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## Cancer Alley and the Fight Against Environmental Racism

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## CANCER ALLEY AND THE FIGHT AGAINST ENVIRONMENTAL RACISM

### I. AN INTRODUCTION TO CANCER ALLEY

“Cancer Alley,” also known as “Petrochemical America,” is an area along the Mississippi River spanning from Baton Rouge to New Orleans, Louisiana.<sup>1</sup> Cancer Alley houses over 150 petrochemical plants and refineries.<sup>2</sup> Petrochemical companies use these plants to refine “crude oil . . . into a variety of petrochemicals” that are then used to produce everything from construction materials to clothing.<sup>3</sup> The most common petrochemical product is plastic.<sup>4</sup>

The media and local inhabitants dubbed the region “Cancer Alley” after noticing that many residents were dying after developing different types of cancer.<sup>5</sup> In Cancer Alley, approximately forty-six individuals per one million are at risk of developing cancer, compared with the national average of roughly thirty individuals per one million.<sup>6</sup> Louisiana is attractive to petrochemical companies because it has one of the largest concentrations of oil and natural gas in the Western Hemisphere.<sup>7</sup> Consequently, Louisiana has the highest concentration of petrochemical facilities in the Western

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1. Courtney J. Keehan, Note & Comment, *Lessons from Cancer Alley: How the Clean Air Act Has Failed to Protect Public Health in Southern Louisiana*, 29 COLO. NAT. RES. ENERGY & ENVTL. L. REV. 341, 341 (2018) (providing description of Cancer Alley). Cancer Alley spans “an eighty-five mile stretch of land” along the Louisiana portion of the Mississippi River. *Id.* (describing geography of Cancer Alley region).

2. *Id.* (noting large number of petrochemical plants in Cancer Alley).

3. *Id.* at 347 (describing petrochemical industry). Some of the most famous petrochemical companies with plants in the area are Chevron, DuPont, Exxon Mobil, and Shell, among others. *Id.* (recounting companies with plants located in Cancer Alley). Additional products derived from petrochemicals are “acetone . . . plexiglass, antifreeze, medication for swimmer’s ear, [and] plastic furniture . . . .” *Id.* at 348 (listing products made from petrochemicals).

4. See Beth Gardiner, *The Plastics Pipeline: A Surge of New Production Is on the Way*, YALE ENV’T 360 (Dec. 19, 2019), <https://e360.yale.edu/features/the-plastics-pipeline-a-surge-of-new-production-is-on-the-way> (predicting plastic production will account for half of “oil demand growth” by 2050).

5. Keehan, *supra* note 1, at 344 (recounting significant number of cancer cases and death in area).

6. Wesley James ET AL., *Uneven Magnitude of Disparities in Cancer Risk from Air Toxics*, 9 INT’L J. ENVTL. RES. & PUB. HEALTH 4365, 4369 (2012) (comparing average rates of cancer risk in Cancer Alley, Louisiana, and rest of United States).

7. Keehan, *supra* note 1, at 345 (describing why Cancer Alley is attractive to petrochemical companies).

Hemisphere, and in 2018 had the sixth-highest cancer mortality rate in the United States.<sup>8</sup>

Most of Cancer Alley's residents are impoverished African Americans who live near, or next to, petrochemical plants.<sup>9</sup> This is no coincidence.<sup>10</sup> There is little evidence that communities of color move to sites where toxic waste facilities and landfills are located.<sup>11</sup> Rather, toxic waste sites are often sited in primarily poor and African American neighborhoods, which suggests "[w]hen taking out the factor of income, race is the single most significant indicator of where toxic waste or pollutant sites are located."<sup>12</sup> This phenomenon has led to accusations of "environmental racism" and calls for "environmental justice."<sup>13</sup> Environmental racism refers to a society unduly burdening people of color with the risks and harmful effects of environmental policies that otherwise benefit the rest of society.<sup>14</sup>

Petrochemical companies intentionally place their facilities in towns with established poor communities of color, meaning that "toxicity follows poor, segregated communities, not the other way around."<sup>15</sup> There are various reasons why Cancer Alley exists and why communities of color are disproportionately affected by pollution when compared with white communities.<sup>16</sup> Some of these reasons include Jim Crow laws, zoning laws and siting processes, and the Environmental Protection Agency's (EPA) unequal enforcement of federal environmental laws based on the race of the population impacted.<sup>17</sup> Additionally, the "Not In My Back Yard"

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8. *Id.* (connecting large number of petrochemical plants with high incidence of cancer); see also *Cancer Mortality by State*, CDC, [https://www.cdc.gov/nchs/pressroom/sosmap/cancer\\_mortality/cancer.htm](https://www.cdc.gov/nchs/pressroom/sosmap/cancer_mortality/cancer.htm) (last visited June 13, 2020) (ranking states by highest cancer rates).

9. See Julia Mizutani, Note, *In the Backyard of Segregated Neighborhoods: An Environmental Justice Case Study of Louisiana*, 31 GEO. ENVTL. L. REV. 363, 364, 372-74 (2019) (noting most toxic wastes sites are located in poor, African American neighborhoods).

10. See generally *id.* at 364 (insinuating location of toxic waste sites is not random).

11. *Id.* 364-65 (discussing unlikelihood of minorities moving to polluted sites).

12. *Id.* at 364 (describing location of waste sites).

13. *Id.* at 365 (stating environmental justice movement seeks to right wrongs perpetrated by environmental racism).

14. Maria Ramirez Fisher, Comment, *On the Road from Environmental Racism to Environmental Justice*, 5 VILL. ENVTL. L.J. 449, 449-50 (1994) (defining environmental racism and noting burdens placed on people of color).

15. Mizutani, *supra* note 9, at 365 (pointing to how petrochemical companies decide where to place toxic waste facilities).

16. See *id.* at 390 (suggesting possible reasons for Cancer Alley's existence).

17. See *id.* at 370, 390 (listing possible reasons behind environmental racism).

(NIMBY) movement and white flight have affected how petrochemical companies and zoning boards decide where to locate petrochemical facilities.<sup>18</sup>

As citizens in primarily white neighborhoods started mounting successful opposition campaigns against the siting of petrochemical plants in their communities, these facilities were increasingly relocated to communities of color.<sup>19</sup> Petrochemical companies chose to build in communities of color, as residents were often in need of jobs and politically vulnerable due to a lack of support from local government or access to resources.<sup>20</sup> Although people of color have mobilized to fight the siting of toxic waste facilities since the 1990s, their success has been limited.<sup>21</sup>

The limited success that people of color throughout the United States have had in challenging siting decisions explains why many petrochemical companies choose to locate their facilities in Cancer Alley.<sup>22</sup> Most Cancer Alley residents are impoverished African Americans who are unable to afford legal representation to assist them in challenging siting decisions, thus ensuring the siting of toxic waste facilities goes unchallenged.<sup>23</sup> Unlike the Cancer Alley communities, predominantly wealthy and white neighborhoods are often represented on local zoning boards and can fight the siting of toxic waste facilities near their neighborhoods through NIMBYism.<sup>24</sup>

The NIMBY movement grew in the 1970s as the public became aware of the health risks associated with hazardous waste facilities.<sup>25</sup>

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18. See Robin Saha & Paul Mohai, *Historical Context and Hazardous Waste Facility Siting: Understanding Temporal Patterns in Michigan*, 52 SOC. PROBLEMS 618, 638 (2005) (examining siting practices in Michigan and rest of United States). The siting of hazardous waste facilities in Michigan in residential areas with aging and deteriorating housing coupled with white flight has led to the concentration of poor people of color in such areas. *Id.* (noting communities could become significantly vulnerable to siting of new hazardous waste facilities).

19. See *id.* at 623 (explaining growth of NIMBY movement).

20. *Id.* (listing reasons why petrochemical companies place facilities in poor communities of color).

21. *Id.* at 624 (noting people of color's limited success in challenging siting decisions).

22. See Mizutani, *supra* note 9, at 370 (illustrating companies' desire to avoid challenges and resulting delays).

23. See *id.* (identifying poor minority communities as path of least resistance, leading to toxic waste facilities being placed there).

24. *Id.* (showing disparate treatment between white and African American communities in Louisiana).

25. See David Schelly & Paul B. Stretesky, *An Analysis of the "Path of Least Resistance" Argument in Three Environmental Justice Success Cases*, 22 SOC'Y & NAT. RESOURCES 369, 370 (2009) (discussing origins of NIMBY movement).

As wealthy and white communities increased their opposition to facility siting, the industry had to change its tactics on the “spatial distribution of environmental hazards.”<sup>26</sup> This is because affluent communities are often able to “leverage their economic and political clout” to deflect unwanted facilities from their neighborhoods.<sup>27</sup> Accordingly, petrochemical companies began placing their toxic waste facilities near poor African American neighborhoods to avoid any further delays or expenses associated with trying to place a facility in a wealthy white neighborhood.<sup>28</sup>

This Comment discusses the events that led to the existence of Cancer Alley as well as the environmental racism Cancer Alley residents suffer.<sup>29</sup> Section II discusses the siting of petrochemical plants in Cancer Alley.<sup>30</sup> Section III analyzes how the EPA’s regulations and the Louisiana Department of Environmental Quality’s (LDEQ) lack of enforcement of environmental laws fail to protect Cancer Alley’s most vulnerable citizens.<sup>31</sup> Section III also briefly considers President Clinton’s Executive Order on environmental justice and the proposed Environmental Justice Act.<sup>32</sup> Section IV then examines the difficulty of obtaining legal representation in Cancer Alley and the Tulane Environmental Law Clinic controversy.<sup>33</sup> Finally, Section V explores the continued fight of Cancer Alley’s residents against the construction of more petrochemical

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26. *Id.* (stating opposition from wealthy and white communities led to targeting of poor and minority communities for facility siting).

27. Robert D. Bullard, *Environmental Blackmail in Minority Communities*, in REFLECTING ON NATURE: READINGS IN ENVIRONMENTAL PHILOSOPHY 132, 134 (Lori Gruen & Dale Jamieson eds., 1994) (noting affluent communities are more vocal and successful in opposing hazardous waste facility siting). Groups opposing the siting of hazardous waste facilities began demanding that they be placed elsewhere, which often led to facilities being placed in disadvantaged communities of color. *Id.* (stating placement of unequal environmental burdens on poor and minority communities has “engendered feelings” of disparate treatment).

28. Mizutani, *supra* note 9, at 370 (describing how companies place toxic waste sites where they will not be met with resistance).

29. *See generally id.* at 365 (discussing link between racism and environmental injustice).

30. For a further discussion of siting decisions in Louisiana and Cancer Alley, see *infra* notes 35-78 and accompanying text.

31. For a further discussion of the EPA’s and LDEQ’s failure to protect Cancer Alley’s residents, see *infra* notes 79-178 and accompanying text.

32. For a further discussion of the proposed Environmental Justice Act, see *infra* notes 179-88 and accompanying text.

33. For a further discussion of the difficulty of obtaining legal representation to litigate environmental issues in Cancer Alley, as well as the unsuccessful attempt to close the TELC, see *infra* notes 189-226 and accompanying text.

plants and the revitalization of the environmental justice movement.<sup>34</sup>

## II. SITING OF PETROCHEMICAL PLANTS

Cancer Alley's sad history foreshadowed the struggles its future inhabitants would face.<sup>35</sup> The population's history, the legacy of Jim Crow laws, and parish governance in Louisiana signaled the environmental injustices Cancer Alley residents would suffer.<sup>36</sup> Moreover, Louisiana's "racial geography" and its practice of redlining further exposed Cancer Alley residents to environmental hazards that worsened their health.<sup>37</sup>

### A. Louisiana and Cancer Alley's History

Before becoming an industrialized region, Cancer Alley was composed of "sugar, indigo, and cotton" plantations that were built by slave labor.<sup>38</sup> After the American Civil War and the issuance of the Emancipation Proclamation, many former slaves remained close to the plantations where they had been enslaved.<sup>39</sup> These former slaves founded the unincorporated communities that now make up Cancer Alley.<sup>40</sup> Former slaves established homes in these unincorporated communities, which have been passed down through generations to some of Cancer Alley's current residents.<sup>41</sup>

Recently, Formosa Plastics Group (Formosa) discovered unmarked slave burial grounds on the site of its proposed industrial complex, known as the Sunshine Project, in St. James Parish.<sup>42</sup> Par-

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34. For a further discussion of the ongoing fight against environmental racism and the siting of petrochemical facilities in Cancer Alley, see *infra* notes 227-50 and accompanying text.

35. See Mizutani, *supra* note 9, at 364-65 (discussing how Cancer Alley came to be).

36. See *id.* at 365, 373 (highlighting Cancer Alley's history of segregated communities).

37. See *id.* at 365, 374-75 (discussing intersectionality between segregation and environmental racism).

38. Keehan, *supra* note 1, at 345 (describing Cancer Alley's landscape pre-Civil War).

39. *Id.* at 346 (discussing Cancer Alley's history of slavery).

40. Mizutani, *supra* note 9, at 373 (noting history behind Cancer Alley's unincorporated communities).

41. Keehan, *supra* note 1, at 346 (describing ownership of land in Cancer Alley).

42. Alex Lubben, 'Cancer Alley' Residents Are Trying to Stop a Huge Plastics Plant from Being Built on the Graves of Slaves, *VICE* (Dec. 19, 2019, 12:09 PM), [https://www.vice.com/en\\_us/article/bvg8bz/cancer-alley-residents-are-trying-to-stop-a-huge-plastics-plant-from-being-built-on-the-graves-of-slaves](https://www.vice.com/en_us/article/bvg8bz/cancer-alley-residents-are-trying-to-stop-a-huge-plastics-plant-from-being-built-on-the-graves-of-slaves) (recounting residents' reactions to discovery of burial grounds at proposed site).

ishes in Louisiana are the equivalent of counties in other states.<sup>43</sup> Formosa is a petrochemical company that plans to build an industrial complex of petrochemical plants in Cancer Alley.<sup>44</sup> The fight against Formosa's industrial complex is important for St. James Parish residents because the complex is expected to produce large amounts of plastic and toxic pollutants.<sup>45</sup>

Parish residents claim Formosa learned of the graves' existence in 2018.<sup>46</sup> The residents are concerned there could be more gravesites in the area than previously thought.<sup>47</sup> Since discovering the graves' existence—which they claim Formosa hid from them—the residents have been trying to use the gravesites as leverage to prevent construction of another petrochemical facility in their community.<sup>48</sup> Cancer Alley residents hope these gravesites will help them preserve their heritage and protect their communities from further pollution.<sup>49</sup>

Segregation's legacy in Cancer Alley continues to oppress African American communities by disproportionately exposing them to pollution.<sup>50</sup> Residential segregation and redlining became more widespread when the South underwent an industrial transforma-

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43. For a further discussion of parishes in Louisiana, see *infra* notes 64-78 and accompanying text.

44. Lylla Younes ET AL., *In a Notoriously Polluted Area of the Country, Massive New Chemical Plants Are Still Moving In*, PROPUBLICA (Oct. 30, 2019), <https://projects.propublica.org/louisiana-toxic-air/> (stating Formosa's plans of building mega-complex of petrochemical facilities).

45. See *id.* (detailing impact Formosa plant emissions will have on air quality); see also *Welcome to the Sunshine Project*, SUNSHINE PROJECT, <http://www.sunshineprojectla.com/> (last visited June 13, 2020) (describing Formosa's planned industrial complex). Formosa will invest \$9.4 billion dollars into the project and expects the complex to generate 1,200 permanent jobs in the St. James Parish area once permits are approved. *Id.* (explaining goals of Sunshine Project). Most of the products that will be produced are made out of plastic. *Id.* (listing car casings, playground equipment, artificial turf, and polyester clothing as possible products); see also *Proposed Project*, SUNSHINE PROJECT, <http://www.sunshineprojectla.com/proposed-project> (last visited June 13, 2020) (laying out phases of project and proposed products).

46. See Lubben, *supra* note 42 (recounting residents' accusations that Formosa did not share knowledge of possible gravesites with residents for seventeen months).

47. *Id.* (insinuating Formosa has found more gravesites). Parish residents believe the plantations previously located at the proposed site were part of a nearly successful slave revolt in 1811. *Id.* (noting historical significance of land).

48. *Id.* (stating land represents residents' painful history and they do not want to disturb gravesites).

49. See *id.* (noting residents' attempt to use burial grounds as leverage against Formosa to prevent facility from opening).

50. See Mizutani, *supra* note 9, at 374 (implying segregation is why African American communities in Cancer Alley are disproportionately exposed to pollution).

tion and its population grew in the early 1900s.<sup>51</sup> Redlining is “[c]redit discrimination . . . by an institution that refuses to provide loans or insurance on properties in areas that are considered to be poor financial risks or to the people who live in those areas.”<sup>52</sup>

In Louisiana, Jim Crow era policies exemplify redlining.<sup>53</sup> Because of the need to construct new drainage systems during the mid-1800s, white people in New Orleans forced African Americans to move to the city’s poorly-drained areas.<sup>54</sup> Racially restrictive covenants and building permit denials in white neighborhoods ensured African Americans continued to live in these poorly-constructed areas.<sup>55</sup> This led to a geographic makeup where white people lived in homes built on elevated ground, while relegating African Americans to living in swamp land.<sup>56</sup> For this reason, African Americans were more likely to contract typhoid and malaria, which increased their death rate.<sup>57</sup>

Displacement of African Americans to the poorly-drained areas of New Orleans continued well into the twentieth century.<sup>58</sup> Segregation and Jim Crow laws “became the backdrop” to the devastation

51. *Id.* (describing how residential segregation became prevalent during Jim Crow era).

52. *Redlining*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining redlining). See TERRY GROSS, *A ‘Forgotten History’ of How the U.S. Government Segregated America*, NPR: RACE (May 3, 2017, 12:47 PM), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> (recounting how federal housing policies forced African Americans into urban housing projects); see also Steven Plitt & Daniel Maldonado, *Prohibiting de Facto Insurance Redlining: Will Hurricane Katrina Draw a Discriminatory Redline In the Gulf Coast Sands Prohibiting Access to Home Ownership?*, 14 WASH. & LEE J. CIV. RTS. & SOC. JUST. 199, 200 (2008) (describing redlining as prohibiting “certain individuals from acquiring property”).

53. See Mizutani, *supra* note 9, at 375 (recounting how redlining prevented African Americans in New Orleans from buying or renting homes in white neighborhoods).

54. *Id.* (noting early instances of environmental burden-shifting). Flooding is an issue in New Orleans because the city is primarily below sea level. *Id.* (clarifying how white people in New Orleans used drainage and sewage systems to oppress city’s African American population).

55. *Id.* (explaining how city ordinances kept African Americans away from white neighborhoods); see also Manuel Pastor ET AL., *Environment, Disaster, and Race After Katrina*, 13 RACE, POVERTY & ENV’T 21, 23 (2006) (noting minorities’ difficulty in recovering after natural disaster due to inequities related to redlining).

56. Mizutani, *supra* note 9, at 375 (describing New Orleans’s geographic layout); see also Plitt & Maldonado, *supra* note 52, at 201 (noting minorities in aftermath of Hurricane Katrina had higher property damage because they lived in poorly constructed homes).

57. Mizutani, *supra* note 9, at 375 (stating consequences of early segregation).

58. See generally *id.* (noting segregation’s long-lasting effects).



Hurricane Katrina caused in 2005.<sup>59</sup> Although Jim Crow laws were officially overruled in the mid-twentieth century, their segregation pattern remains and continues to affect Louisiana's African American population.<sup>60</sup> Even before Hurricane Katrina raged through New Orleans, the city had the second-highest poverty level in the country.<sup>61</sup> After Hurricane Katrina, only fifty-three percent of African American households could stay or return to their homes, as opposed to the eighty-one percent of white households who were able to return.<sup>62</sup> Hurricane Katrina, therefore, highlighted the devastating effects of segregation's legacy by displacing most of New Orleans's poor, African American population.<sup>63</sup>

#### B. Louisiana's Parishes and Industrial Zoning Decisions

Louisiana's practice of redlining prevented poor African Americans from moving into primarily white neighborhoods, which led many of them to move to rural, unincorporated towns in Cancer Alley.<sup>64</sup> Moreover, the African American population in New Orleans grew after the Civil War, which meant more African Americans had to live in unincorporated towns located in Cancer Alley at the edge of plantations.<sup>65</sup> A problem with unincorporated towns is that local municipal corporations do not govern them.<sup>66</sup> Many of the towns in Cancer Alley are unincorporated, which means the towns lack governance power over their own affairs and are instead governed by the councils of the parishes in which the towns are lo-

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59. *Id.* at 376 (explaining segregation caused African American communities to endure disproportionate amount of hardships after Hurricane Katrina); *see also Jim Crow Laws*, HIST., <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> (last updated June 6, 2020) (recounting history of Jim Crow laws). Jim Crow laws were statutes that legalized racial segregation. *Id.* (defining Jim Crow laws).

60. *See generally* Mizutani, *supra* note 9, at 376 (implying unofficial segregation remained in New Orleans).

61. *Id.* (pointing to high levels of poverty in New Orleans).

62. *Id.* at 378 (discussing empirical evidence showing Hurricane Katrina's disproportionate effect on African Americans in New Orleans).

63. *See id.* (illustrating Hurricane Katrina's effects).

64. *See id.* at 372-73 (explaining why many African Americans moved to area now known as Cancer Alley). Hurricane Katrina increased housing prices in New Orleans, which has left poor African Americans vulnerable to more redlining. *Id.* at 379 (predicting possibility of future redlining because some areas in New Orleans are still vulnerable to flooding).

65. *See* Mizutani, *supra* note 9, at 373-75 (explaining redlining forced African Americans to live in segregated communities with unfavorable conditions).

66. Louise Gaille, *16 Biggest Pros and Cons of an Unincorporated Town*, VITTANA (June 25, 2019), <https://vittana.org/16-biggest-pros-and-cons-of-an-unincorporated-town> (listing benefits and drawbacks of living in unincorporated towns).

cated.<sup>67</sup> The lack of local governance in unincorporated towns increases the likelihood that the area can be re-zoned at any moment.<sup>68</sup>

A parish in Louisiana is the equivalent of a county in another state.<sup>69</sup> The parishes where the unincorporated towns are located have the jurisdictional authority to establish governance rules instead of the unincorporated towns themselves.<sup>70</sup> When a petrochemical company comes into the parish seeking to open a new plant, residents of these unincorporated towns often suffer because parish officials readily allow petrochemical companies to construct their facilities near poor African American communities.<sup>71</sup> The predominantly white council of St. John the Baptist Parish, for example, rezoned for industrial use the unincorporated town of Wallace—a mostly African American town—so that Formosa could construct a new plant.<sup>72</sup>

Parish residents have accused parish officials of putting industrial interests before community interests.<sup>73</sup> In 1998, council members from Convent Parish were accused of providing Shintech, a petrochemical company, with personality profiles of other council members when it was trying to get its plant approved.<sup>74</sup> Convent citizens were concerned by the lack of procedures followed by the LDEQ when it filed Shintech's air pollution permit.<sup>75</sup> The citizens

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67. Mizutani, *supra* note 9, at 373 (characterizing lack of autonomy among unincorporated towns in Cancer Alley).

68. Gaille, *supra* note 66 (noting common zoning issues in unincorporated towns).

69. Gregory Sousa, *Why Does Louisiana Have Parishes Instead of Counties?*, WORLD ATLAS (Apr. 25, 2017), <https://www.worldatlas.com/articles/why-does-louisiana-have-parishes-and-not-counties.html> (explaining origins of Louisiana's parish system).

70. *See* Mizutani, *supra* note 9, at 373 (explaining who is in charge of policies and legislation in unincorporated towns). There is not much research on how many residents of unincorporated towns are represented in parish councils, but because of the large number of petrochemical facilities located in unincorporated towns, one can infer the residents do not receive much representation. *See generally id.* at 373-74 (elaborating on how petrochemical companies have freely polluted Cancer Alley).

71. *See id.* at 373-74 (noting lack of representation for Cancer Alley's African American inhabitants).

72. *Id.* (providing example of rezoning residential areas to industrial).

73. Keehan, *supra* note 1, at 360 (showing parish officials' disregard for communities' health interests).

74. *Id.* (providing example of businesses and parishes working together). Parish officials shredded the documents when Cancer Alley residents asked officials to make them public. *Id.* (noting parish officials' questionable actions).

75. *Id.* at 359 (demonstrating how LDEQ prioritized industrial interests over citizens' health).

organized themselves to challenge the siting of the proposed plant and attended public hearings to voice their opposition.<sup>76</sup> Convent citizens took prominent action to voice their concerns, including collecting water samples from the river to present to LDEQ officials and travelling to Tokyo to discuss with company officials the dangers associated with the plant.<sup>77</sup> Eventually, Shintech withdrew its proposal for construction of a polyvinyl chloride (PVC) plant in Convent after two years of strong community activism.<sup>78</sup>

### III. LACK OF ENFORCEMENT OF ENVIRONMENTAL LAWS

The EPA designs environmental statutes to protect American citizens from exposure to high levels of chemical pollution.<sup>79</sup> One of the most important statutes is the Clean Air Act (CAA), which is designed to regulate air pollution at the national level.<sup>80</sup> Other relevant statutes include the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).<sup>81</sup> Although Congress designed these federal laws to protect citizens from pollution, the EPA's and state environmental agencies' unequal enforcement of these laws have actually perpetuated environmental racism in Cancer Alley and similar communities.<sup>82</sup>

President Clinton formally acknowledged the existence of, and the need to prevent, environmental racism in 1994 when he signed Executive Order 12898.<sup>83</sup> Despite the Executive Order, it remains difficult for a plaintiff to succeed on an environmental racism

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76. Alejandro Colsa Pérez, *Shintech PVC Plant in Convent, LA, USA*, ENVTL. JUST. ATLAS, <https://ejatlas.org/conflict/shintech-pvc-plant-in-the-cancer-alley-usa> (last updated Aug. 7, 2015) (discussing Convent citizens' mobilization and community activism).

77. *Id.* (discussing Convent citizens' high-profile actions). An eighty-year-old Convent Parish citizen traveled to Tokyo, Japan to meet with the President and CEO of Shin Etsu—Shintech's parent company—to discuss the citizens' opposition to the plant. *Id.* (noting citizens went to great lengths to oppose plant construction).

78. Keehan, *supra* note 1, at 360 (describing activism's impact on Shintech's relocation of proposed PVC plant).

79. *Id.* at 345, 350 (stating federal government has regulations designed to protect public health).

80. *Id.* at 350 (specifying CAA's importance).

81. See Ramirez Fisher, *supra* note 14, at 454 (describing Congressional intent behind RCRA and CERCLA).

82. See Keehan, *supra* note 1, at 345 (providing overview of how CAA has failed to protect communities like Cancer Alley).

83. See Oliver A. Houck, *Shintech: Environmental Justice at Ground Zero*, 31 GEO. ENVTL. L. REV. 455, 475 (2019) (discussing President Clinton's attempt to address environmental racism).

claim.<sup>84</sup> Even after the EPA allowed environmental racism lawsuits under Title VI of the Civil Rights Act, it has become nearly impossible for plaintiffs to prove environmental racism.<sup>85</sup> Consequently, the burdens imposed on plaintiffs bringing environmental racism claims only serve to perpetuate environmental injustice.<sup>86</sup>

Section III will begin by exploring the CAA’s safeguards to regulate air pollutants.<sup>87</sup> Next, this section will discuss how enforcement of the CAA at both the federal and state levels fails to protect Cancer Alley residents.<sup>88</sup> This section will then analyze the effects of federal laws like CERCLA and RCRA on overburdened communities of color.<sup>89</sup> Finally, Section III will conclude by contemplating the forms of relief available for environmental racism plaintiffs and by pondering the proposed Environmental Justice Act.<sup>90</sup>

#### A. Air Pollutants

The CAA lists six common air pollutants, also known as “criteria air pollutants,” that can cause damage to health, property, and the environment.<sup>91</sup> The criteria air pollutants the CAA regulates are (1) ground-level ozone, (2) particulate matter, (3) carbon monoxide, (4) lead, (5) sulfur dioxide, and (6) nitrogen dioxide.<sup>92</sup> As required by the CAA, the EPA is responsible for establishing National Ambient Air Quality Standards (NAAQS) for each enumerated pollutant.<sup>93</sup> NAAQS place a limit on the atmospheric concentration of these pollutants.<sup>94</sup>

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84. *See id.* (discussing difficulty of winning environmental racism suits); *see also* Mizutani, *supra* note 9, at 381-82 (explaining different barriers in environmental racism suits).

85. *See* Houck, *supra* note 83, at 474-75 (noting courts added extra requirement of proving discriminatory intent). For a further discussion of environmental racism lawsuits under Title VI, *see infra* notes 149-78 and accompanying text.

86. *Id.* at 500 (warning Trump Administration considered abolishing EPA’s Office of Civil Rights).

87. For a further discussion of the CAA’s regulation of air pollutants, *see infra* notes 91–103 and accompanying text.

88. For a further discussion of enforcement of the CAA, *see infra* notes 104–135 and accompanying text.

89. For a detailed discussion of CERCLA’s and RCRA’s effects on communities of color, *see infra* notes 136–148 and accompanying text.

90. For a discussion on environmental lawsuits under Title VI and the proposed Environmental Justice Act, *see infra* notes 149-188 and accompanying text.

91. *Criteria Air Pollutants*, EPA, <https://www.epa.gov/criteria-air-pollutants> (last updated Mar. 8, 2018) (describing criteria air pollutants).

92. *Id.* (listing common air pollutants).

93. *Id.* (noting EPA’s responsibility for overseeing pollutants).

94. Keehan, *supra* note 1, at 351 (indicating NAAQS’s purpose).

The CAA also employs the National Emission Standards for Hazardous Air Pollutants (NESHAPs) to regulate emissions of toxic substances not covered by the NAAQS.<sup>95</sup> The NESHAPs address pollutants that are known or believed to cause “cancer or other serious health effects . . . .”<sup>96</sup> As part of the NESHAPs, the CAA discusses “emissions of hazardous air pollutants from both major sources and area sources.”<sup>97</sup> Major sources annually emit at least ten tons of one type of hazardous air pollutant or at least twenty-five tons of a combination of pollutants.<sup>98</sup> Area sources are defined as all other sources that do not fall under the major source definition.<sup>99</sup>

The EPA utilizes a two-step process “to regulate hazardous air pollutants produced by both major and area source industrial facilities . . . .”<sup>100</sup> First, the EPA must establish technology-based standards, based on the most compliant source’s emission level, that regulate emissions from a certain “industrial group” or “source category.”<sup>101</sup> Then, eight years after those standards are set, the EPA “must assess remaining health risks” from each source or group.<sup>102</sup> The EPA uses this assessment to establish whether the technology-based standard “adequately protects public health . . . and protects against adverse environmental effects.”<sup>103</sup>

## B. Federal Enforcement of CAA

The CAA tasks the EPA with ensuring petrochemical facilities are complying with it.<sup>104</sup> When the EPA’s Inspector General conducted an assessment of the CAA’s enforcement in 2011, it found Louisiana ranked “in the bottom quarter of all states in enforcing the Clean Air Act . . . .”<sup>105</sup> Pollution regulations have failed to protect Cancer Alley’s population because industrial interests often

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95. *Id.* at 350, 353 (listing additional CAA regulatory programs for air pollutants).

96. *Id.* at 353 (stating effects of hazardous air pollutants).

97. *Id.* (addressing sources of pollution outlined in Section 112 of CAA).

98. *Id.* (describing major sources according to CAA).

99. Keehan, *supra* note 1, at 353 (defining area sources).

100. *Id.* (listing steps EPA must take to regulate pollutants).

101. *Id.* at 353-54 (explaining first step in regulating hazardous air pollutants). The standard to control emissions is based on the level that “the best-controlled and lowest emitting source(s) in the industry” achieve(s). *Id.* (explaining how standard is calculated).

102. *Id.* at 354 (discussing second step involving assessing health risks).

103. *Id.* (describing health-based assessment).

104. See Keehan, *supra* note 1, at 354 (detailing EPA’s responsibilities).

105. Gordon Russell, In “Cancer Alley,” Toxic Polluters Face Little Oversight from Environmental Regulators, *PROPUBLICA: POLLUTERS PARADISE* (Dec. 19, 2019, 1:30

outweigh the community's interests in enforcement of the CAA in the area.<sup>106</sup> The CAA notably prohibits the EPA from considering costs when setting NAAQS.<sup>107</sup> Nevertheless, the influence of industrial interests is evident because the EPA still considers costs when developing and reviewing NAAQS.<sup>108</sup>

The CAA does not require the EPA to impose standards that eliminate every health risk when setting NAAQS.<sup>109</sup> The CAA, instead, allows the EPA to consider what standards are practicable for industrial companies to comply with, so that they are not financially burdened.<sup>110</sup> Although the EPA has interpreted the CAA to exclude cost as a factor in determining what qualifies as clean air, cost can be considered when contemplating how to implement a clean air standard.<sup>111</sup> This system inevitably leads the EPA to consider the cost of compliance for industrial companies, thereby rendering industrial interests one of the determining factors in setting standards.<sup>112</sup>

When the EPA collects data to determine whether an area has met attainment (i.e., met the NAAQS), it calculates attainment based on an average or percentile.<sup>113</sup> Because the EPA bases attainment on averages and percentiles instead of the entire data from a location, the results it uses to calculate attainment could be skewed.<sup>114</sup> This means an area could meet attainment despite occa-

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PM), <https://www.propublica.org/article/in-cancer-alley-toxic-polluters-face-little-oversight-from-environmental-regulators> (discussing Louisiana's shortcomings).

106. Keehan, *supra* note 1, at 355 (describing factors affecting CAA's enforcement).

107. See *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 467-68 (2001) (holding EPA may not consider costs in implementing national air quality standards); see also Keehan, *supra* note 1, at 355 (noting CAA's prohibition against considering costs).

108. Keehan, *supra* note 1, at 355 (noting how EPA does not adhere to CAA's NAAQS guidelines).

109. *Id.* at 355-56 (explaining purposes of NAAQS).

110. *Id.* at 356 (noting CAA's flexibility for setting standards).

111. *Id.* (explaining EPA's interpretation on cost consideration).

112. *Id.* (noting conflict to which cost consideration leads). The CAA prohibits the EPA from basing standards "in whole or in part," on financial costs. *Id.* (providing examples of when EPA has considered costs in setting NAAQS).

113. Keehan, *supra* note 1, at 357 (illustrating how NAAQS work); see also *Air Quality Designations for Ozone*, EPA, <https://www.epa.gov/ozone-designations> (last updated Apr. 14, 2020) (defining attainment and non-attainment).

114. Keehan, *supra* note 1, at 357 (describing problem with EPA's system). See Bob Weinholt, *Ozone Nation: EPA Standard Panned by the People*, 116 ENVTL. HEALTH PERSP. A302, A304 (2008) (discussing how ozone standard EPA set receives incomplete information). The EPA rests its approach for reviewing ozone standards on "the three-year average of the fourth highest reading . . . [,]" which means this approach "ignores the three-highest readings and discounts high indi-

sionally exceeding safe air quality standards.<sup>115</sup> This flaw makes it harder for the EPA to deem areas in Cancer Alley as non-attainment areas, thereby letting violations of the CAA go unchecked.<sup>116</sup>

### C. State Enforcement of CAA

The State of Louisiana tasks the Louisiana Department of Environmental Quality (LDEQ) with regulating toxic air emissions.<sup>117</sup> When a petrochemical company is looking to build a new facility in Louisiana, it must obtain a permit from the LDEQ.<sup>118</sup> Additionally, the company must request permission from the LDEQ if it wants to increase toxic emissions in the area it is polluting.<sup>119</sup> While Louisiana designed the LDEQ to protect the health of its citizens, the LDEQ often prioritizes industrial and business interests over public welfare.<sup>120</sup> The LDEQ often justifies its decisions favoring industrial interests by arguing the social and economic benefits of the petrochemical plants far outweigh the “adverse environmental impacts.”<sup>121</sup> The “benefits” to which the LDEQ refers are economic, namely the creation of jobs and the money companies invest in developing the land.<sup>122</sup> Cancer Alley residents rarely get to reap these benefits, yet their air is being polluted by the companies that promised them jobs.<sup>123</sup>

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vidual years.” *Id.* (demonstrating difficulties with EPA’s approach for calculating compliance).

115. Keehan, *supra* note 1, at 357 (explaining how EPA determines attainment); *see also* Weinhold, *supra* note 114, at A304 (stating it matters which three-year period EPA chooses as readings can vary from year to year).

116. *See* Keehan, *supra* note 1, at 358 (arguing current environmental regulations are not strong enough to protect public health in Cancer Alley).

117. *See generally* Russell, *supra* note 105 (explaining LDEQ’s responsibilities).

118. *See id.* (stating what polluting companies do to obtain permits).

119. *See id.* (recounting how Noranda Alumina plant requested permission to keep emitting half ton of mercury).

120. *See id.* (implying LDEQ readily granted Noranda’s permit to continue emitting tons of mercury).

121. *Id.* (showing LDEQ’s justifications for putting citizens’ health at risk). Because Louisiana’s economy relies on oil and gas exploration, petrochemical plants are crucial in keeping the state’s economy afloat. *See id.* (implying why environmental regulation has not been a priority in Louisiana).

122. Russell, *supra* note 105 (quoting LDEQ as stating plant was “critical to ensure . . . domestic supply” of aluminum). The plant in question was a Noranda Alumina plant that was emitting half a ton of mercury into the air. *Id.* (clarifying Noranda Alumina plant’s controversy).

123. *See* Houck, *supra* note 83, at 461-63 (stating plants tend to hire African American residents last). Plant construction often requires skilled workers from outside the area, and permanent positions in the plants require workers with degrees in computer science and engineering. *Id.* at 462 (noting difficulty of obtaining jobs at petrochemical plants). Residents in Convent, St. James, and St. Gabriel Parishes have had difficulty obtaining the jobs promised to their communi-

Petrochemical companies tend to build their facilities in Louisiana, particularly in Cancer Alley, because they often receive tax breaks and subsidies from the state.<sup>124</sup> While the LDEQ argues it is fulfilling its regulatory duties, environmental activists disagree, noting the state allows petrochemical plants to expedite the permit approval process by paying LDEQ employees overtime.<sup>125</sup> Companies that want to expedite the permitting process must pay for the LDEQ employees' overtime because of the agency's staffing issues.<sup>126</sup> With the petrochemical industry paying the agency designed to regulate it, environmental activists have criticized the expedited permit process for creating an obvious conflict of interest.<sup>127</sup>

Additionally, the LDEQ once found itself at the center of a lawsuit between the citizens of St. James Parish and Shintech.<sup>128</sup> Parish residents argued that instead of acting like an independent agency, LDEQ acted as Shintech's agent, lobbyist, and as an opponent to St. James Citizens for Jobs and the Environment (St. James Citizens).<sup>129</sup> St. James Citizens filed a motion to recuse the LDEQ in the permit approval process for Shintech's PVC plant; however, the Louisiana Court of Appeal, First Circuit, denied the motion, holding there was no "statutory entitlement to judicial review" at that stage because the permit was not yet approved.<sup>130</sup> The court

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ties, with St. James applicants being told they will not "cut it" and St. Gabriel residents holding less than nine percent of jobs in the industry. *Id.* (implying racism is behind lack of industry jobs in Cancer Alley).

124. Russell, *supra* note 105 (describing why petrochemical companies choose to open plants in Louisiana).

125. *Id.* (stating permit applicants must pay LDEQ's permit reviewer's overtime).

126. *Id.* (noting how Louisiana governors have history of cutting funds to LDEQ). See also *Expedited Permit Program*, LA. DEP'T ENVTL. QUALITY, <https://www.deq.louisiana.gov/page/expedited-permit-program> (last visited June 14, 2020) (providing forms for petrochemical companies to apply for expedited permit processing). Acts 586 and 779 of the 2006 Regular Legislative Session allow petrochemical companies to reimburse the LDEQ for the overtime paid to LDEQ employees who worked to expedite approval for a permit. *Id.* (proclaiming statutes allow LDEQ to hire contractors, if necessary, to expedite approval process).

127. Russell, *supra* note 105 (equating overtime payment for expedited permit processing with student bribing teacher who is grading paper).

128. See Houck, *supra* note 83, at 468 (recounting how LDEQ is supposed to be independent regulatory agency); see also *In re Shintech*, 734 So. 2d 772, 773-74 (La. Ct. App. 1999) (summarizing group's motion to recuse LDEQ's secretary).

129. Houck, *supra* note 83, at 464, 468 (arguing LDEQ protected industrial interests, not citizens' health). St. James Citizens is an integrated, environmental activist group from St. James Parish in Cancer Alley. *Id.* at 464 (describing plaintiff St. James Citizens).

130. *In re Shintech*, 734 So. 2d at 774 (vacating district court's decision ordering LDEQ to hold hearing on impartiality issue).



held the right to judicial review exists when there is a constitutional deprivation, but because there was no such deprivation here, the court could not intervene.<sup>131</sup>

Like the LDEQ, Louisiana state officials have also advocated for industrial interests.<sup>132</sup> When Shintech proposed building its \$700 million petrochemical plant in Cancer Alley, Louisiana Governor Mike Foster offered Shintech a ten-year, \$130 million industrial tax exemption provided they locate the plant in Convent.<sup>133</sup> Over the past three decades, Louisiana governors have also reduced funding for the LDEQ, which has perpetuated staffing issues.<sup>134</sup> The LDEQ, however, denies being understaffed, arguing “numbers don’t tell the whole story.”<sup>135</sup>

#### D. Other Federal Laws that Burden Cancer Alley Residents

Congress enacted CERCLA and RCRA to confront the dangers of hazardous waste disposal.<sup>136</sup> The waste management system created by CERCLA and RCRA does not account for the inequitable dispersion of environmental hardships across the country, even despite Congress’s best intentions.<sup>137</sup> Specifically, CERCLA and RCRA do not consider the number of hazardous waste facilities that are placed in economically disadvantaged communities of color.<sup>138</sup>

By enacting RCRA, Congress expected states to manage their own hazardous waste programs.<sup>139</sup> To administer these programs, the states make siting decisions via permitting systems under

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131. *Id.* (vacating district court’s judgment and dismissing suit).

132. *See* Keehan, *supra* note 1, at 359 (discussing concern over tax breaks given to Shintech).

133. *Id.* (discussing Governor Foster’s tax exemptions). The tax exemption affected the local community, which would have benefitted from the tax revenue Shintech generated. *Id.* (lamenting loss of tax revenue from Shintech). Convent is a predominantly African American community in Cancer Alley. *See* Houck, *supra* note 83, at 458 (describing how Shintech’s proposed plant in Convent would emit three million tons of air pollution per year).

134. Russell, *supra* note 105 (discussing cuts made by Governor Bobby Jindal to LDEQ).

135. *Id.* (highlighting LDEQ argument that it has never missed its regulatory commitments).

136. Ramirez Fisher, *supra* note 14, at 454 (expressing Congress’s intentions).

137. *Id.* at 454-55 (noting problems with enforcement of CERCLA and RCRA).

138. *See id.* at 455 (stating CERCLA and RCRA disproportionately strain communities of color).

139. Saha & Mohai, *supra* note 18, at 624 (noting Congress’s expectations in enacting RCRA).

RCRA.<sup>140</sup> The problem with RCRA permitting programs is that the public cannot participate in the siting process until the state environmental agency has already made a decision.<sup>141</sup> Public participation is one of the means that members of the community can use to challenge siting decisions; obstructing public participation until the state environmental agency conveys a decision makes challenging siting decisions even more difficult.<sup>142</sup> Additionally, challenging permit approvals requires “considerable technical, legal, and financial resources” that are typically unavailable to disadvantaged people of color and low-income communities.<sup>143</sup> Because these facilities are often located in poor communities of color, the residents of those communities end up bearing the health risks associated with pollution.<sup>144</sup>

Despite Congress’s intentions in enacting RCRA and CERCLA, states unequally enforce the statutes to the detriment of people of color.<sup>145</sup> For example, the unequal enforcement of “federal environmental laws governing air, water, and waste pollution” generates higher penalties for petrochemical companies that commit violations in white neighborhoods compared to violations in communities of color.<sup>146</sup> Additionally, hazardous waste sites that have been abandoned in predominantly white communities are prioritized under CERCLA’s cleanup program, as opposed to those in communities of color which, on average, “take twenty percent longer to be placed on the national priority list . . . .”<sup>147</sup> While RCRA and CER-

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140. *Id.* (describing how siting decisions are made). The purpose of these programs is to ensure “protection of human health and the environment in the construction, operation, and closure” of hazardous waste facilities. *Id.* (stating purpose of RCRA’s permitting programs).

141. *Id.* (detailing RCRA permitting programs’ framework).

142. *Id.* at 624-25 (stating problems with RCRA’s configuration).

143. *Id.* at 625 (explaining hardships RCRA imposes on impoverished and minority communities).

144. *See Ramirez Fisher, supra* note 14, at 460-61 (discussing health costs of hazardous waste facilities).

145. *Id.* (describing unequal enforcement of laws). Congress enacted CERCLA and RCRA to combat pollution from hazardous waste disposal facilities. *Id.* at 454-55 (concluding CERCLA and RCRA ultimately created waste management system which failed to account for unequal distribution of environmental burdens).

146. *Id.* at 461 (listing different instances of unequal enforcement).

147. *Id.* (noting communities’ different treatment under CERCLA). In an analysis of a study that examined the unequal enforcement of hazardous waste site cleanup, the authors found that, regardless of socioeconomic status, race predominantly impacted site cleanup. *See Marianne Lavelle & Marcia Coyle, Unequal Protection: The Racial Divide in Environmental Law*, 15 NAT’L L. J. 1, 1 (1992) (concluding people of color are disproportionately affected by pollution).

CLA may be enforced unequally, they are facially neutral, thus making it difficult for potential plaintiffs to challenge the laws.<sup>148</sup>

#### E. Suing for Environmental Racism

To sue for environmental racism, litigants may bring a lawsuit under the Equal Protection Clause of the Fourteenth Amendment.<sup>149</sup> The Equal Protection Clause applies to environmental racism lawsuits because petrochemical facilities are disproportionately located in communities of color.<sup>150</sup> It is difficult to bring suit under the Equal Protection Clause because, according to Supreme Court precedent, plaintiffs must show government decisionmakers acted with discriminatory intent.<sup>151</sup> This level of scrutiny has ensured that Equal Protection Clause litigation remains unsuccessful.<sup>152</sup>

Alternatively, plaintiffs may bring an environmental racism claim under Title VI of the Civil Rights Act.<sup>153</sup> Title VI prohibits discrimination based on race, color, or national origin in federally-funded programs.<sup>154</sup> Previously, the EPA stated it was not subject to Title VI claims because it was “not in a position to assess the effects its decisions have on people protected by the [Civil Rights A]ct.”<sup>155</sup> Following President Clinton’s Executive Order in 1994, however, the EPA began reviewing Title VI claims.<sup>156</sup> The excitement behind Title VI litigation quickly faded after the Supreme Court held in *Guardians Association v. Civil Service Commission*<sup>157</sup> that Title VI claims require proof of discriminatory intent.<sup>158</sup>

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148. See Ramirez Fisher, *supra* note 14, at 458 (noting arguments made by companies and agencies accused of environmental racism).

149. *Id.* at 468 (reviewing ways plaintiffs can sue).

150. *Id.* (describing Equal Protection Clause relevance in environmental racism suits).

151. *Id.* at 468-69 (noting Supreme Court precedent requires discriminatory intent to sue under Fourteenth Amendment).

152. *Id.* at 469 (proposing courts change level of scrutiny for environmental racism cases).

153. See Ramirez Fisher, *supra* note 14, at 471 (discussing other legal remedies available).

154. See Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018) (barring discrimination based on race, color, and national origin).

155. Ramirez Fisher, *supra* note 14, at 472 (explaining EPA’s rationale).

156. See *id.* (noting progression of Title VI litigation).

157. See *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 584 (1983) (affirming lower court decision on other grounds).

158. *Id.* (holding proof of discriminatory intent is not required to establish Title VI violation, but proof of discriminatory intent is required to receive compensatory relief).

Although the Supreme Court ruled in *Lau v. Nichols*<sup>159</sup> that discriminatory effect was sufficient to bring a Title VI claim regardless of the defendant's intent, the Court's decision in *Alexander v. Sandoval*<sup>160</sup> called *Lau* into question.<sup>161</sup> In *Sandoval*, the Supreme Court held that Title VI did not create a private right of action for discriminatory impact claims but was meant to reach only instances of discriminatory intent.<sup>162</sup> Plaintiffs have subsequently moved away from filing Title VI claims because of the Supreme Court's holding in *Sandoval*, which perpetuates Title VI's high evidentiary bar.<sup>163</sup>

Environmental racism plaintiffs have recently moved toward filing Title VI claims under the EPA's administrative complaint process.<sup>164</sup> Title VI administrative complaints, however, can only be asserted against recipients of federal funds and must allege disparate impact.<sup>165</sup> Complainants must include two elements in the complaint: (1) "a description of the discriminatory acts alleged," and (2) "evidence that the discriminator receives federal funds . . . ."<sup>166</sup> The administrative complaint process, however, can still present some challenges.<sup>167</sup>

The first major hurdle of the administrative complaint process is the EPA's unresponsiveness.<sup>168</sup> Although the EPA's Office of Civil Rights is supposed to accept or dismiss these complaints within twenty days of receipt, the Office rarely meets this deadline.<sup>169</sup> Additionally, for the complaints the Office does accept, the EPA has implemented a "180-day regulatory deadline" to complete the investigation.<sup>170</sup> A report from Deloitte found that "out of 247 com-

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159. *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (ruling discrimination is barred when it has discriminatory effect regardless of intent).

160. *See Alexander v. Sandoval*, 532 U.S. 275, 284-85 (2001) (holding there is implied private right of action for intentional discrimination but not for disparate impact).

161. *See id.* at 285 (rejecting *Lau*'s interpretation of Title VI as reaching beyond intentional discrimination).

162. *Id.* at 280-81, 293 (holding Title VI did not create private right of action for disparate impact). The Court held it was clear § 601 of Title VI of the Civil Rights Act prohibited only intentional discrimination. *Id.* at 281 (clarifying Title VI's purpose).

163. Mizutani, *supra* note 9, at 382 (stating consequences of Supreme Court's decision in *Sandoval*).

164. *Id.* (noting only recourse left to environmental justice plaintiffs).

165. *Id.* (explaining when Title VI administrative complaints are available).

166. *Id.* (listing necessary elements of complaint).

167. *Id.* (acknowledging it can also be difficult to prevail in administrative complaints).

168. *See Mizutani, supra* note 9, at 382-83 (noting EPA's delayed response).

169. *Id.* at 382 (stating Office of Civil Rights rarely adheres to deadline).

170. *Id.* (explaining EPA's 180-day regulatory deadline).

plaints received by 2011, only [six percent] of requests were accepted or denied within the deadline.”<sup>171</sup> Further, some of the unanswered claims stretched back ten years, well beyond the 180-day regulatory deadline.<sup>172</sup>

The second hurdle comes from the “effects test” the EPA uses to determine disparate impact when reviewing Title VI administrative complaints.<sup>173</sup> This test is similar to the disparate impact test employed in Title VII cases.<sup>174</sup> Courts interpret the “effects test” as a balancing test in which they consider the defendant’s “substantial legitimate justification” for the action and an alternative course of action that would have less of a disparate effect on the plaintiffs.<sup>175</sup> This test adds to the increasing difficulty of winning a Title VI claim because courts have been reluctant to find for plaintiffs when a policy is facially neutral and necessary to meet a legitimate goal.<sup>176</sup> Consequently, even if plaintiffs are able to show disparate impact in a case, the discriminatory action may still be permissible if it advances a legitimate goal and there is not a less discriminatory option.<sup>177</sup> Because of the high evidentiary burden the Supreme Court

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171. *Id.* (noting low percentage of claims processed); see also Albert Huang, *Environmental Justice and Title VI of the Civil Rights Act: A Critical Crossroads*, A.B.A.: ENV’T, ENERGY, & RESOURCES (Mar. 1, 2012), [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2011\\_12/march\\_april/environmental\\_justice\\_title\\_vi\\_civil\\_rights\\_act/](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2011_12/march_april/environmental_justice_title_vi_civil_rights_act/) (discussing Deloitte’s evaluation of EPA’s Title VI administrative complaint process).

172. Mizutani, *supra* note 9, at 382 (implying EPA’s Office of Civil Rights is ineffective in processing Title VI claims).

173. *Id.* at 383 (mentioning standard for Title VI cases). The EPA has a six-step investigatory process for assessing disparate impact:

- 1) assessing the applicability of Title VI regulations;
- 2) determining the appropriate scope of the investigation;
- 3) evaluating the actual impacts;
- 4) determining whether the impact was adverse;
- 5) characterizing the demographic of the affected population;
- and 6) deciding whether the adverse disparate impact is sufficiently significant. Each of these six steps requires data showing causality, the severity of the impact, and demographic information which may not be significant enough for the EPA to believe there is an adverse disparate impact.

*Id.* (listing six steps in investigatory process).

174. *Id.* (comparing “effects test” to “disparate impact test”).

175. *Id.* at 384 (explaining balancing test). Economic interests that could harm segregated communities can constitute legitimate goals. *Id.* (noting difficulty of overcoming balancing test).

176. *Id.* (describing difficulty of winning Title VI claims); see also *New York City Env’tl. Justice All. v. Giuliani*, 214 F.3d 65, 72 (2d Cir. 2000) (concluding defendants had substantial legitimate justification and plaintiffs had not shown less discriminatory alternatives were available).

177. See Mizutani, *supra* note 9, at 384 (reiterating difficulty of obtaining favorable judgment). For plaintiffs to meet the disparate impact test, courts require them to show defendants are unable to provide a “substantial legitimate justification” for their actions or that there is a less discriminatory option available for

and the EPA have imposed on environmental justice plaintiffs, those affected by environmental racism are further disenfranchised by so-called “racially neutral” laws.<sup>178</sup>

#### F. President Clinton’s Executive Order and the Proposed Environmental Justice Act

When President Clinton signed Executive Order 12898, many civil rights and environmental activists thought it would help people of color to combat environmental racism.<sup>179</sup> President Clinton signed the Executive Order to address specifically how communities of color are disproportionately affected by environmental pollution.<sup>180</sup> While there was some “initial flurry of activity” after the Executive Order was signed, environmental justice concerns were quickly set aside.<sup>181</sup> Further, the importance of environmental justice waned after President Clinton left office and the Bush Administration retreated from the Executive Order’s principles and enforcement.<sup>182</sup>

Some politicians have proposed an Environmental Justice Act (EJA) to help individuals who are most at risk of being exposed to pollution.<sup>183</sup> The first politician to propose an EJA was then Sena-

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the defendants’ legitimate goals. *See Giuliani*, 214 F.3d at 72 (finding plaintiffs failed to meet either prong).

178. *See Ramirez Fisher*, *supra* note 14, at 458 (noting how companies and agencies defend themselves against racism claims).

179. *See Mizutani*, *supra* note 9, at 380 (describing environmental activists’ initial excitement about Executive Order).

180. *See id.* at 379-80 (explaining Executive Order’s purposes).

181. *Id.* at 380 (noting how environmental justice lost its place on federal government’s agenda).

182. *Id.* (stating how Bush EPA challenged and changed environmental justice’s meaning). The Assistant Inspector General stated in a 2004 report on environmental justice that the EPA had not fully implemented nor fully complied with the intent of President Clinton’s Executive Order on environmental justice. *See OFF. OF INSPECTOR GEN., U.S. ENVTL. PROT. AGENCY, REP. NO. 2004-P-00007, EPA NEEDS TO CONSISTENTLY IMPLEMENT THE INTENT OF THE EXECUTIVE ORDER ON ENVIRONMENTAL JUSTICE 7* (2004) (noting EPA had not identified or addressed disproportionately adverse health or environmental effects of its policies on minority and low-income populations). Additionally, the Assistant Inspector General found that the EPA changed the environmental justice program’s focus by “de-emphasizing minority and low-income populations,” and focusing instead on environmental justice for everyone. *Id.* at 10-11 (noting EPA’s interpretation of environmental justice moved EPA’s focus away from populations Order was designed to protect). *See also Talia Buford, Has the Moment for Environmental Justice Been Lost?*, *PROPUBICA* (July 24, 2017, 8:00 AM), <https://www.propublica.org/article/has-the-moment-for-environmental-justice-been-lost> (stating EPA was not performing Executive Order’s required environmental justice reviews).

183. Claire L. Hasler, Comment, *The Proposed Environmental Justice Act: “I Have a (Green) Dream”*, 17 *U. PUGET SOUND L. REV.* 417, 417 (1994) (expressing purpose of Environmental Justice Act).

tor Al Gore.<sup>184</sup> Although former Vice President Gore's proposed EJA was never passed, other senators have tried to revive the Act since it was first introduced in Congress in 1992.<sup>185</sup> Most recently, Senator Cory Booker reintroduced another iteration of the EJA.<sup>186</sup> Senator Booker has visited communities across the United States that struggle with environmental racism, including Cancer Alley, as part of his environmental justice initiative.<sup>187</sup> Despite Senator Booker's efforts, it is unlikely that the bill will pass given the history of environmental justice legislation that has died in committee.<sup>188</sup>

#### IV. THE DIFFICULTY OF OBTAINING REPRESENTATION AND THE TULANE ENVIRONMENTAL LAW CLINIC CONTROVERSY

Because most of Cancer Alley's inhabitants are poor, they often cannot afford to pay for legal representation to challenge the siting of toxic waste facilities.<sup>189</sup> One of the few ways Cancer Alley residents can secure representation is through environmental organizations or legal aid programs, such as the Tulane Environmental Law Clinic (TELC).<sup>190</sup> In the fall of 1998, however, Louisiana Governor Mike Foster and petrochemical businesses began to attack the TELC for representing some of Louisiana's most disen-

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184. *Id.* (acknowledging Senator who proposed EJA).

185. *Id.* at 418 (noting increased interest in environmental racism).

186. *Booker Reintroduces Sweeping Environmental Justice Bill*, CORY BOOKER: U.S. SENATOR FOR N.J. (July 24, 2019), [https://www.booker.senate.gov/?p=press\\_release&id=966](https://www.booker.senate.gov/?p=press_release&id=966) (reporting Senator Booker's introduction of environmental justice legislation). Section 5(a)(1) of the Environmental Justice Act of 2019 states that every federal agency must make achieving environmental justice part of its mission. *See* Environmental Justice Act of 2019, S. 2236, 116th Cong. § 5(a)(1) (2019) (requiring federal agencies to consider adverse health and environmental effects on communities of color and low-income communities). Additionally, the Act expressly grants a private right of action to any person affected by a federal agency's failure to comply with the Act or with a regulation promulgated under the Act. *See id.* § 10(a) (amending § 602 of Civil Rights Act of 1964 to provide private right of action for disparate impact).

187. *Booker Reintroduces Sweeping Environmental Justice Bill*, *supra* note 186 (listing communities Senator Booker has visited). Senator Booker also co-founded the Senate's "first-ever" Environmental Justice Caucus to highlight environmental justice issues affecting the nation. *Id.* (detailing Senator Booker's environmental justice activism).

188. *See* Hasler, *supra* note 183, at 472 (explaining problems with drafting of environmental justice legislation).

189. *See* Houck, *supra* note 83, at 466-67 (recounting how difficult it was for St. James Parish's residents to obtain representation).

190. *See id.* at 456-57 (describing how Tulane law students often took cases challenging siting of petrochemical plants).

franchised citizens.<sup>191</sup> Governor Foster even petitioned the Louisiana Supreme Court to forbid Tulane's law students from practicing environmental law.<sup>192</sup> As TELC students were defending poor people of color in their fight against toxic pollution, Governor Foster's actions demonstrate how difficult it is for Cancer Alley residents to challenge siting decisions.<sup>193</sup>

The controversy started when Shintech was trying to build a PVC plant in Convent, Louisiana.<sup>194</sup> Like most areas in Cancer Alley, Convent was a mostly poor, African American community.<sup>195</sup> Shintech's proposed plant was projected to emit approximately three million tons of pollutants per year.<sup>196</sup> Among the possibly emitted pollutants were dioxin, ethylene chloride, and vinyl chloride, which are all carcinogens.<sup>197</sup> As news of the proposed plant spread, an integrated group of concerned citizens known as St. James Citizens for Jobs and the Environment (St. James Citizens) prepared to fight the plant's construction.<sup>198</sup>

Initially, the TELC avoided taking the group's case.<sup>199</sup> But after St. James Citizens was unable to find an organization to represent them, the TELC's director decided to take the case.<sup>200</sup> Governor Foster's Deputy Chief of Staff, concerned TELC would take the case, phoned the clinic director, which may have tipped the scale in favor of the TELC taking the group's case.<sup>201</sup>

The TELC students represented St. James Citizens in public hearings and challenged the "air, water, and coastal zone permits" granted to Shintech.<sup>202</sup> Additionally, the TELC "petitioned [the] EPA to review and override" the air permits the state granted

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191. *See id.* at 456 (narrating how Louisiana's businesses gathered with Governor Foster to stop Tulane law students from interfering with Louisiana's businesses).

192. *Id.* at 457 (noting lengths Governor Foster went to).

193. *See generally id.* at 458 (implying Governor Foster tried to make it impossible for citizens to find legal representation).

194. *See Houck, supra* note 83, at 457-58 (recounting events leading to Tulane Clinic controversy).

195. *Id.* at 458 (describing community where plant would be located).

196. *Id.* (expressing concern for pollution Shintech's plant would generate).

197. *Id.* (listing pollutants that plant would emit).

198. *Id.* at 464 (recounting how St. James Parish citizens gathered to plan how to fight Shintech).

199. *See Houck, supra* note 83, at 466 (noting clinic supervisor initially tried to avoid case because of how long and complicated it was).

200. *Id.* at 466-67 (recounting how St. James Citizens struggled to find representation).

201. *See id.* at 467 (noting how controversial case was).

202. *Id.* (recounting students' actions).



Shintech and filed a Title VI claim.<sup>203</sup> In 1997, the TELC filed the first petition requesting the EPA Regional Office in Dallas, Texas to deny Shintech's permits for reasons including disparate impact and CAA violations.<sup>204</sup> In response to the petition, the Regional Office denied Shintech's permits after finding they contained technical errors, but it rejected the Title VI claim as being beyond the office's scope.<sup>205</sup>

After listening to citizen complaints about the disproportionate number of cancer deaths in the area and the lack of jobs, the TELC filed a new Title VI claim, this time with the EPA's Office of Civil Rights.<sup>206</sup> The EPA granted the petition to investigate environmental justice violations, which seemed to be the final affront in the Shintech controversy.<sup>207</sup> Shintech decided not to build its PVC plant in St. James and instead chose another town along the Mississippi River.<sup>208</sup>

After Shintech abandoned construction of the plant, Governor Foster and the Business Council of New Orleans sent a petition to the Louisiana Supreme Court complaining that the TELC was "bad for business" and its views were "in direct conflict with business positions."<sup>209</sup> Conversely, some Louisiana newspapers accused the Louisiana Association of Business and Industry (LABI) of trying to quash "even the most rag-tag opposition" to Louisiana's policy allowing petrochemical companies to pollute entire communities.<sup>210</sup> In June 1998, the Louisiana Supreme Court issued new restrictions for law student practice.<sup>211</sup> Although the restrictions were directed at all law student clinics in Louisiana, Tulane Law School staff believe the TELC was the target of the restrictions.<sup>212</sup>

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203. *See id.* (describing state's permit as "hastily-granted"). The state granted the air permit the day after Shintech submitted a massive administrative record. *See id.* (expressing problem with how state reviewed air permit).

204. Houck, *supra* note 83, at 481 (recounting steps St. James Citizens took to get permits denied).

205. *Id.* (explaining outcome of petition).

206. *Id.* (describing environmental justice issues that inspired second petition).

207. *See id.* at 482, 506 (recounting events leading to Governor Foster's petition).

208. *See id.* at 506 (summarizing outcome of Shintech controversy).

209. Houck, *supra* note 83, at 491-93 (restating what petition said).

210. *Id.* at 496 (implying Louisiana industrial business tried to crush all opposition).

211. *Id.* at 496-97 (recounting restrictions court imposed on student attorneys).

212. *Id.* at 495 (noting real target of petition was TELC); *see also* Robert R. Keuhn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33, 77-78 (2000) (recounting how TELC was

The court's restrictions were essentially a compromise between Governor Foster, LABI, and the TELC.<sup>213</sup> The court rejected some of the proposed restrictions, such as those requiring students to represent businesses and government agencies in addition to low-income clients.<sup>214</sup> Another requirement the court rejected proposed that there be outside review of clinic cases by a body of people representing all the interests affected.<sup>215</sup> The court, however, prohibited representation of any organization with a national counterpart, such as the Sierra Club.<sup>216</sup> One restriction the court adopted set stringent indigency thresholds for both individuals and groups represented by clinics, which allowed the students to represent only those below the federal poverty line.<sup>217</sup>

Later in 1998, however, Louisiana Supreme Court Chief Justice Calogero eased some of the new restrictions.<sup>218</sup> The poverty threshold required for representation was increased to 200 percent of the federal poverty line.<sup>219</sup> The court also abandoned its prohibition on representing organizations affiliated with national groups altogether.<sup>220</sup> The court further clarified that the rules only applied to law students, so any plaintiffs who did not qualify for representation by clinic students could be represented by a clinic's attorney.<sup>221</sup>

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specifically targeted for investigation due to business groups' complaint letter). See Adam Babich, *How the Tulane Environmental Law Clinic Survived the Shintech Controversy and Rule XX Revisions: Some Questions and Answers*, 32 ENVTL. L. REP. 11476, 11476 (2002) (noting Rule XX Revisions were sparked by TELC's representation of St. James Citizens). Although the intent behind the Rule XX revisions is unclear from the text, the revisions have not denied representation to the TELC's clients. See *id.* at 11478 (stating TELC can still provide students with litigation experience).

213. See Houck, *supra* note 83, at 497 (listing new restrictions court imposed on clinics).

214. *Id.* (explaining how rejected rule could pose conflict of interest).

215. *Id.* (describing more aggressive rules that Louisiana Supreme Court rejected).

216. *Id.* (explaining representation restrictions). The Sierra Club is a national environmental organization founded in California in 1892. See *About the Sierra Club*, SIERRA CLUB, [https://www.sierraclub.org/about-sierra-club?gclid=CJ0KCQjwwr32BRD4ARIsAAJNf\\_1hHpnyD4o4Pm21D3rCyuAHm\\_\\_uvS2IVjoLWaEChTMrQBn\\_4Vz0IEaAmauEALw\\_wcB](https://www.sierraclub.org/about-sierra-club?gclid=CJ0KCQjwwr32BRD4ARIsAAJNf_1hHpnyD4o4Pm21D3rCyuAHm__uvS2IVjoLWaEChTMrQBn_4Vz0IEaAmauEALw_wcB) (last visited June 20, 2020) (describing Sierra Club's mission and history).

217. Houck, *supra* note 83, at 497 (describing federal poverty line as extremely low). The working poor would be excluded from the TELC's representation under the new rule. *Id.* (explaining how difficult it is for Cancer Alley citizens to obtain representation).

218. See *Id.* at 498 (describing rule modifications).

219. *Id.* (describing adjusted poverty threshold required for representation).

220. *Id.* (noting how court abandoned representation restriction for nationally affiliated groups).

221. *Id.* (describing how court relaxed rules).

The TELC came under attack again in 2010 when Louisiana State Senator Robert Adley introduced a bill—sponsored by the Louisiana Chemical Association—meant to shut down the clinic.<sup>222</sup> Senator Adley sought to prohibit law clinics at universities that receive state funding from suing government agencies.<sup>223</sup> This bill would have required Tulane to decide between receiving state funding or shutting down its clinic.<sup>224</sup> Before the bill went further, the Louisiana Senate Commerce Committee voted to kill the bill.<sup>225</sup> Although the TELC has survived multiple attacks, the controversy surrounding the clinic shows how difficult it is for Cancer Alley residents to obtain representation to contest the siting of petrochemical facilities.<sup>226</sup>

#### V. CONCLUSION: THE CONTINUED FIGHT AGAINST THE SITING OF PETROCHEMICAL FACILITIES IN CANCER ALLEY

With the growth of the petrochemical industry and increased usage of petrochemical products, it is likely that both the air quality and pollution in Cancer Alley could worsen.<sup>227</sup> The biggest threat to Cancer Alley residents at the moment is Formosa's Sunshine Project, an industrial complex of fourteen petrochemical facilities in St. James Parish.<sup>228</sup> The citizens of the parish are worried their community will not survive another plant that will further pollute their already polluted communities.<sup>229</sup>

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222. CityBusiness Commentary, *Opinion: Law Clinic Ban Dies a Good Death*, NEW ORLEANS CITYBUSINESS (May 20, 2010), <https://neworleanscitybusiness.com/blog/2010/05/20/opinion-law-clinic-ban-dies-a-good-death/> (reporting new unsuccessful attack on TELC).

223. *Id.* (explaining bill's purpose).

224. *Id.* (describing conundrum university would be placed in).

225. *Id.* (recounting how committee unanimously voted to defer bill).

226. *See generally* Houck, *supra* note 83, at 499 (stating clinic's opponents had taken "extremely hard swing" at clinic and missed).

227. *See* Gardiner, *supra* note 4 (predicting toxic emissions will increase worldwide). Currently, petrochemicals account for fourteen percent of oil use. *Id.* (expecting petrochemicals to drive half of oil demand growth). Additionally, with demand for plastic rapidly increasing, it is expected that global emissions linked to plastic production could increase from 900 million tons per year to 1.3 billion tons per year by 2030. *See id.* (anticipating plastic production will increase). Companies are looking to create a new petrochemical corridor like Cancer Alley to expand their plastic production. *Id.* (listing potential candidates for new "petrochemical hub" as Ohio, Pennsylvania, and West Virginia).

228. *See* Lubben, *supra* note 42 (describing Shintech's new plant).

229. *Id.* (describing citizens' concerns).

Nonetheless, many Cancer Alley residents have taken this opportunity to unite and fight against the siting of these facilities.<sup>230</sup> Despite being aware of how onerous their situation is, Cancer Alley residents refuse to acquiesce to petrochemical facilities that pollute their communities.<sup>231</sup> A Cancer Alley resident decided to form Rise St. James, an environmental justice group, after she noticed no government officials were protecting St. James from petrochemical pollution.<sup>232</sup> While the group is small and consists mostly of volunteers, its leader, Sharon Lavigne, is quickly helping the group gain momentum by organizing protests and marches.<sup>233</sup>

Meanwhile, the Louisiana Chemical Association (LCA) disputes the existence of a connection between petrochemical facilities and the high cancer rate in the region.<sup>234</sup> The LCA has even gone so far as calling the Cancer Alley label a myth.<sup>235</sup> Further, the LCA maintains that study after study has negated a connection between the petrochemical industry and cancer rates.<sup>236</sup> Advocates for the petrochemical industry believe the “Cancer Alley label” negatively affects the “local industry’s progress and efforts to build positive relations with the community.”<sup>237</sup>

The Lake Area Industrial Alliance (LAIA), a non-profit organization made up primarily of petrochemical companies, undertook an advertising campaign in 2007 designed to debunk the “cancer alley myth.”<sup>238</sup> The campaign did not have its intended effect because Cancer Alley residents continued to believe petrochemical fa-

230. See Antonia Juhasz, *Louisiana’s ‘Cancer Alley’ Is Getting Even More Toxic – But Residents Are Fighting Back*, ROLLING STONE (Oct. 30, 2019, 12:59 PM), <https://www.rollingstone.com/politics/politics-features/louisiana-cancer-alley-getting-more-toxic-905534/> (describing how Cancer Alley residents have created environmental groups).

231. See *id.* (explaining how some Cancer Alley residents never expected to become activists).

232. See *id.* (recounting events leading to Rise St. James’s inception). Sharon Lavigne, RISE St. James’s founder, noticed at the public meetings on Formosa’s industrial complex that no local officials spoke up about the pollution the complex is expected to produce. *Id.* (describing founder’s motivations).

233. See *id.* (noting group has been protesting against Formosa’s industrial complex).

234. *Fighting the Cancer Alley Myth*, LA. CHEMICAL ASS’N, <http://www.lca.org/resources/chemical-connections/fighting-the-cancer-alley-myth> (last visited June 24, 2020) (arguing cancer rates in region are not higher than rest of country).

235. *Id.* (aligning with Cato Institute’s labeling of Cancer Alley as myth).

236. *Id.* (attempting to debunk “Cancer Alley myth”).

237. *Id.* (noting effects of Cancer Alley label).

238. *Id.* (summarizing advertising efforts undertaken). The campaign was designed to inform Cancer Alley residents that cancer rates in the region are similar to those of the rest in the country. *Id.* (illustrating goals of advertising campaign).

cilities cause cancer.<sup>239</sup> The LAIA conducted a more aggressive advertising campaign in 2009, recruiting doctors, hospitals, and physician groups in Cancer Alley to inform the public of cancer rates in the region.<sup>240</sup> This campaign seemed to achieve its intended goal as more members of the community appeared to believe cancer rates were related to lifestyle choices instead of the petrochemical industry.<sup>241</sup>

Petrochemical companies often defend their siting decisions by maintaining that land use laws, which already confine facilities to predominantly African American neighborhoods, restrict zoning boards.<sup>242</sup> Additionally, low-income communities and communities of color are often ideal locations “because land prices and compensation costs are relatively low,” thus leading petrochemical companies to place their facilities there.<sup>243</sup> Perhaps the most popular arguments in favor of petrochemical facilities are that they are good for business and that they bring jobs to areas in desperate need of them.<sup>244</sup> The promise of jobs has been criticized, particularly in Cancer Alley, as local residents often hold only a small percentage of industry jobs with the rest going to outsiders.<sup>245</sup>

Despite the petrochemical industry’s efforts, the environmental justice movement continues to gain attention and support in Cancer Alley.<sup>246</sup> Cancer Alley residents could leverage this attention and gain more political power by incorporating their towns—

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239. *Fighting the Cancer Alley Myth*, *supra* note 234 (noting failure of first campaign).

240. *Id.* (recounting steps taken in second, more aggressive campaign).

241. *Id.* (noting how some Cancer Alley residents switched their beliefs).

242. Mizutani, *supra* note 9, at 370 (arguing site selection process fails to prevent discriminatory siting).

243. Saha & Mohai, *supra* note 18, at 619 (explaining why industrial zones coincide with low income and minority neighborhoods).

244. *See* Gardiner, *supra* note 4 (stating petrochemical facilities are welcome in areas affected by loss of coal industry); *see also* Houck, *supra* note 83, at 492-93 (recounting how Governor Foster and business allies claimed TELC was bad for business in petitions filed with Louisiana Supreme Court).

245. *See* Houck, *supra* note 83, at 461-62 (stating petrochemical companies seek outside skilled workers).

246. *See generally* Juhasz, *supra* note 230 (describing environmental justice groups’ increased mobilization). The environmental justice movement continues to grow in Cancer Alley, especially in St. James, where environmental groups—like the Sierra Club, 350 New Orleans, and Extinction Rebellion—have joined in marches against the siting of petrochemical facilities. *Id.* (recounting how environmental groups joined in “March Against Death Alley”). Rise St. James members are currently focusing their energy on battling Formosa’s Sunshine Project, which will be located approximately one mile from an elementary school. *Id.* (expressing group’s main motivations).

just like the citizens of St. Gabriel, Louisiana did.<sup>247</sup> Residents of the newly incorporated towns could then make decisions regarding the zoning and placement of petrochemical facilities in their communities.<sup>248</sup> Additionally, TELC's success in getting Shintech to abandon its plans to build a plant in Convent, Louisiana shows there is hope Cancer Alley residents will be able to gain legal representation to protect their communities from pollution.<sup>249</sup> Until then, Cancer Alley residents should keep up the good fight.<sup>250</sup>

*Idna G. Castellón\**

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247. See generally Houck, *supra* note 83, at 479 (explaining how incorporation led to increased political clout for parish residents). Although petrochemical companies are still trying to build plants in St. Gabriel, the community's fierce opposition to industrial rezoning has led council officials to reject zoning requests from petrochemical companies. Terry L. Jones, *St. Gabriel residents keeping up their fight against chemical plant, industrial expansions*, THE ADVOC. (Oct. 22, 2017, 2:30 PM), [https://www.theadvocate.com/baton\\_rouge/news/communities/westside/article\\_d43f5d32-b031-11e7-b345-9fe6c6ef7ba1.html](https://www.theadvocate.com/baton_rouge/news/communities/westside/article_d43f5d32-b031-11e7-b345-9fe6c6ef7ba1.html) (recounting how St. Gabriel residents swarmed city council's chambers urging them to reject chemical company's zoning request). In 2015, St. Gabriel residents were successful in getting the owners of three thousand acres of undeveloped land to withdraw their request to rezone the area from residential to "heavy industrial." *Id.* (explaining fierce opposition from activist group caused owners to back out).

248. See Mizutani, *supra* note 9, at 373 (stating unincorporated towns lack governance power over their own affairs).

249. See Houck, *supra* note 83, at 506 (noting Shintech abandoned plans to build plant).

250. See *id.* at 507 (hoping one day poor Louisiana residents will rely less heavily on student representation).

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