

ECO-ABLEISM IN THE ENVIRONMENTAL JUSTICE MOVEMENT

*Clare Pledl**

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INTRODUCTION

When Hurricane Katrina hit Louisiana, Mississippi, and Alabama in 2005, nearly half a million people with disabilities lived in the counties affected.¹ Despite the foreseeability of evacuation being more difficult for people with disabilities, the most vulnerable people were left to fend for themselves.² Evacuation prior to the storm was not an option for many people with disabilities.³ Emergency shelter spaces lacked entrances that could

* Clare Pledl is from Milwaukee, WI. She received a Bachelor of Arts in Women's Studies and Sociology at Hamline University in St. Paul, MN. She is currently pursuing a Juris Doctorate and Masters of Restorative Justice at Vermont Law School, with plans to graduate in Spring 2022. Clare would like to thank her parents, Rock and Meg, and Professor Greg Johnson for their support during the writing process.

1. Rooted in Rights, *The Right to be Rescued*, Vimeo (Oct. 6, 2017), <https://vimeo.com/ondemand/therighttoberescuedad>.

2. *Id.*

3. *Id.*

accommodate wheelchairs.⁴ Transportation vehicles, if available, lacked the lifts needed to transport someone to a shelter space, and those lucky enough to be transported often had hours-long wait times in 90°-heat.⁵ The storm took the lives of over 1,300 people—hitting the most vulnerable populations hardest.⁶ It is difficult to ascertain how many people with disabilities died due to the storm, as many people passed away in the years following due to health complications.⁷

We are living in a time where environmental disasters, such as Hurricane Katrina, are going to become more common. Frequent natural disasters are the new normal.⁸ The environmental justice movement has shed light on the way that race and class status increases susceptibility to the impacts of climate change. However, the environmental justice movement often fails to include a disability analysis.⁹ People with disabilities cannot continue to be ignored given the significant impact of climate change on their lives. People with disabilities are the largest minority group in the United States, comprising no less than 20% of the population.¹⁰ However, the United States has a long history of oppressing people with disabilities. This subordination has led to the disabled population becoming more likely to experience extreme impacts of climate change. To be truly inclusive, the environmental justice movement must incorporate the voices of people with disabilities when fighting for systemic change.

There is an imminent need to implement disability-specific legal responses under the existing body of environmental law. Using an intersectional analysis of disability and class, this note will first explain how people with disabilities historically were segregated into communities that now face severe consequences from climate change. To analyze why many

4. *Id.*

5. Kathleen Otte, *No One Left Behind: Include Older Adults and People with Disabilities in Emergency Planning*, ADMINISTRATION FOR COMMUNITY LIVING (Sept. 4, 2015) <https://acl.gov/news-and-events/acl-blog/no-one-left-behind-including-older-adults-and-people-disabilities#:~:text=The%20storm%20inflicted%20a%20terrible,over%20the%20age%20of%2060>.

6. *Id.*

7. Carrie Morantz, *CDC Reports on Illnesses in Hurricane Katrina Evacuees and Relief Workers*, AM. FAM. PHYSICIAN (Nov. 15, 2005), <https://www.aafp.org/afp/2005/1115/p2132.html>.

8. Alice Wong, *In California Wildfires, Disabled People May Be Left Behind*, CURBED S.F. (Nov. 13, 2018), <https://sf.curbed.com/2018/11/13/18087964/california-wildfires-disabled-people-elderly-evacuation-disabilities>.

9. Krystal Vasquez, *Why Environmental Justice Research Needs to Include Disability*, GREEN BIZ (Sept. 16, 2021), <https://www.greenbiz.com/article/why-environmental-justice-research-needs-include-disability>.

10. HARRIET TUBMAN COLLECTIVE, *DISABILITY SOLIDARITY: COMPLETING THE “VISION FOR BLACK LIVES” IN DISABILITY VISIBILITY: FIRST PERSON STORIES FROM THE TWENTY-FIRST CENTURY* 236 (Alice Wong, ed. 2020) [hereinafter HARRIET TUBMAN COLLECTIVE].

people with disabilities have become devalued as workers and relegated to low-income areas, we must understand the impact of capitalism on our social system. Next, this note will highlight several instances of climate emergencies and their disproportionate impact on people with disabilities. These examples will highlight the disparate impacts and the lack of resources available to people with disabilities. The analysis section of this note will then explore ways to reform the environmental justice movement to advocate for the rights of people with disabilities. This analysis will build off of a discussion about the current state of disability rights legislation. Finally, the note will end with suggestions about where the environmental justice movement can strengthen their activism through the grassroots efforts led by activists working towards an equitable environmental justice movement.

I. DISABILITY IS A CRITICAL ISSUE IN THE FIGHT FOR ENVIRONMENTAL JUSTICE

A. A Brief History of Disability

The history of disability is difficult to track as societies tend to define disability based on how they view normal behavior. Michel Foucault tracked the history of our cultural understandings of disability through the term *madness*.¹¹ During the Middle Ages, *madness* was linked with *folly*. *Folly* is an evil vice, a human weakness.¹² Other weaknesses included greed, being quick-tempered, or gluttonous.¹³ Since disability was not understood to be a developmental or physical difference, it was explained away through the understanding of evils. These evils were used to explain irregularities in human conduct.¹⁴ Essentially anything abnormal, like a disability, was viewed as a weakness that could be overcome through a life of morality.¹⁵

The turn of the 16th century in Europe introduced a new way of viewing disability—as something that must be contained, confined, and managed through hospitalization. Houses of correction popped up throughout Europe representing “establishments of religion and public order, of assistance and punishment, [and] of governmental charity and welfare measures.”¹⁶ People with disabilities were not the only people confined in these hospitals, which

11. MICHEL FOUCAULT, *MADNESS & CIVILIZATION: A HISTORY OF INSANITY IN THE AGE OF REASON* 24 (Richard Howard trans., Vintage Books 3rd ed. 1988).

12. *Id.*

13. *Id.* at 27.

14. *Id.* at 27.

15. *Id.*

16. *Id.* at 43.

also served as places of punishment for vagabonds.¹⁷ The houses of correction were funded through taxes.¹⁸ Local judges chose whether someone should be sent to a house of correction or whether a workhouse (the typical penitentiary of this time) would be more appropriate.¹⁹ Today, we still often utilize the court system to determine the extent to which someone is disabled.²⁰

The religious context of the 16th century helps explain the power of these houses of correction. Through Catholic, Protestant, and Calvinistic ideas about idleness as rebellion, the people who could not work within their communities represented a danger to society.²¹ The houses of correction weaponized an “ethical power of segregation” where they ejected those who were not socially useful to their community.²² Ideas about morality justified the desire to confine those who could not work. These new morality-based meanings about the importance of work and the obligation to provide for yourself set a dangerous precedent for the treatment of disability moving forward. Many historical messages about disability are prominent in the modern era. Disability is still frequently seen in conjunction with other undesirable social conditions, such as poverty and criminal behavior.

The concept of houses of correction laid the groundwork for the massive institutionalization of people with disabilities in the United States throughout the 19th and 20th centuries. Institutions, parading themselves as schools or places of reform, opened throughout the country.²³ These schools were advertised as places where “with proper training . . . people with disabilities could be educated to return to the community and lead productive lives.”²⁴ At first, the schools seemed to be successful—children were able to gain social skills and return to their homes.²⁵ However, these schools quickly turned into asylums when they began providing custodial care for children with significant disabilities.²⁶ This marked the beginning of the dehumanizing period, where the institutions focused primarily on how

17. *Id.*

18. *Id.*

19. *Id.* at 44.

20. See *Arc Guide to Decision Making*, THE ARC MINN. <https://arcminnesota.org/resource/arc-guide-to-guardianship/> (last visited Sept. 20, 2021) (providing a general overview of decision-making options in court for people with disabilities).

21. FOUCAULT, *supra* note 11, at 56.

22. *Id.* at 58.

23. *Parallels in Time: A History of Developmental Disabilities*, MINN. DEP'T OF ADMIN., <https://mn.gov/mnddc/parallels/four/4d/9.html> (last visited Sept. 23, 2021).

24. *Id.*

25. *Id.*

26. *Id.*

economical their facilities could be.²⁷ Having a disabled child had a high financial impact on low-income families. Institutions presented an opportunity to have children cared for at a low cost to their families. As enrollment in these facilities increased, the focus on education was left behind.

Institutions became medically oriented as doctors were chosen to be supervisors of the facilities.²⁸ Children with disabilities were viewed as sick, needing to be cured. Popular cultural ideas about eugenics spurred further interest in removing people with disabilities from society and moving them into these facilities.²⁹ Sterilization of institutionalized residents was commonplace.³⁰ The Supreme Court of the United States had the opportunity to intervene on these sterilization practices in 1927 with *Buck v. Bell*.³¹ In this case, the plaintiff was a disabled woman whose mother and grandmother were also disabled.³² Chief Justice Oliver Wendell Holmes famously declared, “three generations of imbeciles are enough!” and approved of the plaintiff’s involuntary sterilization.³³ The forced and involuntary sterilization of people with disabilities continues today.³⁴

People without disabilities have been trying to explain and understand disability for many years. Foucault’s history of disability shows the progression of this understanding. Unfortunately, much of this attempt to explain disability has resulted in subordination and harm to people who were viewed as abnormal and different. This stigma and confusion around disability has continued into our modern era.

B. The Disability Rights Movement

It was not until the disability justice movement of the 1950s and 1960s that general American society began to understand people with disabilities as deserving of treatment, not just confinement. When the disability rights movement began to gain momentum, one of the first actions was closing

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Ari Ne’eman, *Washington State May Make it Easier to Sterilize People with Disabilities*, ACLU (Jan. 29, 2018), <https://www.aclu.org/blog/disability-rights/integration-and-autonomy-people-disabilities/washington-state-may-make-it>.

institutions and instituting reforms of those facilities.³⁵ Although institutions have undergone much reform in the last 30 years, many people with disabilities still feel they live “institutional lives.”³⁶ Many people with disabilities rely on government resources for survival. Confinement is still often utilized as a form of *treatment* for people with disabilities today.³⁷

The disability justice movement has taken many forms throughout the 20th and 21st centuries. The disability justice movement of the 1980s and 1990s focused on equality, primarily with remedying access to the workforce.³⁸ Disability advocates were responsible for the passage of the Americans with Disabilities Act (ADA) in 1990, the first major piece of federal legislation to address equality for people with disabilities.³⁹ This Act, similar to other civil rights legislation, was also an economics bill.⁴⁰ The activists and legislators who worked to pass the ADA understood that for people with disabilities to be seen as equals they needed access to the workforce.

Several legal definitions of disability involve differentiating between the ability and inability to work. Notably, the Social Security Administration (SSA) defines disability as:

the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairments which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.⁴¹

The definition’s use of “substantial gainful activity” is a roundabout way to describe the ability to work.⁴² Many people with disabilities can perform substantial gainful activity and hold jobs in their community, but if they want

35. *A Brief History of the Disability Rights Movement*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/backgrounders/disability-rights-movement> (last visited Oct. 22, 2021).

36. *Id.*

37. *Institutions: Definitions, Populations, and Trends*, NAT’L COUNCIL ON DISABILITY (Sept. 19, 2012), <https://ncd.gov/publications/2012/Sept192012/Institutions>.

38. ANTI-DEFAMATION LEAGUE, *supra* note 35.

39. *Id.*

40. MARTA RUSSELL, *CAPITALISM & DISABILITY* 41 (Keith Rosenthal ed., 2019).

41. *Disability Evaluation Under Social Security Part 1 - General Information*, SOC. SEC. ADMIN., <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last visited Oct. 22, 2021).

42. *Id.*

to benefit from Social Security, then they are unable to do so.⁴³ This definition of disability incentivizes staying unemployed to remain eligible for other necessary benefits of Social Security.

Many people with disabilities who are unable to work rely on government benefits through programs like the SSA. However, these payments are not enough to cover the costs of daily life. The average monthly disability benefit in 2019 was \$1,234.⁴⁴ The SSA acknowledges that this payment is modest and “barely enough to keep a beneficiary above the 2018 poverty level (\$12,140 annually).”⁴⁵ These payments are often the only income that people with disabilities receive.⁴⁶ The application process for these government benefits is tedious and confusing.⁴⁷ People who do not understand how the process works may be denied access to the benefits system.

Many people with disabilities live in poverty or experience homelessness because they have fallen through the cracks in our system. Even if they do receive benefits from the SSA, people with disabilities tend to hover around the poverty line.⁴⁸ A 2019 study from The Institute on Disability places the poverty rate for people with disabilities age 18–64 around 26.1%.⁴⁹ For similar age groups of nondisabled people, the poverty rate hovers around 10.7%.⁵⁰ People with disabilities are disproportionately represented in the chronically homeless population.⁵¹ It is estimated that nearly one-quarter of people who are experiencing chronic homelessness are people with disabilities.⁵² This is a serious issue—many people with disabilities are forced to live in low-income areas without access to safe and stable housing. The result is extreme vulnerability to environmental disasters.

43. *Id.*

44. *The Faces and Facts of Disability*, SOC. SEC. ADMIN., <https://www.ssa.gov/disabilityfacts/facts.html> (last visited Oct. 22, 2021).

45. *Id.*

46. *Id.*

47. SOC. SEC. ADMIN., *Disability Benefits: The Disability Application Process*, <https://www.ssa.gov/benefits/disability/> (last visited Oct. 22, 2021).

48. *The Faces and Facts of Disability*, *supra* note 44.

49. E.A. Lauer et al., *Annual Disability Statistics Compendium: 2019*, DURHAM, NH: U. OF N.H., INSTITUTE OF DISABILITY (2020), 62, https://disabilitycompendium.org/sites/default/files/iod/reports/2019-annual-disability-statisticscompendium_pdfs/2019_Annual_Disability_Statistics_Compndium_ALL.pdf?ts=1580831674 [hereinafter *Annual Disability Statistics Compendium*].

50. *Id.*

51. *Homelessness in America: Focus on Chronic Homelessness Among People with Disabilities*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Aug. 2018), https://www.usich.gov/resources/uploads/asset_library/Homelessness-in-America-Focus-on-chronic.pdf.

52. *Id.*

C. The Significant Impacts of Climate Change on Disability

Hurricane Katrina is a frequent example used in conversations about climate change and separately in conversations about disability. Among climate change activists, Hurricane Katrina represents a public awakening of the changes that global warming can bring to global weather.⁵³ The scientific community is unsure whether climate change will create more hurricanes, however they are confident that their intensity will increase.⁵⁴ Katrina's impact was worsened by the high sea level in the Gulf Coast at the time.⁵⁵ If a storm of Katrina's scale happened under the sea level conditions in 1990, the impact on the coast would have been anywhere from 15–60% lower.⁵⁶ Temperature changes also likely played a part in Katrina's impact, as warmer ocean temperatures have been found to increase the intensity of storms.⁵⁷

For the disability community, Hurricane Katrina is often pointed to as a failure on the part of local governments to protect their most vulnerable populations. People with disabilities were disproportionately impacted by the storm partly due to governmental failures to disperse resources in a timely fashion.⁵⁸ Weather forecasters warned government officials ahead of time, so the storm exposed major failures in America's disaster preparedness and response systems.⁵⁹ One of the largest issues was general confusion due to a breakdown in communication.⁶⁰ After the initial storm, over three million customer telephone lines were knocked down resulting in the inability of the government to communicate with people who could not evacuate.⁶¹ Over 20 million telephone calls did not connect in the day after the storm.⁶² The New Orleans Police Department's communication system failed and was

53. Andrea Thompson, *Was There a Link Between Climate Change and Hurricane Katrina?* GRIST (Aug. 27, 2015), <https://grist.org/climate-energy/was-there-a-link-between-climate-change-and-hurricane-katrina/>.

54. *Hurricanes and Climate Change*, CTR. FOR CLIMATE ENERGY SOLS., <https://www.c2es.org/content/hurricanes-and-climate-change/> (last visited Oct. 22, 2021).

55. *Id.*

56. *Id.*

57. *Id.*

58. See *Generally SELECT BIPARTISAN COMMITTEE TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA, 109TH CONG., A FAILURE OF INITIATIVE: FINAL REPORT OF THE SELECT BIPARTISAN COMMITTEE TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA* (Comm. Print 2006) [hereinafter BIPARTISAN COMMITTEE REPORT] (detailing how the government's response to Hurricane Katrina failed people with disabilities through underwhelming evacuation and supply efforts).

59. Chris Edwards, *Hurricane Katrina: Remembering Federal Failures*, THE CATO INSTITUTE (Aug. 27, 2015), <https://www.cato.org/blog/hurricane-katrina-remembering-federal-failures>.

60. *Id.*

61. BIPARTISAN COMMITTEE REPORT, *supra* note 58.

62. *Id.*

unreachable for three days following the storm.⁶³ This communication breakdown severely hindered emergency response team's ability to provide assistance.⁶⁴ People with disabilities were left waiting for help that never came.

Many people with disabilities were unable to evacuate for Hurricane Katrina due to a lack of information on how to evacuate. People with visual and hearing disabilities were unable to obtain evacuation information because government communications were not in compliance with federal law.⁶⁵ Broadcasters and emergency management agencies failed to "comply with legal obligations to provide accessible emergency information."⁶⁶ News releases failed to offer sign language interpreters, or TV stations cut the interpreters out of screen.⁶⁷ While the nondisabled population in Louisiana was able to access televised news for critical updates, many people with disabilities were left unaware of the magnitude of the emergency.⁶⁸ People who relied on cell phone messaging updates were unable to access any information once the phone lines went down. Additionally, evacuation by public transportation was inaccessible: most buses did not have wheelchair lifts.⁶⁹

Unfortunately, there was also no plan on how to rescue people with disabilities after the storm hit.⁷⁰ There was no plan to transport wheelchairs or the people who use them.⁷¹ There was no preplanning for evacuating hospitals or nursing homes.⁷² No accommodations were made in shelters for people who were deaf, blind, or used wheelchairs.⁷³ These were not simple inconveniences, these were "life-preserving accommodations that many people with disabilities need in order to live."⁷⁴ The point of emergency planning is to think about disasters ahead of time. While the national and

63. *Id.*

64. *Id.*

65. Lex Frieden, *The Impact of Hurricanes Katrina and Rita on People with Disabilities: A Look Back and Remaining Challenges*, NAT'L COUNCIL ON DISABILITY (Aug. 3, 2006), <https://ncd.gov/publications/2006/aug072006#:~:text=Almost%20immediately%20after%20Hurricane%20Katrina,hit%20by%20the%20hurricane%3A%20Biloxi%2C>.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Jordan Melograna, *People with Disabilities Left Behind During Katrina Tell Their Stories*, HUFFPOST (Aug. 26, 2016), https://www.huffpost.com/entry/people-with-disabilities-_2_b_8045700.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

state governments failed generally to plan for Hurricane Katrina, people with disabilities were not even incorporated into emergency response plans.⁷⁵

While major climate emergencies gain national attention, the daily impact of climate change on people with disabilities is often much more subtle. As sea levels in Miami continue to rise, the city has struggled to figure out how to maintain city streets while also combatting the all-too-common flooding.⁷⁶ Flood experts have a suggestion—raise the roads.⁷⁷ The city has addressed sea level rise with road elevation in the past, much to the disdain of the residents.⁷⁸ The impact of the raised roads on neighborhoods has been significant: water overflow onto properties, insurance issues, and long construction times.⁷⁹ But the raised roads also present an issue to people with disabilities, many who already struggle to access roads.⁸⁰ Even a simple half-inch difference in street height can mean a massive change in accessibility for people with mobility disabilities.⁸¹ While the city of Miami works to figure out a solution that prevents flooding without upsetting residents, people with disabilities hope for a solution that is accessible.

Although the Americans with Disabilities Act requires ramps or curb cuts in any accessible route with a greater level change than a half-inch, many people with mobility disabilities know that this is often not the case.⁸² Dropped curbs, doorways without steps, or wheelchair-friendly access ramps are often the exception and not the rule.⁸³ Comedian Zach Anner shed light on the lack of accessible routes in New York City in a viral YouTube video.⁸⁴ Anner has cerebral palsy and utilizes a motorized wheelchair.⁸⁵ His goal for the video: exit his hotel and take the subway to Brooklyn to grab a rainbow bagel.⁸⁶ An estimated 28-minute trip took over five hours as Anner struggled to find an elevator to exit his hotel, subway stations without stairs, sidewalks

75. *Id.*

76. Alex Harris, *Raising Flood-Prone Roads has Angered Miami Beach Residents. Experts Say They Need to Go Higher*, MIA. HERALD (Feb. 03, 2020), <https://www.miamiherald.com/news/local/environment/article239486308.html>.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Chapter 4: Ramps and Curb Ramps*, THE U.S. ACCESS BD. (July 2015), <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards/chapter-4-ramps-and-curb-ramps>.

82. *Id.*

83. Saba Salman, *What Would a Truly Disabled-Accessible City Look Like?* THE GUARDIAN (Feb. 14, 2018), <https://www.theguardian.com/cities/2018/feb/14/what-disability-accessible-city-look-like>.

84. Cerebral Palsy Foundation, *Zach Anner & The Quest for the Rainbow Bagel*, YOUTUBE (Mar. 20, 2017), <https://www.youtube.com/watch?v=LhpUJRGrZgc>.

85. *Id.*

86. *Id.*

with curb cuts, and a bagel storefront with a ramp.⁸⁷ His attitude throughout the video is upbeat and humorous, but Anner points out serious accessibility issues within the city. Anner even notes that as far as cities go, New York is fairly accessible. Anner demonstrates that a simple trip for most New Yorkers becomes a true quest when you utilize a wheelchair.

Feeling at the mercy of sudden changes in your environment is all too common of a reality for many people with disabilities. Something as routine as a power outage can be life-threatening to a person reliant on medical equipment.⁸⁸ People with disabilities may rely on “equipment powered by electricity, such as motorized wheelchairs, elevators, refrigerated medications, oxygen generators, and more.”⁸⁹ When there is an unexpected power outage, many people with disabilities are ill-equipped to handle a blackout. Wind causes many power outages. As strong wind activity becomes more common with climate change, we can count on wind-caused power outages to also become more common.⁹⁰ This means that fallen power lines, downed trees, or broken poles will likely cause increased power outages.⁹¹

When power companies prepare for incoming wind storms, they may proactively turn off power in neighborhoods expected to be hit hard.⁹² If people with disabilities living in those communities are not prepared for a power outage or notified of a proactive power turnoff, they may be placed in dangerous situations without access to help.⁹³ A massive blackout in California in October of 2019 left over 700,000 people without electricity for over 72 hours.⁹⁴ The power outage was in response to the threat of growing wildfires in the region. However, many utilities customers were not notified about the expected length of the power outage.⁹⁵ Many people with

87. *Id.*

88. Elizabeth Wright, *Climate Change, Disability, and Eco-Ableism: Why We Need to be Inclusive to Save the Planet*, UX COLLECTIVE (Feb. 19, 2020), <https://uxdesign.cc/climate-change-disability-and-eco-ableism-why-we-need-to-be-inclusive-when-trying-to-save-the-88bb61e82e4e>.

89. Stephanie Collins, *US Power Outages Endanger People with Disabilities*, HUM. RTS. WATCH (Oct. 23, 2019), <https://www.hrw.org/news/2019/10/23/us-power-outages-endanger-people-disabilities#>.

90. Maxine Mouly, *PG&E Power Outages Leave About 400,000 Customers Without Power*, THE DAILY CAL. (Feb. 13, 2020), <https://www.dailycal.org/2020/02/13/pge-power-outages-leave-about-400000-customers-without-power/>.

90. See Chelsea Harvey, *The World's Winds Are Speeding Up*, E&E NEWS (Nov. 19, 2019), <https://www.scientificamerican.com/article/the-worlds-winds-are-speeding-up/>.

91. *Id.*

92. *Id.*

93. Collins, *supra* note 89.

94. *Id.*

95. *Id.*

disabilities purchased generators, stayed in hotels, or reported to hospitals.⁹⁶ These unexpected costs hit people with disabilities harder than the average person due to the financial inequalities that accompany disability. Since blackouts are not considered natural disasters, there are few resources to fund aid or shelters—leaving vulnerable populations at the mercy of their power companies.⁹⁷ Power companies often have maps of where their most vulnerable customers are and sometimes are able to provide access to generators.⁹⁸ However, this does not always happen in time for long-ranging blackouts.

As climate emergencies occur with more frequency, it is critical that people with disabilities are incorporated into planning for those emergencies. However, it is not just those climate emergencies where people with disabilities have historically felt like an afterthought. People experience daily hardship in examples of poor city planning, seen both in New York and Miami. While the ADA is supposed to provide guidance on city planning to protect people with disabilities, this is not always the case in practice. People with disabilities have been asking for years to be included in conversations that will impact their lives. By partnering with the environmental justice movement, perhaps there is finally an opportunity for their voices to be heard.

II. ECO-ABLEISM AND THE ENVIRONMENTAL JUSTICE MOVEMENT

The environmental justice movement was primarily championed in the United States by people of color.⁹⁹ Environmental justice advocates are people working to address the fact that “the people who live, work and play in America’s most polluted environments are commonly people of color and the poor.”¹⁰⁰ This injustice is commonly called environmental racism.¹⁰¹ One of the defining moments of the environmental justice movement was the call to action in Warren County, North Carolina, in 1982.¹⁰² Primarily low-income, rural black people made up the population of Warren County.¹⁰³ When the state government of North Carolina chose the county as a dumpsite

96. *Id.*

97. *Id.*

98. *Emergency Power Planning for People Who Use Electricity and Battery-Dependent Assistive Technology and Medical Devices*, PAC. ADA CTR. (Oct. 2021), <https://adata.org/factsheet/emergency-power>.

99. Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NAT’L RES. DEF. COUNCIL (Mar. 17, 2016), <https://www.nrdc.org/stories/environmental-justice-movement>.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

for 6,000 truckloads of toxic soil, the residents of Warren County were justifiably concerned about the impact on the environment and their community.¹⁰⁴ The community's residents and their allies expressed their concerns through marches and nonviolent street protests; over 500 people were arrested.¹⁰⁵ The people of Warren County ultimately lost this battle, but it represented a turning point in the United States—the national media finally exposed the need for an environmental justice movement.¹⁰⁶

Although other people protested environmental harm in their communities before Warren County, this was one of the first protests to gain national attention.¹⁰⁷ In the years following the Warren County protests, activists all over the country began to recognize the patterns of environmental racism: “pollution-producing facilities are often sited in poor communities of color.”¹⁰⁸ These communities lacked the connections to advocate during city council meetings; the financial resources to hire legal experts to protest decisions; and frequently experienced language barriers to accessing this information.¹⁰⁹ Research done by Congress's General Accounting Office in the 1980s and 1990s gave credibility to these claims of environmental racism.¹¹⁰ Their study revealed 75% of the hazardous waste sites in eight states were located in primarily low-income, Black, and Latino communities.¹¹¹

The environmental justice movement steadily gained momentum in the mainstream public as politicians began to take up the cause. The Office of Environmental Justice was established in 1992 to address the needs of “vulnerable populations by decreasing environmental burdens, increasing environmental benefits and working collaboratively to build healthy, sustainable communities.”¹¹² President Clinton signed Executive Order 12898 in February 1994, directing federal agencies to identify and address health risks of policies on people who were low-income or racial minorities.¹¹³ It also directed agencies to seek new ways to prevent discrimination in federally funded programs addressing health or the

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Office of Environmental Justice in Action*, ENV'T PROT. AGENCY (Sept. 2017), https://www.epa.gov/sites/production/files/201709/documents/epa_office_of_environmental_justice_factsheet.pdf.

113. Skelton, *supra* note 99.

environment.¹¹⁴ This political recognition of the environmental justice movement further legitimized the need for action.

While the environmental justice movement has always had a strong focus on the adverse impacts of environmental changes on low-income communities and racial minority groups, the movement has lacked a strong emphasis on the intersectional identity of disability. Given the inability of many people with disabilities to work, there tends to be a strong reliance on government programs to make ends meet. Over a quarter of people with disabilities live below the poverty line.¹¹⁵ They are likely to live in the same communities advocated for by the environmental justice movement.¹¹⁶ However, the environmental justice movement tends to ignore the prevalence of people with disabilities within these communities. This oversight reinforces social bias about disability—it is something to hide, an issue for somebody else to solve, or it is generally not important. Given the overlaps in need between people with disabilities, racial minorities, and people who are low-income, it is logical to ask the environmental justice movement to take steps to incorporate disability into the movement.

A. Perpetuation of Ableism in the Environmental Movement

Scholar Valerie Ann Johnson writes, “those in the environmental justice community are not immune to our society’s standards of health, beauty and normality, and until we confront those values we will replicate the oppressive structures we seek to overturn.”¹¹⁷ Johnson outlines the need for a more inclusive environmental justice movement in the essay *Bringing Together Feminist Disability Studies and Environmental Justice*.¹¹⁸ Johnson uses the example of the Earth Charter, a document codifying a global consensus around sustainability.¹¹⁹ This document was created by an independent global organization after the Earth Summit in 1992.¹²⁰ In the Earth Charter’s list of principles, they state the need for upholding “the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the

114. *Id.*

115. *Annual Disability Statistics Compendium*, *supra* note 49.

116. *Id.*

117. Valerie Ann Johnson, *Bringing Together Feminist Disability Studies and Environmental Justice*, CTR. FOR WOMEN POL’Y STUD. (Feb. 2011), https://www.peacewomen.org/assets/file/Resources/Academic/bringingtogetherfeministdisabilitystudiesandenvironmentaljustice_valerieannjohnso.pdf.

118. *Id.* at 73.

119. *Id.* at 74.

120. *Id.*

rights of indigenous peoples and minorities.”¹²¹ The charter then outlines examples of these minority groups, including “race, color, sex, sexual orientation, religion, language, and national, ethnic or social origin.”¹²² Notably, the category of ability or ableness is missing from this list.¹²³

Johnson uses this document as an example of where disability is missing from the greater conversation between environmental justice advocates. Johnson asks the environmental justice movement to be explicit with their calls for activism, because “without explicitly naming ability or ableness as a category where discrimination can occur, we cannot be sure that sustainability (for example) in relation to persons with disabilities will in fact be addressed.”¹²⁴ Johnson worries that “disability is subsumed under one of the other categories,” masking or obscuring “the issues that need to be attended to when considering . . . mental and physical ability.”¹²⁵ While Johnson notes that this may be an unintentional oversight, this leads to a lack of voices and perspectives from those who identify as disabled.¹²⁶

When people with disabilities are left out of environmental justice conversations, the environmental justice movement can act in ways that are adverse to the needs of people with disabilities. Recently, there was a push to reduce the public’s reliance on single-use plastics, such as grocery bags and plastic straws.¹²⁷ Photos and videos circulated on social media of sea turtles and other charismatic megafauna with straws in their noses. The public immediately jumped on board with the cause, petitioning local legislators to ban single-use plastics. The impact was the creation of regulations like in Malibu, California, which prohibited restaurant vendors from providing plastic straws to customers.¹²⁸

Vermont’s single-use plastic ban went into effect in July 2020.¹²⁹ While this initially seemed like an exciting step for the environmental movement, disability advocates spoke out about the harm this caused—people who relied on straws to consume beverages could no longer rely on restaurants to

121. *Id.*

122. *Id.*

123. *Id.* at 75.

124. *Id.*

125. *Id.*

126. *Id.* at 76.

127. Duncan J.J. Kessler, *Plastic Straw Bans Can Run Afoul of the Americans with Disabilities Act*, 69 AM. U. L. REV. F. 1, 7-8 (2019).

128. *Id.*

129. *Single-Use Products Law*, VT. DEP’T OF ENV’T CONSERVATION, <https://dec.vermont.gov/content/single-use-products-law> (last visited Oct. 24, 2021) [hereinafter *Single-Use Products Law*].

provide them.¹³⁰ Straws were first developed as tools for people with disabilities and use in hospitals.¹³¹ The Vermont legislature was clearly conscious of plastic straws and their utility as tools since the legislation includes exemptions for places like nursing homes, assisted living facilities, and hospitals.¹³² However, by making these exemptions location-specific, this legislation ostracizes and segregates people with disabilities from the rest of their community. If certain people can only access plastic straws in one location, such as an assisted living facility, then they are forced to only use straws in those places. Or people with disabilities need to take on the extra burden of bringing their own straws with them when they want to run a simple errand such as picking up a coffee from their local café. Single-use plastic bans have effectively added another barrier to the lives of many people with disabilities.

Many disability activists felt that the well-being of persons with disabilities came second to the health of marine animals.¹³³ The use of plastic straws, and other single-use plastics, is a matter of daily life for many people with disabilities. People who experience limited mobility in their hands and arms may rely on a straw to serve their beverage if they are unable to lift a cup to their mouths.¹³⁴ Straws also allow people who frequently experience choking to pace themselves when consuming liquids.¹³⁵ These needs are not mediated by non-plastic straws as “paper and similar biodegradable straws can quickly fall apart, particularly in hot liquids. Further, this type of straw can present both a burning and choking hazard and is easy for people with limited jaw control to bite through.”¹³⁶ Reusable straws need to be washed, which presents another issue for people with limited hand mobility.¹³⁷ Glass, metal, and bamboo straws can be dangerous if used with hot liquids.¹³⁸

An additional unexpected side effect is the potential allergens in compostable straws. Compostable straws and utensils are often made from

130. Kessler, *supra* note 127, at 24.

131. Olivia Babis, *The Significant Role Plastic Straws Play in Health and Safety*, Florida Restaurant & Lodging Association (Oct. 9, 2019), <https://frla.org/role-plastic-straws-play-in-health-and-safety/>.

132. *Single-Use Products Law*, *supra* note 129.

133. *The Last Straw: Ableism in Environmental Campaigns*, UNIV. OF ALA. BIRMINGHAM INST. FOR HUM. RTS. BLOG (Oct. 10, 2018), <https://sites.uab.edu/humanrights/2018/10/10/the-last-straw-ableism-in-environmental-campaigns/>.

134. *Id.*

135. *Id.*

136. Kessler, *supra* note 127, at 13.

137. *Id.*

138. *Id.*

the starch of plants like corn, potatoes, or wheat.¹³⁹ For people with gluten allergies or starch sensitivities, these alternative straws pose a serious risk. Most restaurants do not know the composition of materials in their straws, meaning they cannot guard their customers against allergic reactions.¹⁴⁰ While strides have been made in the development of reusable straws, these alternatives are often expensive for a person with a disability who may require the use of many throughout the day.

Nondisabled Americans, who took those single-use plastics for granted, effectively created a massive problem for the people with disabilities who relied on those straws to consume their meals. The straw ban legislation also made it harder to find plastic straws for home use, meaning that people with disabilities felt the impact in their homes as well.¹⁴¹ When Seattle announced their citywide ban of plastic straws, utensils, and cocktail sticks in July of 2018, many people with disabilities expressed their outrage and concern.¹⁴² The legislation was passed without consulting members of the disability community, causing concern among people who rely on straws for daily use.¹⁴³ The Seattle Commission for People with Disabilities wrote to the Seattle City Council and described the problem as this:

Requiring people with disabilities to treat a routine fast-food trip as something that requires planning and supplies is an unplanned failure in equity, when these restaurants could just as easily offer them upon request to individuals who need them. Disability is already very expensive, and many people are forced to carry around large amounts of equipment or types of medication and devices. Adding another specialized device, simply for them to be able to hydrate themselves, is an undue burden, and an unfortunate effect of this law.¹⁴⁴

The straw ban is just one example of what disability activists have labeled *eco-ableism*.¹⁴⁵ Eco-ableism is the idea that there is ableism within the environmental movement resulting in the exclusion or suppression of

139. Melissa Hellmann, *Straw Ban Leaves Disabled Community Feeling High and Dry*, SEATTLE WKLY. (July 11, 2018), <https://www.seattleweekly.com/news/straw-ban-leaves-disabled-community-feeling-high-and-dry/>.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. Hellmann, *supra* note 139.

145. Wright, *supra* note 88.

people with disabilities.¹⁴⁶ Eco-ableism results in people with disabilities feeling like they are excluded from the environmental movement, or guilt for requiring the use of items that nondisabled people view as conveniences.¹⁴⁷ Disability activist Elizabeth Wright writes, “climate change is symbiotically connected to our human world, and that includes all that comes with the human world. If you are a person alive today you are an instigator and an experiencer of climate change. This includes disabled people.”¹⁴⁸ The disability community has long rallied around the idea of “nothing about us, without us.”¹⁴⁹ This must also include the fight for inclusive, effective environmental justice.

B. Protections Under the Americans with Disability Act are Insufficient

Since most of the plastic straw bans did not go into effect until 2018, there have been no court opinions to determine whether the Americans with Disabilities Act (ADA) provides enough coverage to people with disabilities to overrule the plastic straw bans. However, there have been settlements in the past for similar complaints. In 2009, a person with a fused neck was denied a straw at a Florida restaurant.¹⁵⁰ The person complained and the restaurant agreed to modify their “no straws” policy, as well as paying out a \$500 compensation.¹⁵¹ Although there was no formal court proceeding in the Florida instance, it has been theorized that Title III of the ADA may provide guidance on allowing establishments to provide straws to people with disabilities who request them.¹⁵²

The ADA provides that “no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services . . . of any place of public accommodation.”¹⁵³ The purpose of Title III of the ADA is to provide recourse for people who have been denied: service; full and equal enjoyment; or reasonable modifications.¹⁵⁴ Under this public

146. *Id.*

147. *Id.*

148. *Id.*

149. Sheri Levinsky-Raskin & Greg Stevens, *Nothing About Us, Without Us: Reflections on Inclusive Practices at Cultural Institutions*, AM. ALL. OF MUSEUMS (Jan./Feb. 2016), <http://ww2.aam-us.org/docs/default-source/resource-library/nothing-about-us-without-us.pdf>.

150. *Enforcing the ADA: A Status Report from the Department of Justice April–September 2009*, U.S. DEP’T OF JUST. CIV. RTS. DIV. DISABILITY RTS. SECTION (March 17, 2010), <https://www.ada.gov/aprsep09.htm>.

151. *Id.*

152. Kessler, *supra* note 127, at 20.

153. 42 U.S.C. § 12182.

154. Kessler, *supra* note 127, at 11.

accommodations provision, the ADA requires businesses “to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.”¹⁵⁵ The keyword here for court analysis is *reasonable*. When analyzing claims under the ADA, the court applies an *undue burden* standard.¹⁵⁶ The undue burden must be unreasonable and outweigh the benefit to the person with the disability. An undue burden on a place of business would be if they were forced to engage in an accommodation that is unreasonable or not readily achievable. The court will find that the business was not in violation of the ADA because of the undue burden of the accommodation.¹⁵⁷

A good test case of this principle would be if a person with a disability who requires the use of a plastic straw were denied access to one by the business they were at because the business attempted to comply with single-use plastic legislation. Here, the person with a disability would have a strong argument that a plastic straw should be considered a reasonable accommodation. The burden for a restaurant to maintain a small supply of plastic straws, as well as the non-plastic straws to maintain compliance with single-use plastic legislation, is small. However, the impact on the person with the disability is significant. They are unable to access the same benefits from the business as nondisabled customers.

One possible solution to the plastic straw bans is that establishments could offer to provide the straws upon asking. However, this may require the person with a disability to out themselves as disabled to access a straw. They may have to justify their need for the plastic straw by explaining their medical purpose. While asking for a plastic straw may seem miniscule or trivial to nondisabled people, many people with disabilities cannot make it through a day without being viewed as disabled. They are constantly perceived as someone with a disability. Having to take another step to ask for a plastic straw adds a burden that people who are nondisabled do not have.

The ADA continues to be one of the leading legislative enactments providing protections to people with disabilities. However, it fails to address the needs of all protected individuals.¹⁵⁸ When the ADA was amended in 2008, Congress acknowledged this failure by stating that “historically, society has tended to isolate and segregate individuals with disabilities, and,

155. 2 U.S.C. § 12182.

156. Kessler, *supra* note 127, at 22.

157. *Id.*

158. Russell, *supra* note 40, at 5.

despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.”¹⁵⁹ Congress identifies this discrimination as being persistent in “employment, housing, public accommodations, transportation, communication, education, recreation, institutionalization, health services, voting, and access to public services.”¹⁶⁰

Disability discrimination is unique from other forms of discrimination based on factors such as race or sex.¹⁶¹ Factors like race and sex “generally do not create any rational differences between individuals regarding the ability to do a job or qualification to perform in a program.”¹⁶² Therefore, there is rarely a reason to treat someone differently based on their race or sex. Disability is unique in that it “may—to differing degrees—affect his or her ability to perform, and thus may—to differing degrees—constitute a permissible reason for treating that individual in a different manner.”¹⁶³ Therefore, the courts are hesitant to assume that all “disparate treatment of persons with disabilities is discriminatory.”¹⁶⁴ The analysis is much more complex. Racial discrimination is typically based on irrational and hostile beliefs.¹⁶⁵ Stigma towards disability usually comes from a variety of factors, such as discomfort, pity, or apathy.¹⁶⁶ This combination of stigmatizing beliefs makes it difficult to create a single solution to discriminatory actions.

Current disability legislation offers little legal recourse to people impacted by climate change and natural disasters. When considering the impacts that a storm, such as Hurricane Katrina, has on a person with a disability it seems highly unlikely that someone would succeed on an ADA claim for damages relating to a storm. The language of the Act provides that “no individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”¹⁶⁷ There is perhaps an argument to be made for the government’s failure to provide resources to people with disabilities before

159. RUTH COLKER, *FEDERAL DISABILITY LAW IN A NUTSHELL 1* (6th ed. 2019).

160. *Id.*

161. *Id.* at 2.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 3.

167. 42 U.S.C. § 12132.

and after Katrina.¹⁶⁸ Several citizens filed lawsuits after the hurricane to decide whether the federal government was responsible for the levee break or whether the state was responsible for not preparing its citizens.¹⁶⁹

At this point, there is still much confusion about how to define causation as it relates to storm damages. After Hurricane Katrina, residents of impacted areas sued the United States for flood damages.¹⁷⁰ The Fifth Circuit for the Court of Appeals ruled in favor of some residents but not others.¹⁷¹ The main difference is whether the government was liable for the flood damage was deciding whether the waters that caused damage were related to flooding control.¹⁷² This is a complicated issue to prove in court. Essentially, if the water that flooded your house was caused by governmental “flood control” efforts, then the government is not responsible for the damages.¹⁷³ The government can only be held responsible for flood damages if it was negligent in its flood control responsibility.¹⁷⁴

This established an unfortunate precedent—if your house was flooded by water that was not “touched” by the government for flood control, then the government is immune from suit.¹⁷⁵ It was assumed that homeowner’s insurance should cover those flood damages instead of the government.¹⁷⁶ This decision makes it extremely difficult for residents of flooded zones to recover damages from the government because they have to prove both a government association with the waters and the government’s negligence. This precedent makes it extremely unlikely that a person with a disability who wants to sue the government for lack of protection during Hurricane Katrina would be successful.

After Hurricane Katrina, the United States Department of Transportation’s Federal Highway Administration put together a guide to support evacuation for people with disabilities.¹⁷⁷ This guide begins by acknowledging the tragedies of Hurricane Katrina and Hurricane Rita.¹⁷⁸ The

168. See *Crescent Towing Salvage Co. v. M/V Chios Beauty*, No. CIV.A. 05-4207, 2008 WL 5264268 (E.D. La. Dec. 16, 2008) (providing an example of a case filed after Hurricane Katrina to determine liability of individuals versus the State).

169. *Id.*

170. *In re Katrina Canal Breaches Litig.*, 696 F.3d 436, 436-37 (5th Cir. 2012).

171. *Id.* at 454.

172. *Id.* at 444.

173. *Id.*

174. *Id.*

175. *Id.* at 445.

176. *Id.*

177. FEDERAL HIGHWAY ADMIN., FED. HIGHWAY ADMIN., ROUTES TO EFFECTIVE EVACUATION PLANNING PRIMER SERIES: EVACUATING POPULATIONS WITH SPECIAL NEEDS (2009), <https://ops.fhwa.dot.gov/publications/fhwahop09022/fhwahop09022.pdf>.

178. *Id.* at iii.

document also states that “evacuation operations are primarily a State and local function; therefore, State and local authorities are the most knowledgeable in this area.”¹⁷⁹ This language specifically places responsibility for evacuation efforts on the states themselves. Significantly, this relieves the federal government¹⁸⁰ Because of the DOT’s guide, states must develop disaster management programs.

The litigation post-Hurricane Katrina focused primarily on determining the government’s responsibility for the damage to homes. Very little, if any, focus was given to the actual individuals harmed by the flooding and storm. This sets a dangerous tone for harm endured from future storms—there is no legal remedy established for individuals who are injured by environmental emergencies. The governmental response has been to place more emphasis on the need for evacuation before emergencies occur.¹⁸¹ This is significant because we do not have a consistent federal or state plan in place to evacuate people before they are harmed. We also do not have legal remedies in place for after the harm occurs. Instead, people with disabilities are forced to wait in limbo without any real governmental protection from environmental disasters.

C. Expanding Environmental Legislation Protections to People with Disabilities

Disability activist Marta Russell writes, “having a disability is conventionally regarded as a personal tragedy which the individual must overcome, or as a medical problem to which the individual must become adjusted.”¹⁸² By treating disability as an individual issue, this ignores the systems within our society that actively oppress and limit people with disabilities. Disability activists have rallied around a different idea: “it is society which disables persons with impairments.”¹⁸³ The Harriet Tubman Collective described disability in similar terms: “the phrase ‘differently abled’ suggests that we are the locus of our disability when we are, in fact, disabled by social and institutional barriers.”¹⁸⁴ This shift in thinking posits that our social institutions are responsible for creating barriers for people with

179. *Id.*

180. *Id.* at 1.

181. *Id.*

182. Russell, *supra* note 40.

183. *Id.*

184. HARRIET TUBMAN COLLECTIVE, *supra* note 10, at 239.

disabilities. This shift also places those institutions in the position to take responsibility for the removal of those barriers.

As climate emergencies and storms occur with more frequency, it is likely that this body of law will continue to grow. At this point, it is still difficult for courts to determine who should be at fault and responsible for damages after disasters. Disability-focused legislation, such as the ADA, was not intended to provide recourse for climate change. Instead, environmental legislation seems to be a better route for legal resources. The United States Environmental Protection Agency (EPA) is likely the best starting point to offer protections to people with disabilities facing environmentally related issues.

The EPA offers several environmental justice grants and funding opportunities. One grant opportunity, the State Environmental Justice Cooperative Agreement Program, offers to “support and/or create model state activities that lead to measurable environmental public health results in communities disproportionately burdened by environmental harms and risks.”¹⁸⁵ It is important to note that this grant is available only to state programs and not to individuals.¹⁸⁶ Therefore, a state would need to take the initiative to apply. Interested states could receive \$200,000 for a two-year project period.¹⁸⁷ The goals of the program are to:

- (1) achieve measurable and meaningful environmental and/or public health results in communities;
- (2) build broad and robust, results-oriented partnerships, particularly with community organizations within disproportionately impacted areas;
- (3) pilot activities in specific communities that create models, which can be expanded or replicated in other geographic areas;
- (4) reinforce connections to EPA regional [environmental justice] EJ activities and priorities and,
- (5) strengthen the development and implementation of specific approaches to achieve environmental justice.¹⁸⁸

States could utilize grants from the EPA such as this to develop action plans to combat the impacts of climate change within their communities. These action plans could follow the guidelines released by the Department

185. U.S. ENV'T PROT. AGENCY: THE STATE ENV'T JUST. COOP. AGREEMENT PROGRAM (2021).

186. *Id.*

187. *Id.*

188. *Id.*

of Transportation after Hurricane Katrina. States could utilize grant money to connect with the grassroots disability activists who are already preparing for natural disasters. This grant opportunity could help to ensure that planning for future disasters includes steps on evacuating people with disabilities safely to accessible locations. This opportunity places the power to implement change into the hands of the state to take care of *all* its citizens.

The EPA also offers grants through their Environmental Justice Small Grants Program.¹⁸⁹ This program is open to community-based organizations that work on supporting communities through environmental justice issues.¹⁹⁰ Projects are funded up to \$30,000.¹⁹¹ Past projects have included education on air pollution in Springfield, Massachusetts, and energy efficient weatherization of houses for residents in Wichita, Kansas.¹⁹² This grant offers an opportunity to smaller organizations interested in the relationship between disability and environmental justice to take action in their communities. Disability advocacy groups could apply for project grants, such as these, to act in their own communities. These organizations could take the initiative to fill in some of the gaps in their states where resource provisions do not focus on people with disabilities.

Interestingly, the EPA began observing National Disability Employment Awareness Month in 2016.¹⁹³ This came as a result of a Presidential Proclamation under the Obama Administration that declared the right to dignity and respect in the workplace for people with disabilities.¹⁹⁴ The goal of this proclamation was to “recognize the significant progress our country has made for those living with disabilities” and to “honor the lasting contributions and diverse skills they bring to our workforce.”¹⁹⁵ The public acknowledgment by President Obama of the important contributions made by people with disabilities represented a turning point in our ideas of disability—the federal government values people with disabilities as employees.

189. *Environmental Justice Small Grants Program*, ENV'T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/environmental-justice-small-grants-program> (last updated June 2, 2021).

190. *Id.*

191. *Id.*

192. *Air Projects: Fostering Community Participation in Air Pollution Reduction Initiatives (Springfield, MA)(2012)*, ENV'T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/air-projects> (last updated Oct. 15, 2021).

193. *Profiles of Americans with Disabilities at EPA*, ENV'T PROT. AGENCY, <https://www.epa.gov/careers/national-disability-employment-awareness-month> (last updated July 26, 2021).

194. Proclamation No. 9509, 81 Fed. Reg. 194, 69373, (Oct. 6, 2016).

195. *Id.*

The recognition of people with disabilities in the workforce represents a huge societal shift in thinking about disability. In the late 1980s, only two-thirds of “working age Americans with disabilities who were able to be employed had jobs, and many of those who did have jobs were working in positions below their capabilities.”¹⁹⁶ Many employers refused to hire people with disabilities or considered people with disabilities only for entry-level positions.¹⁹⁷ The people with disabilities who wanted to work and were denied jobs were required to depend on government benefits “to the disadvantage of all Americans.”¹⁹⁸ The Presidential Proclamation recognizing the importance of people with disabilities to access the workforce sends a powerful and simple message—people with disabilities have value within the federal government. The EPA’s recognition of Disability Employment Awareness Month may be interpreted as part of this change in attitude towards people with disabilities and their importance in the fight for environmental justice. Incorporating the voices of people with disabilities into one of the most important environmentally focused agencies in the country is a significant sign of progress.

III. GRASSROOTS MOVEMENTS AND FUTURE STEPS

For the environmental justice movement to advocate for true equity, there must be inclusion of people with disabilities within these conversations. Although the legal system offers some protections to people with disabilities, very little analysis has been done on legal resources available to disabled people impacted by climate change and climate emergencies. Given the likelihood of the increasing frequency of climate emergencies, it is imperative that people with disabilities are covered by environmental legislation. While some states have taken the initiative to write emergency strategies that include planning for the safety of people with disabilities before emergencies, there is no legal recourse for people with disabilities who need assistance afterwards.¹⁹⁹ This is where the work of grassroot organizers and disability activists may be able to provide guidance.

Disability activist Patty Berne writes, “communities around the world are grappling with a growing number and intensity of climate-related

196. COLKER, *supra* note 159, at 5.

197. *Id.*

198. *Id.*

199. Patty Berne & Vanessa Raditz, *To Survive Climate Catastrophe, Look to Queer and Disabled Folks*, YES! MAG. (Jul. 31, 2019), <https://www.yesmagazine.org/opinion/2019/07/31/climate-change-queer-disabled-organizers>.

disasters.”²⁰⁰ As we continue to experience worsening floods, fires, and earthquakes, there is a need for direction during this “climate chaos.”²⁰¹ Berne suggests looking towards the knowledge and wisdom of disabled queer and trans people:

The history of disabled queer and trans people has continually been one of creative problem-solving within a society that refuses to center our needs. If we can build an intersectional climate justice movement—one that incorporates disability justice, that centers disabled people of color and queer and gender nonconforming folks with disabilities—our species may have a chance to survive.²⁰²

Berne outlines examples of how “disabled queer and trans communities of color are already preparing for the survival of their communities through oncoming disasters.”²⁰³ They have created networks to teach other skills in resilience-based organizing, share masks, air filters, and generators to refrigerate medication, and lead healing workshops.²⁰⁴ Berne notes that while this movement may be invisible to most, it should not be surprising.²⁰⁵ This type of grassroots organizing is built on the “gritty persistence that disabled people embody every day.”²⁰⁶ Berne’s essay ends with a call to action: “[w]elcome to our world. We have some things to teach you if you’ll listen so that we can all survive.”²⁰⁷

CONCLUSION

For the environmental justice movement to advocate for true equity, there must be inclusion of people with disabilities within these conversations. Although the legal system offers some protections to people with disabilities, little analysis has been done on legal resources available to disabled people impacted by climate change and climate emergencies. Given the likelihood of the increasing frequency of climate emergencies, it is imperative that people with disabilities are covered by environmental legislation. While some states have taken the initiative to write emergency strategies that

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

include planning for the safety of people with disabilities before emergencies, there is little legal recourse for people with disabilities who need assistance afterward. This is where looking to the federal government for funding and to the individual work of grassroots organizers and disability activists can provide guidance.