

A COMPARATIVE LOOK: APPLYING VERMONT’S ENVIRONMENTAL JUSTICE ACT IN TENNESSEE

*K. Ashley Eshleman*¹

EXECUTIVE SUMMARY155
INTRODUCTION156
I. FEDERAL ACTIONS TOWARDS ENVIRONMENTAL JUSTICE...158
II. BACKGROUND ON VERMONT’S ENVIRONMENTAL JUSTICE ACT.....160
III. BACKGROUND ON TENNESSEE.....163
IV. HOW THE BILL WOULD WORK IN TENNESSEE167
CONCLUSION172

EXECUTIVE SUMMARY

This Article introduces a potential Environmental Justice (EJ) bill in Tennessee modeled after Vermont’s Environmental Justice Act (the Act, or EJA). EJ communities face disparate impacts from environmental harm and need legal protection.² The EJ movement originated in the Southeast, building on the Memphis Sanitation Strike in Tennessee and strikes in North Carolina.³

The federal government took legislative action to address EJ by proposing the Environmental Justice for All Act to increase resources for impacted individuals and place pressure on states to create their own

1. J.D., Master of Environmental Law & Policy, May 2023, Vermont Law School; B.S., Environmental & Soil Sciences, 2019, University of Tennessee-Knoxville. The author thanks her husband, John Eshleman, for his gentle yet constructive criticism throughout the writing process.

2. *Learn About Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last updated Aug. 16, 2023).

3. See *Environmental Justice Timeline*, EPA, <https://www.epa.gov/environmentaljustice/environmental-justice-timeline> (June 27, 2023) (providing a brief history of EJ in the U.S.).

legislation.⁴ The Environmental Protection Agency (EPA) recently released statements about its stance and created grants to aid EJ communities. All state governments receive federal funds that go toward EJ initiatives, and government agencies must comply with certain requirements in order to receive such funds.⁵

Vermont recently passed a comprehensive Environmental Justice Act that includes cumulative impact analyses, community engagement, and mandates the creation of a mapping tool.⁶ This Act could serve as a general model for Tennessee to create an EJ bill because EJ concerns are universal. Tennessee legislators must define EJ in a way that pertains to Tennessee specifically and considers the unique qualities of different communities across the state.

Once EJ is defined, Tennessee may act based on this resulting bill. The bill would establish timelines for state agencies to create community engagement plans, cumulative impact analyses, and mapping catered specifically to Tennessee. Tennessee should also choose different threshold levels for populations based on the demographic and geographic differences between Vermont and Tennessee. Tennessee agencies should also address issues relating to low-income agricultural workers because of the state's large reliance on agriculture.

In today's political climate, an EJ bill may not pass immediately or on its face, so Tennessee legislators should start by focusing on areas in the state where EJ issues are prevalent. This would allow EJ laws to pass without explicitly referencing EJ to bring about change. Once a precedent for protecting these communities is established, an EJ bill may be successfully introduced.

INTRODUCTION

The environmental justice movement has long coincided with the civil rights movement, with a strike in Tennessee being one of the first EJ-type movements in the United States.⁷ The 1968 Memphis Sanitation Strike concerned EJ and the unfair treatment of garbage workers.⁸ EJ concerns arose here because the strike highlighted the need for economic equality and

4. See *H.R. 2021- Environmental Justice for All Act*, CONGRESS.GOV (2022), <https://www.congress.gov/bill/117th-congress/house-bill/2021> (summarizing the various components of the bill).

5. H.R. 2021, 117th Cong. (1st Sess. 2021).

6. An Act Relating to Environmental Justice in Vermont, S.148, Act No. 154 (Vt. 2022) [hereinafter EJA].

7. *Environmental Justice Timeline*, *supra* note 3.

8. *Id.*

social justice.⁹ The EJ movement then became a national movement protesting workers' treatment.¹⁰ Fourteen years later, predominantly Black environmentalist and civil rights groups protested a landfill in Warren, North Carolina.¹¹ From there, the EJ movement gained traction, sparking various inquiries and the formation of groups such as the Indigenous Environmental Network.¹²

EPA defines EJ as “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹³ The Department of Energy (DOE) released a statement that included EPA's definition, but expanded on the terms “fair treatment” and “meaningful involvement”:

Fair treatment means that no population bears a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or from the execution of federal, state, and local laws; regulations; and policies. Meaningful involvement requires effective access to decision makers for all, and the ability in all communities to make informed decisions and take positive actions to produce [EJ] for themselves.¹⁴

By defining “fair treatment” and “meaningful participation,” the DOE clarified these terms and made it possible to measure progress towards fair treatment. Without such a definition, the term is ambiguous and up to the interpretation of those attempting to enforce legislation.

State EJ bills have existed since the mid-1990s—the first, which passed in Florida, created the state's Environmental Justice Equity Commission.¹⁵ The exact number of states that have implemented EJ policies is uncertain because some states may have plans that did not pass through legislation but may be implemented in other ways.¹⁶ One example is in Hawaii, where no legislation has successfully passed, but where legislators have had a draft EJ

9. *Memphis Sanitation Workers' Strike*, STAN. UNIV.: THE MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/memphis-sanitation-workers-strike> (last visited Dec. 19, 2023).

10. *Id.*

11. *Environmental Justice Timeline*, *supra* note 3.

12. *Id.*

13. *Environmental Justice*, EPA (2022), <https://www.epa.gov/environmentaljustice>.

14. *What is Environmental Justice?*, U.S. DEP'T OF ENERGY: OFF. OF LEGACY MGMT., <https://www.energy.gov/lm/services/environmental-justice/what-environmental-justice> (last visited Nov. 15, 2023).

15. Abby Blocker, *State Trends in Environmental Justice Legislation*, WASTE360 (June 8, 2021), <https://www.waste360.com/legislation-regulation/state-trends-environmental-justice-legislation>.

16. *Id.*

plan since 2015.¹⁷ Instead, the Hawaii State Department of Health had set EJ as a goal and conducted trainings on EJSCREEN.¹⁸ The Environmental Planning Office within the Department of Health has since closed.¹⁹ As of May 2021, 17 states have passed EJ legislation,²⁰ including Vermont's unanimous passage in May 2022.²¹ Several other states, such as Georgia and Arizona, have proposed EJ bills that have yet to pass.²²

EPA released a draft plan in 2022 highlighting several goals that states can pursue to expand EJ.²³ These goals include strengthening compliance with environmental statutes and civil rights laws, incorporating EJ considerations in the regulatory development process, improving community engagement, and implementing the Justice40 initiative.²⁴ States such as Tennessee that have no current or proposed legislation could use EPA's 2022 draft plan goals to maximize engagement and compliance, developing a strong and effective EJ bill.

This paper introduces Vermont's EJA to serve as guidance for Tennessee to hopefully introduce a similar bill. Part I examines federal EJ actions, which can create causes of action. Part II identifies aspects of Vermont's EJA that should apply to Tennessee law. This includes considerations for protected groups and future changes that will stem from the bill. Part III explores the background of Tennessee and what the state has done to address EJ issues thus far. Part IV examines how different aspects of Vermont's EJA would work in Tennessee and compares the two states to determine what may or may not work. Lastly, Part V provides policy recommendations for Tennessee policymakers and the Tennessee Department of Environment and Conservation (TDEC) based on the factor analysis from Part IV.

I. FEDERAL ACTIONS TOWARDS ENVIRONMENTAL JUSTICE

In 1994, Executive Order 12,898 became the first federal action to address EJ in minority and low-income populations.²⁵ This Order was issued

17. *Id.*

18. *See Environmental Justice*, HAWAII.GOV, <https://health.hawaii.gov/epo/ej/> (last updated Oct. 24, 2022) (providing an overview of EJ initiatives in Hawaii).

19. *Id.*

20. *Id.*

21. *S.148 (Act 154)*, VT. GEN. ASSEMB., <https://legislature.vermont.gov/bill/status/2022/S.148> (detailing the legislative history of Act 154 in the 2021-2022 Session for the Vermont General Assembly).

22. *See Blocker*, *supra* note 15.

23. *See Environmental Justice Update*, O'MELVENY & MYERS, LLP (Jan. 31, 2022), <https://www.omm.com/resources/alerts-and-publications/alerts/environmental-justice-update-january-2022/> (highlighting significant elements of EPA's draft plan).

24. *Id.*

25. *State and Federal Environmental Justice Efforts*, NAT'L CONF. OF STATE LEGS., <https://www.ncsl.org/research/environment-and-natural-resources/state-and-federal-efforts-to-advance-environmental-justice.aspx> (last updated May 26, 2023).

by President William J. Clinton to focus attention on federal impacts on environmental and human health.²⁶ Under this Order, federal agencies were required to identify EJ communities, create strategies for remedying issues that these communities face, and develop more comprehensive plans in the future that include public participation.²⁷ The Council on Environmental Quality developed the 1997 Guidance Under the National Environmental Policy Act (NEPA).²⁸ In 2010, EPA released the Interim Guidance on Considering Environmental Justice During the Development of an Action.²⁹

EPA states that EJ occurs when everyone has the same degree of protection from environmental hazards and equal access to the decision-making process for achieving EJ.³⁰ EPA mandates EJ considerations when setting standards, permitting facilities, awarding grants, issuing licenses, promulgating regulations, and reviewing actions proposed by federal agencies.³¹ Thus, for decisions going forward, EPA must consider these at-risk EJ communities and will expose itself to potential lawsuits by failing to follow through on its commitment.

In September 2022, EPA also amended the Environmental Justice Thriving Communities Technical Assistance Centers Program (EJ TCTAC) to increase funding, extend the deadline, and extend coverage for applicants.³² EJ TCTAC is a program designed to increase community capacity for technical support, learning, and funding.³³ This funding is available to aid communities facing EJ issues³⁴ and would be especially helpful for communities in states where there are no laws addressing EJ issues, such as Tennessee.³⁵

A proposed act in Congress called the Environmental Justice for All Act seeks to bring federal agencies into compliance with Executive Order

26. *Summary of Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, EPA, <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice> (last updated July 3, 2023).

27. *Id.*

28. See NAT'L CONF. OF STATE LEGS., *supra* note 25.

29. *Id.*

30. See EPA, *supra* note 13.

31. *Learn About Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last updated Aug. 16, 2023).

32. *Request for Applications (RFA) Amendment*, EPA: OFF. OF ENV'T JUST. (Sept. 2, 2022), https://www.epa.gov/system/files/documents/2022-09/EPA-I-OP-OEJ-22-02_amendment_9.2.22.pdf.

33. *The Environmental Justice Thriving Communities Technical Assistance Centers Program*, EPA, <https://www.epa.gov/environmentaljustice/environmental-justice-thriving-communities-technical-assistance-centers> (last updated Dec. 21, 2023).

34. *Id.*

35. *Environmental Justice Frequently Asked Questions (FAQs)*, TENN. DEP'T OF ENV'T & CONSERVATION (Aug. 2022), https://www.tn.gov/content/dam/tn/environment/policy-planning/documents/title-vi-ej/opp_ej_faqs.pdf.

12,898.³⁶ This bill addresses federal agencies' responsibilities, access to outdoor spaces, EJ training, cosmetic alternatives, and grants, among other EJ considerations.³⁷ Another stated purpose of the bill is to correct environmental injustices because people have a right to "share the benefits of a prosperous and vibrant pollution-free economy."³⁸ Even though Congress has not passed this bill yet, the language is there for states to mirror in their own EJ legislation.

The Environmental Justice for All Act also seeks to strengthen Title VI of the Civil Rights Act of 1964 (Title VI).³⁹ This would increase the capability of Tennessee residents to file EJ lawsuits. It would also require federal agencies to include community involvement under NEPA, especially for EJ communities and Indigenous tribes.⁴⁰ This bill was introduced in the House of Representatives in March 2021.⁴¹ The latest action on the bill was an amendment by the Committee on Natural Resources.⁴²

II. BACKGROUND ON VERMONT'S ENVIRONMENTAL JUSTICE ACT

Vermont's first EJ bill was introduced in April 2021 by Senator Kesha Ram Hinsdale.⁴³ It was first referred to the Committee on Natural Resources and Energy, and after several rounds of amendment proposals and committee reviews, the Governor signed the bill in May 2022.⁴⁴ The final Act has five sections: Findings; 3 V.S.A. chapter 72 addition; Spending Report; Appropriations; and Effective Date.⁴⁵ This Act went into effect on May 31, 2022.⁴⁶ This Article examines the addition of Chapter 72 in 3 V.S.A. and the spending report.

Chapter 72 defines environmental benefits, environmental burdens, and EJ, respectively.⁴⁷ This Act defines EJ to mean that:

36. CONGRESS.GOV, *supra* note 4.

37. *Id.*

38. CONGRESS.GOV, *supra* note 4.

39. See Memo to House Committee on Natural Resources Republican Members re: Full Committee Hearing on *H.R. 2021 the "Environmental Justice for All Act,"* SUBCOMM. ON ENERGY & MIN. RES. REPUBLICAN STAFF (Feb. 14, 2022), https://naturalresources.house.gov/uploadedfiles/02-15-22_fc_leg_hrg_memo.pdf.

40. *Id.*

41. CONGRESS.GOV, *supra* note 4.

42. *All Actions H.R. 2021 – 117th Congress (2021-2022)*, CONGRESS.GOV (2022), <https://www.congress.gov/bill/117th-congress/house-bill/2021/all-actions?overview=closed#tabs>.

43. EJA, Vt. S.148.

44. VT. STAT. ANN. tit. 3, § 6004 (2023).

45. *No. 154, An Act Relating to Environmental Justice in Vermont*, VT. GEN. ASSEMB. (2022), <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT154/ACT154%20As%20Enacted.pdf>.

46. *Id.*

47. VT. STAT. ANN. tit. 3, § 6002(1)–(3) (2023).

[A]ll individuals are afforded equitable access to and distribution of environmental benefits; equitable distribution of environmental burdens; and fair and equitable treatment and meaningful participation in decision-making processes, including the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes the particular needs of individuals of every race, color, income, class, ability status, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief, or English language proficiency level. Environmental justice redresses structural and institutional racism, colonialism, and other systems of oppression that result in the marginalization, degradation, disinvestment, and neglect of Black, Indigenous, and Persons of Color. Environmental justice requires providing a proportional amount of resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most affected by environmental burdens and natural disasters.⁴⁸

Vermont's EJ definition is more comprehensive than the EPA's because it emphasizes the need for fairness and equity in decision-making. Like EPA's, Vermont's EJ definition also considers race, color, income, and English language proficiency.⁴⁹

Vermont's EJA further says the state policy shall not cause communities to bear disproportionate impacts of environmental burdens, and such communities shall not be denied access to an "equitable share of environmental benefits."⁵⁰ When implementing policy, state agencies must consider the cumulative environmental burdens and access to benefits.⁵¹ State agencies must also adopt a community engagement plan that gives communities meaningful participation.⁵² Both cumulative impact statements and community engagement plans are essential to implementing an EJ act, no matter where it is.

The Vermont EJA also created several committees, such as the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee (the Committees).⁵³ Establishing these Committees is extremely useful and important when considering EJ because they provide advice and recommendations to state agencies that implement the law.⁵⁴ The

48. *Id.* § 6002(3).

49. *Id.* § 6002(4)(A)–(C).

50. *Id.* § 6003.

51. *Id.* § 6004(b).

52. *Id.* § 6004(c).

53. *Id.*

54. *Id.* § 6004(d).

analyses developed by these Committees are essential to implementing a just transition.⁵⁵

Another aspect of the Act and addition to 3 V.S.A. chapter 72 is the requirement to develop an EJ mapping tool.⁵⁶ Such a mapping tool could be similar to and incorporate EJSCREEN and the Vermont Social Vulnerability Index.⁵⁷ Vermont has until January 1, 2025 to develop this tool before it will be used to identify these at-risk communities.⁵⁸ Tennessee is geographically and demographically different from Vermont, so the state would benefit from using a similar tool to identify specialized community needs.

Within the Act, protected groups consist of Black, Indigenous, and People of Color (BIPOC), as well as individuals considered low-income and those with limited English proficiency.⁵⁹ These recognized groups need protection because they disproportionately bear the burdens of environmental harm and lack adequate access to food and healthcare.⁶⁰ Only when protected groups are fully recognized can they access the protection they are owed under the Act.

Vermont has made several of the changes required by the Act and will continue to do so over the next few years. The call for “meaningful participation” requires state agencies to change the way they include communities in decision-making.⁶¹ The agencies covered by this Act are currently obligated to adopt community engagement plans, but they will likely not do so for several years.⁶² The first definitive action required by the Act was the creation of the EJ Advisory Council and Interagency Environmental Committee.⁶³ Members were appointed to these Committees

55. *Id.* § 6006(A)(1)(3).

56. *Id.* § 6007(a).

57. EJSCREEN is an Environmental Justice mapping and screening tool developed by EPA. *EJScreen: Environmental Justice Screening and Mapping Tool*, EPA, <https://www.epa.gov/ejscreen> (last updated Nov. 14, 2023). The tool combines environmental and demographic indicators, such as a census block’s English proficiency, along with environmental hazards based on things such as proximity to designated Superfund sites. *Id.* The combination of such factors allows the user to identify Environmental Justice communities in which to implement state and federal government action. VT. STAT. ANN. tit. 3, § 6007(b). The Vermont Social Vulnerability Index is produced by the Vermont Department of Health and consolidates 16 measures of vulnerability into a single index. *Social Vulnerability Index: A User’s Guide*, VT. DEPT OF HEALTH, (Dec. 2015), https://www.healthvermont.gov/sites/default/files/documents/2016/12/ENV_EPHT_SocialVulnerabilityIndex.pdf.

58. VT. STAT. ANN. tit. 3, § 6007(c) (2023).

59. *Id.* § 6002(4)(B).

60. Michael Gochfeld & Joanna Burger, *Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers*, 101 AM. J. PUB. HEALTH S53, S53 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222496/>.

61. VT. STAT. ANN. tit. 3, § 6002(6).

62. VT. GEN. ASSEMB., *supra* note 21.

63. VT. STAT. ANN. tit. 3, § 6006(a)(2).

in December 2022.⁶⁴ Most actions and first reports, however, are not due until 2024 and 2025.⁶⁵

The spending reports from individual agencies will include information on “where investments were made,” the affected census block groups, and the quantified environmental benefits that such groups received.⁶⁶ The quantified environmental benefits need only be described and quantified if it is practicable to do so.⁶⁷ Additionally, these spending reports must be publicly available to keep the agencies accountable and facilitate community engagement.⁶⁸

As of December 2023, there are no lawsuits resulting from the Act’s enactment. That is not to say there will not be any resulting litigation; the Act is relatively new, and there could be lawsuits with respect to future actions.

III. BACKGROUND ON TENNESSEE

Tennessee currently does not have any EJ legislation.⁶⁹ As of December 2023, some of the only mentions of EJ in Tennessee’s state code are statements released by the Tennessee Department of Health (TDH) and TDEC.⁷⁰ The TDH references definitions from EPA, Centers for Disease Control and Prevention, and TDEC, citing reasons why EJ should be pursued.⁷¹ While these statements can be considered a step in the right direction, no affirmative action has been taken. Even the “Additional Resources” portion of the TDH webpage is blank.⁷² This demonstrates that, despite its acknowledgment of EJ, the state has taken no action towards addressing such concerns.

As of the 2020 U.S. Census, Tennessee’s population was just over 6.9 million.⁷³ As of 2022, 7.8% of Tennesseans spoke a language other than English at home.⁷⁴ That same year, 13.4% of the population lacked either a computer or broadband subscription at home, and the median household

64. *Id.*

65. VT. GEN. ASSEMB., *supra* note 21.

66. VT. STAT. ANN. tit. 3, § 6004(g)(1)(A).

67. *Id.* § 6004(g)(1)(B).

68. *Id.* § 6004(j).

69. TENN. DEP’T OF ENV’T CONSERVATION, *supra* note 35.

70. *Environmental Justice*, TENN. DEP’T OF HEALTH, <https://www.tn.gov/health/cedep/environmental/healthy-places/healthy-places/health-equity/he/environmental-justice.html> (last visited Nov. 28, 2023).

71. *Id.*

72. *Id.*

73. *Tennessee*, U.S. CENSUS BUREAU, <https://data.census.gov/profile/Tennessee?g=0400000US47> (last visited Nov. 28, 2023).

74. *Id.*

income was \$65,254.⁷⁵ Of the state's population, there were approximately 28,000 American Indian and Alaska Native residents, 135,600 Asian residents (1.9% of the state's population), 1.1 million Black residents (15%), 479,000 Hispanic or Latino residents (6.9%), 4,000 Native Hawaiian and Pacific Islander residents, 246,000 who identify as some other race, and 413,000 who identified as two or more races.⁷⁶

Comparatively, Vermont's population was about 643,000 in 2020.⁷⁷ Of these 643,000, about 5.5% spoke a language other than English at home in 2022.⁷⁸ Roughly 13.7% of Vermont's population lacked either a computer or broadband at home that year—about the same as Tennessee's.⁷⁹ The median 2022 household income in Vermont was \$73,991, about \$8,700 more per year than in Tennessee.⁸⁰ Of Vermont's 643,000 residents, there were approximately 2,000 American Indians and Alaska Natives, 11,500 Asian residents (1.7% of the state's population), 9,000 Black residents (1%), 15,500 who identified as Hispanic or Latino (2.4%), 181 Native Hawaiian and Pacific Islander residents, about 5,000 who identified as other, and 37,000 who identified with two or more races.⁸¹

After the Trail of Tears in 1838, Indigenous people were forced out of Tennessee completely, and to this day, no tribe has reserved land in Tennessee.⁸² Nonetheless, six tribes in Tennessee gained recognition status in 2010.⁸³ Currently, the Eastern Band of Cherokee Indians is reacquiring land through the Community Forest Program with the U.S. Department of Agriculture in the Great Smoky Mountains.⁸⁴ Gaining recognition is an important step towards achieving EJ, but there is further action the state can take.

75. *Id.*; *Digital Equity Act Population Viewer: Tennessee*, U.S. CENSUS BUREAU, <https://mtgis-portal.geo.census.gov/arcgis/apps/webappviewer/index.html?id=c5e6cf675865464a90ff1573c5072b42> (last visited Dec. 3, 2023).

76. *Digital Equity Act Population Viewer: Vermont*, U.S. CENSUS BUREAU, <https://mtgis-portal.geo.census.gov/arcgis/apps/webappviewer/index.html?id=c5e6cf675865464a90ff1573c5072b42> (last visited Dec. 3, 2023).

77. *Vermont*, U.S. CENSUS BUREAU, <https://data.census.gov/profile/Vermont?g=0400000US50> (last visited Nov. 28, 2023).

78. *Id.*

79. *Digital Equity Act Population Viewer: Vermont*, *supra* note 76.

80. U.S. CENSUS BUREAU, *supra* note 77.

81. *Id.*

82. *About*, NATIVE AM. INDIAN ASS'N OF TENN., <https://naiatn.org/about/> (last visited Nov. 28, 2023).

83. Travis Snell, *Tennessee Commission of Indian Affairs Recognizes 6 Clubs as Tribes*, CHEROKEE PHOENIX (Jun. 23, 2010), https://www.cherokeephoenix.org/news/tennessee-commission-of-indian-affairs-recognizes-6-clubs-as-tribes/article_c846f1ac-496d-5137-bfd3-45da48f5300c.html.

84. *Land Back: How Two Tribes Are Re-Acquiring and Leveraging Community Forests*, FIRST NATIONS DEV. INST., <https://www.firstnations.org/stories/land-back-how-two-tribes-are-re-acquiring-and-leveraging-community-forests/> (last visited Nov. 28, 2023).

Tennessee is known for its strong agricultural economy, with farms covering 41% of the state's land.⁸⁵ As of 2017, 310,544 farm workers were listed on payroll in the state.⁸⁶ Of these, just over 5,000 were listed as migrant workers.⁸⁷ These statistics, developed by the Trump Administration, heavily promoted deportation policies for non-U.S. citizens.⁸⁸ As a result, the listed number may be lower than the actual number of migrant workers within the state, and many more may not have been on the payroll.

Tennessee's Migrant and Seasonal Farm Worker Program is designed to help farm workers find employment.⁸⁹ The problem with the program is that it is time-consuming and expensive. To be eligible, the individual must be "struggling to secure a job or education due to personal challenges," which may include having no reliable transportation.⁹⁰ Yet to enter the program, the individual must meet with a case manager, which is difficult without reliable transportation.⁹¹

According to EPA's website, there are 29 total Superfund sites⁹² in Tennessee.⁹³ Of these, 19 are on the National Priority List of Superfund sites and approximately 10 are in reuse, located across the state, with two in Collierville and two in Chattanooga.⁹⁴ According to EJSCREEN, in Knoxville, both government-owned housing and private housing subsidized by government vouchers are consistently in close proximity to Superfund

85. *USDA National Agricultural Statistics Service, Tennessee Field Office: About Us*, USDA, https://www.nass.usda.gov/Statistics_by_State/Tennessee/About_Us/index.php (last modified Nov. 15, 2019).

86. *USDA, 1 2017 CENSUS OF AGRICULTURE: TENNESSEE COUNTY LEVEL DATA 333* (2017), https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_2_County_Level/Tennessee/ (under row "Table 7," follow "PDF" hyperlink).

87. *Id.*

88. *President Trump's Executive Orders on Immigration and Refugees*, CTR. FOR MIGRATION STUDS. (Jan. 29, 2017), <https://cmsny.org/trumps-executive-orders-immigration-refugees/>.

89. *Migrant and Seasonal Farm Workers Program (MSFW)*, VIRTUAL AM. JOB CTR. OF TENN., <https://www.tnvirtualajc.com/MSFW-program> (last visited Dec. 19, 2023).

90. *Id.*

91. *Id.*

92. *What Is Superfund?*, EPA, <https://www.epa.gov/superfund/what-superfund> (last updated Oct. 30, 2023). Superfund sites are generally abandoned hazardous waste sites that are created by dumping hazardous waste, leaving hazardous waste out in the open, or improperly managing toxic materials. *Id.* When a party is responsible for the contamination, the Comprehensive Environmental Response, Compensation and Liability Act may force that party either to conduct a cleanup of the contaminated site or reimburse the government for cleanup work that EPA has conducted. *Id.* If no party is found responsible, EPA is tasked with the cleanup. *Id.*

93. *National Priorities List and Superfund Alternative Approach Sites*, EPA, <https://www.epa.gov/superfund/search-superfund-sites-where-you-live#map> (last updated Oct. 30, 2023).

94. *National Priorities List (NPL) Sites – by State*, EPA, <https://www.epa.gov/superfund/national-priorities-list-npl-sites-state#TN> (last updated Oct. 23, 2023); *Superfund Sites in Reuse in Tennessee*, EPA, <https://www.epa.gov/superfund-redevelopment/superfund-sites-reuse-tennessee> (last updated Dec. 22, 2023).

sites.⁹⁵ Without any state statute in place, these communities are offered no protection except on the federal level.

Another EJ concern is water quality throughout the state.⁹⁶ The Upper Tennessee River Basin has a high concentration of fecal coliform indicators due to the large number of agricultural areas.⁹⁷ This pollution is also caused by leaky and faulty sewage systems.⁹⁸ Old, deteriorating wastewater treatment plants are also known to leak bacteria into the river during storm events.⁹⁹ This pollution harms EJ communities by impacting the quality of their drinking water sources.¹⁰⁰ These communities are particularly vulnerable because they are often next to industrial facilities or face the consequences of other poor zoning decisions, increasing their exposure to chemicals, microplastics, and bacteria.¹⁰¹ With poor water quality comes a concerning increase in health issues.¹⁰²

Over the past few years, the frequency of flooding has noticeably increased across the state.¹⁰³ The floods are becoming increasingly catastrophic and leave little time for residents to evacuate once water levels start rising.¹⁰⁴ BIPOC and low-income communities face increased risk every time there is an intense rain event because they are often located in flood plains.¹⁰⁵ Additionally, 7.8% of Tennessee's census tracts are areas of high flood risk that are densely populated with mobile homes.¹⁰⁶ People in these areas are most at risk during severe storms and have the most difficulty making repairs and recovering.

95. *EJScreen: EPA's Environmental Justice Screening and Mapping Tool*, EPA, <https://ejscreen.epa.gov/mapper/> (last visited Dec. 19, 2023) (view proximity to Superfund sites using the "Environmental Justice Indexes" and "Pollution and Sources" tabs).

96. *What's in the Water? Tennessee's Water Pollution Problems Are Becoming More Widespread*, NEWSCHANNEL 5, <https://www.newschannel5.com/news/whats-in-the-water-tennessees-water-pollution-problems-are-becoming-more-widespread> (Dec. 21, 2020, 10:03 PM).

97. P.S. HAMPSON ET AL., U.S. GEOLOGICAL SURVEY, *WATER QUALITY IN THE UPPER TENNESSEE RIVER BASIN, TENNESSEE, NORTH CAROLINA, VIRGINIA, AND GEORGIA 1994-98* (2000), https://pubs.usgs.gov/circ/circ1205/major_findings.htm.

98. *Id.*

99. *Id.*

100. *The Right to Clean Water*, S. ENV'T L. CTR., <https://www.southernenvironment.org/topic/the-right-to-clean-water/> (last visited Dec. 3, 2023).

101. *Id.*

102. *Id.*

103. Yaron Miller & Kristiane Huber, *After Devastating Storms, Tennessee Coalition Calls for State Policy to Address Pervasive Flooding*, THE PEW CHARITABLE TRS. (Oct. 12, 2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/10/06/after-devastating-storms-tennessee-coalition-calls-for-state-policy-to-address-pervasive-flooding>.

104. Michael Levenson, *At Least 22 Dead and 50 Missing in Tennessee Floods, Officials Say*, N.Y. TIMES (Aug. 24, 2021), <https://www.nytimes.com/2021/08/21/us/tennessee-flash-floods.html>.

105. Kris Smith, *Mobile Home Residents Face Higher Flood Risk*, HEADWATERS ECON. (Feb. 10, 2022), <https://headwaterseconomics.org/natural-hazards/mobile-home-flood-risk/>.

106. *Id.*

In addition to mobile homes, some cities within the state also have high risks of flooding, with 42% of the local properties in Chattanooga being at risk.¹⁰⁷ Redlined areas see the most damage and predominantly Black neighborhoods are often in low-lying neighborhoods that are more prone to flooding.¹⁰⁸ Climate change is intensifying and increasing the frequency of these devastating storms, harming those who are least able to protect themselves.¹⁰⁹ Without protective laws in place, the harm will only worsen.

IV. HOW THE BILL WOULD WORK IN TENNESSEE

Tennessee needs an EJ bill to protect the communities most at risk. Broadly speaking, something like Vermont's EJA would work in Tennessee simply because it would prompt EJ action where none already exists. In general, individual aspects of Vermont's Act that would work are the cumulative impact analyses, community engagement plans, and language access objectives.

The bill would first work by defining what EJ in Tennessee means. This definition would include identifying all the protected groups and the EJ harms they face. EJ definitions are usually unique to individual states, and for each, it is important to define who needs to be protected by such action.¹¹⁰

The cumulative impact analysis would function similar to Vermont's by requiring certain government agencies to conduct reports through different processes. An example of this could be examining drinking water quality of a particular water source and the demographics of the populations that use that drinking water source. This would be most applicable during agency permitting processes, such as examining permits for wastewater treatment facilities or other pollution-creating facilities.¹¹¹ Such an analysis would

107. *Top Cities That Flood in Tennessee*, AFS: A GROUNDWORKS CO., <https://www.afsrepair.com/resources/top-cities-that-flood-in-tennessee/> (last visited Dec. 19, 2023).

108. Thomas Frank & E&E News, *Flooding Disproportionately Harms Black Neighborhoods*, SCI. AM. (June 2, 2020), <https://www.scientificamerican.com/article/flooding-disproportionately-harms-black-neighborhoods/>.

109. See KATE MARVEL ET AL., FIFTH NATIONAL CLIMATE ASSESSMENT: CHAPTER 2. CLIMATE TRENDS § 2.2 (2023), <https://nca2023.globalchange.gov/chapter/2/>.

110. See VT. L. SCH. ENV'T JUST. CLINIC, *Environmental Justice State by State Directory*, ENV'T JUST. STATE BY STATE, <https://ejstatebystate.org/directory> (last visited Nov. 19, 2023) (compiling the definitions of "environmental justice" and "environmental justice communities" for each state); see also KEN KIMMELL ET AL., A USER'S GUIDE TO ENVIRONMENTAL JUSTICE: THEORY, POLICY, & PRACTICE, NE. UNIV. SCH. OF PUB. POL'Y & URB. AFFS. § 2 (2021), <https://cssh.northeastern.edu/policyschool/wp-content/uploads/sites/2/2021/07/Users-Guide-to-Environmental-Justice-6.22.21-clean.pdf> (explaining that "[d]efining EJ communities is an essential first step" because "[w]ithout a clear and comprehensive definition, policymakers are likely to continue to overlook or make assumptions about certain communities").

111. EPA, EPA LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE: CUMULATIVE IMPACTS ADDENDUM 15–16 (2023), <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>.

examine communities surrounding the sites and determine whether they are EJ communities and the consequences if the permit were approved.

Massachusetts has taken a similar approach to its EJ act and requires cumulative impact analyses to be performed, but it limits the analysis to air quality.¹¹² The reason for this limitation is that the statute only requires the air quality analysis and expanding the analysis may complicate review.¹¹³ The Massachusetts Department of Environmental Protection (MDEP) developed a draft cumulative impact analysis.¹¹⁴ As of November 2023, the draft is available publicly, and the analysis portion is open for public commenting.¹¹⁵

However, given the condition of the Tennessee River, Tennessee should take a broader approach and examine impacts on drinking water and water quality.¹¹⁶ Given the state's agricultural focus,¹¹⁷ examining impacts on soil should be another consideration. Soil health is important to the viability of crops and thereby the livelihood of individuals who rely on that soil.¹¹⁸ Soil health impacts EJ communities because soil carries pesticides and toxicities, thereby impacting safe drinking water.¹¹⁹ Soil has an overarching impact on every individual,¹²⁰ which is why it is so important to study and consider.

Community engagement plans are a crucial part of allowing communities to be heard when considering decisions that may impact them. Community engagement encourages community members to participate in decision-making processes by voicing their values and concerns.¹²¹ Agencies frequently impact communities, such as by allowing certain permits or rezoning and redistricting. By changing the review process to hear the opinions of impacted communities, the governing agency may become aware

112. Microsoft Teams Interview with Marilyn Levenson, Senior Counsel, Mass. Dep't of Env't Prot. (Dec. 1, 2022).

113. *Id.*

114. Brook Detterman et al., *MassDEP Releases Proposed Cumulative Impact Analysis Regulations for Air Permits*, BEVERIDGE & DIAMOND (Jan. 9, 2023), <https://www.bdlaw.com/publications/massdep-releases-proposed-cumulative-impact-analysis-regulations-for-air-permits/>.

115. Margaret Renkl, *Tennessee's Dangerous Waters*, N.Y. TIMES (Oct. 28, 2019), <https://www.nytimes.com/2019/10/28/opinion/tennessees-dangerous-waters.html>.

116. *USDA's National Agricultural Statistics Service Tennessee Field Office*, USDA (Nov. 15, 2019), https://www.nass.usda.gov/Statistics_by_State/Tennessee/About_Us/index.php.

117. *Soil Health*, USDA, <https://www.farmers.gov/conservation/soil-health#:~:text=Healthy%20soil%20is%20the%20foundation,resiliency%20of%20their%20working%20land> (last visited Nov. 19, 2023).

118. Janaki Jagannath, *Healthy Soil is Ground Zero for Environmental Justice in Farm Communities*, CIV. EATS (Aug. 17, 2018), <https://civileats.com/2018/08/17/healthy-soil-is-ground-zero-for-environmental-justice-in-farm-communities/>.

119. USDA, *supra* note 117.

120. *Id.*

121. Sally Hussey, *Why is Community Engagement Important?*, GRANICUS, <https://granicus.com/blog/why-is-community-engagement-important> (last visited Dec. 19, 2023).

of situations not previously considered. Hearing the opinions of impacted communities “increases the visibility and understanding of issues” and gives people a say in decisions that will affect their lives.¹²²

When creating a community engagement plan, it is extremely important to consider the needs of community members that the agency plans to engage with.¹²³ Oftentimes, members of these communities lack basic necessities and face situations that make it difficult to take hours out of their day to provide feedback to an agency.¹²⁴ While providing feedback is beneficial in the long run, taking time to provide input can create short-term difficulties for these communities. To help mitigate this problem, community members should be meaningfully reimbursed for giving their time. This means more than just \$20 for each community meeting; it means providing an equitable compensation that correlates to the time these community members give.

Other ways to facilitate community engagement include providing childcare for the day, offering transportation to and from the meeting, and providing food throughout the engagement process. One way to look at this is to envision the person who needs the most assistance; provide that, and a government ensures that all are sufficiently supported. To assist agencies in promptly creating a comprehensive and meaningful engagement plan, the state may implement a compliance deadline for agencies.

Another critical element for community access plans is language access. If residents cannot communicate their opinions and needs with those who are doing the decision-making, then they have effectively been silenced. The Centers for Medicare and Medicaid Services have created a guide for developing a language access plan.¹²⁵ The guide is aimed at healthcare providers, but the concepts effectively apply to government agencies. To do this, Tennessee should start with identifying the number of individuals with limited English proficiency in the area.¹²⁶ The state must keep in mind the difference between benefits provided by oral and written translation and the availability of each within a community.¹²⁷ As Vermont did, Tennessee should examine the number of languages spoken within the state, particularly examining settlement sites, because large groups of people in these areas

122. *Id.*

123. *Creating a Community and Stakeholder Engagement Plan*, U.S. DEP'T OF ENERGY 2 (Aug. 2022), https://www.energy.gov/sites/default/files/2022-08/Creating%20a%20Community%20and%20Stakeholder%20Engagement%20Plan_8.2.22.pdf.

124. *Id.* at 15.

125. *See generally Guide to Developing a Language Access Plan*, CTR. FOR MEDICARE & MEDICAID SERVS., <https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Language-Access-Plan-508.pdf> (Aug. 2023) (providing a template for community language access programs).

126. *Id.*

127. Telephone Interview with Keshia Ram Hinsdale, Senator, Vt. Senate (Dec. 12, 2022).

speak the same language, and language access has a direct correlation with EJ.¹²⁸

In conjunction with improving language access, community engagement plans should be supported by staff with adequate support and assistance. The state should interpret the support prong to include training so that the staff may appropriately handle different situations. This is relevant to language access because with the correct support, language barriers will not be a problem. Different communities will have different needs, and staff should provide and use accessible language to handle these differences.¹²⁹

Currently, Tennesseans may find relief from discriminatory environmental acts under Title VI of the Civil Rights Act of 1964.¹³⁰ Title VI prohibits intentional discrimination as well as “procedures, criteria or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin.”¹³¹ This means that facially neutral actions, including permitting a facility that creates high levels of pollution to be constructed in a primarily Black neighborhood, may be held to violate Title VI. While this may offer some protection, seeking damages is expensive and time-consuming, which discourages people with limited resources from pursuing legal relief.¹³² Another issue with finding a remedy only in Title VI is that some communities may not realize they are facing an injustice and that their situation could change; community members may have accepted their situation for what it is because they do not know any differently.¹³³

Title VI provides funding for agencies and institutions under the U.S. Department of Education.¹³⁴ Once these agencies and institutions receive funding, they must operate in a non-discriminatory manner.¹³⁵ This applies to a whole array of programs and activities, including housing and employment, which are both significant EJ components.¹³⁶ For Tennessee residents to lodge complaints for Title VI violations, they must file a

128. *Id.*

129. CTR. FOR MEDICARE & MEDICAID SERVS., *supra* note 125.

130. 42 U.S.C. § 2000(d).

131. *Civil Rights Requirements - A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. (“Title VI”)*, U.S. DEP’T. OF HEALTH & HUM. SERVS., <https://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/civil-rights-requirements/index.html> (last visited Dec. 19, 2023).

132. *Initiating Legal Action*, UNIV. OF KAN., <https://ctb.ku.edu/en/table-of-contents/advocacy/direct-action/legal-action/main>. (last visited Dec. 19, 2023).

133. *Id.*

134. *Education and Title VI*, U.S. DEP’T OF EDUC.: OFF. FOR CIV. RTS., <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html> (last visited Dec. 19, 2023).

135. *Id.*

136. *Id.*

complaint with the Office for Civil Rights.¹³⁷ Additionally, someone may complain on behalf of another person or group of people.

Different measures should be taken to ensure public policy goals are achieved. These measures should be taken through a combination of cumulative impact analyses and community engagement. This can be done by surveying stakeholders and community members after implementing a program or action to see how they have been affected and whether they believe the goal was achieved. Measuring progress toward achieving public policy goals is important because doing so can not only assess program satisfaction, it can also determine whether changes need to be made.

Parts of the Vermont EJA that could be successfully implemented in Tennessee include the aforementioned reports,¹³⁸ studies, and analyses within the state.¹³⁹ This is because geography would not change the implementation of such a program; it would only potentially change the implementation and focuses therein. Similarly, the Act's creation of the Committees is replicable and would be beneficial for Tennessee.¹⁴⁰ Since Tennessee is much larger than Vermont, it would be possible and may be necessary for Tennessee to increase the size of these councils or add an additional council.

Another aspect that would succeed in Tennessee is the identification of households where the annual median household income is less than 80% of the state's.¹⁴¹ Using 80% as the benchmark would make sense because even the average household income in Vermont is higher, so is its cost of living.¹⁴² The annual income adjusted for the cost of living in Vermont is \$38,857, while in Tennessee it is \$36,854.¹⁴³ This means that the average Vermont household retains about \$2,000 more even though income is about \$12,000 more, so 80% of the household income is functionally comparable between the states. If anything, Tennessee should increase this standard to 85% to make up the difference and be more inclusive of low-income households.

Parts of Vermont's EJA that would not work in Tennessee or may need to be changed include identifying focus populations that have households with 1% or higher limited English proficiency.¹⁴⁴ A 1% benchmark is intended to increase inclusivity and reach community members, but it may be unattainable for a state as large as Tennessee. A more realistic standard

137. *Id.*

138. *See supra* Part II.

139. *See* VT. STAT. ANN. tit. 3, § 6006(a)(3) (2023).

140. *Id.* § 6006(a)(1)(A)–(B).

141. *Id.* § 6002(4)(A).

142. *Id.*; Nathan Yau, *Income in Each State, Adjusted for Cost of Living*, FLOWINGDATA, <https://flowingdata.com/2021/03/25/income-in-each-state-adjusted-for-cost-of-living/> (last visited Dec. 19, 2023).

143. Yau, *supra* note 142.

144. VT. STAT. ANN. tit. 3, § 6002(4)(C).

for Tennessee may be to expand this to 5% to begin with and then increase the number of consulted communities as they are identified.

Other disparities may arise through the implementation of cumulative impact analyses. The MDEP performed a test scenario with an actual permit in an EJ community.¹⁴⁵ The MDEP looked at different characteristics within the community and found that there cannot be too many indicators for the analysis.¹⁴⁶ To perform an effective analysis, the agency must look at the rational characteristics of that community.¹⁴⁷ Vermont has not released which characteristics are to be used, but the differences in geography and needs of communities between Vermont and Tennessee mean that the appropriate EJ indicators may vary greatly between the two states.

Some EJ bills have legally challenged industries that overburden EJ communities by utilizing the court system to file—or threaten to file—lawsuits.¹⁴⁸ For example, New Jersey has one of the strongest EJ laws, which was used to file a series of lawsuits in August 2022.¹⁴⁹

Before any explicit EJ laws were passed, there was *Bean v. Southwestern Waste Management Corporation*.¹⁵⁰ This 1979 case arose because the Texas Department of Health granted a permit that allowed for the operation of a solid waste facility.¹⁵¹ The plaintiffs claimed racial discrimination in the selection of facility sites because the sites would be in areas that primarily housed people of color.¹⁵² While the plaintiffs failed to obtain their preliminary injunction in the end,¹⁵³ that case showed that it is possible to sue on the basis of EJ-related harms.

CONCLUSION

In sum, Vermont's EJA would theoretically work if implemented in Tennessee with minor adjustments to account for unique differences between the two states. The requirements for different committees, cumulative impact analyses, and community engagement are all strong elements that can be seen

145. Microsoft Teams Interview with Marilyn Levenson, *supra* note 112.

146. *Id.*

147. *Id.*

148. VT. STAT. ANN. tit. 3, § 6004(d) (2023).

149. Steven Rodas, *N.J. Officials File Lawsuits to Address 'Historic Injustices' of Pollution*, NJ.COM, <https://www.nj.com/news/2022/08/nj-officials-file-lawsuits-to-address-historic-injustices-of-pollution.html> (Aug. 26, 2022, 8:35 PM).

150. *Bean v. Sw. Waste Mgmt. Corp.*, 482 F. Supp. 673, 673 (S.D. Tex. 1979).

151. *Id.* at 675.

152. *Id.* at 678.

153. *Id.*

in many other states' EJ acts.¹⁵⁴ While these individual features may be implemented differently, these features, overall, have been successfully implemented in various states, leading to the conclusion that they would work in Tennessee. The EJ mapping tool that Vermont is creating would be another useful instrument for Tennessee to identify communities most at risk, should it choose to develop a mapping tool.

Recommended changes between Vermont's EJA and a potential bill in Tennessee include expanding the threshold for identifying communities where a relatively large proportion of households have limited English proficiency. Vermont uses the 1% figure as a threshold, but Tennessee should use 5% for identification.¹⁵⁵ Tennessee is much larger than Vermont and has a higher concentration of households that speak a language other than English, with about 2% more across the state.¹⁵⁶ Since 5% is the federal standard, this simplifies compliance and still helps identify EJ communities.¹⁵⁷

Another recommended change is to widen the focus of low-income households to identify households below 85% of the state's median household income, compared to Vermont's 80% threshold.¹⁵⁸ This is because Tennessee has a lower per capita average income than Vermont. The more inclusive standard would also increase protections for those in at-risk communities and residents who work in the agricultural industry.

Before policymakers can pass any sort of EJ bill in Tennessee, they need information to prove that EJ-related disparities exist.¹⁵⁹ This would include examining home ownership, renewable energy, and social justice across the state in general.¹⁶⁰ Tools should be in place to identify EJ communities and factors such as flooding and heat vulnerability.¹⁶¹ This reemphasizes the importance of creating a mapping tool for Tennessee so that policymakers may identify those who are most at risk and the state's capacity for assisting those communities.

Several implementation methods should be created to further aid Tennessee in identifying and aiding EJ communities. One way to help EJ

154. See MASS. DEP'T OF ENV'T PROT., CUMULATIVE IMPACT ANALYSIS (CIA) FRAMEWORK FOR AIR PERMITS: DRAFT FOR DISCUSSION – APRIL 25, 2022, 1 (2022) (unpublished draft for discussion) (available at <https://www.mass.gov/doc/draft-cumulative-impact-analysis-framework-april-25-2022/download>).

155. See VT. STAT. ANN. tit. 3, § 6002(4)(C) (2023).

156. *Tennessee*, U.S. CENSUS BUREAU, <https://data.census.gov/profile/Tennessee?g=040XX00US47> (last visited Dec. 19, 2023); *Vermont*, U.S. CENSUS BUREAU, <https://data.census.gov/profile?g=0400000US50> (last visited Dec. 19, 2023).

157. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127.

158. See VT. STAT. ANN. tit. 3, § 6002(4)(A).

159. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127.

160. *Id.*

161. *Id.*

communities is to create projection mapping.¹⁶² This means creating a mapping tool that uses data to determine community demographics and harms that may impact those communities in the future.¹⁶³ State-specific mapping tools could, like EJSCREEN, aid in identifying EJ communities and creating awareness of the harms that these communities are facing.¹⁶⁴

When considering its Indigenous population, Tennessee should incorporate certain actions in its EJ bill. First, the state should assist Indigenous people in “Land Back” movements and recognize tribal lands because there is no state-recognized land as of this writing. Tribes are taking Land Back initiatives on their own with forest land, but the state should ease this process.¹⁶⁵

On the other hand, this could be contentious because, historically, tribes shared some lands with other tribes; full ownership by just one tribe restricts the others from their historical lands.¹⁶⁶ There are also local concerns about the sovereignty of the land and concerns over gambling in the area.¹⁶⁷ To address these concerns, the state could establish cultural centers.¹⁶⁸ Cultural centers provide preservation and generation of Indigenous culture and a safe space for community members to gather.¹⁶⁹ Tennessee has the discretion to implement such a program. Research should be done to determine which would be best for Indigenous people and the state in conjunction with an EJ provision.

Within Tennessee’s proposed EJ bill, the community engagement plan should include equity considerations such as monetary incentives. Community members who participate in the process should be reimbursed a fair wage for providing their time. It is important that EJ stakeholders be included in the process, and income will incentivize them to donate time. Childcare should also be provided so that people with children who cannot otherwise afford childcare may still participate. By accommodating those in the community who are worst off and providing them the assistance they need, agencies can ensure that everyone who is there will receive the assistance they need. Lastly, to ensure that agency community engagement

162. Class Lecture with Xusana Davis at Vt. L. & Graduate Sch., Exec. Dir. of Racial Equity, State of Vt. (Nov. 23, 2022) (on file with author).

163. *Id.*

164. Bryan Davidson, *Advancing Environmental Justice with the Latest Technology*, 58 TENN. BAR J. 5 (2022), <https://www.tba.org/?pg=TennesseeBarJournal&pubAction=viewIssue&pubIssueID=19125&pubIssueItemID=84660>.

165. FIRST NATIONS DEV. INST., *supra* note 84.

166. Class Lecture with Judy Dow, Educator, Vt. L. & Graduate Sch. (Aug. 31, 2022).

167. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127.

168. *Id.*

169. *Cultural Spaces in Indigenous Communities Program*, GOV’T OF CAN., <https://www.rcaanc-cimac.gc.ca/eng/1628786076040/1628786094489> (last modified Oct. 25, 2023).

plans are created within a reasonable time, the state should enforce a compliance deadline.

With almost half of Tennessee's land being used for farming and 23% of the employed population working in the agribusiness sector, considerations should also be made for Tennesseans in these sectors.¹⁷⁰ Farming is considered one of the most dangerous businesses in the U.S., and individuals in this line of work should be offered protections that their employers, such as Tyson Foods, may otherwise not provide.¹⁷¹ These considerations should include a focus on migrant and seasonal farmworkers to help them achieve equity and equality, especially those who may not be identified on payroll for safety reasons.¹⁷² Studies of agricultural communities would identify those communities at risk of EJ-related harms. Using community engagement, these studies would find ways to best provide assistance to vulnerable communities.

It is important to define EJ in a way that pertains to Tennessee and protects underserved communities. In Massachusetts, community groups, industry people, and all sorts of stakeholders were involved in providing input on what the definition should be.¹⁷³ For the definition to be meaningful, it must resonate with and educate people about what exactly EJ is in Tennessee.¹⁷⁴ Tennessee could also look at what other states have done, using those to formulate the definition. This could include focusing on other southeastern states such as Virginia, North Carolina, and Georgia, because these states share demographic similarities¹⁷⁵ and share similar histories of environmental injustice. As in Vermont, this definition could also examine factors, such as thresholds established by New Jersey and environmental costs and benefits established by Massachusetts.¹⁷⁶

170. D. Alan Barefield & George F. Smith, *Tennessee's Agriculture*, THE UNIV. OF TENN.: AGRIC. EXTENSION SERV. 3, <https://www.shelbycountytn.gov/DocumentCenter/View/1262/Tennessee-Agriculture?bidId=> (last visited Dec. 19, 2023).

171. *Farming: The Most Dangerous Job in the U.S.*, MORNING AGCLIPS (Sept. 14, 2022), <https://www.morningagclips.com/farming-the-most-dangerous-job-in-the-u-s/#:~:text=%E2%80%93Each%20year%2C%20more%20people%20die,the%20national%20average%20for%20workers>.

172. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127; *Facts About Farmworkers*, NAT'L CTR. FOR FARMWORKER HEALTH, INC. 3–4 (Aug. 2012), http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-facts_about_farmworkers.pdf.

173. Microsoft Teams Interview with Marilyn Levenson, *supra* note 112.

174. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127.

175. *Consumer Spending by State*, BUREAU OF ECON. ANALYSIS: U.S. DEP'T OF COM., <https://www.bea.gov/data/consumer-spending/state> (last modified Dec. 15, 2023); *Regional Economic Accounts*, BUREAU OF ECON. ANALYSIS: U.S. DEP'T OF COM., <https://www.bea.gov/data/economic-accounts/regional> (last modified May 17, 2022); *Arts and Cultural Production Satellite Account, U.S. and States*, BUREAU OF ECON. ANALYSIS: U.S. DEP'T OF COM., <https://www.bea.gov/data/special-topics/arts-and-culture> (last modified Aug. 4, 2023).

176. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127.

Since 2011, the Governor and a majority of the Senate and House of Representatives in Tennessee have been Republican.¹⁷⁷ In this current political climate, an EJ bill is unlikely to pass on its face, particularly one with specific language referencing EJ. What other states have done—and what Tennessee could do—is pass other bills addressing EJ concerns without calling out EJ by name.¹⁷⁸ Nashville, which is currently majority Democratic, and Chattanooga, which has a high risk for flooding, could be potential starting points. In Chattanooga, policymakers should determine what EJ framework would help communities that face flooding by determining why those homes are impacted and then using that information to assist communities across the state.

Overall, Tennessee policymakers should take action to protect EJ communities because they face disparate treatment: these communities face the greatest environmental harms and have the least capability to address those harms. The definition of EJ in Tennessee must include language that identifies specific communities and groups the bill would seek to protect. Defining EJ is only one step to creating an effective and meaningful bill for Tennessee. Even without any EJ legislation, Tennessee still has an affirmative duty to protect its citizens.

177. *Party Control of Tennessee State Government*, BALLOTPEDIA, https://ballotpedia.org/Party_control_of_Tennessee_state_government (last visited Dec. 19, 2023).

178. Telephone Interview with Kesha Ram Hinsdale, *supra* note 127.