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Legal Sidebar

Environmental Justice and Title VI of the Civil Rights Act of 1964

Updated October 27, 2026

During the Biden Administration, both the Environmental Protection Agency (EPA) and the Department of Justice (DOJ) sought to advance "environmental justice" goals using Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits recipients of federal funds from discriminating on the basis of race, color, or national origin. While *environmental justice* is not defined in federal statute or regulation, the term has generally been used to refer to the identification and remediation of environmental harms impacting low-income and minority communities as a result of government-funded actions. In January 2025, the Trump Administration issued three executive orders (EOs) that, among other things, direct executive agencies to review, and in some cases "terminate," agency actions and positions related to "environmental justice." The EOs appear to treat environmental justice similarly to diversity, equity, and inclusion (DEI) programs. In March 2025, EPA announced that, to implement EO 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing," it intended to end its "Environmental Justice and Diversity, Equity, and Inclusion" programs, resulting in a reduction in force "for approximately 280 DEI and [environmental justice] employees," and that it had placed employees administering these programs on administrative leave. (EPA's decision to terminate grants awarded under the Environmental and Climate Justice Block Grant program, passed by Congress as part of the Inflation Reduction Act to fund "environmental and climate justice activities," is the subject of pending litigation in federal court.) In April 2025, DOJ rescinded the agency's first-ever resolution agreement related to an environmental justice investigation and closed the matter, stating that such action was required by the EOs. DOJ has stated that the agency "will no longer push 'environmental justice' as viewed through a distorting, DEI lens."

Some Members of Congress had previously expressed criticism of the Biden Administration's environmental justice efforts, while others have been critical of the Trump Administration's retrenchment. This Legal Sidebar provides an overview of the issue, beginning with an explanation of how the term "environmental justice" has been used in federal and state law. It then provides a brief background on Title VI and relevant agency Title VI regulations, discusses how EPA and DOJ have previously enforced Title VI in the context of federal "environmental justice" efforts, and concludes with considerations for Congress.

Congressional Research Service
https://crsreports.congress.gov
LSB11340

Environmental Justice in Context: Statutes, Regulations, and Executive Orders

While the term "environmental justice" appeared in the *Congressional Record* as early as 1971, the concept of "environmental justice" appears to have been first defined at the federal level in then-President Clinton's since-revoked EO 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." EO 12898 required each federal agency to incorporate environmental justice into its mission "by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations . . . ." There is no express definition of environmental justice in federal statute, though the term is mentioned in various places. For example, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 contained a pilot program for the Department of Defense's use of "sustainable aviation fuel." (Since September 5, 2025, the Department has been "using a secondary Department of War designation" under EO 14347.) At the end of the pilot program, the Act directed the Department to submit a report to Congress including information on

> the effect of the use of sustainable aviation fuel on the environment and on surrounding communities, including environmental justice factors that are created by the demand for and use of sustainable aviation fuel by the Department of Defense[.]

That Act did not define "environmental justice." Other statutes incorporate elements of EO 12898's conception of "environmental justice," such as in requiring certain federal entities and grant applicants to consider environmental and health effects on low-income, minority, or "disadvantaged" communities in specific contexts.

Some agencies have used the term *environmental justice* and defined it in regulations implementing conservation and environmental protection laws. For example, some regulations implementing the National Environmental Policy Act, which the Supreme Court has said requires agencies to "take a 'hard look' at environmental consequences" of proposed actions that potentially result in significant environmental impacts, require consideration of environmental impacts on "environmental justice communities." The regulations define "environmental justice communities" as those that have "been historically marginalized and overburdened by pollution," including but not limited to "minority populations, low-income populations, or indigenous peoples." Another example can be found in regulations implementing the Comprehensive Everglades Restoration Plan, established by the Water Resources Development Act of 2000, which tasks the Army with taking steps needed to "restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region." As part of the plan, the Secretary of the Army must "ensure that impacts on socially and economically disadvantaged individuals . . . and communities are considered during implementation" of the plan and that these individuals "have opportunities to review and comment on its implementation." The Army Corps of Engineers' regulations implementing the plan include provisions stating that the Corps "shall consider and evaluate environmental justice issues and concerns in the implementation of projects." The regulations define *environmental justice* as

> identifying and addressing[] disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations, in accordance with applicable laws, regulations, and Executive Orders.

Prior regulations issued by other agencies also adopted language mirroring the definition of environmental justice in the since-rescinded EO 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All," issued by then-President Biden in 2023. EO 14096, which ordered all federal agencies to "make achieving environmental justice part of [their] mission[s]," defined "environmental justice" as

> the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:
>
> (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
>
> (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

Both EO 14096 and then-President Clinton's EO 12898 were revoked by EO 14148, "Initial Recissions of Harmful Executive Orders and Actions," signed by President Trump on January 20, 2025. Some regulations implementing EOs 14096 and 12898 are in the process of being rescinded, while others have already been removed from the *Code of Federal Regulations*.

Some states and localities have adopted their own environmental justice laws and policies, which often include definitions of environmental justice. For example, Virginia's Environmental Justice Act defines "environmental justice" as "the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy."

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 bans race discrimination in federally funded programs. Section 601 provides that no person 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." Section 601 permits aggrieved individuals to sue only in instances of *intentional discrimination*. Intentional discrimination may exist where a policy contains an express race-based classification or when the funding recipient adopts a facially neutral policy with discriminatory intent.

Section 602 of Title VI directs federal agencies that distribute financial assistance to promulgate rules implementing Title VI. As a result, all cabinet-level agencies have regulations that guide the implementation and enforcement of Title VI. These regulations must be approved by the President to go into effect. Agencies may terminate or refuse to provide funding to recipients who fail to comply with these regulations, but only after providing the recipient with notice of the compliance issue and determining that the matter cannot be resolved through voluntary means. Final agency actions are subject to judicial review.

Prior to the second Trump Administration, most Title VI regulations provided that recipients of federal funds could violate Title VI by adopting policies resulting in a *disparate impact*, or a discriminatory effect, on some people because of race, color, or national origin, regardless of intent. The Supreme Court had not squarely addressed the validity of these regulations. Some Justices expressed doubt as to whether disparate impact regulations comported with the authority granted to agencies under Section 602, since Section 601 is limited to intentional discrimination. As discussed below, the issue is currently the subject of litigation, and a federal district court has vacated some disparate impact regulations nationwide. Regardless, the Supreme Court has held that there is no private right of action under Section 602. As a result, while agencies can enforce the regulations, an individual cannot bring a legal claim for a violation of an agency's disparate impact regulations.

On April 23, 2025, President Trump issued EO 14281, "Restoring Equality of Opportunity and Meritocracy," which revoked presidential approval of DOJ's Title VI disparate impact regulations. EO

14281 also ordered all federal agencies to coordinate with the Attorney General to develop a plan for amending or repealing disparate impact provisions of their Title VI regulations. In addition to the vacatur mentioned above, DOJ and several other agencies have altered their Title VI regulations to align with EO 14281. DOJ's rule amending its Title VI regulations is discussed further below.

EPA and DOJ Use of Title VI to Address "Environmental Justice"

EPA and DOJ have both previously enforced Title VI in service of "environmental justice" goals, and theories of disparate impact have played a role. For example, 2022 EPA interim guidance on "Environmental Justice and Civil Rights in Permitting" stated that certain populations had been "disproportionately burdened" by environmental harms and claimed EPA authority under Title VI to remedy such harms. Both EPA and DOJ formally incorporate disparate impact provisions in their Title VI regulations. EPA's disparate impact regulations state that recipients of EPA funds shall not administer programs or activities in ways that "have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin . . . ." The regulations further prohibit recipients from choosing "a site or location of a facility that has the purpose or effect of" discrimination based on race, color, or national origin. DOJ's Title VI regulations contain substantively identical provisions.

EPA and DOJ have previously opened Title VI investigations into the practices of recipients of federal funds that allegedly had a disparate environmental impact on communities with large populations of racial minorities. For example, DOJ, in conjunction with the Department of Health and Human Services (HHS), opened its first Title VI investigation related to such practices in 2021. The investigation involved improper wastewater sanitation in a high-poverty Alabama county where most residents are Black. According to a complaint filed by the environmental nonprofit Earthjustice, the county was not connected to the municipal water system, and many residents were unable to afford an effective septic system. As a result, residents attempted to construct a sewage system that did not meet state sanitation standards. Evidence suggested that the state penalized Black residents at a disproportionately high rate under a state law prohibiting such systems. The complaint alleged that the states' lack of assistance and punitive actions had a disproportionately negative effect on the Black residents, thus violating HHS's Title VI disparate impact regulations. DOJ, HHS, and the state reached a voluntary agreement to address the claims in 2023. In April 2025, DOJ closed the matter, terminating the agreement on the grounds that the investigation was impermissible under the Trump Administration's EO 14151.

EPA's public complaint tracking system reflects several Title VI complaints involving alleged discriminatory effects caused by, for example, municipal flood prevention measures, air emissions testing policies, and implementation of a state's Drinking Water State Revolving Fund program. In 2022, EPA also opened an investigation into Louisiana's Department of Environmental Quality and Department of Health in response to complaints about the state's air-permitting program. The complaints alleged that the state agencies' air-permitting program disproportionately exposed residents of Black communities to pollution, negatively impacting their health. Louisiana filed a lawsuit against EPA and DOJ, alleging that the EPA and DOJ disparate impact regulations exceed the statutory authority granted to the agencies under Section 602. In *Louisiana v. EPA*, a federal district court in Louisiana held, among other things, that the major questions doctrine applied to the case. The doctrine requires an agency to show clear congressional authorization when it seeks to promulgate regulations on an issue of great "economic and political significance." In the district court's judgment, the EPA and DOJ disparate impact regulations were not based on express congressional authorization in what the court viewed as "an extraordinary case, of economic and political significance." In August 2024, the court permanently enjoined the agencies from enforcing their disparate impact regulations in Louisiana. The state subsequently filed a motion

requesting that the court amend its decision and fully vacate the disparate impact regulations. In September 2026, the district court granted Louisiana's motion, thus vacating the regulations nationwide.

By the time the district court issued the nationwide vacatur in *Louisiana v. EPA*, DOJ had already amended its Title VI regulations to exclude disparate impact. DOJ stated that the amendment sought to align regulations "with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, . . . serve the public interest[,]" and "implement changes directed in Executive Order 14281." That EO, discussed above, orders all federal agencies to develop plans for amending or repealing Title VI regulations "to the extent they contemplate disparate-impact liability," which includes the EPA and DOJ regulations at issue in *Louisiana v. EPA*.

Considerations for Congress

During the Biden Administration, EPA and DOJ enforced stated federal environmental justice programs under Title VI. President Trump's recent EOs on the subject, and subsequent actions by those agencies implementing the EOs, appear to be turning away from such efforts.

If it wished to weigh in, Congress could encourage or limit environmental justice efforts in statute, including by defining the term, establishing or limiting enforcement mechanisms, or providing or limiting funding. Congress could also specifically weigh in on the debate over whether or not agencies have the authority to regulate disparate impact under Title VI. Congress could amend Title VI to allow or expressly prohibit individuals or agencies from seeking relief under Title VI based on a theory of disparate impact.

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