

**PRIDE IN OUR COMMUNITIES:
THE LEGAL INTERSECTION OF THE LGBTQ AND ENVIRONMENTAL
JUSTICE MOVEMENTS**

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PRECIS

The bright colors of the rainbow pride flag have rallied the LGBTQ community¹ for the past 40 years, to defend and celebrate civil rights.² In 2017, the city of Philadelphia’s Office of LGBT Affairs unraveled a new pride flag that added two colors to the rainbow: black and brown.³ The black and brown stripes symbolized “a renewed dedication to unity and inclusion in the LGBT[Q] community.”⁴ The Philly Pride Flag signals that unity and inclusion belong at the forefront of LGBTQ advocacy.

The LGBTQ community is not a unified political movement. Lesbians, gay men, bisexuals, and transgender people existed as separate social movements for decades.⁵ These communities came crashing together during the 1980s AIDS epidemic. LGBTQ identities came together to care for the sick.⁶ In the process, they forged a community of sexual and gender minorities.⁷ Through unity, the LGBTQ community has achieved major

1. In this article, LGBTQ refers to the diverse community of sexual and gender minorities, including lesbian, gay, bisexual, transgender, queer, intersex, pansexual, two-spirit, asexual, and other identities. The LGBTQ acronym has evolved over the years to encompass the diverse expressions of human gender and sexuality. Originally, the LGBTQ community adopted the acronym LGBT and GLBT in the 1990s to replace the term “gay,” which was used to describe the greater LGBTQ community since the 1940s. Emily Zak, *LGBTQQIAA+: How we got here from Gay*, MS. MAG. (Oct. 1, 2013), <https://msmagazine.com/2013/10/01/lgbtqqiaa-how-we-got-here-from-gay/>. The LGBT acronym has grown further to be more inclusive, and has created multiple variants such as LGBT+, LGBTQIA, and others. *Id.* As of 2022, LGBTQ is one of the more common inclusive versions of the acronym, and has been adopted by several LGBTQ organizations, such as GLAAD and the Human Rights Campaign. GLAAD Media Reference Guide, 11th ed., GLAAD, <https://www.glaad.org/reference/terms> (last visited Sept. 30, 2022); HRC Staff, *HRC Officially Adopts Use of “LGBTQ” to Reflect Diversity of Own Community*, HUM. RTS. CAMPAIGN (June 3, 2016), <https://www.hrc.org/news/hrc-officially-adopts-use-of-lgbtq-to-reflect-diversity-of-own-community>. This article similarly adopts the LGBTQ version of the acronym to acknowledge other sexual and gender identities outside of the eponymous lesbian, gay, bisexual, transgender, and queer identities. However, as an editorial note, the acronym LGBT is occasionally referenced in this article as well to refer to LGBTQ-affiliated organizations and other studies about the LGBTQ community. Finally, this article acknowledges that LGBTQ is not the definitive term for this community and that this acronym is subject to debate within the community itself. *See, e.g.*, Erin Blakemore, *From LGBT to LGBTQIA+: The Evolving Recognition of Identity*, NAT’L GEOGRAPHIC (Oct. 19, 2021), <https://www.nationalgeographic.com/history/article/from-lgbt-to-lgbtqia-the-evolving-recognition-of-identity?loggedin=true> (noting that there are critics of the term LGBTQ and that “the words people use to describe gender expression and sexual identity will continue to evolve”).

2. Curtis M. Wong, *The History and Meaning of the Rainbow Pride Flag*, HUFFPOST (Jun. 7, 2018), https://www.huffpost.com/entry/rainbow-pride-flag-history_n_5b193aaf4b0599bc6e124a0.

3. Ben Deane, *The Philly Pride flag, explained*, THE PHILA. INQUIRER, (Jun 12, 2021) <https://www.inquirer.com/philly-tips/philadelphia-pride-flag-20210612.html>.

4. Amber Hikes, *More Color, More Pride*, CITY OF PHILA. OFFICE OF LGBT AFFAIRS (Jun 8, 2017), <https://www.phila.gov/posts/office-of-diversity-equity-and-inclusion/2017-06-08-more-color-more-pride/>.

5. JAMI K. TAYLOR ET AL., *THE REMARKABLE RISE OF TRANSGENDER RIGHTS*, 28 (2018) (explaining that there were “deep divisions between gay men and lesbian women because of misogyny in the gay rights movement. . . . Gender divisions also extended to the trans community during this era”).

6. *Id.* at 29 (“[L]esbian and gay activists also interacted with transgender people who were also affected by the disease”).

7. *Id.*

political and legal milestones. Each milestone—from decriminalizing sodomy⁸ to legalizing same-sex marriage⁹ to protecting employment rights¹⁰—has significantly changed the lives of LGBTQ Americans.

While the LGBTQ community has achieved major victories together—vast inequities remain. These inequities exist within the LGBTQ population itself. Forty-two percent of the LGBTQ population in the United States also belongs to racial and ethnic minority groups.¹¹ People of color within the LGBTQ community face multiple forms of oppression including: racism, sexism, and homophobia.¹² Further still, people of color in the LGBTQ community face higher rates of food insecurity and economic insecurity than white LGBTQ people.¹³ Addressing the issues faced by people of color and/or low-income members of the LGBTQ community will move the LGBTQ Movement towards the inclusive ideal of the Philly Pride Flag.

In a similar vein, the Environmental Justice (EJ) Movement seeks to remedy the “disproportionately high and adverse human health or environmental effects . . . on minority populations and low-income populations.”¹⁴ The issue of inclusion within the LGBTQ Movement and EJ’s focus on remedying adverse health and environmental effects both seek to aid people of color and/or low-income people. Therefore, building a more inclusive LGBTQ community will require uniting the LGBTQ Movement with the EJ Movement. The purpose of this article is to explore how intersectional issues can be addressed with our present framework of environmental and civil rights laws, to encourage greater participation in the EJ Movement.

This article will explore EJ themes through a queer lens. Section II provides background on the overlap between the LGBTQ and EJ communities. Section III analyzes statutory language in civil rights and environmental statutes commonly utilized by EJ advocates. Section IV raises policy arguments for LGBTQ protections in the EJ context. Section V offers recommendations and potential solutions to include sex and gender protections in environmental and civil rights statutes. The article concludes

8. *See generally* *Lawrence v. Texas*, 539 U.S. 558 (2003) (ruling criminal punishments for same-sex sodomy were unconstitutional).

9. *See generally* *Obergefell v. Hodges*, 576 U.S. 644 (2015) (ruling that same-sex marriage was constitutional).

10. *See generally* *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) (ruling that employment discrimination based on sex is unconstitutional).

11. THE WILLIAMS INST., *LGBT DEMOGRAPHIC DATA INTERACTIVE* (2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#density>, (last visited Dec. 5, 2021).

12. Cheryl A. Parks et al, *Race/Ethnicity and Sexual Orientation: Intersecting Identities*, 10 *CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH.* 241, 252 (2004).

13. SOON KYU CHOI ET AL, *BLACK LGBT ADULTS IN THE US*, WILLIAMS INST., Jan. 2021.

14. Exec. Order No. 12,898, 32 C.F.R. § 651.17 (Feb. 11, 1994).

that statutory language for EJ advocacy provides limited legal tools to the LGBTQ members of EJ communities.

I. BACKGROUND

A. *The History of the LGBTQ and EJ Movements*

The Stonewall Riot in 1969 has been described by many as the beginning of the modern LGBTQ Movement.¹⁵ After Stonewall, the LGBTQ community shifted from support network organizations, like the Mattachine Society and the Daughters of Bilitis, to more political-focused organizations.¹⁶ The new wave of LGBTQ organizations took inspiration from the Civil Rights Movement and the Feminist Movement.¹⁷ These organizations expanded LGBTQ rights and improved public opinion for LGBTQ individuals.¹⁸ The 1980s shaped the LGBTQ organizations into the more unified LGBTQ coalition—when lesbian, gay, and transgender groups came together to combat the AIDS epidemic.¹⁹ Since then, the community has weathered numerous social and political battles. The LGBTQ community won strategic victories towards decriminalizing sodomy,²⁰ legalizing same-sex marriage,²¹ and gaining employment discrimination protections.²²

The EJ Movement laid down its roots in the early 1980s. The Movement began with the citizen protests over the PCBs (polychlorinated biphenyls) landfill in Warren County, NC.²³ Reverend Benjamin Chavis of the United Church of Christ Commission for Racial Justice coined the term “environmental racism.”²⁴ This term describes the disproportionate impact that the predominantly Black and low-income residents of Warren County

15. TAYLOR ET AL., *supra* note 5, at 45 (stating that Stonewall “is generally thought of as the birth of the modern gay rights movement”).

16. See Bonnie J. Morris, *History of Lesbian, Gay, Bisexual, and Transgender Social Movements*, AM. PSYCH. ASS’N, <https://www.apa.org/pi/lgbt/resources/history> (explaining that LGBTQ political organizations arose during the gay liberation movement in the 1970s).

17. *Id.*

18. *Id.*

19. See TAYLOR, *supra* note 5, at 31 (explaining that lesbians, gays, and transgender people came together to help the “infected individuals [who] were dying in ever-larger numbers [while] there was no response by the government”).

20. See generally *Lawrence v. Texas*, 539 U.S. 558 (2003) (declaring criminal punishment for same-sex sodomy unconstitutional).

21. See generally *Obergefell v. Hodges*, 576 U.S. 644 (2015) (declaring same-sex marriage constitutionally protected).

22. See generally *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) (declaring employment discrimination based on sex unconstitutional).

23. CLIFFORD VILLA ET AL., ENVIRONMENTAL JUSTICE LAW, POLICY, & REGULATION 4 (3d ed. 2020).

24. *Id.*

faced from the environmental toxins.²⁵ After Warren County, communities of color and low-income communities began to challenge the placement of environmental burdens in their neighborhoods.²⁶

In 1994, the federal government answered calls made by EJ grassroots organizations to address environmental justice issues.²⁷ President Clinton issued Executive Order 12898 (E.O. 12898) along with an accompanying Memorandum on Environmental Justice.²⁸ E.O. 12898 directed federal agencies to incorporate environmental justice into their operations.²⁹ Additionally, E.O. 12898 directed agencies to allow public participation during environmental decisions.³⁰

The definition of EJ used by federal agencies as part of their directive under E.O. 12898 has evolved over the years. E.O. 12898 defined EJ as “disproportionately high and adverse human health or environmental effects . . . on minority populations and low-income populations in the United States and its territories and possessions.”³¹ The Environmental Protection Agency (EPA), a significant actor in the federal government’s EJ mission, has its own definition for EJ. In the early 1990s, the EPA included “people of color and low-income populations” in the agency definition of “EJ community.”³² In 1998, the EPA revised its definition of EJ to encompass “all communities and persons across [the] Nation.”³³ The EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”³⁴ This EJ definition—without an emphasis on overburdened minority and low-income communities—is still utilized by the agency today.³⁵

EJ activists have criticized the EPA’s EJ definition for ignoring the central issue of environmental racism.³⁶ One criticism is that the EPA’s EJ mission is diluted because EJ concepts are “applied to all communities

25. *Id.*

26. *Id.*

27. See Meredith J. Bowers, *The Executive’s Response to Env’t. Injustice: Executive Order 12898*, 1 ENV’T LAW. 645, 649–650 (1995) (stating that the E.O.’s “purpose is to achieve environmental justice and to promote nondiscrimination in federal programs”).

28. *Id.* at 649.

29. *Id.* at 650.

30. *Id.* at 651.

31. Exec. Order No. 12,898, 32 C.F.R. § 651.17 (Feb. 11, 1994).

32. Ryan Holifield, *The Elusive Environmental Justice Area: Three Waves of Policy in the U.S. Environmental Protection Agency*, 5 ENV’T JUSTICE 293, 294 (2012).

33. *Id.* at 297.

34. VILLA ET AL., *supra* note 23, at 18.

35. *Environmental Justice*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/environmentaljustice>.

36. Holifield, *supra* note 32, at 295.

regardless of race, ethnicity, or income status.”³⁷ The EPA has mitigated some issues with its EJ definition by focusing on the “disproportionate adverse effect” component of the E.O. 12898 guideline.³⁸ However, a possible silver lining to the EPA definition is that it has opened the door towards a more intersectional view of environmental justice.³⁹

B. Sociological Composition of the LGBTQ and EJ Communities

The LGBTQ community is a coalition of different gender and sexual identities that intersects with different racial and socio-economic groups. Forty percent of the LGBTQ population are people of color.⁴⁰ The LGBTQ community also extends across a range of socio-economic backgrounds, with roughly 22 percent of LGBTQ people in the United States living in poverty.⁴¹ This sub-section and the following sub-section will explore intersections between different communities of color and the LGBTQ community. The intention is to show that LGBTQ studies fail to consider environmental racism and environmental justice—despite the studies’ focus on race and socio-economic status.

Roughly 12 percent of LGBTQ people, an estimated 1,210,000 adults, identify as Black.⁴² Black LGBTQ people face different challenges than Black *non-LGBTQ* adults.⁴³ Compared to Black *non-LGBTQ* individuals, Black LGBTQ people face a higher rate of everyday discrimination.⁴⁴ Black LGBTQ people have greater economic insecurity, with higher likelihoods of being unemployed and living in low-income households than Black *non-LGBTQ* adults.⁴⁵

Latinx individuals make up an estimated 20 percent of the LGBTQ adult community.⁴⁶ Latinx LGBTQ individuals face higher rates of unemployment and food insecurity than Latinx *non-LGBTQ* adults.⁴⁷ Latinx LGBTQ individuals “have a higher prevalence of asthma, diabetes, heart attack,

37. *Id.*

38. *Id.* at 296.

39. *See, e.g.,* Stephanie A. Malin & Stacia S. Ryder, *Developing Deeply Intersectional Environmental Justice Scholarship*, 4 ENV'T SOCIO. 1, 3 (2018) (stating that critical environmental justice incorporates other power structures such as heteropatriarchy into environmental justice).

40. CHOI ET AL., *supra* note 13, at 3.

41. M.V. LEE BADGETT ET AL., *LGBT POVERTY IN THE UNITED STATES*, 3, 7 (UCLA Williams Institute, 2019).

42. CHOI ET AL., *supra* note 13, at 3.

43. *Id.* at 4. A number of the studies cited in this article sampled adult populations. This article, in contrast, focuses on the LGBTQ community at large—thus uses the phrase “individuals” instead.

44. *Id.* at 5.

45. *Id.* at 4.

46. SOON KYU CHOI ET AL., *LATINX LGBT ADULTS IN THE US: LGBT WELL-BEING AT THE INTERSECTION OF RACE* 3 (UCLA Williams Institute, 2021).

47. *Id.* at 5.

cancer, and high blood pressure, and high cholesterol than [*non-LGBTQ*] adults.⁴⁸ Additionally, Latinx LGBTQ individuals are more likely to lack insurance than Latinx *non-LGBTQ* adults.⁴⁹

Asian American and Pacific Islander (AAPI) individuals account for approximately three percent (or 685,000 adults) of the LGBTQ population in the United States.⁵⁰ AAPI LGBTQ individuals experience economic insecurity at higher rates than AAPI *non-LGBTQ* individuals.⁵¹ AAPI LGBTQ individuals face ten percent unemployment, as opposed to six percent for AAPI *non-LGBTQ* individuals.⁵² Additionally, AAPI LGBTQ individuals are more likely than AAPI *non-LGBTQ* individuals to live in low-income housing.⁵³

Indigenous people account for roughly two percent of the LGBTQ Community, which is an estimated 285,000 adults.⁵⁴ More than half of Indigenous adults live in low-income households.⁵⁵ Indigenous LGBTQ adults are slightly more likely to be in low-income housing than Indigenous *non-LGBTQ* adults.⁵⁶ Additionally, Indigenous LGBTQ adults, alongside Indigenous *non-LGBTQ* adults, have higher rates of serious health conditions like asthma and cancer compared to non-Indigenous and *non-LGBTQ* adults.⁵⁷ Studies also indicated that Indigenous LGBTQ adults experienced discrimination and victimization.⁵⁸

C. Economic Composition of LGBTQ and EJ Communities

LGBTQ individuals are at higher risk than *non-LGBTQ* individuals for economic insecurity.⁵⁹ Across the United States, LGBTQ people face higher

48. *Id.* at 24.

49. *Id.* at 25.

50. SOON KYU CHOI ET AL., AAPI LGBT ADULTS IN THE US: LGBT WELL-BEING AT THE INTERSECTION OF RACE 3 (UCLA Williams Institute, 2021).

51. *Id.* at 5.

52. *Id.*

53. *Id.*

54. See Bianca D.M. Wilson et al., AMERICAN INDIAN AND ALASKAN NATIVE LGBT ADULTS IN THE US 3 (UCLA Williams Institute 2021) (explaining demographics of “American Indian and Alaskan Native” individuals who identify as LGBTQ. The article does not include demographics of individuals who identify as Two-Spirit and non-LGBTQ.).

55. *Id.*

56. See *id.* at 5 (stating that 54% of LGBTQ and 52% of non-LGBTQ Indigenous adults live in low-income households).

57. See *id.* at 6 (stating that “Compared to non-LGBTQ adults, [Indigenous]-multiracial adults have a higher prevalence of serious health conditions . . . Among [Indigenous]-only adults, LGBTQ adults have a higher prevalence of asthma.”).

58. *Id.* at 7 (stating that “81% of [Indigenous] adults reported having experienced everyday forms of discrimination in the prior year . . . 57% reported experiencing physical or sexual assault at some point as an adult, and 81% reported experiencing verbal assault or abuse.”).

59. BADGETT ET AL., *supra* note 41, at 2.

poverty rates than their heterosexual counterparts.⁶⁰ Additionally, transgender people experienced higher rates of poverty than most cisgender people.⁶¹ In another study, 20–40 percent of homeless youth identified as LGBTQ, which included a disproportionate amount of Black and Indigenous youth.⁶² LGBTQ people of color face greater poverty rates than *non-LGBTQ* people of color, white LGBTQ people, and white *non-LGBTQ* people.⁶³

Historically, part of the economic insecurity for LGBTQ people was related to employment discrimination.⁶⁴ LGBTQ people were banned from certain employment areas, such as teaching and federal jobs.⁶⁵ Additionally, LGBTQ people were at higher risk of being denied employment or promotions.⁶⁶ In 2020, the United States Supreme Court finally held that Title VII of the Civil Rights Act of 1964 protected LGBTQ people from sex discrimination at work.⁶⁷

The demographic research on the LGBTQ community raises issues such as lower healthcare access, food insecurity, and economic insecurity. Something that is missing from these studies is data that directly confronts issues of environmental racism and other environmental justice issues faced by LGBTQ people of color. Higher rates of economic insecurity and low-income housing rates for LGBTQ people of color are particularly concerning. This raises the issue that there are LGBTQ people who are disproportionately impacted by environmental racism, as well as homophobia and/or transphobia.

II. ANALYSIS

EJ activists rely on a toolkit of different environmental statutes to aid communities that are disproportionately impacted by environmental burdens and hazards. Commonly used statutes in EJ include: the Clean Air Act; the Clean Water Act; the National Environmental Policy Act; and the Comprehensive Environmental Response, Compensation, and Liability Act;

60. *Id.* at 7.

61. *See id.* at 5 (noting that transgender people have higher poverty rates than: cis-gay and cis-straight men; cis-lesbian and cis-straight women; and cis-bisexual men). Cisgender refers to individuals whose gender identity aligns with their sex assigned at birth. *See Glossary of Terms*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/glossary-of-terms>.

62. *See Homelessness & Housing*, YOUTH.GOV, https://youth.gov/youth-topics/lgbtq-youth/homelessness#_ftn (Last visited Dec. 4, 2020, 2:20 PM) (explaining that four top causes of homelessness for these individuals are family rejection, abuse, aging out of foster care, and financial or emotional neglect).

63. BADGETT ET AL., *supra* note 41, at 6; *supra* p. 6–7, Sociological Composition of the LGBTQ and EJ Communities.

64. M.V. Lee Badgett et al, *LGBT Economics*, 35 J. ECON. PERSPECTIVES 141, 158 (2021).

65. *Id.*

66. *Id.* at 159.

67. *Id.* at 158–59.

to name a few. These statutes help EJ advocates combat issues, such as air and water pollution, as well as siting for polluting facilities, which disproportionately impact low-income communities and/or communities of color.⁶⁸ EJ activists utilize civil rights statutes, such as the Civil Rights Act of 1964 to combat discrimination. This article will explore each of these statutes, in turn, to find potential avenues for an intersectional approach to environmental justice.

A. *The Clean Air Act*

The Clean Air Act's (CAA's) mandate is "to improve, strengthen, and accelerate programs for the prevention and abatement of air pollution."⁶⁹ The CAA's intent is to mitigate public health issues connected to urbanization and industrialization.⁷⁰ Subsection (a) of the CAA grants funding to air pollution control programs.⁷¹ In doing so, the agencies must give "due consideration to (1) the population [and] (2) the extent of the actual or potential air pollution problem."⁷² These funds can be requested by state governors, state air pollution control agencies, or municipalities.⁷³ Notably, the language of the statute does not directly address any specific class of people to protect.

The CAA's funding provision presents an opportunity for LGBTQ advocates working on EJ projects. In areas that are disproportionately affected by air quality issues, advocates can petition the governing bodies. In so doing, under the CAA, advocates for the affected community may request that the municipality or state apply for CAA funding or direct programming. Advocates should emphasize the impacted communities' character as both an EJ community and LGBTQ community. These communities' character places them at greater risk of both environmental hazards and healthcare disparities—which the CAA remedy should address.

For example, environmental hazards and healthcare disparities can create and exasperate respiratory conditions like asthma.⁷⁴ In a study of asthma rates among same-sex couples, people of color experienced higher rates of

68. See FRANK P. GRAD, TREATISE ON ENVIRONMENTAL LAW, Ch. 9 § 9.10(1)(a) (explaining that "[s]tudies have shown that low-income, minority communities bear a disproportionate burden of environmental hazards, such as air, water or soil pollution, landfills, incinerators, and other polluting facilities").

69. Clean Air Act, 42 U.S.C. § 7401 (1963).

70. *Id.*

71. *Id.*

72. *Id.* § 7405 (internal punctuation marks omitted).

73. *Id.*

74. See VILLA ET AL., *supra* note 23 at 177 (explaining that "a large body of compelling evidence demonstrates that particulate matter is associated with early and unnecessary deaths, aggravation of heart and lung diseases, reduction in the ability to breath normally, and increases in respiratory illnesses").

asthma than white people.⁷⁵ Additionally, the study found that same-sex couples faced greater rates of asthma than opposite-sex couples.⁷⁶ Emphasizing these heightened health risks should factor into the cumulative risk assessment used by the EPA when making decisions under the CAA.⁷⁷ The cumulative risk assessment is beneficial for addressing EJ concerns since the EPA may consider the compounded risks that arise in intersectional communities.⁷⁸

In practice, the EPA should evaluate the respiratory issues that the combined LGBTQ and EJ community face in cumulative risk assessments.⁷⁹ Therefore, LGBTQ advocates should work with agencies to take an intersectional approach to address respiratory illnesses and other diseases exacerbated by air pollution.

B. The Clean Water Act

The Clean Water Act's (CWA's) mandate is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."⁸⁰ The EPA encourages public participation in programs and regulations developed through the CWA.⁸¹ The public participation guidelines under the CWA are developed and regulated by the EPA administrator and the states.⁸²

Water quality issues are critical in communities that depend on water sources for economic and cultural use.⁸³ The CWA provides several means for advocates to address these water quality issues. One focus under the CWA is point-source pollution discharge into navigable waters.⁸⁴ This section of the CWA is focused on stopping polluters rather than remedying impacted communities.⁸⁵ Therefore, actions taken by LGBTQ advocates working with EJ communities would emphasize holding polluters accountable following the usual environmental *modus operandi* for water pollution cases.

75. John Blosnich et al., *Asthma Disparities and Within-Group Differences in a National, Probability Sample of Same-Sex Partnered Adults*, AM. J. PUBLIC HEALTH (Sept. 2013).

76. *Id.*

77. Sarah Alves & Joan Tilghman, *EPA Authority to Consider Cumulative Effects and Cumulative Risk Assessments in Decision Making under the Clean Air Act*, 28 J. ENV'T. L. & LITIG. 151, 154 (2013).

78. *Id.*

79. See Blosnich, *supra* note 75 (explaining how factors such as minority stress and stigma against combined factors of LGBT and racial discrimination may increase rates of asthma).

80. Clean Water Act, 33 U.S.C. § 1251(a).

81. *Id.* § 1251(e).

82. *Id.*

83. VILLA ET AL., *supra* note 23, at 174 (citing Richard J. Lazarus & Stephanie Tai, *Integrating Env't. Justice into EPA Permitting Authority*, 26 ECOLOGY L. Q. 617, 631–649 (1999)).

84. *Summary of the Clean Water Act*, U.S. ENV'T. PROT. AGENCY, <https://www.epa.gov/laws-regulations/summary-clean-water-act>.

85. See *id.* (explaining that the Clean Water Act "establishes the basic structure for regulating discharges of pollutants into the waters of the United States").

Since the CWA is designed to assist state and local action,⁸⁶ LGBTQ advocates would have to take a state-by-state approach for EJ projects.⁸⁷ This localized approach should be taken by local or state LGBTQ organizations since they can focus on the state standards impacting their communities. While a specialized intersectional approach may not be an option under the CWA, the statute remains an important tool in an LGBTQ advocate's legal toolkit. Water quality issues arising in LGBTQ communities can have serious health and economic impacts on the community. Therefore, LGBTQ advocates must be ready to use legal tools under the CWA to aid their communities.

C. The National Environmental Policy Act

The National Environmental Policy Act (NEPA) declares "a national policy which will encourage productive and enjoyable harmony between [humans] and [their] environment."⁸⁸ Under NEPA, the federal government must consider the environment while making major decisions.⁸⁹ NEPA in effect, has two roles. The first role establishes a substantive policy. The second role creates procedural rules.

NEPA § 101(a) states that the federal government must coordinate with other branches of government and organizations

to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.⁹⁰

Section 101 further states that "each person should enjoy a healthful environment and that each person has a responsibility to contribute to the

86. See 2 TREATISE ON ENVIRONMENTAL LAW § 3.03(1)(a) (2021) (stating "[c]ongress provided for an elaborate procedure to delegate the responsibility for the establishment of standards to the states subject to federal approval").

87. See, e.g., *City of Albuquerque v. Browner*, 97 F.3d 415, 425 (10th Cir. 1996) (stating "'states have the primary role under § 303 of the CWA (33 U.S.C. § 1313), in establishing water quality standards. EPA's sole function, in this respect, is to review those standards for approval.'" (quoting *Natural Resources Defense Council v. EPA*, 16 F.3d 1395, 1399, 1401 (4th Cir. 1993))).

88. National Environmental Policy Act of 1969 § 101, 42 U.S.C. § 4332.

89. See *id.* (explaining that decision-making should "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment").

90. *Id.*

preservation and enhancement of the environment.”⁹¹ Section 101 directs officials to use “all practicable means,” which is a flexible form of discretion.⁹² However, there is a circuit split regarding substantive rights in § 101 cases. Some circuits have held that there are substantive rights that can be enforced by non-governmental organizations.⁹³ Whereas other courts have held that there are not separate substantial rights guaranteed under § 101.⁹⁴

NEPA’s substantive rights are accessible to LGBTQ advocates depending on their location within the grand scheme of the circuit courts. For example, advocates in the Eighth Circuit Court of Appeals can seek judicial review for § 101 cases.⁹⁵ However, the Fourth Circuit and Tenth Circuits do not permit judicial review for cases under § 101.⁹⁶ Advocates in states like Arkansas, Nebraska, North Dakota, and South Dakota can enjoin agency decisions that are arbitrary and capricious. However, advocates in states like Virginia, North Carolina, Colorado, Utah, etc. cannot enjoin agency decisions that are arbitrary and capricious under § 101 alone. While substantive NEPA relief may be state specific, advocates have other remedies for procedural relief under NEPA.

NEPA’s second role creates procedural rules. Under § 102, federal agencies must perform an environmental assessment while enacting a “major federal action significantly affecting the quality of the human environment.”⁹⁷ During this process, agencies are directed to take “a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making.”⁹⁸ With the information from the environmental assessment, agencies are directed to complete a detailed environmental impact statement (EIS). These EIS reports must include discussions of alternatives and cost-benefit analysis.⁹⁹ Judicial review for § 102 will approve EIS reports that are made “fully and in good-faith.”¹⁰⁰

91. *Id.*

92. *Calvert Cliffs’ Coordinating Com., Inc. v. United States Atomic Energy Com.*, 449 F.2d 1109 (D.C. App. 1971).

93. *See generally* *Overton Park v. Volpe*, 401 U.S. 402 (1971) (reversing a Sixth Circuit affirmation of summary judgment against Petitioners who were private citizens and national conservation organizations).

94. *See generally* *Env’t. Def. Fund, Inc. v. Corps of Engineers of U.S. Army*, 470 F.2d 289 (8th Cir. 1972) (reversing finding by United States District Court, Eastern District of Arkansas by affirming that NEPA does create substantive rights).

95. *Id.* at 301.

96. *Id.* at n.15 (citing *N.C. Conservation Council v. Froehle*, 340 F. Supp. 222 (M.D. N.C. 1972) and *Nat’l Helium Corp. v. Morton*, 455 F.2d 650 (1971)).

97. National Environmental Policy Act of 1969 § 102, 42 U.S.C. § 4332.

98. *Id.*

99. *Id.*

100. *Calvert Cliffs’ Coordinating Com., Inc. v. United States Atomic Energy Com.*, 449 F.2d 1109 (D.C. App. 1971).

NEPA's environmental assessment mandate has been a critical tool for EJ work.¹⁰¹ Federal agencies are required to include an EJ analysis in the EIS.¹⁰² Courts review EJ analyses using the arbitrary-and-capricious standard.¹⁰³ The agency is given deference for its "choice among reasonable analytical methodologies."¹⁰⁴ Several federal agencies have increased public participation for their EJ analyses.¹⁰⁵

The EIS requirement under § 102 gives LGBTQ advocates the ability to participate in the decision-making process and challenge agency actions that negatively impact their communities. First, LGBTQ advocates can work with agency officials to address the community's concerns in the EIS. This involvement can inform the agency about the prominence of the LGBTQ community in the affected area, as well as longstanding health concerns. This information could be included as part of an interdisciplinary approach from both a medical and sociological approach. Second, when agencies fail to consider the LGBTQ community in an area impacted by a proposed "major federal action," LGBTQ advocates can take legal action against the federal agency. In a NEPA case, LGBTQ advocates can argue that the agency's actions were arbitrary and capricious because it did not consider LGBTQ-related matters in the community. Advocates could further argue that LGBTQ members of the community have higher risks of health impacts.¹⁰⁶ Those same health risks are higher for LGBTQ people of color.¹⁰⁷ Therefore, LGBTQ advocates could argue that the health of LGBTQ people of color must be accounted for in the environmental assessment made by federal agencies.

One potential challenge to this litigation strategy is the agency's discretion on analytical methodologies. The decision to consider LGBTQ health impacts would be one such methodology in the EIS report. The first argument that LGBTQ advocates could make is that these health impacts are significant attributes that should be brought up in an environmental assessment. If agencies fail to consider these health impacts, then the agency's EIS would subsequently fail under an arbitrary-and-capricious analysis. Alternatively, this approach could be used in predominantly LGBTQ neighborhoods to establish a precedent. Hypothetically, if a federal agency considered funding a highway next to a predominantly LGBTQ and

101. Rachael E. Salcido, *Reviving the Env't Justice Agenda*, 91 CHI.-KENT L. REV. 115, 127 (2016).

102. *Sierra Club v. Fed. Energy Regul. Comm'n*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).

103. *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004).

104. *Id.*

105. See Salcido, *supra* note 101, at n.64 (listing eleven agencies including the Dep't of Agriculture, Dep't of Commerce, Dep't of Energy, Dep't Health and Human Services, etc.).

106. John Blosnich et al., *Health Inequalities Among Sexual Minority Adults*, AM. J. PREV. MED. 337-349 (Apr. 2014); see generally Blosnich et al., *supra* note 75.

107. Blosnich et al., *supra* note 105.

minority neighborhood, the agency would have to consider the highway's impact on air and noise pollution in the neighborhood. In that situation, the higher rates of health risks for LGBTQ individuals would factor heavily into the agency's decision process.¹⁰⁸ If the agency failed to fully consider the health impacts to the LGBTQ neighborhood, advocates would have a strong case that the decision was arbitrary and capricious.

In those situations, failing to address health issues would impact a large portion of that neighborhood. Since the adverse health impacts disproportionately affect the population, an agency's failure to consider these issues would be arbitrary and capricious. After setting that intersectional precedent, other LGBTQ advocates could rely on that decision and try to expand LGBTQ-specific health considerations to other EJ situations. This precedent would help intersectional LGBTQ/EJ communities, even under a more conservative environmental assessment.

Lastly, LGBTQ advocates could work with agencies to establish regulations that expand interdisciplinary research into environmental assessments. Under this interdisciplinary approach, agencies would incorporate gender studies and LGBTQ-specialized health in their assessments. Thus, LGBTQ advocates could ensure that LGBTQ people of color are considered in environmental assessments at the outset, rather than waiting for their day in court.

D. The Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is designed to “provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.”¹⁰⁹ Further, the purpose of CERCLA is to make the individuals responsible for causing hazardous problems be the ones who “bear the costs and responsibility for remedying the harmful conditions they created.”¹¹⁰ CERCLA encourages polluting parties to settle by precluding other claims against them.¹¹¹ The purpose of CERCLA's settlement process is to reduce

108. *See generally* Blosnich et al., *supra* note 75.

109. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 (1980).

110. CAROLINE N. BROUN & JAMES T. O'REILLY, 1 RCRA AND SUPERFUND: A PRACTICAL GUIDE, 3d § 9:1 (2021) (quoting *Lockheed Martin Corp. v. United States*, 35 F.Supp. 3d 92 (D.D.C. 2014) (internal quotation marks omitted)).

111. *Id.*

the time and cost of litigation and to expedite clean-up.¹¹² Notably, CERCLA is not designed to protect a particular class of individuals.

Superfund and Brownfield sites under CERCLA have been used to remedy EJ issues. Superfund sites are contaminated sites—such as manufacturing plants, landfills, and mining facilities—that are targeted for clean-up under CERCLA.¹¹³ Brownfields, on the other hand, are properties that are redeveloped after addressing hazardous substances located on the property.¹¹⁴ The purpose of Brownfields is “to empower states, tribes, [and] communities . . . to prevent, assess, safely clean up, and sustainably reuse” the sites.¹¹⁵ Overall, CERCLA is designed to prevent polluters from escaping liability.

CERCLA becomes a critical intersectional EJ tool in situations where LGBTQ individuals live in polluted or contaminated areas. For LGBTQ advocates working on EJ projects, CERCLA works the same regardless of the impacted area’s demographics. CERCLA claims would focus on the site itself and the level of hazardous contamination.¹¹⁶ CERCLA has a citizen suit provision that gives individuals—which includes LGBTQ and EJ advocates—the ability to bring a claim against government officials for failing to perform under CERCLA.¹¹⁷ Despite not providing specialized remedies, CERCLA’s citizen suit provision remains a critical tool for LGBTQ advocates.

E. The Civil Rights Act of 1964

The Civil Rights Act of 1964 is divided into several titles, each addressing different topics. The most pertinent title of the Civil Rights Act for LGBTQ and EJ intersectionality is Title VII. Title VII of the Civil Rights Act protects individuals against employment discrimination.¹¹⁸ Title VII states that:

[I]t shall be an unlawful employment practice for an employer to . . . discriminate against any individual with respect to [their] compensation, terms, conditions, or privileges of employment,

112. *Id.*

113. *What is Superfund?*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/superfund/what-superfund> (last visited Dec. 5, 2021).

114. *Overview of EPA’s Brownfields Program*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/brownfields/overview-epas-brownfields-program> (last visited Dec. 5, 2021).

115. *Id.*

116. *See generally* 42 U.S.C. § 9601 (explaining that CERCLA standards focus of the site itself and the level of contamination).

117. *See* 61C AM JUR 2D POLLUTION CONTROL § 1344 (stating that, under CERCLA, persons may commence civil action on their own behalf or the behalf of others).

118. Civil Rights Act of 1964, 42 U.S.C. § 2000e (1964).

because of such individual's race, color, religion, sex, or national origin.¹¹⁹

The Supreme Court interpreted the word *sex* in Title VII in *Bostock v. Clayton County*. The Court held that “[s]ex plays a necessary and undisguisable role” in discriminating against homosexual or transgender individuals.¹²⁰ Using a textualist approach, the Court focused on the language “because of such individual’s . . . sex.”¹²¹ The Court interpreted “because of” to imply a *but for* test for causation.¹²² Further, the Court interpreted *sex* to mean the “biological distinctions between male and female.”¹²³ The “distinction between male and female” definition was based on the common use of *sex* in 1964 when the Civil Rights Act was enacted.¹²⁴ Altogether, the Court interpreted this segment to mean that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”¹²⁵

In statutory interpretation, the *in pari materia* canon compels judges to construe terms within the same act or code in a similar light.¹²⁶ Therefore, terms used in Title VII would apply similarly to other sections of the Act. Title VII, however, is the only title within the Civil Rights Act to explicitly mention *sex*. Following this canon, the *Bostock* interpretation would be limited to Title VII of the Civil Rights Act. Conversely, LGBTQ advocates may not necessarily invoke the remaining titles for the sake of LGBTQ intersectional issues.¹²⁷ Importantly, *Bostock* has been interpreted as a persuasive authority in lower circuits on issues ranging from Title IX to the interpretation of the Affordable Care Act.¹²⁸ Ultimately, the Civil Rights Act contains many vital tools for EJ work.¹²⁹ Yet, only one such tool is equipped for LGBTQ and EJ intersectionality claims.

119. *Id.* § 2000e-2 (emphasis added).

120. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020).

121. *Id.* at 1753; 42 U.S.C. § 2000e-2.

122. *Bostock*, 140 S. Ct. at 1739.

123. *Id.*

124. *Id.*

125. *Id.* at 1741.

126. See LINDA JELLUM, *THE LEGISLATIVE PROCESS, STATUTORY INTERPRETATION, AND ADMINISTRATIVE AGENCIES* 257 (Carolina Academic Press, 2020) (referencing *Rhyne v. K-Mart Corp.*, 594 S.E.2d 1, 20 (N.C. 1994)).

127. See, e.g., *Foster v. Michigan*, 573 F. App'x 377 (6th Cir. 2014) (holding that gender discrimination is not covered under Title VI of the Civil Rights Act because Title VI applies to discrimination based on race, color, and national origin).

128. Becca Damante, *One Year Later: The Impact of Bostock v. Clayton County*, CONST. ACCOUNTABILITY CTR., (Jun. 14, 2021), <https://www.theconstitution.org/blog/one-year-later-the-impact-of-bostock-v-clayton-county/>.

129. See generally Tony Lopresti, *Realizing the Promise of Environmental Civil Rights: The Renewed Effort to Enforce Title VI of the Civil Rights Act of 1964*, 65 ADMIN. L. REV. 757, 757 (stating

Title VII has potential to become an intersectional EJ tool. In EJ, the term “environment” is defined as the place “where one lives, works, plays, and goes to school.”¹³⁰ EJ includes a wide range of issues, including public health and worker safety.¹³¹ Therefore, Title VII can be used in situations where people of color and LGBTQ individuals are discriminated against in the workplace.

A hypothetical situation for a Title VII case could involve a plaintiff who is a transgender person of color. This plaintiff was frequently harassed by their employer, who was motivated by racial prejudice. The employer discovered the plaintiff was transgender while looking through the plaintiff’s employment records. The employer, acting on racial and transgender prejudices, then violated the plaintiff’s privacy by outing the plaintiff to other employees to remove the plaintiff from the workplace.¹³² As a result of the workplace harassment, the plaintiff was forced to quit their job.

Using Title VII, the plaintiff could make multiple claims of action in an employment discrimination case. The plaintiff could claim that there was both gender and racial discrimination. The plaintiff could bring evidence of the employer’s racially discriminatory actions prior to and after the employer discovered that the plaintiff was transgender. The plaintiff could then show that the harassment worsened because their transgender identity was exposed when their privacy was violated. Since *Bostock* guarantees employment discrimination protections for gender identity, the plaintiff would have a persuasive argument for sex discrimination. Therefore, the plaintiff could make a persuasive argument for employment discrimination against their former employer.

F. The Fair Housing Act of 1968

The Fair Housing Act (FHA) is a comprehensive housing statute that was included in Title VIII of the Civil Rights Act of 1968.¹³³ The purpose of the statute is to provide individuals with fair housing across the United States.¹³⁴

“[n]o legal tool has inspired such high hopes—and such deep disappointment—as Title VI of the Civil Rights Act of 1964”).

130. Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 20 ENV’T. L. REP., 10681, 10681 (2000).

131. *Id.*

132. See e.g., NAT’L CTR. FOR TRANSGENDER EQUAL., *Employment Issues*, <https://transequality.org/issues/employment> (last visited Dec. 5, 2021) (explaining that three out of four transgender people have experienced some form of workplace harassment, and transgender people of color experience workplace harassment at higher rates).

133. Fair Housing Act, 42 U.S.C. § 3601.

134. *Id.*

Section 804 of the FHA prohibits discrimination against renters based on “race, color, religion, sex, familial status, or national origin.”¹³⁵ These prohibitions cover discrimination in offers, rejections, terms and conditions, advertisements, representation, etc.¹³⁶ However, the FHA contains several exemptions for § 804. For example, private individual owners are exempt from § 804 if they own less than three single-family homes.¹³⁷ Additionally, owners may discriminate against renters if they reside in a dwelling with less than four separate units or rooms, if the owner resides in the building.¹³⁸

Similarly, in § 805, the FHA prohibits discrimination in real estate transactions due to “race, color, religion, sex, familial status, or national origin.”¹³⁹ While § 805 is not subject to specific exemptions, it is limited by § 807’s overarching exemptions.¹⁴⁰ Section 807 provides an exemption for religious institutions and religiously-affiliated non-profit organizations.¹⁴¹ This exemption permits religiously-affiliated owners from discriminating in the rental, sale, or occupation of their buildings and residences.¹⁴²

The FHA is a crucial tool for LGBTQ and EJ advocates since the FHA addresses discrimination against race, color, sex, familial status, and national origin. This tool offers protection in a number of situations. For example, the FHA would protect LGBTQ minority renters as well as LGBTQ minority couples seeking to buy a home. In the event that the property or dwelling owners were discriminatory, the renters and/or buyers may file a complaint to the Department of Housing and Urban Development (HUD).¹⁴³

HUD accounts for sexual orientation and gender identity as part of sex discrimination under the FHA. This directive was given to HUD’s Office of Fair Housing and Equal Opportunity by E.O. 13988, which was signed by President Biden in February 2021.¹⁴⁴ This E.O. expanded the application of *Bostock’s* definition for sex discrimination to other areas under the federal government’s purview.¹⁴⁵ The purpose of E.O. 13988 was to address the issue where “same-sex couples and transgender persons in communities across the country experience demonstrably less favorable treatment than

135. *Id.* § 3604(a).

136. *Id.* § 3604(a)–(f).

137. *See Id.* § 3604(2)(b)(1) (explaining the FHA exemptions and limitations, such as prohibiting such owners from using real estate brokers or discriminatory advertising).

138. *Id.* § 3604(2)(b)(2).

139. *Id.* § 3605(a).

140. *See generally id.* § 3607(a) (listing exemptions that apply to the FHA in its entirety).

141. *Id.*

142. *Id.*

143. *See id.* § 3609 (explaining the administration and enforcement of the FHA); *see generally id.* § 3608 (codifying the administration authority and responsibility of the HUD).

144. Exec. Order No. 13988, 86 Fed. Reg. 7023 (Feb. 11, 2021).

145. *See id.*; *see generally* *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) (defining sex discrimination as including both gender identity as well as sexual orientation).

their straight and cisgender counterparts when seeking rental housing.”¹⁴⁶ Additionally, the E.O. sought to ensure the mission of the FHA by expanding HUD’s duties to LGBTQ individuals.¹⁴⁷

E.O. 13988 brings significant federal protections to the LGBTQ community, especially LGBTQ-members of EJ communities. However, the E.O. bears the same Achilles Heel as other executive orders. Namely that it’s effects can be diluted or erased by a future sitting President.¹⁴⁸ The LGBTQ community itself has felt the effects when an executive order is overturned by the next sitting President. For instance, the transgender community felt the political whiplash of executive orders regarding transgender military service. Transgender soldiers were permitted to serve openly in the armed services during the Obama Administration.¹⁴⁹ That policy was replaced during the Trump Administration with a comprehensive ban on transgender service members.¹⁵⁰ The tide changed again once President Biden took office.¹⁵¹ President Biden signed an executive order which granted transgender troops the ability to serve in the armed forces once again.¹⁵²

E.O. 13988 remains in effect. However, it is unknown at this moment whether LGBTQ housing discrimination rights will ebb and flow like transgender military service rights did—shifting each time the keys to the White House are exchanged between a Republican and a Democratic tenant.

Under the FHA and E.O. 13988, there are legal avenues for both race and sex discrimination protections. These protections are particularly relevant in situations where an individual may be denied housing in areas free from environmental burdens. Which would lead these individuals to acquire housing located near environmental burdens—like in EJ communities. Intersectional identities may be directly in the crosshairs of discriminatory housing practices. For example, a combination of their race and gender/sexual identity may result in the individual finding housing closest to environmental hazards like factories or highways. While making a complaint to HUD, the individual can make claims of both racial and sex discrimination.

146. Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021).

147. *Id.*

148. *What is an Executive Order*, AM. BAR ASSOC., https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-an-executive-order/ (last visited on Jan. 23, 2022).

149. Hallie Jackson & Courtney Kube, *Trump’s Controversial Transgender Military Policy Goes into Effect*, NBC NEWS <https://www.nbcnews.com/feature/nbc-out/trump-s-controversial-transgender-military-policy-goes-effect-n993826>. (Apr. 12, 2019).

150. *Id.*

151. *Biden Overturns Trump Transgender Military Ban*, BBC NEWS, <https://www.bbc.com/news/world-us-canada-55799913> (Jan 25, 2021).

152. *Id.*

With those claims, the individual has several possible avenues while seeking a remedy, since a sex discrimination complaint may succeed where a race discrimination complaint may not. Such a situation could arise if a housing complex primarily rents to Black and Latinx individuals but denies renting the property to an LGBTQ couple. The owner, for example, may reject the LGBTQ couple's application and/or conduct a poor showing of the apartment facilities.¹⁵³ The couple's only alternative may be to rent a dwelling closer to an environmental burden, like a factory. The owner may be able to show that they have rented spaces to minority individuals and families in the past. Thus, the owner would argue there was no discrimination. However, the couple can argue that there is still sex discrimination because no LGBTQ individuals or couples could rent the dwelling located further from the factory.

III. POLICY ARGUMENT

Other disciplines have begun exploring the intersectional dynamics within the LGBTQ community. Medical studies have found that overlapping minority stress places LGBTQ people of color at higher risk for disease and illness.¹⁵⁴ Sociology research has collected data exploring demographic trends and policy coverage.¹⁵⁵ These areas of research and scholarly discussion are still developing, and the legal field has yet to catch up.

Thankfully, there are opportunities for a legal approach addressing EJ issues with the help of LGBTQ advocacy. The definition of environmental justice, as defined by the EPA, appears to invite intersectional approaches. The EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental law, regulations, and policies.”¹⁵⁶ The words “all people” could serve as an invitation for other marginalized groups to support the EJ Movement.

The language “all people” in the EPA's definition has a complicated history. The words were originally intended to water down the EPA's EJ mandate. The Bush Administration was criticized by EJ advocates for

153. See, e.g., Zack Ford, *Housing Discrimination Against Transgender People is Even Worse than We Thought*, <https://archive.thinkprogress.org/trans-housing-discrimination-study-889129c40c1b/> (Apr. 3, 2017) (explaining that transgender individuals were “1) more likely to be quoted a higher rental price; 2) less likely to be offered a financial incentive to rent the apartment; 3) shown fewer areas than the control (i.e. such as storage area, laundry facilities, etc.); and 4) less likely to be asked their name upon meeting the housing provider face to face.”).

154. Blosnich et al., *supra*, note 75; see Blosnich et al., *supra* note 105 (explaining “[t]he minority stress model posits that negative experiences (e.g., stigma) projected onto minority groups negatively influences their health by causing elevated distress”).

155. Cheryl A. Parks et al., *supra* note 12; Choi et al., *supra* note 13.

156. Villa et al., *supra* note 23 at 18.

attempting to remove race from environmental considerations.¹⁵⁷ The Obama Administration recommitted to the goals of E.O. 12898 by staffing the EPA with administrators like Lisa P. Jackson.¹⁵⁸ Further, the EPA developed several plans, including Plan EJ 2014 and Plan EJ 2020.¹⁵⁹

With the Biden Administration's recommitment to EJ,¹⁶⁰ the words "all people" can be used as a positive force in advancing the EJ Movement. One way "all people" can be used in a positive manner is to increase intersectional approaches. By encouraging intersectionality in EJ, all members of disproportionately impacted communities can receive the benefits, regardless of their physical or mental abilities, religion, sexuality, or gender.

The goal of advocating for LGBTQ intersectionality in EJ is not to divert resources from communities of color and/or low-income communities disproportionately impacted by environmental harms. Instead, the goal is to gain support from LGBTQ advocates and grassroots organizations. Unifying marginalized groups reflects their common battles and consolidates their resources towards fighting a seemingly indomitable social evil. When different groups combine their strengths, the societal evil of environmental injustice will crumble.

IV. POTENTIAL SOLUTIONS

The current framework of environmental and civil rights laws provides some avenues for LGBTQ advocates to create intersectional solutions to EJ issues. Yet, more can be done to broaden the options available to the EJ Movement and its allies.

First and foremost, more research is needed on intersectional demographics.¹⁶¹ Research is required under E.O. 12898's mandate "that agencies gather health data to support actions to remedy unequal pollution impact."¹⁶² To fulfill these research needs, more studies should be conducted on the LGBTQ community, especially for its minority members. One

157. Salcido, *supra* note 101, at 120–21.

158. *Id.* at 123 (explaining that "Administrator Jackson . . . was 'committed to making environmental justice an essential part of our decision making'").

159. *Id.* at 123, 125.

160. *See, e.g., What They are Saying: Biden Administration Lays Out Path to Reach Justice40 Goal, Earns Praise from Administrative Officials, Environmental Justice Leaders, Advocates, and Congressional Leaders*, WHITE HOUSE (Jul. 21, 2021) <https://www.whitehouse.gov/ceq/news-updates/2021/07/21/what-they-are-saying-biden-administration-lays-out-path-to-reach-justice40-goal-earns-praise-from-administration-officials-environmental-justice-leaders-advocates-and-congressional-leaders/> (demonstrating how Biden Administration incorporates environmental justice into climate policy plan).

161. *See, e.g.,* Bloshich, *supra* note 75 (concluding that "[b]etter data could illuminate and make central the role of stress in asthma etiology, which could be relevant for other minority groups disproportionately affected by asthma, such as racial/ethnic minority communities").

162. Salcido, *supra* note 101, at 127.

possible solution would be to have more inclusive questions on the U.S. census. Data from the U.S. census is used for EJ mapping tools like the EPA's EJScreen. EJScreen is a tool developed by the EPA for citizen scientists and other concerned parties to identify who is impacted by environmental hazards.¹⁶³ EJScreen currently has built in tools such as “female population,” “male population,” and “married.”¹⁶⁴ These demographics could be updated to provide better mapping of transgender and gender-non-conforming identities. Further, demographic indicators could be mapped for same-sex couples versus opposite-sex couples. Other demographics could map sexual minority data such as indicators for lesbians, gays, bisexuals, and other sexual minority identities. With these tools integrated into EJScreen, advocates and community members could access more resources and data to aid in their missions.

Second, the LGBTQ community requires greater support from federal law and administration. Supreme Court cases like *Bostock* and *Price Waterhouse* have made federal laws like the Civil Rights Act of 1964 more inclusive for the LGBTQ community.¹⁶⁵ Similarly, executive orders like E.O. 13988 have expanded LGBTQ rights within the FHA.¹⁶⁶ However, on the federal level, LGBTQ rights are few and far between. Legislation, like H.R. 5—the Equality Act—would benefit the LGBTQ community, especially for members living in EJ communities.¹⁶⁷ However, bills like H.R. 5 could go further. A comprehensive LGBTQ civil rights bill could provide much needed legal protections to the overarching LGBTQ community and its most disproportionately impacted members. A civil rights bill, like H.R. 5, may sound ambitious. With public opinion for the LGBTQ community at historic highs, a comprehensive LGBTQ civil rights bill may be possible.¹⁶⁸

Overall, the federal government has several possible contributions towards intersectional EJ. Federal agencies like the EPA can advance greater research into environmental health risks on the LGBTQ community—

163. EJSCREEN, U.S. ENV'T. PROT. AGENCY (Version 2020) <https://www.epa.gov/ejscreen> (last visited Nov. 6, 2021); cf. COUNCIL ON ENV'T. QUALITY, CLIMATE AND ECONOMIC JUSTICE SCREENING TOOL, <https://screeningtool.geoplatform.gov/en/methodology#14.35/42.35414/-83.05608> (last visited Apr. 8, 2022) (the methodology for CEQ's new EJ screening tool does not include demographic information, such as gender or sexuality, outside of economic status).

164. *Id.*

165. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239 (1989); see generally *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) (ruling that employment discrimination based on sex is unconstitutional).

166. Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021).

167. Equality Act, H.R. 5, 117th Cong. (2021) (stating that the bill “prohibits discrimination based on sex, sexual orientation, and gender identity in areas including public accommodations and facilities, education, federal funding, employment, housing, credit, and the jury system”) (the bill passed the House on Feb. 25, 2021, and the Senate Judiciary Committee held hearings on Mar. 17, 2021) (last updated Dec. 5, 2021).

168. See generally *LGBT Rights*, GALLUP: NEWS, <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx> (last visited Dec. 5, 2021).

especially for LGBTQ people of color and low-income LGBTQ people. This research can contribute towards environmental assessments and EIS reports under NEPA. Additionally, this research can contribute to legislative measures. Further, legislative actions like passing a comprehensive civil rights law for the LGBTQ community would significantly impact this intersectional field of EJ and LGBTQ advocacy.

CONCLUSION

The LGBTQ community and EJ communities share many similarities. In some regards, these two communities are one and the same. There is a large percentage of people of color and/or low-income people within the LGBTQ community. Those LGBTQ individuals are among the same “disproportionately impacted populations” that the EJ Movement seeks to protect from environmental hazards. LGBTQ advocates have opportunities to mount an intersectional legal strategy to address these environmental hazards.

The current EJ legal toolkit is comprised of statutes such as: the CAA, CWA, NEPA, CERCLA, Title VII, FHA, as well as their respective common law rulings. Section 102 of NEPA and Title VII of the Civil Rights Act have potential for LGBTQ EJ legal claims. Other statutes, like the CAA and NEPA, grant LGBTQ advocates the ability to engage in public participation for governmental actions. Overall, this legal framework gives LGBTQ advocates an opportunity to aid the EJ Movement.

These laws give the LGBTQ community a way to assist people of color and/or low-income members who are also members of an EJ community. Uniting the forces of these two movements would empower a group who may be marginalized within either community by itself. The political needs of an EJ community or LGBTQ community at large have sometimes come at the expense of LGBTQ people of color and/or low-income individuals. An intersectional coalition would combine the resources and networks of both communities.

Empowering LGBTQ people of color and/or low-income people embodies the spirit of the Philly Pride Flag. The Philly Pride Flag symbolizes that each person should have pride in themselves. Pride in oneself also extends to where the pride flag is flown. Regardless of where communities raise the pride flag, each deserves to have safe water, clean air, and a livable environment. A livable environment should be a universal provision, and not guaranteed dependent on an individual’s race, sexuality, gender, or income-level.

By uniting the forces of two separate movements, these communities can receive greater support towards combating environmental hazards. This

mission would emphasize that all members of the LGBTQ community are valued. The goal of this intersectional approach is to give EJ communities the support to improve the health and environmental quality for all people—regardless of their gender or sexual orientation.