

The upcoming legal resistance to Project 2025 and the second Trump Administration

Jon Greenbaum

Like tens of millions of Americans, the election of Donald Trump as President for a second time has filled me with dread, based on the policies he has already announced – many of which would violate the Constitution, federal law, and basic democratic principles. But unlike some others, I have not felt a sense of powerlessness. The election has given me a new sense of purpose, as I am fortunate to have a role in planning the legal resistance to the upcoming Trump Administration overreaches. This article sets forth in broad strokes who is in the resistance and what the resistance will look like.

What the second Trump Administration will try to impose and how they will do it

Unlike eight years ago, Donald Trump and his supporters are prepared for a Trump presidency. Trump's rightwing base fits well with a cadre of conservatives, like Russ Vought, who want to transform the federal government by putting plenary power in the Presidency with the goal of making the United States a Christian nationalist state. They developed a plan this time, Project 2025, that includes a nearly 900 hundred page playbook, the Project 2025 Mandate for Leadership, and a database of people who will carry out the playbook. Trump has already named several Project 2025 contributors as nominees to his next administration. This includes Vought, who if confirmed as the director of the Office of Management and Budget, would be in a prime position to carry out the aims of Project 2025.

A foundational precept of this vision is that the President has sole authority over all aspects of the executive branch, a concept known as Unitary Executive Theory. According to this theory, the President, among other things, would have the

ability to fire independent agency heads or employees within the executive branch without cause, shift responsibilities in government between agencies, withhold expenditure of funds allocated by Congress, or transfer funds allocated by Congress for one purpose and use them for another. Trump and his supporters are planning to reclassify many federal employees so they can be fired without cause, which would enable them to be replaced by conservative activists. Trump and his supporters want to give the President's monarch-like power.

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What are some of the things the Trump administration will likely attempt to impose?

Based on the Project 2025 playbook and statements from the President-elect and his appointees, just a few of the policies we are anticipating include:

- Mass deportations
- The firing of federal employees because they do not conform to conservative ideological views
- The weakening of environmental standards
- Attacks on reproductive rights and access to health care
- Rollbacks of civil rights and diversity, equity, and inclusion initiatives, including the elimination of Title VI disparate impact standard
- The diminution of federal support for public schools
- The weaponization of law enforcement against ideological opponents

(Continued on page 2)

(The upcoming legal resistance to Project 2025 and the second Trump Administration, Continued from page 1)

- The evictions of families with undocumented household members from federal housing
- Enabling parents to sue over curriculum content and limiting academic freedom

The Trump Administration will be ready on day one to transform federal government. In August, Vought said that “[w]e’ve got about 350 different documents that are regulations and things of that nature that are, we’re planning for the next administration.” Similarly, Brooke Rollins the President and CEO of the America First Policy Institute (AFPI), and Trump’s nominee for the Secretary of the

Department of Agriculture, said before the election that AFPI had drafted about 300 executive orders for a second Trump Administration. These executive orders will essentially serve as directives to executive branch agencies to implement through formal rules and other action.

Who will be part of the legal resistance

Before getting to those outside of the federal government, who are the focus of this post, I want to briefly address those inside of the government. Federal employees, who will be under constant pressure to bend to the whim of the President and his political appointees, will be important players over the next four years. To what degree will they be willing to stay in government? To what degree will they be willing to resist illegal orders? Conversely, to what degree will they carry them out? The answers to these questions will dictate how far the Trump Administration is willing to go.

Also critical is what Congress will do. Under the Constitution and current law, the President will have signifi-

cant constraints as to what he can do in certain areas without the help of Congress. Will the Republican majorities in Congress resist policies that undermine the rule of law and the separation of powers?

There are two major sets of “outside” resisters who will be active in filing lawsuits. The first are state and local government. Over the years we have seen an increase in Republican-led states challenging actions taken by Democratic Presidents and Democratic-led states challenge actions taken by Republican Presidents. Sometimes these state and local officials work in coalition and sometimes alone. Governors and Attorneys General will again be active in the second Trump Administration.

The second are progressive nonprofits. One of my clients, Democracy Forward (DF), is extremely active in the legal resistance on two levels. DF is coordinating a coalition of more than 800 lawyers at 280 organizations in developing legal challenges. DF is not just engaging in a coordinating role but seeking to litigate itself. There are other organizations that will be providing direct assistance to those most affected, such as organizations created to help federal employees under attack with pro bono legal support and job assistance. There will also be engagement by the private bar, the degree to which we will know more about in the coming months.

There will likely be a flood of lawsuits during the Trump Administration if the President and his appointees follow through on the goals of Project 2025. Some could be filed within days after President Trump issues Executive Orders. Others will be filed after agencies act. The anticipated actions the Trump administration takes directly against federal

(Continued on page 4)

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In This Issue:

The upcoming legal resistance to Project 2025 and the second Trump Administration	1
Jon Greenbaum	
A battle for the soul of Title VI in Cancer Alley	3
Amy Laura Cahn	
Voices of Resistance: Miguel Acosta	5
Interview conducted by Amy Laura Cahn	
Recent work by members of PRRAC’s Social Science Advisory Board	13

A battle for the soul of Title VI in Cancer Alley

Amy Laura Cahn

On October 12, 2022, U.S. Environmental Protection Agency (EPA) issued a “Letter of Concern” to the Louisiana Departments of Environmental Quality (LDEQ) and Health (LDH) indicating that EPA was close to making findings of discrimination in the permitting of industrial facilities along Cancer Alley—one of the worst ongoing examples of environmental racism in the nation. This was one of the EPA’s boldest ever steps toward enforcing Title VI of the Civil Rights Act of 1964 (Title VI).

Within months, the agency faced litigation that now threatens to eliminate core civil rights protections nationwide. On August 22, 2024, Judge James D. Cain, Jr. of the Western District of Louisiana permanently enjoined EPA and the Department of Justice (DOJ) from enforcing their respective disparate impact regulations against any entity in the state of Louisiana. Black and Brown Louisianans are now living in a legal sacrifice zone, while the state pursues a nationwide vacatur of the rules.

Throughout oral argument and in his subsequent opinions, Judge Cain repeated the phrase “pollution does not discriminate.” In conversation with NPR, Robert Taylor from Concerned Citizens of St. John responded: “Of course pollution doesn’t discriminate. Judges discriminate. The petrochemical industries discriminate. They are the polluters. That’s who my fight is against.”

Title VI remains an unfulfilled promise for fenceline and frontline communities.

Ten years ago, Professor Olatunde Johnson at Columbia Law School wrote, “each anniversary of Title VI provokes the concern that the full power of the statute has gone untapped.” Congress intended Title VI to not simply eradicate the most obvious and intentional discrimination, but the facially neutral policies and practices that cause and perpetuate the harms of structural racism. In that spirit, Title VI could be one of the most salient legal tools to remedy the discriminatory housing, infrastructure, transportation, and land use decisions that have shaped access to clean air, water, soil, and now protection from extreme weather. Title VI also fills gaps in environmental enforcement that routinely fail to account for the cumulative and disparate impacts of multiple pollutants from clustered facilities on individual bodies and

whole communities. Thus, Title VI has potential to advance the multi-dimensional aspects of procedural, distributive, recognition, and reparative justice that make up the larger environmental justice vision.

Yet, as the Civil Rights Act of 1964 celebrates its sixtieth anniversary, Title VI remains an unfulfilled promise for fenceline and frontline communities, even as communities leverage Title VI as a law and organizing tool. Environmental justice advocates saw early, limited legal victories and notable enforcement actions by the U.S. Departments of Housing and Urban Development and

Transportation. However, the U.S. Supreme Court’s 2001 decision in *Alexander v. Sandoval* eliminated plaintiffs’ ability to seek redress from the courts unless they could prove intentional discrimination, requiring communities to rely on federal agencies like EPA to enforce their disparate impact regulations. EPA in particular has persistently failed to hold federal funding recipients accountable to their civil rights obligations. For decades, civil rights complaints languished at an EPA found to be “chronically unresponsive” by the Center for Public Integrity. Even when EPA investigated complaints, the agency routinely declined to make formal findings of discrimination, while complainants remained sidelined from the informal resolution process. And a recently rescinded 1998 EPA decision determined that meeting environmental emissions standards created a presumption of civil rights compliance, enabling a persistent culture of *non*compliance.

Recent gains under the Biden Administration

Sustained grassroots advocacy pushed the Biden Administration to make unprecedented government-wide commitments to enforcing civil rights and advancing environmental justice. The administration has since made critical policy changes, including merging and elevating EPA’s environmental justice and civil rights offices; increasing agency budgets and staff for civil rights enforcement; publishing a transparent, searchable database of EPA’s civil rights docket; releasing procedural guidance; and launching affirmative compliance initiatives paired with training for federal funding recipients. And in April 2023, President Biden issued Executive Order 14096, updating the Clinton environmental

(Continued on page 6)

(The upcoming legal resistance to Project 2025 and the second Trump Administration, Continued from page 2)

employees will, to a significant degree, first go through an administration process before the Merit Systems Protection Board. The employees will have the right to appeal to the federal courts.

What will be the bases for the legal challenges?

Depending on specific circumstances, the challenges will involve a combination of constitutional, statutory, and equitable theories.

In my view, the Unitary Executive Theory that underlies the Trumpian/Project 2025 view of the Presidency runs contrary to separation of powers principles both as set forth in the text of the Constitution and court decisions. The Constitution prioritizes Congress over the President in many respects. The Constitution starts with Article I, which sets forth the powers and duties of the legislative branch and Congress. Article I is followed by Article II, which sets forth the powers and duties of the executive branch and the President. Article I is twice the length of Article II. The order and length of the respective articles is telling regarding the Founders' view of Congress vis-à-vis the President. The Constitution also explicitly provides Congress with substantial authority over the President. For example, the President cannot spend money unless Congress appropriates it. Congress, not the President, creates the agencies within the executive branch and funds them. The President cannot go to war unless Congress approves it.

The courts have been mindful of these separation of powers principles in several contexts. One context involves appropriations of funds. In *Train v. EPA* (1975), the administrator of the Environmental Protection Agency, upon direction of President Nixon, allocated only a portion of the funds for controlling and abating water pollution designated by Congress in the Federal Water Pollution Control Act Amendments of 1972. The Supreme Court held unanimously that the Administrator could not withhold the funds.

In the first Trump administration, the President tried to transfer Department of Defense funds allocated for different purposes to construction of the wall at the U.S.-Mexico border. States filed one suit against this transfer and nonprofit organizations filed another. The Ninth Circuit Court of Appeals, in separate decisions, found in favor of the

plaintiffs. Between the two cases, the courts found that the transfer violated the Appropriations Clause of the Constitution and the Administrative Procedure Act. It also found that plaintiffs won under an equitable ultra vires theory which holds that a court can stop a federal official from acting outside of their authority. Thus, the plaintiffs prevailed under a constitutional theory, a statutory theory, and an equitable theory.

Another context is in the removal of commissioners of independent agencies. In *Humphrey's Executor v. United States* (1935), the Supreme Court held that the President did not have the authority to remove a commissioner of the Federal Trade Commission without cause. The Court found that the Federal Trade Commission Act permitted removal for "inefficiency, neglect of duty, or malfeasance of office," and the Commission was quasi-judicial and quasi-legislative. For these reasons, the President lacked the authority to remove the Commissioner. There is a high likelihood the second Trump Administration will challenge *Humphrey's Executor*. The Project 2025 playbook mentions this in the

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chapter on the Department of Justice and there are independent agencies at the beginning of the Trump Presidency where a majority of the Commissioners will be Democratic appointees.

There are also avenues of challenge based on individual constitutional rights like the First Amendment, equal protection, and due process. For example, the first Trump Administration issued an executive order preventing trainings related to critical race theory and other so-called "divisive concepts." Federal contractors that conducted trainings were able to obtain a court order blocking implementation of portions of the executive order on the ground that it violated the Free Speech Clause of the Constitution.

There are additional challenges that are available to final actions of administrative agencies. The Administrative Procedure Act contains procedural and substantive requirements for agencies to follow when they act. Substantial changes to regulations must go through a lengthy notice and comment process under most circumstances. Agency decisions can also be vacated if they are found to be "arbitrary and capricious." Moreover, doctrines that the Roberts Supreme Court has applied in favor of conservative plaintiffs against administrative actions by the Biden administration

(Continued on page 11)

Voices of Resistance: Miguel Acosta

Adapted from an interview with Miguel Acosta, Co-Director of Earth Care, conducted by Amy Laura Cahn.

Tell us a little bit about you and your community.

Miguel Acosta: I usually tell people that I was made in Mexico, born in Chicago, and I'll die in New Mexico. I'm the Co-director of Earth Care. We do work around climate justice and environmental justice on a statewide level. I manage the environmental justice and community development and community health work at the local level here in Santa Fe.

Santa Fe is an arts and culture mecca. Kind of fancy. High income. We've got a world-renowned opera [and] an art scene. But those of us that work here with frontline communities know that none of that can work if it's not for low income, immigrant, people of color, and Native communities that have been displaced and urbanized [and are] a source of surplus labor.

Because of the history and the culture of Santa Fe, it's a very segregated community. Low-income minority and immigrant populations are segregated into a particular quadrant. That's where we work. It's next to an industrial area and there's very few amenities. Those are the struggles in terms of environmental justice and community health, and community development. Where they all intersect [is] right in this part of the city where we focus our work.

How do you experience environmental racism in your community?

Environmental justice starts where you live. We've got two or three families per mobile home, which is an environmental justice issue. Families don't have parks or recreation spaces. Many of those mobile home parks are very strict in terms of outdoor activities. You know how

they manage people's bodies? You get fined for too much noise, or too many kids outside, or too many bicycles or too many cars. It's a very controlled environment to live.

We're [also] right next to an industrial area. On top of all the existing health challenges, plus overreliance on automobiles and older automobiles because of lack of public transportation, all these things contribute to the environmental injustices people are experiencing. Plus [this area is] directly east of [Santa Fe's] industrial area, so everything floats this way. We're next to a highway that

goes towards Los Alamos, and another highway that goes into the city. All that pollution also wraps around our community.

The less green area[s] are] in this part of the city—a lot more concrete and asphalt. It's hotter. We don't have clinics, libraries, [or] amenities related to health. There is lower access to health and wellness resources [and] insurance coverage, [and] more small children per family. Higher asthma rates, high blood pressure [and] hypertension.

It was the hardest hit area during COVID but it was under-reported and under-resourced. The

COVID crisis ended, and we still had not had appropriate outreach in Spanish from the city or county. Even once they said [the pandemic] was done, hotspots were still there.

A lot of this information gets lost because the reporting areas are rather large. All the mobile home parks are within broader census blocks. When you look at census block data, [the data on our communities] disappears.

[Jurisdiction] is also an environmental justice issue. [This] area had been county and was disregarded and disinvested by the county. Ten years ago, [the area] was annexed into the city. Since then, the city has also disregarded it.

(Continued on page 7)

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justice order with explicit language on Title VI and a mandate ---that federal agencies “advance environmental justice for all by implementing and enforcing the Nation’s environmental and civil rights laws.”

Since 2021, community members and advocacy groups have filed an unprecedented number of Title VI complaints with federal agencies. EPA accepted many for investigation, including Louisiana complaints from two communities.

EPA’s enforcement actions in Louisiana

EPA’s Letter of Concern responded to three civil rights complaints. Two complaints were filed by Concerned Citizens of St. John and the Sierra Club representing St. John the Baptist Parish residents. Black residents in St. John the Baptist face some of the highest cancer risk from toxic air pollution in the country. Children attend elementary school steps from Denka

Performance Elastomer, the nation’s only synthetic rubber neoprene facility, which emits cancer-causing chloroprene at levels 8,000 times higher than EPA’s acceptable level.

A third complaint came from Stop the Wallace Grain Terminal, Inclusive Louisiana, RISE St. James, and the Louisiana Bucket Brigade in St. James Parish. In St. James, more than 80% of the parish’s industrial plants are located in majority-Black districts and residents are fighting a \$9.4 billion Formosa petrochemical complex proposed for the St. James census tract with the highest percentage of Black residents and one mile from the nearest neighborhood and a majority Black elementary school.

EPA’s Letter of Concern outlined “significant evidence” suggesting that Louisiana’s regulatory actions or inactions over many years “resulted and continue to result in disparate adverse impacts on Black residents of St. John the Baptist Parish, St. James Parish, and the Industrial Corridor[.]” The letter detailed systemic failures by both agencies who had, as summarized by ProPublica: “dismissed residents’ concerns about air quality, underplayed the dangers of chloroprene [emitted by Denka specifically], conducted flawed health studies and mischaracterized air monitoring data.”

The letter outlined the “substantially disproportionate” cancer risk borne by Black residents living nearest to sources of harmful emissions. EPA found a possible “causal link” between both LDEQ’s air permitting program and LDH’s administration of its public health mission and “the adverse and disproportionate distribution of the cancer and toxicity

risks” for Black residents. EPA also found these risks were exacerbated by the fact that residents have lived near polluting facilities for decades and “homes have been occupied by members of the same families for several generations.” Central to EPA’s message was that its funding recipients have civil rights obligations above and apart from compliance with environmental statutes.

In the words of Monique Harden, former Director of Law and Policy at the Deep South Center for Environmental Justice, EPA was “for the first time in a long time . . . speaking the truth around environmental racism and willing to put civil rights enforcement tools out there.”

Louisiana v. EPA

On May 22, 2023, then-Louisiana Attorney General and now Governor Jeff Landry filed suit against EPA and DOJ.

The complaint portrayed EPA as “social justice warriors fixated on race” set on “impos[ing] additional mandates based purely on the racial composition of the relevant groups” or “where they lie on EPA’s intersectional pyramid.”

At the heart of the complaint was Louisiana’s broad assault on civil rights designed to protect polluters’ profits over people. Louisiana sought the vacatur of EPA’s and DOJ’s decades-old disparate impact regulations, promulgated in 1973 and 1966, respectively. The state challenged EPA’s implementation of its regulations as exceeding the agency’s Title VI authority, violating the Administrative Procedure Act and triggering the Major Questions doctrine. Louisiana argued that mandates imposed—through an informal resolution process—exceeded the state’s obligations under what the state views as a “race-neutral standard of environmental protection.” Remedying documented environmental and health disparities and the marginalization of Black residents from public process, the state argued, compelled the state to intentionally discriminate against its white residents in violation of Title VI, while guidance to incorporate cumulative impacts analysis into permitting was attacked as “extra-regulatory” and “unratified.”

While DOJ had played no role in the investigation or resolution of the Louisiana complaints, the state argued DOJ could enforce its disparate impact regulations against Louisiana at any time. In support of the court reopening DOJ’s 1966 regulation, the state cited a 2020 proposed-

(Continued on page 8)

(Voices of Resistance: Miguel Acosta, Continued from page 5)

What does the fight for civil rights look like in your community? How have you been using Title VI in your advocacy and organizing?

What got us involved in this work with the New Mexico Environmental Law Center (NMELC) was a declaration by an asphalt plant right next to our communities that they were [planning to] increase their capacity. They were going to combine two plants into one and ask for a new permit to allow them to operate 24/7, 365 days a year. That's when we got involved, filed a complaint, and asked for hearings from the New Mexico Environment Department.

We got testimony from young people and families and teachers and schools right nearby [about] how they would be impacted. We pushed for hearings. We started demanding full access using Title VI language. We needed things in

Spanish. We needed things translated.

[Agency officials] said, “we put the flyer out in Spanish.” Well, that's not enough. Full access means having a capacity to participate, not just being present while other people are talking. Understanding what the issues are, what the options are, and what your rights are.

We got a lot of pushback. [They said,] “It's too much.” And then we find out that [the agency was] already out of compliance and had an agreement from five years ago that they were supposed to have done this and that hadn't happened.

That's when Maslyn [Locke, Senior Staff Attorney at NMELC] said “we may need to talk to EPA directly,” because there already was an agreement in place and the Environment Department was not even following that. So we kept pushing. We kept doing the translations that we needed to do to help build capacity and [help] the people that wanted to testify. And [we] made sure that when the hearing came that the Department would be ready to support everybody's participation. And they failed. They failed miserably when the hearing started.

Two things happened. One person [from the state] told us they didn't want to hear about “human impacts,” because the [permitting] requirements did not include [consideration of] human impacts—as long as they checked off all the boxes about the impacts of their new levels of a release of contamination. None of those boxes talked about impacts on human beings. They just talk about whether they were keeping things under a certain level based on the air quality monitoring. And those air

quality monitoring stations were like four miles away. So immediately [public officials] told all our families and kids that were lined up to testify that they couldn't testify about how this might impact them personally. They could only talk about the science and the check boxes.

And then [the state] failed in terms of the interpretation. They couldn't get it together. The guy made some comments to one of our people that was testifying, “I think your English is

good enough. So just proceed.” And she was totally terrified. Other people that didn't even have her level of English just bounced out of the meeting. They're just like “I'm not gonna embarrass myself.” So we filed a complaint with EPA.

What have the challenges been of trying to seek relief through filing a Title VI complaint?

[EPA] put on this big dog and pony show at the beginning. Lots of emails back and forth clarifying what's going to happen. Then we have this meeting. There's like 20 people there, and they're talking about this whole informal process for resolving [the civil rights complaint]. Which sounds great. They use a lot of the language that we use, right? And they ask for us to come with recommendations to make things better.

We show up to this meeting. We sit for all this time and we share all this information. [And EPA officials

Language is part of culture. It's not just because [our community members] speak Spanish, it is because of who they are they are being denied due process, denied a voice. And in this [other] community, [it is] not just because they speak English, but because they're affluent, white, etc. that they're provided a different sort of welcoming and a different kind of context for the conversations.

(Continued on page 12)

(A battle for the soul of Title VI in Cancer Alley, Continued from page 6)

Trump era DOJ rule that would have deleted disparate impact language, but that the Trump DOJ declined to finalize and the Biden Administration withdrew.

After the suit was filed, EPA swiftly closed all three Louisiana complaints, which has since chilled Title VI enforcement by EPA elsewhere in the country but had little impact on the district court's decisions.

Early in 2024, Judge Cain issued a preliminary injunction against both EPA and DOJ, blocking them from enforcing their disparate impact regulations against the state of Louisiana or any Louisiana state agency. He granted the state standing “to challenge the EPA’s disparate impact mandates and extra-regulatory requirements (cumulative impact)” and found that they triggered the Major Questions doctrine. The court also found the Trump-era draft Title VI rule sufficient to reopen DOJ’s disparate impact regulation, and granted standing to Louisiana against DOJ.

On August 22, 2024, Judge Cain issued a permanent injunction against both EPA and DOJ. He limited the injunction to the State of Louisiana but expanded its reach to any entity receiving federal funds—including municipalities and private businesses. And he stated unequivocally that he “agrees that the unlawful disparate-impact regulations are illegal anywhere in the United States.” Such language invites copycat suits by funding recipients across the country who decline to comply with their Title VI obligations—cases that will likely extend beyond the environmental context.

Louisiana is not content to keep it to Louisiana. On September 19, 2024, Louisiana filed a Motion to Amend the Judgment requesting that the court vacate EPA’s and DOJ’s disparate impact regulations “without any geographic limitations.” The State argued it will “suffer a competitive disadvantage in obtaining grants from DOJ and EPA” because “[a]bsent a vacatur” funding recipients in the other 49 states must still fully comply with civil rights obligations to which Louisiana is no longer bound.

A coordinated attack on Title VI

Louisiana is not alone in its quest to eviscerate EPA’s and likely other agencies’ regulations enforcing civil rights laws. On April 16, 2024, even before Judge Cain ruled in the Louisiana case, Florida Attorney General Ashley Moody filed a petition for rulemaking on behalf of a 23-state confederation

requesting EPA rescind the disparate impact provisions of its Title VI regulations.

When the petition was filed, a civil rights complaint against Florida’s Department of Environmental Protection had languished for over two years. The complaint was filed by a grassroots advocacy group working on behalf of residents living adjacent to an incinerator known as the Miami-Dade Resources Recovery Facility that later burned down in a three-week fire, as well as the communities of color surrounding Florida’s nine other incinerators. For the Doral neighborhood surrounding the Miami-Dade incinerator, Title VI was their only recourse to address the odors and health impacts that led one resident to call the area “the worst city in the U.S. to live.”

Florida’s petition makes explicit a constitutional objection implied in the Louisiana complaint and Judge Cain’s decisions—that EPA’s Title VI regulations “compel the imposition of quotas,” and “any recipient choosing an alternative course of action to avoid a racial disparity would be taking action on the basis of race,” contrary to the Equal Protection Clause. The petition analogizes disparate impact doctrine to the “fatal flaws that doomed the affirmative action policies” in the recent U.S. Supreme Court decision, *Students for Fair Admissions v. Harvard College*.

The petition is characterized as a counter to President Biden’s “radical exploitation of Title VI” and labels environmental justice a practice of “racial engineering.” Its authors are the same attorneys general engaged in what the New York Times has called “a coordinated, multiyear strategy . . . to use the judicial system to rewrite environmental law weakening the executive branch’s ability to tackle global warming.” This includes the recent *West Virginia v. EPA* decision limiting EPA’s options for regulating greenhouse gas emissions—and laying groundwork for Louisiana’s Major Questions doctrine challenge to disparate impact. These state actors work in partnership “with conservative legal activists and their funders, several with ties to the oil and coal industries.”

This Venn Diagram of conservative interest groups has a detailed plan to beat back progress on environmental justice and the climate crisis, while eviscerating decades-old civil rights protections. The Project 2025 Presidential Transition Project playbook developed by the Heritage Foundation and its partners supercharges the goals of both the Louisiana liti-

(Continued on page 9)

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(A battle for the soul of Title VI in Cancer Alley, Continued from page 8)

gation and the petition for rulemaking. Along with massive rollbacks of environmental and climate regulation and funding that will disproportionately impact frontline and fenceline communities, Project 2025 proposes to eliminate EPA’s newly created Office of Environmental Justice and External Civil Rights and “pause and review all ongoing EJ and Title VI actions to ensure that they are consistent with” *Students for Fair Admissions* and anticipated SCOTUS decisions curtailing remedial efforts to address structural racism.

Project 2025’s directive to DOJ is more starkly worded—“prepare a plan to end immediately any policies, investigations, or cases that run contrary to law or Administration policies.” And Project 2025 places a target on the disparate impact regulations—calling to “[e]liminate disparate impact as a valid theory of discrimination” in the education, employment, and housing contexts and across the federal government. The breadth and intensity of threats to these core civil rights protections will escalate under a Trump Administration.

We must resist these revisionist narratives of discrimination—in the courts, in the media, and in everyday conversations.

The right’s legal and rhetorical arguments against disparate impact rely on an inversion of victimhood consistent with fights to undermine a vast array of fundamental rights—corrupting our perceptions of perpetrator and harmed, claiming victimhood for the state and for industry, and erasing the people and communities entitled to legal protection.

Students for Fair Admissions and related lower court cases have cast a pall on efforts to remedy the impacts of structural racism, even through voluntary diversity, equity, and inclusion programs. We risk unnecessary and unjustified rollbacks, not simply in the public sector, but from risk-averse educational, corporate, philanthropic, and nonprofit organizations that were vocal about undoing racism five years ago. This chiseling away at permissible affirmative remedial actions makes the need for Title VI protections even greater. We cannot allow the further stratification of rights and the creation of more legal sacrifice zones.

“[O]ngoing state hostility to Title VI requires decisive action, not retreat.” That was the message from a coalition of

advocates led by Louisiana and Michigan Title VI complainants after EPA’s sudden closure of the Louisiana complaints. We need a federal government who will defend its longstanding power to enforce bedrock civil rights laws. While we defend disparate impact, we need cases that demonstrate to courts and elected officials how intentional discrimination or disparate treatment functions in 2025, with EPA, DOJ, and other agencies dedicating resources to pursue these claims.

We need states willing to be vocal in this fight. We need leadership consistent with the recent response filed by sixteen attorneys general rebutting the Republican states’ petition for rulemaking and affirming that “EPA’s regulations implementing Title VI are a critical tool for the federal government to ensure that the billions of dollars in federal funds received by state, local, and private sector actors across the country do not perpetuate a long history of racial discrimination.” We also need states like Illinois and Michigan, who have recently

resolved federal and state civil rights complaints with substantive commitments to address cumulative impacts in permitting.

We must come together to reaffirm and reinforce civil rights and environmental justice for all.

In drafting the federal Environmental Justice for All Act, Representatives Raúl M. Grijalva of Arizona and A. Donald McEachin of Virginia led a participatory process with fenceline and frontline communities that generated two critical priorities: (1) amending environmental statutes to consider the totality of public health or environmental risk, i.e., cumulative impacts, on health, well-being, and quality of life and (2) restoring the rights of individuals and communities to seek redress from the courts when a program, policy, or practice has a discriminatory effect.

Several states including New Jersey, New York, Colorado, Minnesota, and North Carolina have passed legislation intended to protect fenceline and frontline communities from the on-the-ground realities of disproportionate cumulative burdens. California and Illinois have state Title VI analogues with protections against disparate impact discrimination, and a diverse coalition of environmental justice, education, housing, healthcare, LGBTQIA, and prisoner rights advocates have collaborated on a similar Access to

(Continued on page 10)

(A battle for the soul of Title VI in Cancer Alley, Continued from page 9)

Justice bill for Massachusetts. We need to build on this momentum to pass legislation that provides tools to remedy the root causes of racial disparities at the local, state, and federal levels and safeguard civil rights protections for the long term.

Interrupting the cycle of generational harm caused by the proliferation of industry in Cancer Alley is not discriminatory; it is an act of repair consistent with the policy goals driving Congress's passage of Title VI and the broader Civil Rights Act. Who is harmed by ensuring holistic environmental analysis that accounts

for decades of toxic exposure?

Who is harmed by public health officials taking seriously the concerns of Black residents whose children attend school 1500 feet from severe and ongoing emissions of carcinogenic toxins? Who is harmed by agencies investigating why majority Black communities continue to face substantially greater cancer risk from toxic

air pollution than white communities? Ensuring the right to clean air, water, soil, and a safe and healthy home for all is not a zero-sum game – it's a win-win.

We must recognize that the current backlash to Title VI and broader civil rights enforcement is a direct response to the advancements our grassroots movements have already gained—and persist. We are witnessing a coordinated multi-pronged attack on the legal, policy, social, cultural, and educational tools we use to address the legacy harms of systemic racism. Our efforts must be just as coordinated. We must draw the necessary connections between attacks on Title VI and fights for reproductive justice, LGBTQIA rights, and voting rights originating in these very same states. Our visions and our strategies must bring together advocates, attorneys, scientists, educators, artists, and students working at the intersection of housing, transportation, education, environmental, climate, and disaster justice and civil rights. Our legal and policy efforts must be at the service of a larger organizing strategy. And fenceline and frontline community leadership must remain at the center.

Amy Laura Cahn is a climate and environmental justice lawyer and a lecturer at the University of Pennsylvania Carey Law School and Tufts University. She was a convener of the national Title VI Alliance from 2021 to 2024.

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will be employed. This includes the “major questions” doctrine first applied by the Supreme Court three years ago which states that if an agency implements an action that has major national significance, it must be supported by clear congressional direction. Another precedent that will be used is the Court’s 2024 decision in *Loper Bright Enterprises v. Raimondo*. In *Loper Bright*, the Court overruled a forty-year-old Supreme Court decision and eliminated court deference to administrative agencies when a statute is ambiguous as to whether an agency action is authorized by statute.

One final note is related to the Trump/Musk collaboration that they have entitled the “Department of Governmental Efficiency” (DOGE). This nongovernmental effort is subject to several limitations. It falls under the Federal Advisory Committee Act. FACA committees, consistent with the statutory name, are advisory. They do not wield actual authority. The membership of each committee must be “fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee,” and the committee must make its work product and communications available to the public. When a committee does not operate consistently with those requirements and others, they can be sued. During the last Trump Administration, I was actively involved an effort to sue over the work of the Trump administration’s “anti-voter fraud”

initiative and the ensuing litigation led to Trump disbanding that committee.

There has been substantial effort in anticipating likely executive orders and agency actions, prioritizing which should be challenged, and researching viable legal theories and identifying plaintiffs for standing for each challenge. In other words, it is an active time for those engaged in the legal resistance.

There has been substantial effort in anticipating likely executive orders and agency actions, prioritizing which should be challenged, and researching viable legal theories and identifying plaintiffs for standing for each challenge...It is an active time for those engaged in the legal resistance.

What will happen?

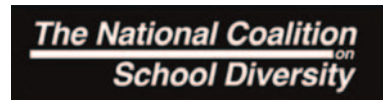
It would be overly optimistic to think that we will be completely successful in stopping all the efforts of the Trump Administration to fundamentally transform the federal government. At the same time, I believe that we will achieve a fair amount of

success, especially in the lower federal courts. I am concerned about the Supreme Court but I have some hope that at least two of the six conservatives on the Court (along with the three left-of-center justices) will recognize the short-term and long-term harm to our democracy from an all-out assault on the rule of law and the separation of powers.

Jon Greenbaum (jgreenbaum@justicels.com and <https://justiceblog.substack.com/>) is the founder of Justice Legal Strategies (www.justicelegalstrategies.com) and was also, until recently, Chief Counsel at the Lawyers’ Committee for Civil Rights Under Law.

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(Voices of Resistance: Miguel Acosta, Continued from page 7)

say.] “Okay, we’ll get back to you.” And then silence. Silence in English and silence in Spanish.

A couple of years later, when we finally hear from them, it’s to let us know that they resolved the issue. And it’s like, “How do you mean?” They didn’t even compel the state to be part of the conversation. They just convene the meeting and let us know that they resolved it. And we’re done.

They said, “we’re sure that they’re not going to do this anymore.” And we said, “well, that’s what they said five years ago.” There was just no explanation.

[Before EPA informed us about the resolution agreement,] we had submitted new information about the hearing officer. In another meeting [about a different project] in another community, he had told people explicitly. “Yes, we want to hear how this [project] impacts your health.” [He had told our community,] “we don’t care how this impacts you. We just want to know whether the science is right.” Two different communities, one immigrant, one white and affluent.

[EPA’s response was to say], “Well, it wasn’t really new information, because it didn’t relate to language access issues.” We tried to share at that meeting that, of course it does. Language is part of culture. It’s not just because [our community members] speak Spanish, it is because of who they are they are being denied due process, denied a voice. And in this [other] community, [it is] not just because they speak English, but because they’re affluent, white, etc. that they’re provided a different sort of welcoming and a different kind of context for the conversations. But now [EPA] says, “No, we’re done. we resolved it.”

What do you need from EPA and other federal agencies to vindicate your civil rights?

We need the commitment to yes—not no [from EPA and other federal agencies.] They need to operate on the basis that “we’re here to ensure people’s health and maintaining care for the environment.” And not “we’re here to protect people’s investments and people’s work and make sure that it doesn’t harm people too much.” There [are currently] acceptable degrees of the collateral damage. We

need them to operate [as if] there [are] no acceptable levels of collateral damage. Let’s figure out how we make that a reality.

What is the benefit of Title VI of the Civil Rights Act of 1964 for your work? How would you explain Title VI to someone who was not aware of it?

There’s the law and then there’s what enables us to use the law to protect our community. The enabling part of the legislation [is] what gives people some power. It’s the organizing space. It’s one thing to have a law on the books.

But if there’s no way to use it or make it actionable, then [it is just] a law on the books.

[Title VI and civil rights laws are] beneficial in the organizing itself, especially with new communities. We’re standing on the shoulders of the folks . . . I was back there, one of them, 50 years ago, when I started in this in this work. It is part of the popular education [and] the historic context of the work that we’re doing.

People can put that constitution around them, the Civil Rights Act around them, and say, “this is what protects me.” This provides energy to our movement. All the work that happened over these years [is] a resource to draw upon. What have other people done in in similar situations? What has been [the federal] government’s, the state’s response? How [have] the courts talked about it?

The life of the Civil Rights Act and Title VI provides the sustenance for all our work. If that’s not known, then the attacks on it are not understood. If we don’t have that to share with people and to help build their capacity, then the threats to the Act are not understood—in terms of the magnitude [and] potential threat that they pose. ■

The content of this interview has been lightly edited for brevity and clarity.

Earth Care is an empowerment and community development organization located in Santa Fe, New Mexico. Earth Care grows grassroots leadership from the ground up by training and supporting youth and parent leaders who organize campaigns to build a healthy, just, and sustainable world.

Recent work by members of PRRAC's Social Science Advisory Board

Professor Michael Lens (UCLA) recently published *Where the Hood At? Fifty Years of Change in Black Neighborhoods* (Russell Sage), which “examines the characteristics and trajectories of Black neighborhoods across the United States over the 50 years since passage of the Fair Housing Act.”

Willow Lung Amam (U.MD) published *The Right to Suburbia: Combating Gentrification on the Urban Edge* (University of California Press), “investigates how marginalized communities in the suburbs of Washington, DC—one of the most intensely gentrifying metropolitan regions in the United States—have battled the uneven costs and benefits of redevelopment.”

NYU Professor Ingrid Gould Ellen co-authored “Race, Space, and Take-Up: Explaining Housing Voucher Lease-up Rates” in the *Journal of Housing Economics* and “Neighborhoods And Health: Interventions at The Neighborhood Level Could Help Advance Health Equity.” in *Health Affairs*.

GWU Professor Greg Squires published a chapter in the *Oxford Handbook of Sociology for Social Justice* titled “Wins, Losses, and Lessons of Engaged Social Justice Research: How Academic Institutions Nurture and Undermine Collaborative Community-Based Scholarship”

Along with artist Tonika Lewis Johnson, **Maria Krysan** (U.Illinois-Chicago) has just published *Don't Go: Stories of Segregation and How to Disrupt It* (Polity Press), a “collection of intimate stories and evocative photos that uncover the hidden influence of both subtle and overt ‘don't go’ messages and the segregation they perpetuate in Chicago.”

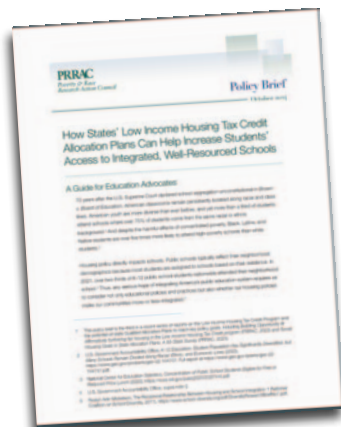
Jacob Faber (NYU Wagner School) co-authored “Still Victimized in a Thousand Ways: Segregation as a Tool for Exploitation in the Twenty-First Century” (*Annual Review of Sociology*, 2024).

Stefanie DeLuca (Johns Hopkins) coauthored “Increasing Residential Opportunity for Housing Choice Voucher Holders: The Importance of Supportive Staff for Families and Landlords” in HUD’s Summer 2024 *Cityscape* journal.

Ann Owens (USC) coauthored “60 Years after Brown: Trends and consequences of school segregation,” in the *Annual Review of Sociology*.

Professor Jamila Michener will direct Cornell University’s new Center for Racial Justice and Equitable Futures. <https://equitablefutures.cornell.edu/>

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Policy Brief: “How States’ Low Income Housing Tax Credit Allocation Plans Can Help Increase Students’ Access to Integrated, Well-Resourced Schools” (October 2024)

PRRAC comments on proposed Direct Rental Assistance demonstration

(August 2024)

PRRAC comments on Choice Neighborhoods Initiative RFI

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Dear friend of PRRAC,

I had hoped that my last fundraising appeal as PRRAC’s Executive Director would come at a time of expanding hope for progress on civil rights, advancing the policies we need to build a stronger multiracial democracy. But regardless of the outcome of the recent election, as a civil rights policy organization our mission remains unchanged. Our job now is to resist the most damaging attacks on low income families and to promote progressive state and local policies with an eye to the future.

We know that structural racism in American society is not going away, and that segregation and concentrated poverty are fundamental building blocks of this system. We know that segregation was driven historically by intentional federal and state actions, that it is perpetuated today by “race-neutral” policies at all levels of government, and that racialized economic exploitation goes hand in hand with racial and economic segregation.

To respond, we need to continue efforts to expand housing choice and undo government policies that separate us, and we also need to expand social housing as an alternative to profit-taking in low income communities. The coming administration will not vigorously enforce the “affirmatively furthering fair housing” mandate, but nonetheless, the principle of AFFH is expanding in the states, state and local “social housing” policies are on the rise, and the tenants’ rights movement is stronger than ever. So there is still an opportunity for continued progress, even as we fight back against a new round of federal policy attacks.

While we know many worthy causes will be asking for your help this year, we could really use your support right now. Please consider including us in your year-end giving!

— Phil Tegeler

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