of the county governing board may petition to call for a referendum on the annexation question. After verification of petition signatures or county governing board compliance with the law's requirements (whichever is applicable), the effectiveness of the resolution is suspended pending results of the referendum.¹³⁹
7. Annexation Referendum: The annexation referendum may be held from 15 to 90 days following newspaper publication of notice of the referendum. The notice must occur a minimum of two times at a minimum of weekly intervals. Should the referendum pass, the annexation will become effective on the fourteenth day following the referendum. Which voters participate in a referendum is dependent upon where the referendum petition emanated. If the petition was submitted by the county governing body or the residents in the area to be annexed, the voters in the area to be annexed may participate in the referendum. If the petition was submitted by residents of the municipality, the voters in the municipality participate. If both circumstances exist, separate elections are held for both the existing municipal voters and for voters in the area to be annexed. In the case of two elections, both sets of voters must approve the referendum in order for the annexation to proceed.¹⁴⁰
8. Registration of Resolution and Boundaries: Regardless of whether or not the annexation is brought to referendum, the annexation resolution and the new municipal boundaries of the municipality must be promptly sent to (1) the county clerk of courts in the county in which the annexation occurred, (2) the Department of Legislative Services, and (3) where applicable

138. *Id.* at 5

139. *Id.* at 6

140. *Id.*

the Maryland-National Capital Park and Planning Commission.¹⁴¹

While these are the procedures in Maryland, the process changes from state to state. Other states require the unincorporated community to pay for an environmental review that costs roughly \$68,000.¹⁴² To expect a low-income unincorporated community to have the ability to afford to pay these high costs for annexation is a tactic used to create separation.

B. Belle Glade, Florida Residents of Okeechobee Center

Annexation is not easy to come by for communities of color. In 1939, Belle Glade, Florida, was home to two identical public housing developments.¹⁴³ Despite being in identical housing, there was *de jure* segregation between Black Caribbean farmworkers and low-income whites.¹⁴⁴ These housing projects were built on unincorporated land. Both housing developments sought annexations due to the horrendous conditions that came with being an unincorporated community.¹⁴⁵ In 1961, the city granted annexation to the white development but not to the black housing project.¹⁴⁶ The city did not even give a public explanation for the denial. The Black Caribbean housing development called the Okeechobee Center continued to apply; they were continuously denied annexation for 40 years.¹⁴⁷ The Black housing development would later fold. Subsequently, this forced community members to bring brought legal actions.¹⁴⁸

Municipal under bounding is when annexation policies and practices allow incorporated cities and towns to grow around or away from low-income unincorporated minority communities.¹⁴⁹ This excludes unincorporated communities from having voting rights in said cities and town elections, in addition to their inability to acquire municipal services.¹⁵⁰ A study of annexation patterns in the nonmetropolitan south in the 1990s showed the impact these annexation denials has on communities of color.¹⁵¹

141. *Id.*

142. Anderson, *supra* note 7, at 951.

143. *Id.*

144. *Id.* at 935

145. *Id.* at 936

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 938

150. *Id.*

151. See Daniel T. Lichter et al., *Municipal Underbounding: Annexation and Racial Exclusion in Southern Small Towns*, 72 RURAL SOC. 47, 52 (2007); JAMES C. CLINGERMAYER & RICHARD C. FEIOCK,

The study found that towns with black populations in unincorporated areas that were disproportionately larger than the black population in the town itself were less likely to annex any fringe areas regardless of whether they are predominately black or white.¹⁵² This is because towns did not want to risk having to include black communities in annexation if they were to grant annexation to a white community.¹⁵³ The above information solidifies the narrative that too often annexation is abused, not allowing low-income unincorporated communities of color the equal opportunity to exercise their rights to gain better services and increase their quality of life through annexation. Without federal regulation, low-income unincorporated communities' ability to seek remedy for the harm they suffer is limited. Lawyers must be creative in the ways they bring cases forward to the courts

C. Annexation Used to Increase White Voting Power

As mentioned earlier, one reason annexation is easier for white unincorporated communities was the towns' desire to increase their white political power. A comprehensive economic analysis of annexations during the 1950s, for instance, found that cities used annexation to increase the proportion of white voters and dilute nonwhites' voting power.¹⁵⁴ White

INSTITUTIONAL CONSTRAINTS AND POLICY CHOICE: AN EXPLORATION OF LOCAL GOVERNANCE 101–05 & tables 6.1, 6.2, 6.3 (2001). Clingermayer and Feiock conducted a multivariate analysis of annexation patterns in the 1980s across most metropolitan cities (as defined by populations greater than 25,000 in 1990) in the country. While their study offered valuable insights with respect to other variables in annexation (such as the annexing city's form of government and expenditures on services), the study's racial demographic variables were so imprecise as to be misleading. Their study accounted for two racial variables: the percent black of the annexing city and the percent black of the surrounding county—the latter measure thus capturing the racial demographics of all unincorporated land in the county as a whole rather than the unincorporated areas eligible for annexation. Yet the racial demographics of non-fringe unincorporated areas in the county (such as scattered rural populations, distant unincorporated subdivisions, the fringe areas surrounding other cities, etc.) are irrelevant to understanding a city's annexation choices. Furthermore, the study failed to compare the racial demographics of the fringe land annexed with the fringe land not annexed in order to capture racial preferences in annexation, and its use of “percent black” as the sole measure of racial diversity is inappropriate for a national study in which other racial groups are overrepresented at the urban fringe. As a result, the authors' claim that race did not significantly influence annexation, is not substantiated, *id.* at 105. Lichter et al. offers a substantially more specific methodology by identifying (using finer census block level data), land “at risk” for annexation, and analyzing the racial demographics of both annexed and non-annexed land in that at risk area, Lichter *supra* at 52.

152. Anderson, *supra* note 7, at 938.

153. *Id.* at 972.

154. D. Andrew Austin, *Politics vs. Economics: Evidence from Municipal Annexation*, 45 J. URB. ECON. 501, 528 (1999) (testing the assumption that cities' desire to expropriate suburban tax bases motivated annexations, and finding that economic considerations alone could not rationally justify annexations during the 1950s); Thomas R. Dye, *Urban Political Integration: Conditions Associated with Annexation in American Cities*, 8 MIDWEST J. POL. SCI. 430, 441 (1964) (investigating the effect of

towns in counties with higher percentages of African Americans were less likely to annex Black low-income unincorporated communities than white ones.¹⁵⁵

This was so important to some areas that, even when annexations were not in the towns' or cities' best economic interest, city officials still moved forward with annexation for predominantly white communities.¹⁵⁶ Towns ended up spending large amounts of money funding infrastructure in the suburbs following annexation, often leading to financial loss for the town, making the decision irrational from a fiscal outlook.

The study found "modest statistical evidence" that race was the independent motivating factor for annexation decisions.¹⁵⁷ Nationwide empirical evidence suggests that prior to the passage of the Voting Rights Act of 1965, political and racial factors motivated urban annexation decisions in ways that imbedded the urban landscape with segregated municipal boundaries.¹⁵⁸ This is where legal counsel needed to be creative. It would be worth knowing that there are no federal laws that cover annexation. It is equally worth understanding when state laws favor a community's ruling to accept an annex.¹⁵⁹ For example, lawyers sought remedies for members of the unincorporated Okeechobee Center community under the Fifteenth Amendment because they were denied their right to vote and denied annexations.¹⁶⁰

D. Legal Action by Okeechobee Center

Due to the continued history of annexation not offered to Black low-income unincorporated communities, community members and activists finally took the issue to the courts.¹⁶¹ In 1995—over 30 years after the initial denial of annexation—community members of Okeechobee Center brought suit claiming racial discrimination and voting rights infringement.¹⁶² Those community members cited *Gomillion v Lightfoot* to argue their case.¹⁶³ In *Gomillion*, the Supreme Court found that the "inevitable" and

"social distance," including socioeconomic differences, between cities and the neighborhoods they annexed, and finding that annexations were much more likely to come to fruition if the central city's population was more "middle class" than the areas it annexed—a finding that undermines any claim that annexations were merely animated by the preference for wealthier communities).

155. Anderson, *supra* note 7, at 939.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 957.

160. Anderson, *supra* note 7.

161. *Id.*

162. *Id.* at 936; *Burton v. City of Belle Glade*, 178 F.3d 1175, 1203-04 (1999)

163. *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960).

unconstitutional effect of redefining a city's boundaries was to remove minority citizens from the city's jurisdiction, thereby discriminatorily depriving them of "the benefits of residence;" including the right to vote in city elections.¹⁶⁴ Even with such strong precedent from the Supreme Court, the *Burton v City of Belle Glade*¹⁶⁵ plaintiffs lost both in the district court and in the Eleventh Circuit Court of Appeals.¹⁶⁶ The court reasoned that the plaintiffs lacked the authority needed to move a city border while focusing on the rationality of the city's contemporary, race-neutral reason for excluding the Black neighborhood—the city's net cost of extending services to the community.¹⁶⁷

E. Creation of Environmental Justice Communities

After years of annexation denials, infiltration of pollution-generating corporations, lowering property values, and a number of other systemic and institutionalized discriminating factors, communities evolve.¹⁶⁸ Unfortunately, their evolution would not be for the better.¹⁶⁹ Often due to lack of financial gain, families stay in these low-income unincorporated areas for generations.¹⁷⁰ Currently, conditions have not improved for those who continue live in these areas.¹⁷¹ Grandsons and granddaughters find

164. *Id.*

165. *Burton*, 178 F.3d at 1203–04. As a general matter, the Court was extremely skeptical that it holds the power to order the annexation of the Okeechobee Center, no matter how egregious the racial climate in Belle Glade. Even though in cases like *Baker v. Carr*, 369 U.S. 186, (1962), the federal courts sometimes redrew political lines, whether those of electoral districts or municipalities; *See, e.g., Baker v. Carr*, 369 U.S. 186, (holding that federal courts may order reapportionment of state electoral districts); *Gomillion v. Lightfoot*, 364 U.S. 339, (1960) (prohibiting act of Alabama legislature to redefine city boundaries in such a way as to cut out primarily black neighborhoods). It is one thing, however, to say that a political unit must structure its voting blocks to secure fair voting, or annex (or deannex) new areas in a racially neutral manner, and quite another thing to say that a political unit must reach outside of its boundaries and grant municipal citizenship to outsiders. The *Burton v. City of Belle Glade* plaintiffs cited no case in which a federal court ordered a municipality to annex property outside of its boundaries, and the Court would be extraordinarily reluctant to establish such a precedent. Fortunately, this case did not require the Court to resolve the broad question of whether it could order Belle Glade to annex the Okeechobee Center pursuant to its Article III powers. For a number of much narrower reasons, the Court concluded that defendants would prevail on summary judgment. Although plaintiff's theories largely overlapped, the Court addressed the statutory and constitutional theories separately, *Burton v. City of Belle Glade*, 178 F.3d 1175 (1999).

166. Anderson, *supra* note 7, at 936.

167. *Id.*; *Burton*, 178 F.3d at 1184.

168. Jim Erickson, *Targeting Minority, Low-Income Neighborhoods for Hazardous Waste Sites*, UNIV. MICH. NEWS (Jan. 19, 2016), <https://news.umich.edu/targeting-minority-low-income-neighborhoods-for-hazardous-waste-sites/>.

169. *See* Anderson, *supra* note 59, at 1146–47 (discussing institutional discriminations that forces black people into unincorporated communities).

170. *Id.*

171. Yeung, *supra* note 5.

themselves inheriting more burden than opportunity.¹⁷² These communities often become what are now known as environmental justice communities.¹⁷³

Environmental justice communities are commonly identified as those where residents are predominantly minorities or low-income; where residents have been excluded from the environmental policy setting or decision-making process; where they are subject to a disproportionate impact from one or more environmental hazards; and where residents experience disparate implementation of environmental regulations, requirements, practices and activities in their communities.¹⁷⁴ Tallassee, Alabama, is a prime example of a historic freedman town that remained unincorporated and now finds itself at the forefront of the environmental justice fight.¹⁷⁵

The Ashurst Bar/Smith Community Organization (ABSCO) alleged that the Alabama Department of Environmental Management (ADEM) discriminated on the basis of race by reissuing a permit to the Stone's Throw Landfill in Tallassee, Alabama.¹⁷⁶ This permit allows the landfill to receive garbage from all 67 Alabama counties and three counties in Georgia.¹⁷⁷ By closing this civil rights complaint, the EPA greenlights the landfill to continue to operate without sufficient public-health and environmental protections in the middle of a historic Black community—one where many residents can trace their land ownership to that of newly freed people who settled the land soon after Emancipation in the 1860s.¹⁷⁸

While the spotlight may be on Tallassee, Alabama—they are not the only community that find themselves fighting environmental justice issues because of institutionalized discriminatory tactics such as unequal and unfair annexation practices. From the author's personal knowledge gained from residing in Los Angeles, California for ten years; current community members living in East Los Angeles are suffering from identical issues (lack of basic services, sidewalks, streetlights, storm drains, etc.). Low-income unincorporated communities in San Joaquin Valley also continue to suffer

172. Anderson, *supra* note 59, at 1146-47 (explaining why multiple generations of Black American continue to live in unincorporated communities).

173. See INDUSTRIAL ECONOMICS, INC., DEFINING ENVIRONMENTAL JUSTICE COMMUNITIES AND DISTRIBUTIONAL ANALYSIS FOR SOCIOECONOMIC ANALYSIS OF 2016 SCAQMD MANAGEMENT PLAN (Nov. 30, 2016), https://www.aqmd.gov/docs/default-source/clean-air-plans/socioeconomic-analysis/scaqmdfinalejreport_113016.pdf?sfvrsn=6 (defining environmental justice communities and highlighting the dangers their residents live through).

174. *Environmental and Social Justice Action Plan*, CA. PUB. UTILITIES COMM'N, <https://www.cpuc.ca.gov/esjactionplan/> (last visited Jan. 23, 2022).

175. Jeronimo Nisa, *EPA Slams Door to Justice on Historic Black Community*, EARTHJUSTICE, (Dec. 12, 2018) <https://earthjustice.org/news/press/2018/epa-slams-door-to-justice-on-historic-black-community>.

176. *Id.*

177. *Id.*

178. *Id.*

the same fate from practices that started when the first migrant workers arrived north from Mexico.

IV. SUGGESTED REMEDIES

At this juncture, the author proposes five recommendations to mitigate and improve the terrible conditions that current low income and predominantly Black unincorporated communities suffer from. First, there must be more Black people elected to official positions at the state and local level. Annexation is not a federal regulation. State and local government remain the most effective avenue. At the local level, individuals in power seem to better understand the assistance that low-income, unincorporated communities require. Far too often, those who make the decisions that affect low-income unincorporated communities have no ties to that community. Very rarely will a person who does not live in an impoverished community, ever visit such a community. Therefore, how can nonresidents relate to the consistent struggles that residents of these vulnerable communities face? In order to create the necessary change to protect citizens' rights, those who make annexation decisions need to be able to relate to the community.

Second, more people of color are needed in locally appointed positions such as zoning and planning commissions. Most annexation laws give significant control of the process to the local municipality. These local municipalities in return, lean on their local experts to help develop a process that will best benefit their community regarding annexation. Often the benefits of the "Black dollar" and the ways in which people of color impact the U.S. economy are not fully understood neither are they supported. Again, if an individual has never been to or interacted with those outside their own race or economic status, when it comes to placing a value on the communities of others, it becomes extremely difficult to do without certain biases. It should therefore come as no surprise that this notion continues to endure in current discriminatory annexation practices happening across this country.

Far too many small towns face the challenge of remaining sustainable. One way to generate a larger and more diverse economic base would be to annex a surrounding low-income unincorporated community into an already thriving town or city. While initially said thriving town or city may need to invest in that annexed community by extending basic services, a consideration often left out (of the equation) is the creation of opportunities from basic services. With basic services creation, new businesses can sprout up in areas that may have previously seemed implausible. With basic services, those who were once without would finally have a chance to do more; creating streams of revenue that did not prior to annexation. Having more people of color on local commissions such as zoning and planning boards, will allow for them to advocate for the creation of these opportunities

Third, we all need to apply pressure on our current elected state and local officials urging them to find a way to assist these unincorporated communities to have the basic services we all take for granted. In addition, education of these officials is necessary so they understand the social and economic impact that ignoring these low-income unincorporated communities has created. From the author's own personal experience as an elected official, it is not uncommon for

representatives to gain knowledge by way of a phone call or letter received from a concerned citizen. One may be surprised to learn just how little time those who serve in office spend in communities. Often, most of the time spent while holding office is in preparing for meetings, taking part in conferences / press releases, and/or completing administrative tasks. Thus, citizens who live in these low-income unincorporated communities and those who advocate on their behalf need to vocalize their concerns with their state and local elected officials as frequently as possible. Representatives learn how best to represent their constituents through conversating with them.

Fourth, Federal/State oversight is necessary to ensure that annexation procedures do not continue to be abused. No longer should cities use annexation as a tool to increase white voting power, neither should they continue to use it to segregate residential neighborhoods. States attorneys must be more aggressive in enforcing the current available laws and regulations. The Belle Glade community took advantage of a voting rights violation to find their way into the courts. States attorney can also be creative in the way they protect their constituents. The Commerce Clause¹⁷⁹ may be one way a state's attorney can hold a town or city accountable if they are abusing annexation procedures. Due Process¹⁸⁰ along with Equal Protection¹⁸¹ must be enforced, especially for recipients of federal funds, to provide the necessary services for a white annexed unincorporated community while denying the equivalent black unincorporated community adjacent.

Lastly, we need Federal/State oversight for funding annexed communities. Elected officials must undertake aggressive enforcement to ensure that state and/or federal funds are not being used to discriminatorily exclude black unincorporated communities in favor of white unincorporated communities. Both State and Federal representatives must make the necessary amendments needed to regulations to include language outlawing the current discriminatory and abusive practices. Currently, under Title VI,¹⁸² the EPA has a responsibility to ensure that its funds do not subsidize projects that discriminate based on race, color, or national origin.¹⁸³ The same should be done at the state level for annexation. Most often when

179. U.S. CONST. article I, § 8, cl. 3. (authorizing Congress "to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.") The commerce clause has traditionally been interpreted both as a grant of positive authority to Congress and as an implied prohibition of state laws and regulations that interfere with or discriminate against interstate commerce (the so-called "dormant" commerce clause). In its positive interpretation the clause serves as the legal foundation of much of the U.S. government's regulatory power, *id.*

180. U.S. CONST. amend. XIV, §1. (providing "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.")

181. *Id.*

182. 42 U.S.C. § 2000 (d). Provision for the "prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, *id.*"

183. *Id.*

expansion is granted, both state and federal funds are being used to complete the necessary construction.

CONCLUSION

As this paper articulates, low-income unincorporated communities need assistance so they can finally receive equal opportunities to achieve a better quality of life. History has told a story that shows residential segregation has been a part of American culture since the beginning. Black Americans suffered from these discriminatory conditions throughout history, whether it was the unincorporated Freedmen communities of the past or current unincorporated communities of the present. Environmental justice communities are not created overnight. Unfair annexation procedures and laws play a significant role in creating communities where populations are intentionally and/or unintentionally targeted, often systematically, by the economic and/or political power structure to bear an environmental burden (pollution or degradation) because of its racial or ethnic composition, social/economic status of residents, or national origin of its residents.

Latinx and Native Americans also continue to suffer similar fates at the hand of discriminatory practices and procedures designed to maintain white supremacy. Difficult and expensive annexation practices remain a challenge for unincorporated communities. Courts have failed to enforce the laws to protect these vulnerable communities. For low-income communities, the disadvantages significantly outweigh the benefits of being unincorporated. For us to truly progress as a nation, wealth must be distributed equally and fairly. The suggested remedies mentioned above must be implemented. State officials need to do a better job of equally allowing low-income and predominately Black unincorporated communities the opportunity to gain basic services through state annexation procedures.