

Fundamental Rights

Executive Summary¹

Issues of environmental justice and climate justice are in state and federal courtrooms with increasing frequency, and judges should be familiar with how these terms are defined and used in environmental, civil rights, housing, zoning, land use, and public health litigation. This module covers these definitions and applications, and explores the various legal mechanisms used in litigation that involves environmental justice and climate justice.

As a result of systemic and discriminatory policies and practices, the adverse environmental and public health impacts of climate change are not equally distributed. The practice of redlining, for example, withheld investment from neighborhoods classified as “hazardous,” many of which had significant minority and low-income populations. This practice led to the proliferation of pollution-generating facilities in these areas and means that not all communities experience the effects of climate change in the same way. These uneven impacts raise issues of environmental justice and climate justice. According to the U.S. Environmental Protection Agency, environmental justice means the “fair treatment and meaningful involvement of all communities regardless of race, color, national origin, or income. . .with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” Relatedly, climate justice is an extension of environmental justice in the context of climate change, and includes dimensions of intergenerational justice as well as geographical justice, both within the United States and globally.

While the U.S. Constitution does not contain any provisions that explicitly guarantee the right to a clean, safe, and/or healthy environment, seven U.S. states guarantee the right through Environmental Rights Amendments, or ERAs. Many others are considering their adoption. ERAs, sometimes called “Green Amendments,” secure a fundamental and inalienable right to healthful environment for present and future generations, though their language and coverage vary across states. As more states adopt ERAs, they will continue to function as vehicles for addressing environmental and climate injustice, so judges’ awareness of their content and how they interact with other constitutional provisions, legal theories, and relevant statutes and regulations will be a critical part of understanding climate litigation.

Since not all states have ERAs, fundamental rights-based cases also rely on legal approaches that include public trust principles, public nuisance law, and environmental and climate justice laws. States have been at the forefront of implementation and enforcement of environmental justice laws to address climate-based harms to individuals’ rights. For example, New York’s environmental justice statute updates its environmental conservation law to set out policies; establish councils to carry out those policies, such as a permanent environmental justice advisory group; and encourage state agencies to create their own policies. Washington’s Climate Commitment Act integrates environmental justice considerations into climate

planning by creating a greenhouse gas reduction pathway that focuses on vulnerable and overburdened communities. While only a few states have enacted legislation with explicit environmental justice goals, more can be expected to do so in the coming years.

¹This is a summary of Fundamental Rights by Barry E. Hill and Jarryd C. Page.