Policy Statement

A Framework for Civil Rights, Environmental Justice, Health Equity & Public Engagement

GreenLatinos is a National Coalition of Latino Environmental, Conservation & Social Justice Leaders

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A. Introduction

GreenLatinos’ core priorities are Civil Rights, Environmental Justice, Health Equity & Public Engagement; Indigenous Rights and Sovereignty; Climate & Clean Air; Toxics & Pesticides; and Clean Water. This policy statement presents the framework for Civil Rights, Environmental Justice, Health Equity & Public Engagement. The framework also underlies each of the other core priorities.

The Civil Rights Revolution combined organizing and legal strategies to achieve social change. Martin Luther King, Jr., sought a “middle ground between riots on the one hand and timid supplications for justice on the other.” Combined organizing and legal strategies provide that middle ground for social change. The role of law remains an integral part of the Civil Rights Revolution today. Yet many advocates, agencies, academics, and funders ignore the need to implement civil rights laws when they address “equity,” “policy,” and community engagement.

The Southern Christian Leadership Conference under Dr. King’s leadership helped develop organizing strategies. This included the March on Washington for Jobs and Freedom, the Montgomery Bus Boycott, and the Poor People’s Campaign. Civil rights attorneys at the NAACP Legal Defense Fund, led by Thurgood Marshall, LULAC (League of United Latin American Citizens), and Asian-American advocates developed legal strategies in and out of court beginning in the early 20th century. Combined organizing and legal strategies culminated in Mendez v Westminster Board of Education in 1946 and Brown v. Board of Education in 1954. The Court in Brown upheld equal justice and human dignity when

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2 This policy statement appears in an earlier version as the chapter called A Framework for Civil Rights, Environmental Justice, and Health Equity in the handbook by the Poverty, Race, and Research Action Council (PRRAC) called Strategies for Health Justice: Lessons from the Field (2018), at pages 45-57. The handbook is available at available at https://prrac.org/pdf/health_justice_rpt.pdf.


4 See Brown v. Board of Education, xx US xx 1954); Mendez v Westminster Board of Education 161 F.2d 774 (9th Cir. 1947) (en banc) (daughter of Mexican-born father and Puerto Rican mother successfully challenged public schools in California segregated on the basis of “Mexican and Latin descent or extraction”), aff’g 4 F.Supp. 544 (DC SDCA 1946) (segregated on the basis of “Mexican and Latin descent or extraction” or “Latinized or Mexican name” or “non-English-speaking school children of Mexican ancestry or descent”); Richard Kluger, Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality (1975 and 2004); Jeanne M. Powers, On Separate Paths: The Mexican American and African American Legal Campaigns against School Segregation, 121 American Journal of Education 29 (2014).
it struck down racial segregation in public schools as inherently unequal under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The *Brown* decision ranks as a canonical text with the Declaration of Independence and the U.S. Constitution in the history and governance of this nation.\(^5\)

Civil rights law and lawyers remain an integral part of the Civil Rights Revolution to seek equal justice and just democracy today. Legal standards are necessary to gather and analyze data, measure progress and equity, and hold officials accountable. A comprehensive civil rights approach relies on coalition building, planning, data collection and analysis, media, policy and legal advocacy, negotiation, and, if necessary, access to justice through the courts—all as part of combined problem-solving strategies. At the same time, however, voluntary compliance with, and enforcement of, equal justice laws and policies can be preferable to action in court to achieve equal justice goals.\(^6\) Civil rights attorneys may work with community allies, clients, broader coalitions, experts, social scientists, academics, journalists, and agencies to seek racial and ethnic justice and overcome discrimination and structural barriers.

This paper presents an analytic framework that relies on social science evidence, good policy, and sound law to guide combined organizing and legal strategies to seek civil rights, environmental justice and health equity in and out of court. We also describe how the framework applies in the context of several specific advocacy projects. The framework is not limited to Latinos, who can be of any race. Latino/Hispano intersectional identity transcends race, ethnicity, class, borders, language and spirituality in a dialectical alternative to the black/white binary that is based on the “single drop of blood” construct.\(^7\)

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to Health Equity (2017). The report recommends education, organizing, compliance, and enforcement related to civil rights laws and strategies. Civil rights approaches can mitigate negative effects of discrimination, and guard against unjustified discriminatory impacts that affect health equity, environmental justice, and community resilience. The report is one of the five most downloaded reports out of 323 the National Academies released in 2017.

The elements of this framework are as follows:

1. **Describe what you plan to do.**

   For example, promote equal access to public lands, waters, and monuments; health resources; or clean air and water.

2. **Include affected communities at every step of the process, including people of color, low income people, and other traditionally marginalized communities.**

3. **Analyze benefits and burdens on all people.**

   Numerical differences and disparities are generally the starting point for analysis (for example, in access or exposure to health resources; public lands, waters, and monuments; toxics and pollution; or health vulnerabilities).

   Numerical disparities can be shown through statistical studies, demographic analyses, GIS mapping, surveys, historical analyses, anecdotal evidence, cumulative impacts, and other information.

   Follow the money: who benefits, and who gets left behind?

   Standards and publicly available data are necessary to measure progress and equity, and hold public officials accountable.

   Consider the values at stake. For example: public health, human development, fun, and healthy recreation; climate justice and conservation; culture, history and art; and economic vitality, including quality jobs, housing, and green displacement. Equal justice and democratic governance underlie these other values.

4. **Analyze alternatives to what is planned.**

5. **Develop an implementation plan and distribute benefits and burdens equitably, avoiding discrimination.**

   Discrimination includes unjustified discriminatory impacts regardless of intent, intentional discrimination, implicit bias, and systemic discrimination – or “business as usual.”

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This framework, derived from a number of laws, can lead to changes in structural inequities, policies, and practices that perpetuate racial, ethnic, and other disparities. The framework can be applied across different areas such as health, park access, conservation, climate, education, housing, and transportation.

The report is one of the five most downloaded reports out of 323 the National Academies released in 2017. The framework can be applied through education and a culture of law.

A civil rights approach based on this framework is not synonymous with litigation. Rather, the framework can be applied in different contexts, such as education, advocacy and planning. The tools of the Civil Rights Revolution include: organizing; attorneys working in and out of court; social science experts and academics; legislation; executive action; implementation by administrative agencies; action by courageous courts; media coverage; popular support through the right to vote; philanthropic support; and other means.

C. The Framework Applied

The following section discusses the framework as applied in different contexts. The examples all combine organizing and legal strategies.

Mark Magaña and Ignacia Moreno, former US Assistant Attorney General for the Environment, present Cornell Law Prof. Gerald Torres the GreenLatinos Living Legacy Award 2018. Prof. Torres is a principal author of the President’s Executive Order 12898 on environmental justice and health equity.

1. Park Access, Civil Rights, Environmental Justice, and Health Equity

Equal access to parks, beaches, pools, schools, and health equity are compelling civil rights and environmental justice values. It’s not just about the simple joys of playing in the park as important as that is; it’s about equal justice, human dignity, and freedom. The Supreme Court upheld equal access to public parks and recreation on equal protection grounds in 1963, extending the reach of Brown v Board of Education.10 Rev. King wrote about parks in Letter from a Birmingham Jail: “[Y]ou suddenly find your tongue twisted and your speech stammering as you seek to explain to your six year old daughter why she can’t go to the public amusement park, and see tears welling up in her eyes when she is told that Funtown

is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky." Civil rights workers held “wade ins” at beaches and “swim ins” at pools, just as they did sit ins at lunch counters. The sit ins were not about hamburgers, either.

Environmental justice is the environmental arm of the Civil Rights Revolution. The City Project pushes the envelope of environmental justice to create benefits like parks, and not just stop burdens like pollution. Nevertheless, traditional civil rights advocates prioritize environmental justice less because education, voting rights, residential segregation, and immigration are under siege. Mainstream environmentalists and even people of color commonly stereotype environmentalists as non-Hispanic white and highly educated. People of color and low income people are consistently the most impacted by environmental degradation, the biggest supporters of environmental protections, and the most marginalized or ignored by government, funders, and mainstream organizations.

2. Legislation and Regulations

The framework is based on a number of laws, including Title VI of the 1964 Civil Rights Act. In light of accelerating roll backs at the federal level since the 2016 elections, many advocates are shifting to protect and strengthen equal justice protections at the state and local level. California is a national leader. The state has recently strengthened civil rights, environmental justice, and coastal justice protections through legislation and ballot measures, with state elected officials and government agencies making new or renewed commitments to protect the people. Law, including legislation, is an essential component of

14 These laws include the Civil Rights Act of 1964, the Fair Housing Act of 1968, the Americans with Disabilities Act of 1990, the Patient Protection and Affordable Care Act (ACA) of 2010, related regulations, executive orders, case law, and state parallels. See National Academies, Communities in Action at 352 nn. 9-14 and authorities cited.
15 For example, California Government Code 11135 et seq. and corresponding regulations promote equal justice and prohibit discrimination by state agencies and state-funded programs and activities for specified classes, parallel to federal civil rights laws such as Title VI. Section 11135 was recently amended to strengthen compliance and enforcement. See, e.g., California Equal Justice Amendments Strengthen Law under 11135,
civil rights protections for people who have traditionally been marginalized, ignored, or oppressed. It is not enough to rely only on the courts, or only on the federal government.

GreenLatinos National Summit Asilomar 2017

3. Diversity, Equal Justice, and Inclusion: Executive Action and the Ballot Box

President Barack Obama dedicated the San Gabriel Mountains National Monument in 2014, proclaiming too many children, especially children of color, don’t have access to parks. Conservation and social justice is about access for all, “young and old, black, white, Latino, Asian, Native American.”16

President Obama released the Presidential Memorandum on Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters in 2017. The Memorandum calls on federal agencies, and recipients of federal financial assistance, to implement action plans to diversify their programs, activities, work forces, and visitors.17 The Memorandum, which reflects the framework above, presents a best practice for the nation. However, the Memorandum depends on implementation by federal agencies under a new administration that has not demonstrated a commitment to the laws and values underlying the Memorandum.

The people of California voted to tax themselves when they passed a $4.1 billion park, water, and resource ballot measure in 2018 that calls on agencies to implement the principles of diversity, equal access, and inclusion from the Presidential Memorandum.18 Progressives took matters into their own hands to add the diversity language in Prop 68, rather than relying on mainstream environmentalists that have dictated the terms of past “pay-to-play” funding measures that promise without delivering equity. Advocates are now working to influence agency guidelines and funding decisions under Prop 68. This presents an opportunity to put test the framework in action.

4. Public Lands, Waters, and Monuments: Community Planning and Administrative Action

The U.S. Army Corps of Engineers (USACE) and National Park Service (NPS) have each published detailed studies of green access in Southern California that reflect the framework in action through the public planning process. Each study concludes: (1) there is not enough park space, especially for children of color and low income children, in Los Angeles and other areas; (2) these disparities contribute to related health disparities such as obesity and diabetes based on those factors; and (3) federal agencies and recipients of federal financial assistance are required to address these disparities under civil rights and environmental justice laws and principles. These studies include the USACE plan to revitalize the Los Angeles River,\textsuperscript{19} and the NPS plan to create and expand national recreation areas in the Santa Monica Mountains\textsuperscript{20} and San Gabriel Mountains.\textsuperscript{21} Advocates continue the community struggle to implement these plans in ways that promote equal opportunity, climate justice, and local green jobs, while avoiding green displacement. As neighborhoods become greener, more desirable, and more expensive, the people who fought epic battles to improve their quality of life face the risk they can no longer afford to live or even work nearby.

\textit{GreenLatinos National Summit Colorado 2018}

5. Administrative Complaints for Clean Air, Water, and Green Space

Administrative complaints are not litigation. A person or organization can file an administrative complaint with an agency. The complaint can be as simple as a form or letter prepared without legal counsel, or it can be as complex as necessary for counsel to fully lay out the evidence and legal analysis in a detailed brief with hundreds of pages of exhibits attached. Grass roots advocates too often lack legal support to take proper action. Administrative complaints filed in North Carolina and Los Angeles show the difference great lawyering can make.

In a historic environmental justice victory, community leaders are holding the North Carolina Department of Environmental Quality (DEQ) responsible for letting industrial swine facilities harm people, air, and water without adequate swine waste controls. Swine feces and urine have tainted air and water for decades in North Carolina’s African American, Latino and Native American communities and low income communities. The stench from lagoons, cess pools, and sprayfields makes it hard for people to


\textsuperscript{20} NPS, Rim of the Valley Corridor: Draft Special Resource Study and Environmental Assessment, April 2015 (Santa Monica Mountains). Highlighted excerpts are available at \url{www.cityprojectca.org/blog/wp-content/uploads/2015/05/NPS-ROTV-draft-study-April-relevant-excerpts-20150629.pdf}.

breathe and harms their health. DEQ agreed to enforce federal civil rights laws in response to the administrative complaint the communities filed with counsel before the U.S. Environmental Protection Agency (EPA) under Title VI disparate impact regulations. The settlement agreement includes developing an environmental justice tool to help alleviate health and environmental inequities, providing a language access program, and changes to the draft general swine permit.22

The U.S. Department of Housing and Urban Development (HUD) provides a best practice example of the framework in action in response to an administrative complaint filed by community leaders with counsel. HUD withheld federal subsidies for a proposed warehouse project in response to community agitation, and required a full study under Title VI and its regulations to consider the park alternative, and the impact on people of color and low-income people. This led to the creation of the L.A. State Historic Park and kicked off the greening of the Los Angeles River. This historic victory for people, planning, and parks is the result of community agitation, not a plan or vision by any politician.23

6. Climate Justice

The environmental justice movement has documented that racially identifiable communities are at a greater risk of environmental harms, disproportionately lack environmental benefits, pay a larger cost, and carry a heavier environmental burden than other communities regardless of class. Once these costs are considered, the distribution of benefits must necessarily be structured to pay down that debt. Establishing clear criteria to measure progress, and assembling the data necessary to assess progress and make mid-course corrections. Only through the creation of constituencies of accountability can government actors or the private actors they are regulating be obliged to conform to standards adopted by the people.24

The policy report Latinos and Climate Change: Opinions, Impacts, and Responses explores the causes of Latino support for environmental protection and government action to control climate change.25 Studies repeatedly demonstrate Latinos in the US care deeply about the environment and the effects of climate change. In fact, registered Latino voters ranked several environmental concerns as highly as immigration reform. These findings contradict several stereotypes about Latinos, their political beliefs, and concern for the environment. The first is that Latinos are a single-issue demographic solely concerned with immigration reform. The second is that concern for the environment is a privilege reserved for privileged white environmentalists.

The policy report focuses on three major factors on Latinos and climate change: local exposure to pollutants, the effects of climate change and pollution on migrant farmworkers, and impact of global warming on Latin American nations. The report also briefly addresses the influence of Pope Francis, the

22 Prof. Marianne Engelman Lado and the Yale Law School Environmental Justice Law Clinic, Julius L. Chambers Center for Civil Rights and EarthJustice represented the community groups. See North Carolina Environmental Justice Network et al., Press Release, With Groundbreaking Title VI Settlement Signed, North Carolina Environmental Justice Organizations Vow to Continue Their Fight, May 3, 2018 (on file with The City Project).

23 Community advocates settled a related lawsuit under state environmental law. The state then bought the land and created the park, and the parties settled the administrative complaint and lawsuit. The City Project, NRDC, and a private firm filed the complaint and suit


25 Samuel David Garcia, Latinos and Climate Change: Opinions, Impacts, and Responses (GreenLatinos and The City Project 2016), www.cityprojectca.org/blog/archives/43303. Sam is working on climate justice under a Schneider Fellowship from Stanford in 2018-19, and worked on community climate adaptation in rural Bluefields, Nicaragua as a blueEnergy Summer Fellow in 2016. His senior honors thesis on international trust building is also instructive at a time when the US is increasingly isolated. See Diplomatic Breakthrough: Politics, Reform, and Trust in the Restoration of US-Cuba Relations (2018) (conventional wisdom that restoration was driven by changes in US domestic preferences or Cuban reforms neglects trust building signals between Presidents Raul Castro and Barack Obama, and the Pope’s help), www.cityprojectca.org/blog/wp-content/uploads/2019/01/SDG-Diplomatic-Breakthrough-Final.pdf. Sam, BA International Relations ’18, received the Stanford Firestone Medal for his “beautifully written” and “theoretically informed” thesis.
first Latino pope, and his strong call for climate and social justice.\textsuperscript{26} Lastly, the report examines strategies by Mexico and Brazil for combating climate change. The report concludes with the significance of Latino perspectives on climate and the environment moving forward, and offers policy recommendations to help address the disproportionate impact of greenhouse gas emissions on Latino communities.

\textit{Sam Garcia, Boats in Pearl Lagoon, Bluefields, Nicaragua 2016}

\textbf{7. A Green Justice New Deal}


Congresswoman Ocasio-Cortez has described the “heart of the Green New Deal as social justice.” We agree and call for a Green Justice New Deal. The original New Deal, “Nature’s New Deal” (the Civilian Conservation Corps), and the so-called 2007 Green New Deal each failed by marginalizing and excluding people of color and low income people.\textsuperscript{27} Structural obstacles must be overcome. The more committed to the environment, the less likely a mainstream environmentalist, foundation, or agency supports social


justice. People must organize a ground up movement based on lessons from the Civil Rights Revolution to build a just green economy. Unrestricted, long term support for organizations dedicated at their core to racial and ethnic justice is required. Green 2.0, after years of advocacy reports, that although people of color are now almost 40% of the U.S. population, mainstream environmentalists and funders have moved backwards in breaking the “green ceiling.” Congresswoman Ocasio-Cortez has described the “heart of the Green New Deal as social justice.” We agree. A Green Justice New Deal is required: 1. Zero-net energy buildings; 2. Zero-waste manufacturing; 3. Zero-carbon grid; 4. Zero-emissions transportation. 5. Zero discrimination. Words matter. No justice, no green new deal.

7. Education and Values

Education and civil rights are intertwined. Education can inform and thereby support civil rights compliance. Civil rights compliance can improve education.

A 2016 University of Southern California study analyzed extensive data on physical education and physical fitness in almost 900 California public school districts. According to the report, there are significant racial and ethnic, economic, and achievement indicators that affect student fitness across all districts. The California Education Code mandates that all public schools both provide physical education for students and assess students’ physical fitness annually through the Fitnessgram standardized test. Yet many schools fail to meet physical education requirements.

Combined organizing and legal strategies armed with academic social science evidence can promote

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physical education compliance. The Los Angeles Unified School District adopted a plan to comply with physical education and civil rights requirements in response to an administrative complaint filed by The City Project as counsel in 2008. The Los Angeles County Department of Public Health publishes a physical education model action plan (MAP) and a tool kit to support community action for compliance with physical education and civil rights requirements in public schools. While litigation alone can work, access to justice through the courts combined with an organizing campaign out of court can work even better to ensure physical education and civil rights compliance, according to a UC Berkeley study.

Education promotes equal opportunity. The Smithsonian Anacostia Community Museum’s urban waters project and newsletter is a best practice example for addressing civil rights, environmental justice, health equity, and community engagement through culture, history, and art. Art -including prose and poetry, painting, sculpture, music, dance, and crafts - can reflect cultural identity while bringing people together through a universal language. STEAM education can work better than STEM: teaching culture, history and art can be more effective than science, technology, engineering, and math alone. A Stanford study found ethnic studies dramatically improves education outcomes, including attendance and GPA in all subjects, including STEM, in public schools. The study illustrates the importance of personal relevance in education. Transit to trail projects can provide fun, educational, and healthy trips, and jobs for underserved youth and their families and friends. Another national survey nevertheless found barely half of public school teachers believe they are competent to teach race and slavery. This may explain why faculty members were placed on leave for dressing up like Mexican stereotypes and a border wall reading “Make America Great Again” for Halloween, and posting their picture on the Idaho school district’s social media page. Did the teachers intend to discriminate? Regardless, the actions had a discriminatory impact.

In higher education, academic experts and social scientists publish studies and can serve as experts in organizing and legal campaigns that support civil rights, environmental justice, and health equity. Rich academic studies document lessons learned from the Civil Rights Revolution. The Civil Rights Act of 1964 improved outcomes for all, not only for people of color, according to Stanford economic historian Gavin Wright’s book-length study.

Foundations and government funders themselves can support education, compliance, and enforcement related to civil rights laws, as the National Academies highlight.

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Social and traditional media campaigns are important to educate the public about civil rights. For example, Native Americans testified to save Panhe and San Onofre State Beach, and stop a toll road that would have devastated both. Acjachemen people posted a YouTube video about the significance of the sacred site in their own lives and culture. An editorial writer for the L.A. Times learned of the sacred site for the first time after seeing the video, visited the site, and ran an editorial in support of the Acjachemen people. The California Coastal Commission stopped the toll road based in part on the history of discrimination against Native Americans. The National Academies published its first comic book ever to reach a broader, younger, and more diverse audience on Communities in Action.

8. Data Collection and Analysis

The framework emphasizes the need for data collection and analysis to evaluate compliance, allow for midcourse corrections, and hold agencies accountable. Data is an important tool in advancing democratic values of diversity, equal justice, and inclusion, in and out of court. The City Project has relied on GIS mapping and demographic analyses in every organizing and legal campaign for 20 years. No data, no justice.

The U.S. Department of Justice and other federal agencies address the need for data collection and analysis in their regulations and guidance documents, as well as tools developed for agency and public use. For example, US EPA’s online tool to analyze environmental justice and health, EJSCREEN, includes data at the census tract level across the nation on health vulnerabilities, exposure to toxics, access to parks and recreation, and demographics based on race, color, national origin, income, and other social determinants of health. Such data is relevant to support advocacy and academic studies in many areas, including residential segregation, fair housing, and climate justice.

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9. Enforceable Standards for Progress and Accountability

The experience with park bond funds in California shows why legal standards matter. California voters have passed billions of dollars in statewide resource, park, and water bonds for almost 20 years, with empty promises to distribute the funds “equitably.” Yet people of color and low-income people throughout California disproportionately lack access to parks, beaches, and recreation areas. To address these concerns, in 2006 voters passed Proposition 84, a bond measure authorizing $5.4 billion in public investments to improve water, parks, coastal protection, and natural resources. Prop 84 and Assembly Bill (AB) 31-implementing legislation for the proposition—defined “park poor” and “income poor” standards to prioritize the investment of $1.3 billion in local impact funds for park, water, and coastal projects. Fully 88 percent of the $400 million in funds invested under the AB 31 standards were invested in communities that are disproportionately of color and low-income. In contrast, 69 percent of the remaining $1 billion that were not invested using those standards were disproportionately invested in communities that tend to be park-rich, wealthy, and white. Standards defined in advance work. Vague commitments to “equity” or “local parks and urban greening” alone can exacerbate rather than alleviate disparities without measurable standards and to back them up.49

10. Native American and Indigenous Rights

Standing Rock Sioux Chairman Dave Archambault II with GreenLatino leaders. L to R Irene Vilar, Susana Sandoval, Chairman Archambault, Raul García, Andrea Delgado, Mark Magaña, Brent Wilkes, Aura Vasquez, Robert García, Rudy Arredondo Nov. 13, 2016.

GreenLatinos stands with Native American and indigenous people at Standing Rock and beyond. Native Americans are protected under the framework presented in this policy statement. In addition, Native Americans stand in a unique historical and legal context in the US. There is a rich and growing literature by and about Native Americans from contact to the present, including their triumphs as well as the continuing legacy, pattern, and history of genocide wiping out the people, culturecide wiping out their way of life, and discrimination.

Rodrigo Tot, an indigenous Maya leader in Guatemala, received the Goldman Prize in 2017 for leading his community to a landmark court decision that ordered the government to issue land titles to the Q’eqchi people and kept environmentally destructive nickel mining from expanding.

11. Access to Justice through the Courts


See, e.g., David Treur, The Heartbreak of Wounded Knee: Native America from 1890 to the Present (2019) (author is Ojibwe from Leech Lake Reservation in Northern Minnesota); Tommy Orange, There There (2018)(author is a member of the Cheyenne and Arapaho Tribes of Oklahoma); Benjamin Madley, An American Genocide: The United States and the California India Catastrophe (2016); David Grann, Killers of the Flower Moon: The Osage Murders and the Birth of the FBI (2017); Peter Cozzens, The Earth Is Weeping: The Epic Story of the Indian Wars for the American West (2016).
The NAACP Legal Defense Fund settled the historic environmental justice class action in *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (MTA) in 1996. The plaintiffs and class showed MTA operated separate and unequal bus and rail systems that discriminated against bus riders who were disproportionately low-income people of color. The $2.5 billion court-ordered consent decree improved bus service and kept fares low for ten years under Title VI and its regulations. The Joint Working Group provision required MTA to work with bus rider representatives to ensure compliance during that period. The attorneys and class relied on academic experts and accountant Tom Rubin to demonstrate bus was the better alternative under every measure of equity and efficiency. The victory is a “remarkable moment in American urban history,” and “it is hard to imagine a stronger team of advocates,” according to UCLA Prof. Edward J. Soja. Civil rights advocates continue to apply the MTA lessons through the framework for combined organizing and legal strategies as described above.


### 12. The Combined Strategies in Action

People of color and low income people have fought to protect people and the environment applying the framework through combined organizing and legal campaigns for 20 years in the historic heart of African American L.A. They stopped a proposed power plant and garbage dump to help create Baldwin Hills Park, the largest urban park designed in the US in over a century, relying on public comments, media campaigns and Title VI and its regulations. To regulate oil drilling, they took part in the public planning process for two years, drafted their own proposed regulations, and successfully sued the County of Los Angeles and a Texas oil company, resulting in the most heavily regulated urban oil field in the nation under state environmental and civil rights laws. Under the Clean Water Act, they reached a $2 billion settlement agreement in federal court to stop noxious odors and clean up sewer spills city wide, create parks in park poor, income poor communities of color, and create Civil Rights Park, the only park in L.A. dedicated to the Civil Rights Revolution. The struggle continues to build the park and provide quality jobs while avoiding green displacement.

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Environmental justice, health equity, and community engagement victories need not be based exclusively on civil rights grounds; a victory for the people on any ground can be an environmental justice victory. The clean water justice victory in L.A. was filed under the federal Clean Water Act. The National Environmental Policy Act plays a vital role in distributing fairly the benefits and burdens of environmental policies and programs for all, providing a proven bulwark against discriminatory federal decisions and fostering government transparency and accountability. The California Coastal Act explicitly uses the language of civil rights, environmental justice, and health equity law to make clear agencies and recipients are required to comply with coastal justice requirements.\(^55\) In the swine context, a jury awarded six neighbors of a hog farm more than $430 million in damages against pork producer Murphy-Brown for excessive noise, odor, flies, buzzards, and other disruptions to their quality of life under the common law tort of nuisance.\(^56\)

The House Natural Resources Committee heard from community leaders on the impact of the border wall and government shutdown in January 2019, just before the most diverse Congress in the history of the nation reached agreement on a budget. The 116th Congress offers hope to restore checks and balances through the separation of powers, the rule of law, justice, democracy, and truth itself. The City Project, Center for Biological Diversity, California LULAC & The Praxis Project joined in written testimony before the Committee.\(^57\)

Chairman Raul Grijalva, a civil rights and environmental leader who has served on the Committee since being elected in 2003, became the first Latino to Chair the House Natural Resources Committee for the 116th Congress in January 2019. Rep. Deb Haaland, a tribal citizen of the Laguna Pueblo and one of the first two Native American women elected to Congress, is the Chair of the Subcommittee on National Parks, Forests and Public Lands, and Vice Chair of the Full Committee. This is the most diverse Resources Committee in the most diverse Congress in US history\(^58\)

**D. Inequality in Race, Income, and Wealth**

Inequality in income and wealth goes hand in hand with inequality based on race, color, and national origin. Enforceable legal standards are necessary to overcome the continuing history, pattern, and legacy of discrimination.

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1. Income and Wealth Inequality

Levels of inequality in income and wealth are unprecedented, growing, and indisputable in the US. The net worth of the wealthiest 0.1% is almost equal to that of the bottom 90% of US families. Congress should adopt progressive taxes rates on income and wealth so those who can afford it most pay the most, instead of cutting taxes that benefit corporations and those with the highest wealth and income. This inequality is in part the continuing legacy of racial discrimination, and perpetuates that history and pattern.59

2. Legal Standards of Discrimination: Intent, Impact, and Implicit Bias

Calls for “diversity, equity, and inclusion” without more are not enough to ensure equal access, antidiscrimination, and health equity. Enforceable legal standards remain necessary. Congress must strengthen equal protection laws.60

The U.S. Supreme Court in Texas Department of Housing and Community Affairs v. Inclusive Communities Project held that the prohibition against unjustified discriminatory impacts plays an important role in moving the nation toward overcoming a legacy of residential segregation and promoting equal opportunity for all. The disparate impact standard allows people to counteract disguised animus, unconscious prejudices, and implicit bias that may escape easy classification as intentional discrimination. The prohibition against unjustified discriminatory impacts promotes equal opportunity for all in access to health, housing, parks, beaches, transportation, jobs, contracts for diverse business enterprises, and other infrastructure and ecosystem services.61 Proof of intentional discrimination is not required. Overlapping evidence is relevant to prove discriminatory impact and intent in the court of public opinion, and in a court of law.

Very briefly, there are three prongs to the discriminatory impact inquiry: (1) Whether an action impacts one group more than another - numerical disparities based on race, ethnicity, or national origin shown through statistical studies or anecdotal evidence, for example. (2) If so, the funding recipient bears the burden of proving that an action is justified by business necessity – or by an analogous public policy in the case of a government agency. (3) Even if there is evidence of business necessity, the disparities are prohibited if there are less discriminatory alternatives to achieve similar objectives.62

To evaluate an intentional discrimination claim, circumstantial evidence includes (1) whether an action impacts one group more than another, including numerical disparities shown through statistical studies and anecdotal evidence; (2) a history of discrimination; (3) departures from substantive norms; (4) departures from procedural norms; (5) a pattern of discrimination; and (6) the decision maker knows the harm a decision will cause.63

62 See, e.g., Inclusive Communities slip opinion at page 10.
Evidence of implicit bias is relevant to ferret out and prove intentional discrimination, as well as discriminatory impacts. According Dean Erwin Chemerinsky of UC Berkeley Law School, “Social science has proven that much discrimination is the result of unexamined stereotypes and unacknowledged bias. Having to prove that discrimination is the result of racial animus or is intentional will allow much discrimination to evade judicial scrutiny.” Dean Chemerinsky concludes, “Challenging the outdated intent standard . . . is essential if courts are to remain the protectors of rights in our society.”

The U.S. Supreme Court in Fisher v. University of Texas at Austin recognized the value of diversity. Diversity promotes cross-racial understanding, ending stereotypes, preparing for an increasingly diverse society and workforce, and cultivating leaders with legitimacy in the eyes of the public. The court emphasized the need to gather, analyze, and publish data based on race, color, and national origin in order to ensure that public benefits and burdens are distributed equally and to promote racial justice and human dignity.

Equal protection is a central target of right supremacists, this administration, and its enablers. The Supreme Court is poised to determine the future of equal justice for generations to come. The unanimous US Supreme Court decision in Brown v Board of Education (1954) upholding equality, human dignity, and freedom – a bedrock of the constitutional canon – is at risk. The 14th Amendment to the US Constitution authorizes Congress strengthen equal protection laws, including Title VI of the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, Title IX of the Education Amendments on gender, and the discriminatory impact standard, and more. We recommend Congress strengthen equal protection of the law, thoroughly vet nominees to agencies and the courts, and engage in effective oversight by agencies and recipients of federal funding.

E. Conclusion

Combined organizing and legal strategies offer a middle ground for resisting social safety net roll backs between riots and timid supplications for justice. State and community strategies offer alternatives until the 2020 elections and beyond. This president, this administration, and their supporters present an
unprecedented assault on people, places, and biodiversity that is corrupting democratic governance, the rule of law, international trust, and the nature of truth itself. This framework underlies each of GreenLatinos core priorities. *La lucha continúa.*

**GreenLatinos**

**Mission Statement**

*GreenLatinos* is a national non-profit organization that convenes a broad coalition of Latino leaders committed to addressing national, regional and local environmental, natural and cultural resources, and social justice issues that significantly affect the health and welfare of the Latino community in the United States. *GreenLatinos* provides an inclusive table at which its members establish collaborative partnerships and networks to improve the environment; protect and promote conservation of land and other natural resources; amplify the voices of minority, low-income and tribal communities; and train, mentor, and promote the current and future generations of Latino environmental leaders.

*GreenLatinos* Staff L-R Gaby Rivera Regional Field Manager; Juan Perez Advocacy & Membership Director; Amanda Aguirre Executive Vice President & COO; Mark Magaña Founding President & CEO.

The GreenLatinos Board of Directors includes Jennifer Allen, Andrea Delgado, Robert García, Larry Gonzalez, and Mark Magaña.

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