




Environmental Justice: Legal Basis & Key Statutes

May 2, 2024

Michelle Ghafar
Earthjustice




Title VI of the 1964 Civil Rights Act

“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.”

42 U.S.C. § 2000d.

Complainants challenging environmental decision-making pursuant to § 2000d must demonstrate that the decision was motivated by **intentional discrimination**.



Title VI of the 1964 Civil Rights Act

Recipients of federal funds must comply with Title VI and the EPA's implementing regulations at 40 C.F.R. Part 7.

Per 40 C.F.R. § 7.35, recipients of federal funding from EPA shall not:

- “use criteria or methods of administering its program or activity which have the **effect** of subjecting individuals to discrimination because of their race, color, national origin”
- “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 or activity to which this part applies on the grounds of race, color, or national origin”



Alexander v. Sandoval, 532 U.S. 275 (2001)

In 2001, Supreme Court decided that private parties may not sue to enforce disparate impact regulations promulgated under Title VI.



Administrative Complaints

- Any person may file administrative complaint alleging disparate impact.
- Agency (here EPA) has 20 days to determine if complaint merits investigation.
- If agency determines investigation is merited, it must issue preliminary findings within 180 days.
- Agency and recipient will attempt informal resolution.
- If complaint not resolved informally, agency will provide recipient with “notice of preliminary finding of noncompliance” with recommendations for achieving voluntary compliance.
- The recipient may agree to these recommendations, send written rebuttal of the preliminary finding, or respond with explanation of how compliance can be achieved in a way other than recommended by agency.
- If the recipient does not take one of these actions, agency will send a formal written determination of noncompliance to the recipient.
- Recipient then has 10 days from receipt of the formal determination to attain compliance.
- After 10 days, agency may begin funding-termination procedures.



Angelita C., et al. v. CA Dept. of Pesticide Regulation

- In June 1999, parents of Latinx children attending school near methyl bromide pesticide application filed Title VI complaint with EPA.
- In April 2011 (12 years later), EPA [issued](#) first and only “preliminary finding of a prima facie violation of Title VI.”
- Parents and their attorneys were not part of the negotiations.
- EPA and CA DPR reached an agreement that required minimal additional monitoring of pesticide levels and outreach efforts (radio advertisements on dangers of pesticides).



CA Government Code § 11135

“No **person** in the State of California shall, on the basis of . . . race, color, religion, ancestry, national origin, ethnic group identification . . . be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”



Implementing Regulations

Effective July 1, 2024:

“It is a prohibited practice for any covered entity, in carrying out or failing to carry out any program or activity or providing, denying, or delaying any services or benefits directly or indirectly . . . **to treat in purpose or effect** any person unfavorably without legal justification on the basis of the protected class of the person, including by:

- utilizing criteria or methods of administration that: subject a person to discrimination on the basis of membership in, perception of membership in, or association with someone in a protected class; exclude from, deny the benefits of, or otherwise subject persons to discrimination under any program or activity”

2 C.C.R. § 11154.



Hurdles to § 11135 Litigation

Program or activity/funding nexus

- *Comunidad en Accion v. Los Angeles City Council* (2013) 219 Cal.App.4th 1116

Statistical analysis

- *Darensburg v. MTC*, 636 F.3d 511, 524 (9th Cir. 2011)

Causation/adverse Impact

Burden shifting



Administrative Complaints

Heads of state agencies shall submit complaint to CA Civil Rights Department if reasonable cause to believe violation of § 11135.

2 C.C.R. § 11136.

Department has authority to receive, investigate, conciliate, mediate, and prosecute complaints alleging violations of § 11135.

2 C.C.R. § 12930.



“Where we live shouldn’t have so much effect on our life span.”

-Brian Beveridge,
West Oakland Environmental
Indicators Project



West Oakland, CA





The Port of Oakland



Neighborhood Drilling in California



Neighborhood Drilling in California





Group Exercise





EARTHJUSTICE

BECAUSE THE EARTH NEEDS A GOOD LAWYER

Michelle Ghafar

mghafar@earthjustice.org

 / earthjustice

 @earthjustice

earthjustice.org