

My name is Nicholas Leonard and I'm the executive director of the Great Lakes Environmental Law Center, a Detroit-based nonprofit that provides pro bono legal services to help Michigan residents use the law to address environmental issues that are impacting their health and quality of life.

I have had the pleasure of working with residents throughout in Detroit and Southeast Michigan to address a wide variety of environmental issues. I've worked with residents in Southwest Detroit and the Southend of Dearborn to address air pollution; residents on the eastside of Detroit and Hamtramck to address the expansion of a hazardous waste treatment and storage facility; residents on the eastside of Detroit to close down a trash incinerator that was violating air emission limits; and residents throughout Michigan that are confronting issues of drinking water quality. Through my work with all of these communities, I've come to deeply understand how our federal environmental laws fail to adequately address the concerns of communities of color and lower income. Today, I'm planning to talk about that failure and how it must be remedied.

I want to start by describing how environmental injustice manifests itself in law or policy. Injustice in law and policy often starts with an absence, specifically the absence of people of color and lower income in creating the law or policy. This absence – which historically has been intentionally discriminatory – has led to laws and policies that ignore the concerns people of color and lower income. This ignorance, particularly if left unremedied for long periods of time by policymakers, leads many people of color to logically and correctly conclude that while our environmental laws adequately protect respectively whiter and wealthier communities, they fail to protect communities of color.

The environmental injustices here in Michigan are indicative of similar problems in communities of color across the country, and many of these problems are glaringly present on the eastside of Detroit, the very location for this hearing.

- Hazardous waste facilities, such as U.S. Ecology's two storage and treatment facilities on the eastside, are overwhelmingly located in communities of color and lower-income – our analysis found that 65% of people living nearby commercial hazardous waste facilities in Michigan are people of color despite being only 25% of the State's total population.¹ To make matters worse, 70% of the waste received by these facilities comes from outside of the Michigan and only 5% comes from the same county where the facility is located.² Simply put, Michigan's communities of color are the dumping grounds for hazardous waste from all over the state, region, and country.
- Residents in Flint and Benton Harbor – both of which are majority Black cities – have been forced to rely on bottled water for all of their cooking and drinking needs for months or even years because their public water supply was so contaminated with lead that it was unsafe for residents

¹ Title VI Complaint Under Michigan Department of Environment, Great Lakes, and Energy Policy and Procedure 09-024 (Jul. 27, 2020).

² Id.

to drink the water from their tap. In both cities, federal and state regulators were not only unable to prevent a prolonged drinking water crisis, but also were initially unwilling to commit to a robust and urgent response and only did so after long-ignored resident voices were backed up by lawyers and healthcare professionals. As a result, Benton Harbor and Flint residents, who are already at high-risk of lead poisoning from deteriorating lead paint in substandard rental housing, were subject to another pathway of lead exposure. Further, many of these residents are uniquely vulnerable to the serious health consequences of lead exposure due to a lack of access to high quality health care and educational support services that is necessary to adequately support children with lead poisoning.³

- Residents living nearby the Stellantis automotive assembly complex on the eastside of Detroit have been forced to endure a significant expansion of the facility and the resulting air pollution impacts. Even though the community immediately adjacent to the facility has the highest asthma rate in Michigan, the Michigan Department of Environment, Great Lakes, and Energy refused to conduct an environmental justice analysis, specifically noting that it did attempt to determine the economic or racial demographics of the area.⁴

These problems are not new. For example, since the 1980's studies have consistently shown that hazardous waste facilities are disproportionately located in communities of color. In 2007, a study found that Michigan was the worst state in the country in regards to disproportionately locating commercial hazardous waste facilities in communities of color. Specifically, the 2007 study found that 66% of people living nearby a hazardous waste facility in Michigan were people of color. Our analysis in 2020 revealed that disparity continues to persist to this day.

How has this been allowed to happen and, more importantly, what is the solution? First, it's important to acknowledge that environmental injustice is an enduring byproduct of our nation's history of intentional, race-based discrimination. Such discrimination was incredibly pervasive, but in particular housing discrimination and segregation, has been a significant cause of environmental injustice. This legacy has been allowed to endure because our federal environmental laws do not address the concerns of people of color and lower income, and do not provide communities with the adequate legal means to address these concerns on their own. Today, in communities of color throughout Michigan, new plants are being built, hazardous waste facilities are being expanded, and tap water is so contaminated that it is undrinkable.

³ Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i and 42 U.S.C. § 300j-1(b), to Abate the Imminent and Substantial Endangerment to Benton Harbor, Michigan Residents from Lead Contamination in Drinking Water (Sept. 9, 2021); Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i, to Abate the Imminent and Substantial Endangerment to Flint, Michigan Residents from Lead Contamination in Drinking Water (Oct. 1, 2015).

⁴ Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, regarding the Michigan Department of Environment, Great Lakes, and Energy's Issuance of Permit Nos. 14-19, 14-19A, & 33-20 (Nov. 8, 2021)

Because the concerns of communities of color are not reflected in the law and required to be addressed, our agencies that make the decisions regarding whether to allow these facilities to be built or expanded must, in accordance with the law, ignore the concerns of people of color. Put another way, the law ignores people of color, and as a result the agencies in charge of administering these laws do as well.

The most significant federal law that does address the environmental concerns of communities of color is Title VI of the Civil Rights Act of 1964, which prohibits state environmental agencies from discriminating on the basis of race, color, and national origin. However, the United States Supreme Court has interpreted this law to only prohibit “intentional” discrimination by state agencies, and not activities that have a disparate impact on communities of color.⁵ The U.S. EPA has adopted Title VI regulations that prohibit state agencies from activities that have a discriminatory effect, regardless of intent. Theoretically, residents can submit a Title VI complaint to the U.S. EPA to address violations of the EPA’s non-discrimination regulations. However, the EPA’s Title VI complaint process has a well-documented history of mismanagement, making it a largely ineffectual.⁶

If we do not take bold and decisive action to cut off our legacy of environmental injustice, the issues that I’ve discussed here today will continue and will become our legacy too. My goal is to make sure the next generation is working on different issues than the ones we are discussing on today. The environmental justice movement began in the 1980’s with residents protesting a hazardous waste landfill being located in a community of color in North Carolina. In 2020, residents in Detroit were similarly protesting a significant expansion of a hazardous waste facility in another community of color. So how is this remedied; I think it’s fairly simple: a just environmental law or policy is one that is developed in partnership with communities of color and lower income, and that adequately addresses the unique environmental issues that these communities face on a day-to-day basis. We cannot let another generation be burdened with our legacy of environmental injustice; we need solutions now.

⁵ See, *Alexander v. Sandoval*, 532 U.S. 275 (2001).

⁶ See, *Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12,898*. U.S. Commission on Civil Rights, September 2016, available at https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf; Evaluation of the EPA Office of Civil Rights: Final Report. Deloitte Consulting LLP. March 21, 2011. <http://src.bna.com/gmK>.