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Note

Returning to the Roots of Environmental Justice: Lessons from the Inequitable Distribution of Municipal Services

Sten-Erik Hoidal*

Race is the most significant variable associated with the location of commercial hazardous waste facilities. Indeed, a strong statistical correlation exists between the number of hazardous waste facilities and the size of the proximate minority population. Further, three out of five Hispanic- and African-Americans live in communities with uncontrolled toxic waste sites. Regarding enforcement, penalties under hazardous waste laws in areas with the greatest white population are nearly 500% higher than those in areas with the greatest minority population. While such disparities are shocking, the environmental justice movement made significant strides toward their alleviation—that is, until recently.

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1. UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES, at xiii (1987). This is the seminal study on environmental justice and serves as the basis for all subsequent environmental justice studies. See ROBERT BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY, at xiv (1990) (describing the United Church of Christ Commission study as a landmark and presenting several studies which corroborate the findings of the above study); see also Vicki Been, What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses, 78 CORNELL L. REV. 1001, 1012 (1993) (highlighting several local studies that confirm minority representation is disproportionately large near hazardous waste sites).

2. UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, supra note 1, at 18.
3. Id. at xiv.

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In 2001, the environmental justice movement ground to a halt. The Supreme Court and the Third Circuit Court of Appeals acted concurrently to eliminate the most promising avenues through which minority communities could contest perceived threats to their urban environment. In *Alexander v. Sandoval*, the Supreme Court held that citizens could not sue directly to compel compliance with regulations designed to remedy disparate impact discrimination in federally funded programs. In *South Camden Citizens in Action v. New Jersey Department of Environmental Protection (Camden III)*, the Third Circuit extended the Supreme Court's reasoning to hold that no private right of action existed under 42 U.S.C. § 1983 for citizens to enforce section 602 disparate impact regulations. This result created a bewildered environmental justice movement in need of a new legal medium through which to pursue its claims.

Seeking a sympathetic forum in which to voice its concern is not a new situation for the environmental justice movement. Historically, the legal strategies employed by the environmental justice movement have met with limited success.

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6. *Id.* at 293. Such regulations are promulgated under section 602 of Title VI. This section states:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President.

42 U.S.C. § 2000d-1 (2000). This statute has been interpreted to allow governmental agencies to promulgate disparate impact regulations. See *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 591–92 (1983). For a more complete discussion of section 602 of Title VI, see *infra* Part II.D.

7. 274 F.3d 771 (3d Cir. 2001) [*hereinafter Camden III*].
8. *Id.* at 774.
There is, however, one exception. During the 1970s and 1980s, several minority communities successfully challenged inequitable distribution of municipal services on equal protection grounds. These suits sought to rectify what the communities perceived as differential treatment of minority and nonminority communities by municipal governments. Their success stemmed from the use of statistical disparities and historical evidence of discrimination to demonstrate the municipalities' intents to discriminate. Despite these early successes, the environmental justice movement has not attempted to revive these cases in a modern context. Given the results in Sandoval and Camden III, it should.

This Note argues that analogizing to the municipal services equalization cases would provide environmental justice advocates with a new framework in which to assert successful equal protection claims. In addition, structuring environmental justice claims in accordance with these cases would allow the movement to take advantage of their precedential authority. Part I gives a brief overview of the history of the environmental justice movement. Part II details the legal avenues frequented by the environmental justice movement. Part III explores the reasons for success in the municipal services cases. Finally, Part IV analogizes environmental justice suits to these cases and explores the pros and cons of modeling environmental justice suits after the municipal services cases.

I. THE HISTORICAL DEVELOPMENT OF THE ENVIRONMENTAL JUSTICE MOVEMENT

The term "environmental justice" is perpetually evolving and has no settled meaning. Thus, the most recent attempt to define environmental justice will have to suffice. Former Envi-
ronmental Protection Agency (EPA) administrator Christine Todd Whitman described environmental justice as "when everyone, regardless of race, color, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process."  

A. THE ROOTS OF ENVIRONMENTAL JUSTICE IN THE CIVIL RIGHTS MOVEMENT

The seedlings of the environmental justice movement first appeared in the late 1960s. Nurtured by a decade of heightened social awareness, the civil rights movement expanded its focus to include concerns about the urban environment. During this period, minority groups began rallying against the inequitable distribution of municipal services. Concerned communities initiated a string of lawsuits against local governmental agencies for failing to provide acceptable sanitation, street lighting, and water supplies.

The paradigmatic lawsuit of this movement was *Hawkins v. Town of Shaw*. In this case, a group of African-American citizens sued Shaw, Mississippi, alleging that the town provided various municipal services—including street paving, street lighting, sanitary sewers, surface water drainage, water mains, and fire hydrants—in a racially discriminatory manner. Such actions, the plaintiffs claimed, violated the Four-
eenth Amendment's Equal Protection Clause. The plaintiffs supported their argument with disturbing facts. African-Americans occupied approximately 98% of the homes in the town of Shaw that faced unpaved streets and 97% of the homes not served by sanitary sewers. In addition to citing statistical disparities, the plaintiffs demonstrated that pervasive residential segregation greatly contributed to a long history of municipal discrimination. In light of these facts, the court found that the plaintiffs made out a prima facie case of racial discrimination subject to strict scrutiny. Accordingly, the court concluded that no compelling state interest could justify the discriminatory results of Shaw's distribution of municipal services and granted the plaintiffs injunctive relief under 42 U.S.C. § 1983.

*Hawkins v. Shaw* became the template for successful municipal service equalization claims. This template was first followed in *Johnson v. City of Arcadia.* In this case, African-American citizens of Arcadia, Florida, sought to ameliorate disparities in the quality and quantity of street paving services, parks and recreational facilities, and water supply systems. They claimed that the city's actions regarding these services violated the Fourteenth Amendment's Equal Protection Clause, section 601 of Title VI of the Civil Rights Act, and the Revenue Sharing Act. In analyzing these claims, the court set forth a new, more difficult test to determine whether the inequitable distribution amounted to a constitutional viola-

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22. Id.; see U.S. CONST. amend. XIV, § 1.
23. *Hawkins,* 437 F.2d at 1288-91.
24. *See id.* at 1287–88 (discussing residential segregation and “the other side of the tracks” phenomena).
25. *Id.* at 1288.
26. *Id.* at 1292.
27. *Id.* at 1288. Plaintiffs were using § 1983 as the vehicle to assert their equal protection claim. *See id.*
30. *Id.* at 1367, 1370–76.
The test required the plaintiffs to establish three elements: (1) the existence of racially identifiable neighborhoods in the municipality; (2) substantial inferiority in the quality or quantity of the municipal services in question; and (3) proof of intent or motive. As in Hawkins, the plaintiffs established all three elements by demonstrating statistical disparities in the provision of municipal services and continuing residential segregation perpetuated by historical discrimination on the part of the city. The court reasoned that such evidence was sufficient to demonstrate intent to discriminate, and it subsequently found for the plaintiffs on all claims.

Two later cases also paralleled Hawkins and Johnson in their attempts to pursue municipal service equalization. In Dowdell v. City of Apopka, a class of African-American residents sued the City of Apopka, Florida, its mayor, and four city council members for inequitable provision of street paving and maintenance services, storm water drainage, water distribution, sewer facilities, and park and recreational facilities. This case was structured identically to Johnson and asserted claims under the Equal Protection Clause, section 601 of Title VI, and the Revenue Sharing Act. Once again, the court ruled in favor of the plaintiffs. In so holding, the court paid particular attention to the cumulative evidence of municipal action and inaction as indicative of discriminatory intent. Similarly, the court in Ammons v. Dade

34. See Johnson, 450 F. Supp. at 1379.
35. Id.
36. Id. at 1370–76.
37. Id. at 1369–70. The court did not limit its consideration of historical discrimination to housing and zoning; it also looked at the underrepresentation of minorities in local political bodies. See id.
38. It is worth noting that Washington v. Davis made intent to discriminate a necessary element of an equal protection claim after Hawkins. See Washington v. Davis, 426 U.S. 229, 242 (1976). This presented the plaintiffs in Johnson with a new hurdle to overcome.
40. 698 F.2d 1181 (11th Cir. 1983).
41. Id. at 1184.
42. Id.
43. Id. at 1186.
44. Id. at 1185–86.
45. Id. at 1186.
City—following Hawkins—used the foreseeability of the deprivation of services from the minority community to infer intent to discriminate. In addition, the court focused on the size of the disparity and the nature of the practices at issue to help infer intent from disparate impact. Consistent with precedent, the court held that the city's inequitable distribution of resources violated the Equal Protection Clause.

B. EMERGENCE OF THE ENVIRONMENTAL MOVEMENT

The emergence of a vocal environmental movement in the 1960s and 1970s played an instrumental role in the development of environmental justice. During this period, the media and urban conditions generated public concern for environmental issues. The publication of Rachel Carson's Silent Spring, the burning of the Cuyahoga River, and overwhelming smog problems captured public attention. The public responded by supporting environmental organizations and celebrating the first Earth Day in 1970.

Eager for a reprieve from the contentiousness of the civil rights movement and the Vietnam War, Congress also adopted an environmental bent. During the 1970s, Congress enacted several groundbreaking environmental statutes, such as the Clean Air Act, Clean Water Act, and Endangered Species Act. The judiciary quickly fell in line. Several judges attempted to embolden these new environmental statutes, interpreting them to provide more environmental protection than lawmakers

46. 783 F.2d 982 (11th Cir. 1986).
47. See id. at 983 (citing Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971)).
48. Id. at 988.
49. Id. at 987–88.
50. Id. at 988.
52. Id. at 282–83.
53. Id.
54. See Lazarus, supra note 16, at 79.
55. Davies, supra note 51, at 284.
57. Id. at 79.
58. Id.
59. Id. at 80.
60. See id.
likely intended. In addition, some courts attempted to relax standing barriers that restricted judicial access for environmental citizen suits.

Not all groups were pleased with this newfound focus on environmental issues. Civil rights advocates believed that it drew attention away from the continuing effects of segregation and discrimination. Some feared Congress's new regulatory efforts would disproportionately disadvantage minority neighborhoods. Having witnessed distributional inequity in the municipal services context, civil rights groups were concerned about the potential for similar treatment with regard to environmental regulation.

C. EMERGENCE OF ENVIRONMENTAL JUSTICE

From these beginnings, a coordinated environmental justice movement emerged. The commonly accepted beginning of the movement was an uprising in Afton, North Carolina. Afton was a predominantly low-income African-American community, deemed by the state of North Carolina to be an appropriate site to dump 32,000 cubic yards of soil contaminated with polychlorinated biphenyls (PCBs). In response to this plan, civil rights leaders and environmental activists coordinated a series of demonstrations opposing the site. The protests successfully drew attention to the claim that poor communities of color were unfairly targeted as sites for toxic waste

61. Id. (detailing how activist judges extended the meanings of the new pieces of environmental legislation).
62. Id.
63. Yang, supra note 13, at 149.
64. Id.
65. Id.
66. See id. For example, one scholar claimed that the new focus on environmental issues was "a deliberate attempt by a bigoted and selfish white middle-class society to perpetuate its own values and protect its own life style at the expense of the poor and the under privileged." Richard J. Lazarus, Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection, 87 Nw. U. L. Rev. 787, 788 (1993) (quoting James N. Smith, The Coming of Age of Environmentalism in American Society, in ENVIRONMENTAL QUALITY AND SOCIAL JUSTICE IN URBAN AMERICA 1 (James N. Smith ed., 1974)).
68. Id. at 77-78.
69. Id. at 78.
dumps and heavily polluting industries.\(^7^0\)

Several reports published in the 1980s provided statistical support for the developing environmental justice concerns.\(^7^1\) Notably, the United Church of Christ Commission for Racial Justice (CRJ) performed an extensive study on the relationship between the siting of hazardous waste facilities and the racial composition of host communities.\(^7^2\) This study found a correlation between the number of hazardous waste facilities located in a community and the percentage of the community's minority population.\(^7^3\) It also identified race as the most significant variable in determining the location of hazardous waste facilities.\(^7^4\) Several subsequent studies buttressed the CRJ's findings.\(^7^5\)

These studies, and the Afton uprising, helped frame the initial scope of environmental justice. In its youth, environmental justice centered on what Dr. Benjamin Chavis termed "environmental racism," generally addressing racially motivated facility siting.\(^7^6\) Gradually, the focus of environmental justice expanded.\(^7^7\) New concerns included distributional equity across all population groups, risk reduction and avoidance,\(^7^8\) and the enforcement of environmental laws.\(^8^0\) These shifts gave environmental justice its current, more expansive perspective.\(^8^1\)

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70. Id.
72. Yang, supra note 13, at 150.
73. Been, supra note 1, at 1010.
74. Yang, supra note 13, at 150.
75. Been, supra note 1, at 1012. Been highlights several local studies, which support the proposition that minority representation is disproportionately large near hazardous waste sites. See id.
76. See Richard J. Lazarus, "Environmental Racism! That's What It Is.", 2000 U. ILL. L. REV. 255, 257 (stating that Chavis's words were "a transforming moment for environmental law in the United States").
77. See id. at 259.
79. See id. Previously, redistribution of risk had been the primary object of concern.
81. See Kuehn, supra note 78, at 10,681.
D. MODERN ATTITUDES TOWARD ENVIRONMENTAL JUSTICE

Modern attitudes toward environmental justice are difficult to gauge. Undoubtedly, environmental justice remains an important social and political issue; yet, public and political support for the movement may be fading slightly. This trend, however, is consistent with current trends of environmental law and civil rights generally. Professor Richard J. Lazarus calls this the "graying of U.S. environmental law." As environmental justice matures and creeps away from its 1990s heyday, it is beginning to lose some of its passion. Thus, as with environmental law and civil rights, environmental justice appears to have fallen slightly out of vogue.

II. LEGAL PATHWAYS AVAILABLE TO ENVIRONMENTAL JUSTICE CLAIMANTS

No specific legislation addresses actions for environmental justice per se. Plaintiffs in environmental justice suits must retrofit various legal theories to the facts of their case. Legal tools employed in these suits include environmental statutes,

82. See Davies, supra note 51, at 354 (discussing the modern implications of environmental justice).
84. Davies, supra note 51, at 350
85. Lazarus, supra note 16, at 76.
86. Id.; see also Davies, supra note 51, at 233–34 (providing statistics which demonstrate that, on a macro level, support for environmentalism is fading).
87. See Lazarus, supra note 16, at 105–06 (discussing the maturation of environmental law).
88. Id. at 101.
common law property claims, constitutional challenges, and civil rights laws. These tools have been used with infrequent success and have generally exposed major shortcomings in environmental justice litigation.

A. ENVIRONMENTAL STATUTES

In the environmental justice context, the efficacy of environmental statutes has been limited primarily to attempts at derailing the permitting of hazardous waste facilities. Recently, however, some academics have begun reexamining environmental statutes, in particular those with public participation requirements. Under this approach, plaintiffs attempt to identify defendants’ failures to meet the public participation requirements of an environmental statute in an attempt to ensure procedural justice. Plaintiffs, however, have been reluctant to put this strategy into practice. Consequently, it is difficult to evaluate its merits.

B. COMMON LAW PROPERTY CLAIMS

Public and private nuisance actions present significant obstacles to minority communities as plaintiffs in environmental justice cases. In large measure, the environmental statutes supplant common law remedies. As a result, facility compliance with applicable environmental statutes negates the possibility of establishing a per se public nuisance. Such compliance also cuts against plaintiffs’ attempts to establish intentional or unreasonable conduct as either private or public


91. Id. at 528–30 (discussing the implementation of this approach in El Pueblo para el Aire y Agua Limpio v. County of Kings, 22 ENVTL. L. REP. 20357 (1991)); see also Hill, supra note 14, at 33 (describing this idea as “Environmental Law, With a Twist”). Environmental statutes typically provide for public participation through comment periods, which allow citizens to express their concerns regarding proposed projects. See id.

92. See Cole, supra note 90, at 541–43 (discussing instances in which the theory has been presented to the court).

93. See Worsham, supra note 89, at 640.


95. Id.
nuisance. Combined with the nebulosity of the public nuisance standard, these factors render success uncertain. Consequently, public and private nuisance claims present an unlikely pathway for pursuing environmental justice.

C. CONSTITUTIONAL CHALLENGES

The Equal Protection Clause of the Fourteenth Amendment is another legal pathway available to environmental justice plaintiffs. The right to equal protection prohibits government officials from basing decisions regarding the distribution of environmental harms, risks, or benefits on racial grounds. To prove a violation, plaintiffs must demonstrate that the government intended to discriminate when making its decision. The difficulty of meeting this requirement has severely diminished the success of equal protection claims in the environmental justice context. Environmental justice plaintiffs generally attempt to demonstrate discriminatory intent from stark patterns of disparate impact resulting from a governmental action. The courts, however, have been reluctant to infer such intent absent additional evidence. Then, even if the plaintiffs establish discriminatory intent, the government can still succeed by showing that the same decision would have resulted regardless of the racial motivation. Consequently, the equal protection standard has been difficult, if not impossible, for environmental justice plaintiffs to meet. In the inequitable dis-

96. Worsham, supra note 89, at 640.
99. Hill, supra note 14, at 32.
100. Id.
101. Id. at 33.
102. Id. at 33-34.
103. See id. In Washington v. Davis, the Supreme Court held that, although disparate impact was not irrelevant, proof of discriminatory intent was necessary for a valid equal protection claim. 426 U.S. 229, 242 (1976).
105. See R.I.S.E., Inc. v. Kay, 768 F. Supp. 1144, 1149–50 (E.D. Va. 1991) (acknowledging the existence of a disparate impact on minorities, but stating that plaintiffs lacked the evidence necessary to show discriminatory intent); E.
tribution cases, however, courts have readily inferred intent to discriminate from racially disparate impact. No judicial reasoning exists to explain this inconsistency.

D. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Environmental justice suits and scholarship have recently focused on Title VI, in particular sections 601 and 602, as a potentially useful legal tool. Section 601 prohibits discrimination against minorities in programs and activities receiving federal funding. It is commonly understood that enforcement of this section requires a showing of intent to discriminate. As a result, it is subject to the same limitations as the Equal Protection Clause. Section 602 authorizes federal agencies to create regulations pursuant to the goals of section 601 that

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106. Lazarus, supra note 66, at 833.
107. See Hill, supra note 14, at 33. This discrepancy is probably a result of several factors. For one, the civil rights movement was at its height in the 1970s, which forced the courts to be receptive to such suits. In addition, municipal services equalization allowed courts to compare recipients' benefits. This was easier than trying to redistribute the risks and burdens associated with industrial facility siting, as required by environmental justice suits. See infra Part III.A.
109. Id.
110. Id. § 2000d-1.
111. See Lazarus, supra note 66, at 834–39 (discussing the validity of Title VI as a legal mechanism for the environmental justice movement); Yang, supra note 13, at 143–92 (discussing the usefulness of Title VI in environmental justice suits); Cody, supra note 9, at 238–62 (discussing the role of Title VI in recent environmental justice suits); Hill, supra note 14, at 39–41 (discussing the usefulness of Title VI in environmental justice suits).
112. 42 U.S.C. § 2000d (2000). This statute states the following: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Id.
114. See supra note 100 and accompanying text (stating plaintiffs bringing Equal Protection claim must prove intentional discrimination).
provide means for the agencies to deal with complaints of racial discrimination. The regulations issued by several federal agencies bar programs that result in a racially disparate impact. For example, the EPA's regulations state that:

A recipient [of EPA funding] shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

Initially, it was believed that both an administrative complaint and a private right of action could enforce these regulations. Indeed, many recent environmental justice advocates' efforts centered on utilizing the latter approach to pursue their goals. A recent Supreme Court decision, however, crushed these efforts.

In *Alexander v. Sandoval*, the Supreme Court ruled that no private right of action exists to enforce disparate impact

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117. 40 C.F.R. § 7.35(c) (2000).


119. Worsham, *supra* note 89, at 664. The EPA's Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits, written in response to President Clinton's EO, provided individuals with a private right of action to enforce the nondiscrimination requirements of Title VI. *Id.*

120. *See id.* at 663–68 (discussing the usefulness of section 602 to environmental justice actions); Bradford C. Mank, *Is There a Private Cause of Action Under EPA’s Title VI Regulations?: The Need to Empower Environmental Justice Plaintiffs*, 24 COLUM. J. ENVTL. L. 1, 1–58 (1999) (evaluating the possibility of environmental justice suits to enforce section 602 disparate impact regulations).

regulations promulgated under section 602. The Alabama Department of Public Safety's decision to administer driver's license tests only in English caused the dispute in this case. Non-English-speaking citizens brought a class action to enjoin this decision, using the Department of Justice's section 602 regulations as a vehicle. In foreclosing this strategy, the Court eschewed the plaintiffs' beliefs that private rights of action could be implied in a statute. It reasoned that Congress must explicitly express a private right of action. Absent congressional language creating a private right, regulations could not provide such a right. Consequently, the Court found that section 602's enforcement mechanisms were available only to government agencies and not to private individuals. In a vehement dissent, Justice Stevens criticized the majority's reasoning, stating that its opinion was "something of a sport." He further critiqued, "Litigants who in the future wish to enforce the Title VI regulations... in all likelihood must only reference § 1983 to obtain relief."

E. 42 U.S.C. § 1983

The case *South Camden Citizens in Action v. New Jersey Department of Environmental Protection (Camden II)* imme-

122. *Id.* at 293.
123. *Id.* at 278–79.
124. *Id.* at 279.
125. *See id.* at 286–87.
126. *Id.* at 286 (citing Touche Ross & Co. v. Redington, 442 U.S. 560, 578 (1979)).
127. *Id.* at 291.
128. *Id.* at 289–90.
129. *Id.* at 300.
130. *Id.*
131. 145 F. Supp. 2d 505, 516–18 (D.N.J. 2001) [hereinafter *Camden II*]. It is important to note the procedural history of this case. Initially the plaintiffs, South Camden Citizens in Action, sued the New Jersey Department of Environmental Protection (NJDEP) for failing to consider the racially disparate impacts of the agency's issuance of a permit for a cement plant as required by applicable section 602 regulations. *S. Camden Citizens in Action v. N.J. Dep't of Envtl. Prot.*, 145 F. Supp. 2d 446, 450–52 (D.N.J. 2001) [hereinafter *Camden I*]. Judge Orlofsky granted the plaintiffs' desired injunction, holding that they established a prima facie case of disparate impact discrimination in violation of section 602. *Id.* at 451–52. Immediately thereafter, the Supreme Court issued its ruling in the *Sandoval* case, effectively rejecting the judge's reasoning. As a result, Judge Orlofsky reconvened the parties to determine if the section 602 regulations were enforceable under § 1983. *See Camden II*, 145 F. Supp. 2d at 508–10.
diately tested Justice Stevens's suggestion that § 1983 might provide a private right of action. In this case, the plaintiffs claimed, and the district court agreed, that the holding in *Sandoval* only prohibited the use of a freestanding cause of action under section 602, and that it did not forbid the use of § 1983 as a method of recourse. The court reasoned that the *Sandoval* decision assumed that Congress intended the statute to create a substantive right. Hence, the disparate impact regulations were enforceable under § 1983. *Sandoval*, the court argued, only barred the direct cause of action. Thus, precedent regarding section 602 remained valid. The court claimed that this conclusion was consistent with governing precedent in the Third Circuit as established in *Powell v. Ridge*, which held that plaintiffs seeking to enforce section 602 disparate impact regulations could do so directly under section 602 or via § 1983. The court also cited *Wright v. City of Roanoke* to support its proposition that regulations may create rights enforceable under § 1983. Finally, the court applied the federal

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132. In relevant part, § 1983 states that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.


133. See *Camden II*, 145 F. Supp. 2d at 516.

134. See id. at 517.

135. See id. ("[T]he Court limited the question decided in *Sandoval* to determining whether Congress intended to create a private remedy to enforce § 602, while assuming that in fact Congress intended that statute, to create a substantive right . . . .").

136. Id. at 518.

137. Id.

138. Id.


rights test from Blessing\textsuperscript{141} to ensure the EPA's disparate impact regulations created a federally enforceable right under § 1983. Based upon this analysis, the court concluded that the defendants had infringed on an enforceable right and, consequently, it granted the requested injunction.\textsuperscript{142}

Shortly thereafter, the Third Circuit Court of Appeals in *South Camden Citizens in Action v. New Jersey Department of Environmental Protection* (*Camden III*) reversed the district court's decision.\textsuperscript{143} The Third Circuit held that:

\begin{quote}
[An administrative regulation cannot create an interest enforceable under section 1983 unless the interest already is implicit in the statute authorizing the regulation, and that inasmuch as Title VI prescribes only intentional discrimination, the plaintiffs do not have a right enforceable through a 1983 action under the EPA's disparate impact discrimination regulations.\textsuperscript{144}
\end{quote}

In support, the Third Circuit stated that “a majority of the Supreme Court never has stated expressly that a valid regulation can create such a right.”\textsuperscript{145} Further, the Third Circuit reasoned that “Wright does not hold that a regulation alone—i.e., where the alleged right does not appear explicitly in the statute, but only appears in the regulation—may create an enforceable federal right.”\textsuperscript{146} Of primary importance to the Third Circuit was Congress's intent to create an enforceable right.\textsuperscript{147} Such intent, it concluded, must be expressed on the face of the statute.\textsuperscript{148} To the disappointment of many, the Supreme Court subsequently denied certiorari.\textsuperscript{149}

\textsuperscript{141.} Blessing v. Freestone, 520 U.S. 329, 340–41 (1997). The federal rights test states that:

First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so “vague and amorphous” that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States.

\textit{Id.} (citations omitted).

\textsuperscript{142.} See *Camden II*, 145 F. Supp. 2d at 535–47.
\textsuperscript{143.} *Camden III*, 274 F.3d at 774.
\textsuperscript{144.} *Id.*
\textsuperscript{145.} *Id.* at 781.
\textsuperscript{146.} *Id.* at 783.
\textsuperscript{147.} See *id.* at 788.
\textsuperscript{148.} See *id.* at 790.
III. REEXAMINING THE ROOTS OF ENVIRONMENTAL JUSTICE: TAKING A FRESH LOOK AT CASES INVOLVING THE INEQUITABLE DISTRIBUTION OF MUNICIPAL BENEFITS

So, what is next? As a result of Sandoval and Camden III, the environmental justice movement needs a new legal avenue through which to pursue its goals. A possible solution exists in the movement's roots. Specifically, environmental justice suits may be successfully modeled after the early cases involving the inequitable distribution of municipal services. By analogizing to these cases, and emphasizing their similarity of concern with environmental justice, the movement can revive the Fourteenth Amendment's Equal Protection Clause in a fresh context.

The early municipal services cases are an appropriate source of guidance for two reasons. First, they succeeded. The plaintiffs in these cases successfully drew inferences of intent to discriminate from statistical disparities, residential segregation patterns, and historical evidence of discrimination. These facts required the municipalities to establish a compelling justification for their actions in accordance with strict scrutiny—a hurdle that they were unable to overcome. Second, environmental justice cases parallel municipal service cases in several respects. For example, at their most basic level, both involve dissimilar treatment of minority communities by municipal governments. More specifically, they involve the inequitable allocation of rights and benefits between minority and nonmi-

150. Alexander v. Sandoval, 532 U.S. 275 (2001); see also supra notes 121–30 and accompanying text (discussing Sandoval).
151. S. Camden Citizens in Action v. N.J. Dept of Env'tl Prot., 274 F.3d 771 (3d Cir. 2001); see also supra Part II.E (discussing Camden III).
152. See discussion supra Part I.A (discussing inequitable distribution of municipal services cases).
153. See supra notes 20–50 and accompanying text.
154. See supra notes 23–25, 34–39 and accompanying text (noting types of evidence presented by plaintiffs in inequitable distribution of municipal services cases).
155. See supra notes 20–50 and accompanying text; see also Hawkins v. Town of Shaw, 437 F.2d 1286, 1292 (5th Cir. 1971) ("Having determined that no compelling state interests can possibly justify the discriminatory results of Shaw's administration of municipal services, we conclude that violation of equal protection has occurred.").
156. See supra notes 15–22 and accompanying text (documenting inequitable distribution of municipal services).
nority communities.\textsuperscript{157} Both also seek to remedy existing dis- 
parities and achieve equitable treatment for minorities.\textsuperscript{158} In 
order to better understand these parallels, however, it is first 
necessary to examine the reasons behind the successes of the 
municipal service equalization cases.

A. ELEMENTS RESPONSIBLE FOR SUCCESS 
IN MUNICIPAL SERVICES CASES

Perhaps more than anything, the success of the municipal 
services equalization cases could be attributed to the presence 
of a spatially isolated and identifiable minority.\textsuperscript{159} These areas 
frequently elicited sympathetic responses from the courts be- 
because they represented the chronically neglected "other side of 
the tracks."\textsuperscript{160} The courts viewed these areas as evidence of con- 
tinued racial segregation.\textsuperscript{161} To be sure, these areas prompted 
the courts to evaluate the historical evidence of restrictive zon-
ing and housing practices that resulted in residential segrega-
ation,\textsuperscript{162} which frequently led to a finding of intentional discrimi-
nation.\textsuperscript{163} In addition, the presentation of such distinct areas 
was responsible for successful claims because it provided the 
court with a clear view of the differential treatment of minority 
and nonminority communities. From this vantage, the courts 
easily concluded that race was a factor in the differential 
treatment at issue.

The sheer number of amenities being distributed inequita-
ably was another core element contributing to the success of the

\textsuperscript{157} See supra Part I.A.
\textsuperscript{158} See supra notes 15–39 and accompanying text (offering examples of 
early municipal services cases where plaintiffs sought equitable distribution of 
services).

\textsuperscript{159} See supra notes 35–37 and accompanying text (discussing racially 
identifiable neighborhood as an element required of plaintiffs in a municipal 
services case).

\textsuperscript{160} See Hawkins, 437 F.2d at 1287.

\textsuperscript{161} See supra notes 23–27, 36–50 and accompanying text (discussing evi-
dence presented by successful plaintiffs claiming inequitable distribution of 
municipal services).

\textsuperscript{162} See Ammons v. Dade City, 783 F.2d 982, 986 (11th Cir. 1986) (discuss-
ing historical evidence of racially restrictive zoning); Dowdell v. City of 
Apopka, 698 F.2d 1181, 1186 (11th Cir. 1983) (same); Johnson v. City of Arca-

\textsuperscript{163} See supra notes 25–27, 34–50 and accompanying text (documenting 
cases finding intentional discrimination in the distribution of municipal ser-
ices).
municipal services cases. The fact that municipalities denied African-Americans the benefit of more than one service piqued the courts' attention to statistical evidence of these disparities. The courts uniformly deferred to such statistical representations. The *Hawkins* court's remark that "figures speak and when they do, [c]ourts listen" is an example of judicial deference. In addition, inequitable distribution of multiple services clearly demonstrated the municipalities' unresponsiveness to the needs of African-Americans. If only one service had been involved, the courts might have overlooked the municipalities' inaction. The presence of multiple inequities, however, made the neglect of African-Americans' rights to municipal amenities overt. Finally, inequitable distribution of multiple services had the effect of slanting the totality of the evidence sharply in favor of the minority groups. In the face of several inequities, it became easier for courts to infer intent to discriminate circumstantially.

The tangible nature of municipal services also factored prominently into the success of municipal service equalization cases. The presence and quality of pavement, pipes, and water pressure were readily observable. Consequently, the courts had no difficulty discerning whether a municipal benefit had been bestowed on African-Americans and whites alike. They were not bemused by complex scientific standards as frequently occurs in environmental justice suits. The fact that municipal benefits were at issue, as opposed to burdens, also aided the courts' analyses. As municipal benefits, the services were discussed as rights to be conferred similarly. Once a municipality elected to provide services, it was required to do so equally or it risked violating the Equal Protection Clause. Viewing the services in this manner allowed the courts to make apples-

165. *See supra* notes 20–50 and accompanying text.
166. *Hawkins*, 437 F.2d at 1288 (quoting Brooks v. Beto, 366 F.2d 1, 9 (5th Cir. 1966)).
168. *See Dowdell*, 698 F.2d at 1186 (analyzing the "totality of the relevant facts" as outlined in *Washington v. Davis*, 426 U.S. 229, 242 (1976)).
169. *See supra* Part I.A.
170. *See supra* Part I.A.
172. *Id.*
to-apples type comparisons. A benefit was or was not conferred equally. No gradations muddied the comparison. With municipally created burdens, however, no such equitable distribution requirement existed. Thus, comparisons between communities could not be drawn as easily regarding burdens.

Another key to minority communities' success was the courts' willingness to consider historical evidence of discrimination. In doing so, the courts primarily looked at racially restrictive zoning ordinances, residential development patterns, and a presence or lack of minority political representation. These factors emphasized the minority communities' political powerlessness and forced the courts to recognize municipalities' intents to discriminate. With minority communities cast as politically disadvantaged and underrepresented, their needs acquired a sense of urgency, to which the courts responded favorably.

B. PARALLELS BETWEEN MUNICIPAL SERVICES AND ENVIRONMENTAL JUSTICE

As stated previously, several parallels exist between municipal services cases and environmental justice cases. Indeed, in many respects these topics are nearly identical. Both involve municipal inattentiveness to the needs of minority communities. Environmental justice focuses on the physical and environmental health of these communities, whereas municipal equalization cases concentrate on the provision of municipal amenities. Further, both types of cases view the failure of

173. See Camden III, 274 F.3d at 771–91 (demonstrating that disparate distribution of environmental burdens does not amount to discrimination).
174. See Ammons v. Dade City, 783 F.2d 982, 987–88 (11th Cir. 1986); Dowdell v. City of Apopka, 698 F.2d 1181, 1186 (11th Cir. 1983); Hawkins v. Town of Shaw, 437 F.2d 1286,1289 (5th Cir. 1971); Johnson, 450 F. Supp. at 1368–71 (M.D. Fla. 1978).
175. See supra notes 20–27, 34–50 and accompanying text.
176. See supra notes 20–27, 34–50 and accompanying text. Arlington Heights v. Metropolitan Housing Development Corp. used the following five factors for consideration in determining intent to discriminate:

(1) a significant statistical disparity; (2) the historical background of the decision or action; (3) the specific sequence of events leading up to the challenged decision or action; (4) procedural or substantive departures from the normal course of action; and (5) the legislative or administrative history of the decision or action.

177. See supra Parts I.A, I.C.
municipalities to address these areas of concern as evidence of racial discrimination. Both are frequently brought under the Fourteenth Amendment's Equal Protection Clause and Title VI and, hence, constitute antidiscrimination suits. Environmental justice has reflected this view since its inception, when it was aptly referred to as "environmental racism." This similarity of vision also reflects the movements' consistency of purpose. Each attempts to counteract municipal action that perpetuates residential segregation and discrimination. In addition, each seeks to protect the rights of minority communities and to ensure that they are accorded the same treatment as nonminority communities. As a result of these parallels, it follows that courts should behave similarly towards municipal services and environmental justice suits, provided they are framed alike.

IV. ANALOGIZING ENVIRONMENTAL JUSTICE SUITS TO THE INEQUITABLE DISTRIBUTION OF MUNICIPAL SERVICES

Analogizing environmental justice to municipal services suits allows the movement to present equal protection claims in environmental suits in a more successful posture than those postured under environmental statutes. Presenting environmental justice in this manner requires framing the suits in accordance with the major elements of the municipal services cases. This will likely require openly referencing and drawing parallels to the municipal services cases. Structuring environmental justice in this manner confers two primary benefits. First, it imbues the suits with authoritative precedent from the municipal services cases. Second, it breathes novelty and straightforwardness into the pursuit of environmental justice objectives.

A. A HOW-TO GUIDE

What follows is a guide for structuring environmental suits

178. See supra Parts I.A, I.C.
179. See supra Parts I.A, I.C.
180. See supra notes 76–81 and accompanying text.
181. See supra Parts I.A, I.C.
182. See discussion supra Part I.A.
183. Structuring environmental justice suits claims like municipal service claims will also bring new life to the environmental justice movement, whose popularity is waning. See discussion supra Part I.D.
so as to take advantage of the municipal services equalization cases.

1. Relief Sought

In determining how to structure an environmental justice suit, it is important to consider the relief desired. Municipal services equalization suits generally sought both injunctive and declaratory relief in order to eliminate the municipal service disparities and to prevent similar conduct in the future.\(^{184}\) So, if plaintiffs desire injunctive and declaratory relief, modeling environmental justice suits after municipal service equalization cases seems appropriate.\(^{185}\) If plaintiffs want damages, however, the municipal service model will be of limited use.

2. Whom to Sue

Municipal service equalization suits provided clear guidelines on whom to sue—whatever entities played a role in creating and perpetuating the disparities at issue.\(^{186}\) Traditionally, this meant the city and the relevant decision-making officials (e.g., the mayor and city council members).\(^{187}\) In the environmental justice context, however, the entities sued may differ slightly. Specifically, because environmental justice tends to focus on the differential siting and permitting of polluting facilities,\(^{188}\) the entities sued should be relevant to those actions. Such entities include the municipal zoning board, the municipal planning board, the permitting agency, the polluting facility (if it received federal funding), and the city and its officials who helped place the facility in its current location.\(^{189}\) The municipal zoning and planning boards are important because they determine whether industrial activities fit with the surrounding neighborhood. They are the entities most likely to have an identifiable history of discrimination.\(^{190}\) The permitting agency

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184. See Hawkins v. Town of Shaw, 437 F.2d 1286, 1292–93 (5th Cir. 1971).
185. See discussion supra Part I.A.
187. See supra notes 21, 41 and accompanying text.
188. See supra Part I.C.
189. See supra notes 21, 41 and accompanying text.
190. See text accompanying infra notes 213–16.
is also a prime target because it reviews related evidence before acceding to a facility's actions. For example, in the Camden cases, the New Jersey Department of Environmental Protection was the permitting agency and the focus of the plaintiffs' claims, and was aware of the neighborhood's constituents and condition prior to permitting. As this illustrates, it can be plausibly argued that the foreseeable outcome of a permitting agency's action would be to disadvantage a minority community. To bring suit against the company operating the facility, however, it must receive federal funding, making it liable for discriminatory actions under section 601 of Title VI. Absent this funding, the facility cannot be included in the suit. Finally, the city and its officials also should be included as parties if they demonstrate a nexus with the disparities at issue.

3. Claims to Bring

The municipal service equalization cases routinely asserted claims for violations of the Fourteenth Amendment Equal Protection Clause, section 601 of Title VI, and the Revenue Sharing Act. The first two claims have also been repeatedly invoked in the environmental justice context. As a result, they should be asserted when attempting to analogize to municipal service equalization cases. Due to a sunset provision, the Revenue Sharing Act is no longer available for environmental justice plaintiffs. In its place, plaintiffs may use section 5309 of the Housing and Community Development Act (HCDA). This Act is novel as applied to environmental justice. Section 5309 states that a municipality or political subdivision may not use community development funds appropriated under the HCDA in making selections or locating facilities in areas that deny minority communities the benefits of such facilities.

191. See supra Part II.E.
192. See supra note 112 and accompanying text.
193. See supra Part I.A.
194. See text accompanying supra notes 31–33, 42.
195. See supra Parts II.C, II.D.
199. See id. Note, however, that § 5309 does not provide a direct cause of
cause of action may prove successful in environmental justice cases because facility siting likely involves federal funds appropriated for community development.

4. Structuring the Complaint

In modeling an environmental justice complaint on municipal service equalization suits, it is important to demonstrate that the action in question deprives the minority community of a municipal benefit. Doing so forces the court to determine whether the benefit has been conferred, and if so, whether it has been conferred equitably.

Developing this framework involves shifting the discussion from the harm done to the minority community to the lack of a corresponding benefit. For example, instead of pointing to the burden presented by the disparate siting of heavily polluting industries, the complaint should focus on the municipality's failure to equitably provide protection from industrial nuisances and to zone in a nondiscriminatory manner. This could also be done by demonstrating similarities between concerns regarding the quality of municipal services and the quality of natural resources (e.g., comparing the quality of mechanisms used to distribute water to water quality in general).

Structuring suits in terms of municipal benefits allows the plaintiffs to discuss rights and entitlements in the complaint, which benefits the plaintiffs in two ways. First, it forces courts to take notice of a municipality's failure to equitably provide rights. When a municipality fails to confer this right, it serves as an indicator of discriminatory intent to the court. Second, focusing on rights also makes the disputed deprivation more accessible to the court. While community burdens occur in varying degrees, benefits either have or have not been distributed. Presenting rights in this binary manner allows for a more

action for plaintiffs. Consequently, plaintiffs likely will have to use § 1983 as a mechanism for bringing the claim. See id.

200. See supra notes 17–42 and accompanying text.

201. See supra notes 170–73 and accompanying text.

202. See supra note 17.

203. See supra Part I.A; see also Johnson v. City of Arcadia, 450 F. Supp. 1363, 1378 (M.D. Fla. 1978) (“Once a municipality elects to provide services, it must provide equal services to the minority community or the City violates the Equal Protection Clause.”).

204. It is generally understood that citizens possess a right to the equitable distribution of municipal benefits. See supra note 203.

205. See supra note 203.
tangible comparison and prevents the court from being mired in scientific complexity.\footnote{206} To fit environmental justice suits into the municipal service equalization framework, emphasis must be placed on the geographical and political isolation of minority communities. This involves supporting complaints with statistical evidence regarding the socioeconomic demographics of the relevant communities.\footnote{207} Such evidence should indicate the number of minorities living in the area in question, patterns of housing segregation, and the history of these patterns. The evidence should also indicate concentration of poverty within the region in question. This will help demonstrate the residents’ political powerlessness.\footnote{208} The complaint should highlight physical barriers that separate the minority community from the community at large, such as highways, railroad tracks, industrial buffer zones, and rivers.\footnote{209} As stated above, presenting the community in this way makes the deprivation at issue easily discernable to the reviewing court.\footnote{210} In addition, the record should provide statistics regarding minority representation in relevant political bodies. If such representation is low, it further demonstrates that the community is politically disenfranchised. The overall effect of illustrating the minority community’s physical and political isolation is to show that it has been marginalized on “the other side of the tracks.”\footnote{211} This designation creates an understanding of the community’s mistreatment and neglect, to which the courts have previously been receptive.\footnote{212}

In addition, these suits should provide historical evidence of discrimination. Such evidence should target discriminatory actions on the local level. In municipal service equalization cases, the courts were particularly responsive to evidence of racially restrictive zoning and housing segregation.\footnote{213} The plaintiffs were able to find antiquated municipal ordinances and

\begin{footnotes}
\item[206] See supra notes 170–73 and accompanying text.
\item[207] See supra notes 22–23 and accompanying text.
\item[208] See supra note 37.
\item[209] Note that the courts in the municipal services cases were particularly receptive to such physical isolation. See text accompanying supra note 35.
\item[210] See text accompanying supra notes 201, 205–06.
\item[211] Hawkins v. Town of Shaw, 437 F.2d 1286, 1287 (5th Cir. 1971); see also supra notes 159–63 (demonstrating the importance of presenting isolated minority communities to courts in environmental justice claims).
\item[212] See supra Part I.A.
\item[213] See supra notes 174–76 and accompanying text.
\end{footnotes}
statutes clearly evincing discriminatory motivations. If local evidence is unavailable, plaintiffs should cast a more national net, discussing, for example, federally mandated discriminatory zoning practices used in the early 1900s. During the 1930s and 1940s, the Federal Housing Administration (FHA) engaged in discriminatory lending practices that frequently conditioned on the presence of racially restrictive covenants. These actions effectively subsidized "white-flight" to the suburbs and concentrated minority communities in the central city. Though national in scope, the effects of the FHA's policies were decidedly local. As such, plaintiffs could reference these actions as evidence of historical discrimination. By presenting this type of evidence, plaintiffs can allege that the effect of the deprivation at issue is to "freeze in" the results of past discrimination. Accordingly, courts will be better positioned to find intent to discriminate in accordance with the Arlington Heights test.

Finally, to successfully structure environmental justice suits like municipal services equalization cases, the complaint should assert multiple claims for the deprivation of multiple benefits. Doing so increases the factors the court must consider under a "totality of the evidence" test. This requires placing environmental justice concerns alongside substantive municipal services deprivation claims. For example, when contesting the quality of the water provided to a minority community, the suit should also challenge the quality of the treatment plants, the municipality's history of enforcing relevant environmental statutes, and any other municipal service disparity that may be documented. Bringing the environmental justice claim with municipal services claims helps demonstrate the similarities between these two types of cases, which would not be as apparent if the environmental justice claim were brought in isolation.

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214. See Ammons v. Dade City, 783 F.2d 982, 986–87 (11th Cir. 1986) (citing various patently discriminatory city ordinances); Johnson v. City of Arcadia, 450 F. Supp. 1363, 1369 (M.D. Fla. 1978) (considering excerpts from the official minute books of the City of Arcadia that demonstrate overt unresponsiveness of city officials to the needs of minority communities).


216. Id.


218. For a description of the Arlington Heights test, see supra note 176.

B. PROS AND CONS OF STRUCTURING ENVIRONMENTAL SUITS AFTER THE MUNICIPAL SERVICES CASES

Structuring environmental justice suits in accordance with the municipal services cases confers several benefits. First, unlike environmental statutes, it addresses concerns unique to environmental justice and is not subject to chance failures in providing the public an adequate comment period. In addition, this method avoids the problems witnessed in the Sandoval and the three Camden cases by attempting to demonstrate intent to discriminate. It eschews any attempt to hinge the case on a chance finding of disparate impact discrimination, which courts have been reluctant to infer. Finally, analogizing environmental justice to the municipal services cases places the environmental justice movement within a historically successful context, allowing it to take advantage of successful precedent.

The municipal services equalization analogy, however, is not without its drawbacks. For instance, in establishing an equal protection violation, a requirement of actual harm exists. That is to say, the violation must have already occurred. This makes it difficult to obtain declaratory relief enjoining the planned permitting and siting of a polluting facility in a minority community. Finally, due to the novelty of this proposal, it has not yet been determined how the courts would respond, although, initial indicators suggest a favorable response.

220. See supra notes 89–92 and accompanying text.
221. See supra notes 121–48 and accompanying text.
222. See supra notes 15–42 and accompanying text.
224. See Santiago, supra note 223, at 112.
225. See Miller v. City of Dallas, No. 3: 98-CV-2955-D, 2002 U.S. Dist. LEXIS 2341, *53 (N.D. Tex. Feb. 14, 2002). In this case, the court partially denied the defendant’s motion for summary judgment against an environmental justice action structured as a municipal services case. See id. Specifically, the plaintiffs claimed that the defendant discriminated against its residents with respect to flood protection, zoning, protection from industrial nuisances, landfill practices, streets and drainage, and federal funding for housing and community development. Id. Such discrimination, the plaintiffs believed, amounted to a denial of their right to equal protection under the Fourteenth
CONCLUSION

The decisions rendered in Sandoval and Camden III eliminated the possibility of using citizens' suits to enforce the EPA’s disparate impact regulations promulgated under section 602 of Title VI. With the drop of the gavel, the environmental justice movement lost its most promising prospect for success. The result: a deflated environmental justice movement again searching for a plausible legal mechanism with which to pursue its objectives.

A solution to the movement’s quandary presents itself when reexamining its early successes in the municipal services context. In these cases, minority communities were able to demonstrate that the inequitable distribution of municipal benefits constituted an equal protection violation under the Fourteenth Amendment. By analogizing to these cases, environmental justice plaintiffs can take advantage of successful precedent and cast Fourteenth Amendment challenges in a new light. If framed correctly, such suits should provide new life to environmental justice litigation.

Amendment. Id.