

Community Lawyering for Environmental Justice Part 7: Connecting Communities with Federal Funding

1. Introduction to the Pro Bono Clearinghouse

The Environmental Law Institute's Pro Bono Clearinghouse works to connect communities who would otherwise be unable to access legal resources with pro bono attorneys and experts to support the resolution of their environmental legal issues.

Communities who require pro bono support may reach out to the Pro Bono Clearinghouse directly. In addition, law clinics and other non-profits may submit any viable environmental matters that they are unable to take on due to resource limitations or because they are outside of their scope of work. Clinics and non-profits can also post requests for Clearinghouse member attorneys to expand their capacity or provide expertise they lack in-house. The Clearinghouse does not post criminal matters. Clearinghouse member attorneys can offer their skills and take on new matters, whether as a long-term legal ally of a community or for a discrete legal task.

Community lawyering, also known as empowerment lawyering, is key to meaningful environmental justice-oriented pro bono work. Community lawyering involves collaboration with community members as facilitative partners. As a result, it differs from the more traditional representational lawyering.

Learn more about the Pro Bono Clearinghouse here: <https://www.eli.org/probono>.

2. Overview of Recent Federal Legislation

The past few years have seen the passage of key pieces of federal legislation that have created extraordinary funding streams designed to support environmental justice work, clean energy goals, and the development of clean and equitable infrastructure. Within these laws, there are significant provisions designed to ensure that the necessary transition is an equitable one by prioritizing Environmental Justice communities.

A. Infrastructure Investment and Jobs Act (IIJA)

On November 15th, 2021, the IIJA was signed into law with ambitious goals: eliminating lead water service lines, improving access to reliable high-speed internet, and investing in transportation and power infrastructure to reduce GHG emissions and improve resiliency.¹

One area of major investment is the federal highway program, to which the IIJA has allocated approximately \$350 billion for FY 22-26. The majority of this funding is allocated to the states as determined by formulas provided for in the law, while a small portion will be distributed

¹ *Fact Sheet: The Bipartisan Infrastructure Deal*, THE WHITE HOUSE (Nov. 6, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/>.

through competitive grant programs.² These grants are available to a wide range of recipients, including state highway agencies, metropolitan planning organizations, local governments, federally recognized Indian tribes, and the Federal Land Management Agencies.³

Other programming that will receive investment from the IJA include:⁴

- \$89.9 billion in public transit, which includes upgrading infrastructure, replacing buses with zero-emission vehicles, and training the transit workforce. Low-income, Black and Hispanic, and immigrant communities are approximately twice as likely to use public transportation.⁵ Investments in public transportation make transportation safer, expand access to jobs, and reduce greenhouse gas emissions.⁶
- At least \$1 billion to reconnect communities that have been divided by transportation infrastructure. Interstate highway projects have often been built directly through thriving communities of color, devastating communities' economic and cultural centers.⁷
- \$65 billion in Broadband internet to ensure access to reliable high-speed internet across the country, including the creation of a permanent program to increase the economic accessibility of the internet.

B. Inflation Reduction Act (IRA)

Signed on August 16, 2022, less than one year later, the IRA serves as an extension and expansion of the IJA and its goals. Where the IJA is focused on physical infrastructure, the IRA offers financial incentives (often in the form of tax credits) to promote investment in resilience. These incentives are primarily designed to support the acceleration of clean energy deployment.

² *Bipartisan Infrastructure Law Funding*, FED. HIGHWAY ADMIN., <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/funding.cfm> (last visited Oct. 11, 2023).

³ *Bipartisan Infrastructure Law Competitive Grant Programs*, FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/bipartisan-infrastructure-law/grant_programs.cfm (last visited Oct. 11, 2023).

⁴ *Fact Sheet: The Bipartisan Infrastructure Deal*, THE WHITE HOUSE (Nov. 6, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/>.

⁵ Monica Anderson, *Who Relies on Public Transit in the U.S.*, PEW RESEARCH CENTER (Apr. 7, 2016), <https://www.pewresearch.org/short-reads/2016/04/07/who-relies-on-public-transit-in-the-u-s/>.

⁶ *Investing in Public Transit Systems Can Empower Workers and Transform Urban Economies*, *New Research Shows*, THE WORLD BANK (Oct. 31, 2022), <https://www.worldbank.org/en/news/feature/2022/10/31/investing-in-public-transit-systems-can-empower-workers-and-transform-urban-economies>; *Expand Public Transportation Systems and Offer Incentives*, U.S. DEP'T OF TRANSP., <https://www.transportation.gov/mission/health/Expand-Public-Transportation-Systems-and-Offer-Incentives> (last visited Oct. 11, 2023).

⁷ One example is the construction of Interstate 10 through the Claiborne community in New Orleans, formerly known as "the Black economic engine of the city." Carly Berlin, *Fixing Claiborne – the Highway that split a Black Neighborhood – Could Come Down to 2 Proposals*, WWNO – NEW ORLEANS PUBLIC RADIO (Dec. 22, 2022), <https://www.wwno.org/news/2022-12-22/fixing-claiborne-the-highway-that-split-a-black-neighborhood-could-come-down-to-2-proposals>.

In defense of the relevance of its name, the IRA invests approximately \$300 billion in deficit reduction to address inflation.⁸ However, the legislation is more commonly known for its environmental investments, with \$369 billion designated for Energy Security and Climate Change programs.⁹ Its goals include lowering energy costs, investing in green jobs, and, in combination with the IIJA, reducing GHG emissions to 40% below 2005 levels by 2030.¹⁰

For example, the IRA provides:

- \$27B in financing toward greenhouse gas reduction projects,¹¹
- \$3B in Environmental and Climate Justice grants, and
- \$3B in funding for zero-emission port equipment and technology.¹²

In addition, a variety of Environmental Justice Grants, Funding, and Technical Assistance programs were established under the IRA. The Environmental and Climate Justice Program (ECJP), provides funding for financial and technical assistance to benefit underserved and overburdened communities.¹³ The Environmental Justice Thriving Communities Grantmaking Program, which falls under the ECJP programmatic umbrella, has identified [16 Technical Assistance Centers](#) that will receive funding to provide training on federal grant application systems, strong grant proposals, and management of grant funding, among other technical assistance offered to support Environmental Justice communities.¹⁴ This program is part of the Department of Transportation's Thriving Communities Program, which is designed to build capacity for communities' environmental activities.¹⁵

⁸ *Summary: The Inflation Reduction Act of 2022*, SENATE DEMOCRATS, https://www.democrats.senate.gov/imo/media/doc/inflation_reduction_act_one_page_summary.pdf (last visited Oct. 11, 2023).

⁹ *Id.*

¹⁰ *Fact Sheet: One Year In, President Biden's Inflation Reduction Act is Driving Historic Climate Action and Investing in America to Create Good Paying Jobs and Reduce Costs*, THE WHITE HOUSE (Aug. 16, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/16/fact-sheet-one-year-in-president-bidens-inflation-reduction-act-is-driving-historic-climate-action-and-investing-in-america-to-create-good-paying-jobs-and-reduce-costs/>.

¹¹ *EPA Releases Framework for the Implementation of the Greenhouse Gas Reduction Fund as Part of President Biden's Investing in America Agenda*, EPA (Apr. 19, 2023), <https://www.epa.gov/newsreleases/epa-releases-framework-implementation-greenhouse-gas-reduction-fund-part-president>.

¹² *Advancing Environmental Justice*, EPA, <https://www.epa.gov/inflation-reduction-act/advancing-environmental-justice> (last visited Oct. 11, 2023).

¹³ *Inflation Reduction Act Environmental and Climate Justice Program*, EPA, <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-environmental-and-climate-justice-program> (last visited Oct. 11, 2023).

¹⁴ *The Environmental Justice Thriving Communities Technical Assistance Centers Program*, EPA, <https://www.epa.gov/environmentaljustice/environmental-justice-thriving-communities-technical-assistance-centers> (last visited Oct. 11, 2023).

¹⁵ *Thriving Communities Program*, U.S. DEP'T OF TRANSP., <https://www.transportation.gov/grants/thriving-communities> (last visited Oct. 11, 2023).

C. Justice40 Initiative

On January 27, 2021, President Biden issued Executive Order 14008: Tackling the Climate Crisis at Home and Abroad.¹⁶ This order established the Justice40 Initiative, which set a goal that “40 percent of overall benefits flow to disadvantaged communities.”¹⁷ Formal guidance was issued by the Office of Management and Budget just months later.¹⁸ This initiative was then reaffirmed in Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All.¹⁹ Agency programs that fall under this derivative include programs that make investments in climate change, clean energy/energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, legacy pollution remediation and reduction, and the development of clean water and wastewater infrastructure.²⁰

“Disadvantaged communities” are recognized through the Climate and Economic Justice screening tool as communities that are at or above the threshold for one or more environmental, climate, or other identified burden and is at or above the threshold for an associated economic burden.²¹ Federally Recognized Tribes, including Alaska Native Villages, are also considered to be disadvantaged communities.²²

D. Agency Consideration of Race

Oftentimes, our understanding of what constitutes an “Environmental Justice Community” includes an explicit consideration of race. However, this may not be possible for federal, state, or local agencies in light of the Supreme Court’s recent decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*.²³ The question in this case was whether a college admissions system that explicitly considers race violates the Equal Protection Clause of the 14th Amendment. The 14th Amendment provides that no state shall “deny to any person [...] equal protection of the laws.” In a 6-3 ruling, the court found that the admissions practice was unconstitutional. The majority opinion, written by Justice Roberts, outlines a very tight version of the strict scrutiny that takes a race-neutral approach to policymaking.²⁴

Justice Gorsuch’s concurrence provides the clearest connection between this case and environmental law, as he specifically discusses Title VI of the Civil Rights Act of 1964, which is

¹⁶ Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

¹⁷ *Id.*

¹⁸ OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-21-28, INTERIM IMPLEMENTATION GUIDANCE FOR THE JUSTICE40 INITIATIVE (July 20, 2021).

¹⁹ Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

²⁰ *Justice40 Initiative Covered Programs List*, THE WHITE HOUSE (Apr. 21, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/04/Justice40-Covered-Programs-List_v1.4_04-20-2023.pdf.

²¹ Climate and Economic Justice Screening Tool, Council on Environmental Quality, <https://screeningtool.geoplatform.gov/en/methodology#9.03/30.0641/-90.7769> (last visited Oct. 11, 2023).

²² *Id.*

²³ 600 U.S. 101 (2023).

²⁴ “We have time and again forcefully rejected the notion that government actors may intentionally allocate preference to those ‘who may have little in common with one another but the color of their skin.’” *Id.* at 220 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)).

a powerful tool in protecting against the disparate impacts of environmental harms.²⁵ As Gorsuch says, “Title VI prohibits a recipient of federal funds from intentionally treating any individual worse even in part because of his race, color, or national origin.”²⁶ However, Gorsuch applies this principle to the case before him and finds that the admissions process “intentionally treat[s] some applicants worse than others at least in part because of their race,” as students who are white or Asian American are unlikely to get a race-based “tip”.²⁷ Should this principle be applied analogously to environmental issues, it could be possible to argue that heightened protections afforded to communities of color would be invalid because they provide a ‘benefit’ that is not available to all. While the recent federal legislation has a clear intent to, at least in part, rectify historic race-based disparities, agencies have avoided using race as an indicator in an attempt to insulate their actions from review on this basis. For example, the Council on Environmental Quality has moved toward race-neutral factors including income levels and exposure to pollution.²⁸

E. Tools to Track IJJA & IRA Developments

Harvard Law School Environmental & Energy Law Program Federal Environmental Justice Tracker

<https://eelp.law.harvard.edu/ejtracker/>

<http://eelp.law.harvard.edu/wp-content/uploads/EELP-IRA-EJ-Provisions-Table.pdf>

Columbia Law School’s Sabin Center for Climate Change Law and Environmental Defense Fund’s Inflation Reduction Act Tracker

<https://iratracker.org/actions/>

Government Finance Officers Association’s IJJA Notice of Funding Opportunity Tracker

<https://www.gfoa.org/ijja-notice-of-funding-opportunity-nofo-tracker>

²⁵ *Title VI and Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice> (last visited Oct. 28, 2023).

²⁶ *Id.* at 289.

²⁷ *Id.* at 290-291, 302.

²⁸ Thomas Frank, *How the White House Found EJ Areas Without Using Race*, E&E News (Jan. 24, 2023), <https://subscriber.politicopro.com/article/eenews/2023/01/24/how-the-white-house-found-ej-areas-without-using-race-00078542>.

3. Notes

Fill out the following sections based on speakers' presentations and remarks.

a. How is the EPA implementing its upcoming appropriations?

b. How are environmental justice communities being defined?

a. Tools

b. Guidance Documents

c. Implications of *Students for Fair Admissions*?

c. Practical Aspects of Accessing Funding

a. How is money being disbursed?

b. How to find available funding opportunities?

c. Who is eligible?

d. Best practices when applying?

d. Broader Implications of this Legislation