



COME HELL OR HIGH WATER: PROTECTING NEW JERSEY’S “OVERBURDENED” COASTAL COMMUNITIES THROUGH ENVIRONMENTAL JUSTICE

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## I. INTRODUCTION

New Jersey residents and vacationers alike share a fondness for the Jersey Shore.<sup>1</sup> In 2018, New Jersey's coastal counties reported that forty-eight million people visited their beaches.<sup>2</sup> The state's 130-mile coastline serves as the backbone of its tourism industry; beach-related tourism contributes \$19 billion annually to the New Jersey economy and is the state's "third largest employment sector."<sup>3</sup> Accordingly, a majority of the state's wealth and population is concentrated on the coast.<sup>4</sup> The average median home value of owner-occupied housing across New Jersey's nine coastal counties was \$330,544 between 2011 and 2015.<sup>5</sup> This amount was \$151,944 more than the national average.<sup>6</sup> Similarly, rental housing in the state is above the national median.<sup>7</sup> Despite the high cost of living, more than seven million of the state's residents live in coastal communities.<sup>8</sup> Considering New Jersey's economic interest in maintaining the integrity of its coastal homes and beaches, it is hard to imagine a world where you cannot take a trip to the Jersey Shore.

No matter the affinity for New Jersey's coastline held by beachgoers, this loving relationship with the Jersey Shore could end in tragedy.

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1. See generally TOURISM ECON., THE ECONOMIC IMPACT OF TOURISM IN NEW JERSEY 53 (2016), <https://www.visitnj.org/sites/default/files/2016-nj-economic-impact.pdf> (demonstrating that tourism sales are typically greater in shore counties).

2. Erin Petenko, *How Many Beachgoers Visit the Jersey Shore? We Flew Over It to Find Out*, NJ.COM (Sept. 24, 2019, 2:19 PM), <https://www.nj.com/news/g66l-2019/08/80df18bd046430/how-many-beachgoers-visit-the-jersey-shore-we-flew-over-it-to-find-out.html>.

3. See David M. Carboni, Note, *Rising Tides: Reaching the High-Water Mark of New Jersey's Public Trust Doctrine*, 43 RUTGERS L.J. 95, 96 (2011); Wayne Perry, *Jersey Shore Tourists Spent \$7.4B in Monmouth, Ocean This Past Year*, APP (May 9, 2019, 3:06 PM), <https://www.app.com/story/money/business/2019/05/09/jersey-shore-tourists-monmouth-ocean-2018/1155305001/> (explaining that in 2017 tourists spent almost \$42.8 billion in New Jersey, half of which took place in shore counties).

4. See Carboni, *supra* note 3, at 96–97; see also OFF. FOR COASTAL MGMT., NAT'L OCEANIC & ATMOSPHERIC ADMIN., STATES: NEW JERSEY (2015), <https://coast.noaa.gov/states/new-jersey.html>.

5. See Donovan Finn & John Travis Marshall, *Superstorm Sandy at Five: Lessons on Law as Catalyst and Obstacle to Long-Term Recovery Following Catastrophic Disasters*, 48 ENV'T L. REP. 10494, 10497–98 tbl.1 (2018). The following is the median home values of owner-occupied housing in New Jersey's coastal counties between 2011 and 2015: Bergen County, \$441,100; Hudson County, \$335,300; Middlesex County, \$323,300; Monmouth County, \$385,100; Ocean County, \$262,700; Essex County, \$356,600; Union County, \$345,500; Atlantic County, \$225,600; and Cape May County, \$299,700. *Id.*

6. See *id.* at 10497.

7. *Id.* at 10497–98.

8. OFF. FOR COASTAL MGMT., *supra* note 4.

Climate change-induced “extreme weather events”<sup>9</sup> threaten to raze New Jersey’s beachfront properties and businesses, displace residents, and in the worst scenarios, cause death.<sup>10</sup> There is a population of people that experience this loss at greater magnitudes than other New Jersey residents.<sup>11</sup> New Jersey Congressman, Donald Payne, says it best: “We are having 100-year climate issues every 5 years now, and the vulnerable and underserved often suffer those effects disproportionately.”<sup>12</sup> Communities of color and low-income communities are often the last to receive assistance after extreme weather events, and when they do, it is less than wealthier, whiter neighborhoods.<sup>13</sup>

With the help of the environmental justice movement,<sup>14</sup> recent legislation acknowledges the disproportionate impacts of environmental harm faced by minority and low-income communities. In 2020, New Jersey passed the country’s strongest environmental justice law,<sup>15</sup> recognizing that the state’s “low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities.”<sup>16</sup> This law aims “to limit the future placement and expansion of such facilities in overburdened communities.”<sup>17</sup> The term of

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9. For the purposes of this Note, “extreme weather events” are defined as “unexpected, unusual, unpredictable severe or unseasonal weather” including heat waves, tornadoes, hurricanes, droughts, and floods. *Extreme Weather Events*, FLA. STATE UNIV. CTR. FOR OCEAN-ATMOSPHERIC PREDICTION STUD., <https://www.coaps.fsu.edu/our-expertise/extreme-weather-events> (last visited Feb. 16, 2022).

10. See Finn & Marshall, *supra* note 5, at 10496. At its worst, extreme weather manifests as storms similar or stronger in magnitude than Superstorm Sandy, which caused 162 deaths, “destroyed thousands of homes and damaged thousands more,” and left 8.5 million people without electricity. *Id.*

11. See *Protecting Every Citizen: Assessing Emergency Preparedness for Underserved Populations: Field Hearing Before the Subcomm. on Emergency Preparedness, Response, & Recovery of the Comm. on Homeland Sec.*, 116th Cong. 49 (2019) (statement of Rep. Donald Payne Jr.) [hereinafter *Protecting Every Citizen*].

12. *Id.*

13. See, e.g., Hannah Perls, Note, *U.S. Disaster Displacement in the Era of Climate Change: Discrimination & Consultation Under the Stafford Act*, 44 HARV. ENV’T L. REV. 511, 538–39 (2020) (“Hurricane Katrina exposed major inequities in the federal government’s disaster response, including disproportionate access to evacuation routes, housing, and shelters for racial and ethnic minorities.”).

14. See Andrea Giampetro-Meyer & Nancy Kubasek, *Harvey: Environmental Justice and Law*, 31 FORDHAM ENV’T L. REV. 37, 43 (2020).

15. *Making the Case for Why New Jersey Needs This Landmark Environmental Justice Law*, NJ SPOTLIGHT NEWS (Nov. 23, 2020), <https://www.njspotlightnews.org/2020/11/why-new-jersey-needs-this-landmark-environmental-justice-law/>.

16. N.J. STAT. ANN. § 13:1D-157 (West 2020).

17. *Id.*

art, “overburdened community,” is defined as a community where at least 35 percent of households are low-income, at least 40 percent of residents are minorities, or at least 40 percent of “households have limited English proficiency.”<sup>18</sup> However, neither this law nor the environmental justice laws and legislation in other states address overburdened communities’ vulnerability to climate change-induced extreme weather events. If law and policy does not evolve with climate, these communities will continue to be caught in a cycle of recovering from “the storm,” never given enough time or resources to prepare for the next one they must weather.

This Note analyzes the disproportionate impacts experienced by New Jersey’s overburdened coastal communities after extreme weather events and how environmental justice legislation can build climate resilient communities. Part II addresses the increasing frequency of extreme weather events in New Jersey and their disproportionate impacts on overburdened communities. Next, Part III highlights recent environmental justice legislation in states with vulnerable coastal communities. Finally, Part IV of this Note calls for environmental justice legislation that addresses the ongoing climate crisis’s disproportionate impact on New Jersey’s overburdened coastal communities.

## II. CLIMATE CHANGE-INDUCED EXTREME WEATHER EVENTS AND THEIR DISPROPORTIONATE IMPACTS

### A. *Planning for Higher Waters, Extreme Heat, and More Frequent Natural Disasters*

Research indicates that climate change plays a major role in the “frequency and intensity” of extreme weather events.<sup>19</sup> A United Nations report found that between 2000 and 2019, there were 7,348 natural disasters worldwide.<sup>20</sup> This is almost double the number of natural

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18. N.J. STAT. ANN. § 13:1D-158 (West 2020). This Note sometimes uses the phrase “overburdened community” interchangeably with “communities of color and low-income communities,” since both communities of color and low-income communities fall under New Jersey’s definition of an overburdened community. *Id.*

19. See NAT’L LOW INCOME HOUS. COAL., LONG TERM RECOVERY OF RENTAL HOUSING: A CASE STUDY OF HIGHLY IMPACTED COMMUNITIES IN NEW JERSEY AFTER SUPERSTORM SANDY 3 (2019); *Extreme Weather Events Have Increased Significantly in the Last 20 Years*, YALE ENV’T 360 (Oct. 13, 2020), <https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years> [hereinafter *Extreme Weather Events*].

20. CTR. FOR RSCH. ON THE EPIDEMIOLOGY OF DISASTERS & U.N. OFF. FOR DISASTER RISK REDUCTION, HUMAN COST OF DISASTERS: AN OVERVIEW OF THE LAST 20 YEARS 9 (2000-2019), <https://www.undrr.org/publication/human-cost-disasters-overview-last-20-years-2000-2019> [hereinafter U.N. REPORT].

disasters recorded between 1980–1999.<sup>21</sup> In the last twenty years, flood occurrence increased two-fold and the number of severe storms increased by forty percent.<sup>22</sup> The frequency of droughts, wildfires, and heatwaves have similarly increased.<sup>23</sup> Most notably, the report indicates that global temperature increase is responsible for the increased frequency of extreme weather events.<sup>24</sup>

Climate modeling predictions indicate that extreme weather events in New Jersey will most likely come in the form of floods and extreme heat.<sup>25</sup> The 2007 Intergovernmental Panel on Climate Change suggested that sea-level could rise twelve inches by 2050.<sup>26</sup> Higher waters can lead to coastal flooding, especially in conjunction with tropical storms.<sup>27</sup> Higher temperatures also threaten the state;<sup>28</sup> “New Jersey is warming faster than” other areas in the Northeast.<sup>29</sup> The annual average temperature has been steadily increasing since the 1970s.<sup>30</sup> Increased temperature will lead to more intense heat waves, especially in densely populated areas.<sup>31</sup>

While climate data cannot yet predict whether hurricanes will occur more frequently in New Jersey, there is evidence that warming ocean waters, one ingredient to hurricane formation, increased the intensity of recent hurricanes.<sup>32</sup> More alarmingly, hurricanes are increasingly combining with other extreme weather events, “overlapping and influencing another in ways that are testing our resilience to the limit.”<sup>33</sup>

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21. *See id.* at 6 fig.1.

22. *See id.* at 7 fig.2.

23. *Id.* at 7.

24. *Id.*

25. *See* SUSTAINABLE JERSEY CLIMATE CHANGE ADAPTATION TASK FORCE, NEW JERSEY CLIMATE CHANGE TRENDS AND PROJECTIONS SUMMARY 4–5 (2011), [https://www.sustainablejersey.com/fileadmin/media/Media\\_\\_Publications/Publications/2011-09-26\\_SJ\\_CATF\\_CC\\_Impacts\\_Summary\\_final.pdf](https://www.sustainablejersey.com/fileadmin/media/Media__Publications/Publications/2011-09-26_SJ_CATF_CC_Impacts_Summary_final.pdf) [hereinafter N.J. CLIMATE TRENDS REPORT].

26. *Id.* at 6.

27. *See id.* at 3–4.

28. *See id.* at 4.

29. N.J. DEP’T OF ENV’T PROT., 2020 NEW JERSEY SCIENTIFIC REPORT ON CLIMATE CHANGE 32 (2020) [hereinafter N.J. 2020 CLIMATE REPORT].

30. *Id.* at 32, 32 fig.4.2.

31. *See id.* at 30.

32. N.J. CLIMATE TRENDS REPORT, *supra* note 25, at 3–4 (stating that climate modelling cannot yet predict hurricanes because “there is a high degree of variability in the frequency and intensity of . . . hurricanes and their associated storm surges from year to year, they need to be tracked over long time scales before a statistically significant trend can be documented”); *How Do Hurricanes Form?*, NAT’L OCEANIC & ATMOSPHERIC ADMIN., <https://oceanservice.noaa.gov/facts/how-hurricanes-form.html> (last updated May 13, 2021).

33. *Extreme Weather Events*, *supra* note 19 (quoting Mami Mizutori, the UN Secretary-General’s Special Representative for Disaster Risk Reduction).

This was the case in October 2012, when a hurricane and a cold front combined over the Atlantic Ocean and swept across New Jersey, creating a “raging freak of nature.”<sup>34</sup> This infamous disaster became known as Superstorm Sandy.<sup>35</sup>

*B. The Disproportionate Impacts of Extreme Weather Events on Overburdened Communities*

In addition to causing billions of dollars in economic losses, Superstorm Sandy exacerbated crises throughout the state including “poverty, lack of affordable housing, . . . and unequal access to resources.”<sup>36</sup> Feeling the brunt of this burden were the minority and low-income renters living in structurally unsound housing in less desirable, risk-prone areas.<sup>37</sup> In a 2014 Senate hearing, former New Jersey Governor, Chris Christie, was criticized for his administration’s mismanagement of federal disaster aid.<sup>38</sup> The hearing revealed that thousands who applied for assistance were denied aid even though they were fully qualified.<sup>39</sup> Further, these actions “shortchanged poor and minority victims.”<sup>40</sup> African Americans applying for disaster relief assistance “were rejected at 2.5 times the rate of” white applicants.<sup>41</sup> Latino applicants faced a rejection rate 1.5 times that of non-Latino white applicants.<sup>42</sup> With the knowledge that “another Sandy” could devastate the Jersey Shore, identifying the reasons “minority and low-income communities” are particularly vulnerable to extreme weather is crucial to these communities’ climate resilience.<sup>43</sup>

Many of overburdened communities’ vulnerabilities to the impacts of extreme weather are the product of systemic discrimination.<sup>44</sup> A

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34. Sarah Gibbens, *Hurricane Sandy, Explained*, NAT’L GEOGRAPHIC (Feb. 11, 2019), <https://www.nationalgeographic.com/environment/natural-disasters/reference/hurricane-sandy/>.

35. *Id.*

36. ERIN BERGREN ET AL., *A TALE OF TWO SANDYS 2* (2013).

37. See NAT’L LOW INCOME HOUS. COAL., *supra* note 19, at 3–4.

38. Editorial, *Hurricane Sandy and New Jersey’s Poor*, N.Y. TIMES (Mar. 19, 2014), <https://www.nytimes.com/2014/03/20/opinion/hurricane-sandy-and-new-jerseys-poor.html>. [hereinafter *Hurricane Sandy and New Jersey’s Poor*].

39. *See id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. See N.J. Exec. Order No. 89 (Oct. 29, 2019), <https://nj.gov/infobank/eo/056murphy/pdf/EO-89.pdf>.

44. See Sue Sturgis, *Recent Disasters Reveal Racial Discrimination in FEMA Aid Process*, FACING S. (Sept. 24, 2018), <https://www.facingsouth.org/2018/09/recent-disasters-reveal-racial-discrimination-fema-aid-process>.

discussion of these vulnerabilities cannot begin without addressing how New Jersey's minority and low-income populations became "communities" in the first place: redlining.<sup>45</sup> Beginning in the 1930s, federal housing officials mapped where banks should award loans for homeownership, denying loans to applicants of color and immigrants.<sup>46</sup> As a result, those denied home loans in desirable areas of cities congregated in "urban slums" where "predatory home-sales agents" sold installment contracts.<sup>47</sup> Unable to keep up with the inflated monthly payments necessary to maintain ownership, households began to combine under the same roof in order to tackle these payments.<sup>48</sup> This overcrowding led to "white flight" in the period after World War II, leaving behind the mixed-race neighborhoods that are commonly associated with the redlining era.<sup>49</sup>

In New Jersey, more than eighty percent of the African American population in Hudson County, Atlantic City, and Essex County, was redlined in the 1940s.<sup>50</sup> Newark's Ironbound neighborhood is an example of a neighborhood experiencing the long-term impacts of redlining.<sup>51</sup> Not only is Newark plagued by hazardous waste sites—with the Ironbound district containing the remains of what "was once the largest Agent Orange producer in the United States"<sup>52</sup>—but it is also categorized as a "heat island."<sup>53</sup> Urban heat island effect is the result of a high ratio of hardscape, such as asphalt roadways, to vegetation.<sup>54</sup> Dark surfaces and "reduced air flow between tall buildings" combine to trap and absorb heat throughout the day, leaving urban areas up to ten degrees hotter than nearby neighborhoods with more vegetation.<sup>55</sup> Evidence indicates that

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45. See generally Parisa Ijadi-Maghsoodi, *Redlining of Our Era: Land-Use Voter Initiatives*, CLEARINGHOUSE REV., Nov. 2018 (providing the historical background of redlining).

46. *Id.* at 2; Michael Sol Warren & Charles Wohlforth, *Climate Change and Concrete Turn Up Heat on Vulnerable Communities in New Jersey's Cities*, CLIMATE CENT. (Sept. 29, 2020), <https://www.climatecentral.org/news/climate-change-and-concrete-turn-up-heat-on-vulnerable-communities-in-new-jerseys-cities>.

47. Ijadi-Maghsoodi, *supra* note 45, at 2–3.

48. *Id.* at 3.

49. See Jacob Krimmel, *Persistence of Prejudice: Estimating the Long Term Effects of Redlining 1*, 54 (Nov. 10, 2020) (unpublished manuscript) (available at <https://osf.io/preprints/socarxiv/jdmq9/>).

50. See *id.* at 38 tbl.9.2.1.

51. See Warren & Wohlforth, *supra* note 46.

52. Tirza S. Wahrman, *Agent Orange in Newark: Time for a New Beginning*, 29 SETON HALL L. REV. 89, 89 (1998).

53. Warren & Wohlforth, *supra* note 46.

54. Ann E. Carlson, *Heat Waves, Global Warming, and Mitigation*, 26 UCLA J. ENV'T L. & POL'Y 169, 213 (2008).

55. See *id.*

neighborhoods redlined before the turn of the twenty-first century are “an average of almost four degrees hotter . . . and in some cases 17 degrees hotter” than other neighborhoods in the same city.<sup>56</sup> Although the Community Reinvestment Act outlawed redlining in 1977, the modern versions of these neighborhoods remain undesirable.<sup>57</sup> Without attracting investors to improve the structural integrity of existing homes or beginning new home construction in these neighborhoods, home values remain low, essentially attracting only those that cannot afford to live elsewhere.<sup>58</sup>

Providing affordable, structurally sound housing is challenging even without the presence of redlining and is perhaps the most easily identifiable vulnerability that overburdened communities face in regard to extreme weather. Most minority and low-income households in New Jersey are renters in risk-prone communities.<sup>59</sup> To illustrate, of New Jersey’s Latino and African American populations impacted by Superstorm Sandy, two-thirds were renters.<sup>60</sup> Rental occupants have little incentive to invest in protective measures for properties they do not own.<sup>61</sup> Most lack the resources to do so because they typically have lower income and less savings than homeowners.<sup>62</sup> This lack of resources extends to access to social networks and “political clout” to plan and recover from extreme weather events.<sup>63</sup> Further, because renters are more likely to be displaced after disasters, their voices are not heard at the public meetings held shortly after these events.<sup>64</sup>

In addition to living in risk-prone housing, another reason some overburdened communities are disproportionately impacted by extreme weather events is due to disaster relief discrimination. Disaster assistance is delivered through a coordination of state, local, and federal efforts.<sup>65</sup> After an extreme weather event, minority and low-income households may not know where to turn in the “confusing maze” of programs offered to them.<sup>66</sup> Knowledge gaps about disaster relief programs is one contributing factor to why some people do not receive

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56. Warren & Wohlforth, *supra* note 46.

57. See Krimmel, *supra* note 49, at 25–27.

58. See NAT’L LOW INCOME HOUS. COAL., *supra* note 19, at 5.

59. *Id.* at 3.

60. *Hurricane Sandy and New Jersey’s Poor*, *supra* note 38.

61. NAT’L LOW INCOME HOUS. COAL., *supra* note 19, at 5.

62. *Id.* at 3.

63. *Id.*; see also John Fialka, *When Storms Hit Cities, Poor Areas Suffer Most*, SCI. AM. (Apr. 1, 2019), <https://www.scientificamerican.com/article/when-storms-hit-cities-poor-areas-suffer-most/>.

64. NAT’L LOW INCOME HOUS. COAL., *supra* note 19, at 6.

65. See *Protecting Every Citizen*, *supra* note 11, at 1.

66. *Id.* at 2.



aid.<sup>67</sup> In other instances, it may be too difficult or cumbersome to apply for assistance.<sup>68</sup> Because minority and low-income communities are more likely to be displaced, they might not have internet access to apply for Federal Emergency Management Agency (“FEMA”) aid or have the resources to point them in the right direction.<sup>69</sup>

Even when minority and low-income persons are able to apply for disaster relief aid, whether they rent or own their home has a significant impact on the amount and types of relief they are awarded.<sup>70</sup> Rental housing recovers at a slower pace than owner-occupied homes.<sup>71</sup> For minority and low-income households renting their homes, likelihood of displacement is high because public subsidies are not available for rental housing.<sup>72</sup> Faced with the decision to repair or relinquish their investment, most investment property owners will choose to sell storm-damaged homes.<sup>73</sup> Owners that choose to repair the property may shift these costs onto tenants by raising rent.<sup>74</sup> In turn, the affordable housing stock diminishes, and displaced tenants may move to nearby floodplains or more socially vulnerable neighborhoods where rent is lower.<sup>75</sup>

For homeowners in communities where property values are lower, their homes are more likely to be targeted for relocation or elevation by government buyout programs.<sup>76</sup> Most buyout scenarios play out in the following chain of events: After an extreme weather event, a home assessor evaluates a property to determine if the home was “substantially damaged.”<sup>77</sup> If damage to the home is more than fifty percent of its value, the home is classified as “substantially damaged” and must be relocated, elevated, or demolished.<sup>78</sup> If the homeowner qualifies for the FEMA-managed National Flood Insurance Program and has a substantially

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67. See STEPHANIE HOOPES HALPIN, RUTGERS SCHOOL OF PUBLIC AFFAIRS AND ADMINISTRATION-NEWARK, *THE IMPACT OF SUPERSTORM SANDY ON NEW JERSEY TOWNS AND HOUSEHOLDS* 6 (2013).

68. See *id.* at 21, 36.

69. See *id.* at 10, 21 n.7, 49.

70. NAT’L LOW INCOME HOUS. COAL., *supra* note 19, at 3, 5–6.

71. *Id.* at 3.

72. *Id.* at 3, 5.

73. *Id.* at 10.

74. See *id.* at 5.

75. A.R. Siders, *Government-Funded Buyouts After Disasters Are Slow and Inequitable—Here’s How that Could Change*, CONVERSATION (Oct. 19, 2018, 6:35 AM), **Error! Hyperlink reference not valid.**<https://theconversation.com/government-funded-buyouts-after-disasters-are-slow-and-inequitable-heres-how-that-could-change-103817>.

76. *Id.*

77. See Press Release, FEMA, Fact Sheet: “Substantial Damage”—What Does It Mean? (Dec. 2, 2019) (available at <https://www.fema.gov/press-release/20210318/fact-sheet-substantial-damage-what-does-it-mean>).

78. Siders, *supra* note 75.

damaged home, they may be able to request funds beyond their insurance policy to “help defray the costs of elevating, relocating, or demolishing a structure.”<sup>79</sup> However, if they are not able to rebuild the structure, they are left only the option of relocation.<sup>80</sup> Homes owned by low-income households are more likely to suffer substantial damage because they have less protective features and are lower in value.<sup>81</sup> In some instances, assessors have purposefully classified homes in low-income areas as substantially damaged when they were not.<sup>82</sup> This scenario ends in a phenomenon coined as “climate gentrification.”<sup>83</sup> Some landlords may see their properties being classified as “substantially damaged” as a business opportunity.<sup>84</sup> Redevelopment or sale of their property to developers may yield higher profits.<sup>85</sup> New, higher value homes can be built on these lots that appeal to more affluent households.<sup>86</sup>

Some minority communities, specifically immigrant households, experience unique vulnerabilities after extreme weather events because of language barriers or citizenship status. New Jersey’s demographic profile is very diverse.<sup>87</sup> For instance, New Jersey has the “fourth largest Asian population and seventh largest Hispanic population” in the United States.<sup>88</sup> While many minority households’ roots may trace back several generations in New Jersey, others are first-generation residents<sup>89</sup> and may be “[l]imited English proficient.”<sup>90</sup> In fact, a study conducted across seven Federal Qualified Health Centers after Superstorm Sandy found that only fifteen percent of Hispanic patients “interviewed identified

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79. *Id.*

80. *Id.*

81. See HALPIN, *supra* note 67, at 49.

82. Siders, *supra* note 75.

83. Perls, *supra* note 13, at 522–23. Climate gentrification can be defined as “a process by which climate change impacts make properties more or less valuable depending on their geographic exposure to those impacts and relative degree of engineered resilience . . . that lead[s] to displacement, and sometimes entrenchment, of existing populations consistent with conventional framings of gentrification.” *Id.* at 522 n.63.

84. See NAT’L LOW INCOME HOUS. COAL., *supra* note 19, at 5.

85. *Id.*

86. See *id.*

87. See generally SEN-YUAN WU, N.J. DEP’T LAB. & WORKFORCE DEV., GROWING NEW JERSEY MINORITY POPULATION REACHES MAJORITY IN SOME MUNICIPALITIES (2011), [https://nj.gov/labor/lpa/pub/lmv/LMV\\_7.pdf](https://nj.gov/labor/lpa/pub/lmv/LMV_7.pdf).

88. *Id.*

89. See AM. IMMIGR. COUNCIL, IMMIGRANTS IN NEW JERSEY 1 (2020), [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_new\\_jersey.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_jersey.pdf).

90. See FED. COORDINATION & COMPLIANCE SECTION, U.S. DEP’T. JUST., TIPS AND TOOLS FOR REACHING LIMITED ENGLISH PROFICIENT COMMUNITIES IN EMERGENCY PREPAREDNESS, RESPONSE, AND RECOVERY i (2016), <https://www.justice.gov/crt/file/885391/download>.

English as their first language.”<sup>91</sup> This means that after extreme weather events, some people may not be able to access disaster resources, such as where to find shelter and where to find resources, “in a language they can understand.”<sup>92</sup> Further, some shelter staff may not be aware of the communication boards available to non-English speaking individuals, which can impede them from having full access to resources.<sup>93</sup>

Further, citizenship status causes some minority populations to be more vulnerable to the impacts of climate change.<sup>94</sup> U.S. Census demographic data does not capture the number of undocumented workers and unnaturalized citizens living in New Jersey.<sup>95</sup> New Jersey’s undocumented workers and their U.S. citizen children contribute \$587 million annually to state and local taxes, yet do not qualify for most government aid.<sup>96</sup> This means that when extreme weather events strike, they will not be provided disaster relief aid to help them get back on their feet.<sup>97</sup> Ironically, undocumented workers are often at the front line of disaster recovery.<sup>98</sup> After Superstorm Sandy, undocumented workers were hired to clean asbestos ridden flooded homes, only to later develop respiratory problems.<sup>99</sup> This discussion of overburdened communities’ vulnerability to extreme weather illustrates that there is not enough emphasis on disaster preparedness in risk-prone communities.<sup>100</sup> In order to begin to rectify these inequities, law and policy first need to recognize the disproportionate harms faced by vulnerable communities after extreme weather events.

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91. Joanna Burger et al., *Ethnic Differences in Risk: Experiences, Medical Needs, and Access to Care After Hurricane Sandy in New Jersey*, 82 J. TOXICOLOGY & ENV’T HEALTH 128, 129–32 (2019).

92. FED. COORDINATION & COMPLIANCE SECTION, *supra* note 90, at i.

93. *Protecting Every Citizen*, *supra* note 11, at 8.

94. See Michael Méndez et al., *The (In)visible Victims of Disaster: Understanding the Vulnerability of Undocumented Latino/a and Indigenous Immigrants*, 116 GEOFORUM 50, 51 (2020).

95. See *id.* at 57.

96. Nora Peachin, *Activists Demand Disaster Relief for Undocumented Workers in New Jersey*, PLANET PRINCETON (June 22, 2020), <https://planetprinceton.com/2020/06/22/activists-demand-disaster-relief-for-undocumented-workers-in-new-jersey/>.

97. See Méndez et al., *supra* note 94, at 57.

98. Traci Tong, *Meet the Undocumented Workers Who Rebuilt New York and New Jersey After Sandy*, WORLD (Oct. 29, 2014, 7:15 PM), <https://www.pri.org/stories/2014-10-29/meet-undocumented-workers-who-rebuilt-new-york-and-new-jersey-after-sandy>.

99. *Id.*

100. See BERGREN ET AL., *supra* note 36, at 4–5.

### III. ENVIRONMENTAL JUSTICE: HOW RECENT LEGISLATION IS ADDRESSING DISCRIMINATION IN LAW AND POLICY

While administrative oversight may cause many of the disparities in disaster relief aid received by New Jersey's coastal communities, environmental justice legislation may be the solution. Legislation identifying the communities historically impacted by environmental hazards and underserved by law and policy is the cornerstone of the environmental justice movement.<sup>101</sup> Although the environmental justice movement's origins trace back to the 1980s,<sup>102</sup> it was not until recently that law started to reflect the goals of the movement on a widespread scale. Worth noting is the enacted laws and pending legislation in California, Oregon, and Virginia. Each contain unique provisions not present in the environmental justice laws of other states.

#### A. California's Land-Use Law

Unsurprisingly, California has several environmental justice laws and pending legislation focused on minority and low-income communities.<sup>103</sup> Considering it is the most natural disaster-prone state in the United States,<sup>104</sup> has the country's largest homeless population,<sup>105</sup> and has 1,100 miles of coastline where sea level is expected to rise seven feet by 2100,<sup>106</sup> California's vulnerable communities arguably face environmental harms at greater magnitudes than residents of any other state. However, with this comes a strong record of environmental justice

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101. *Learn About Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last visited Feb. 17, 2022).

102. Kristoffer Tigue, *Will 2021 Be the Year for Environmental Justice Legislation? States Are Already Leading the Way*, INSIDE CLIMATE NEWS (Jan. 15, 2021), <https://insideclimatenews.org/news/15012021/environmental-justice-in-2021-legislation/>.

103. See Yessenia Funes, *California Governor Signs New Legislation Which Brings Greater Environmental Justice to Communities*, COLORLINES (Sep. 26, 2016, 11:57 AM), <https://www.colorlines.com/articles/california-governor-signs-new-legislation-which-brings-greater-environmental-justice>.

104. Marian White, *Which States Are Most Prone to Natural Disasters?*, MOVING.COM (July 17, 2019), <https://www.moving.com/tips/which-states-are-most-prone-to-natural-disasters/#:~:text=California%20has%20had%2028%20federally,to%20fires%2C%20floods%20and%20earthquakes.&text=These%20declared%20disasters%20can%20be,fires%2C%20floods%20and%20severe%20storms>.

105. *Homeless Population by State 2021*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/homeless-population-by-state> (last visited Feb. 17, 2022).

106. See Press Release, Toni G. Atkins, President pro Tempore, California Senate, *New Atkins Bill Protects California Communities from Dangers of Sea Level Rise* (Feb. 20, 2020) (available at <https://sd39.senate.ca.gov/news/20200220-new-atkins-bill-protects-california-communities-dangers-sea-level-rise>).

legislation. In 2016 alone, California enacted sixteen environmental justice-related laws;<sup>107</sup> one of which was amended by California's land-use law.<sup>108</sup>

California was "the first state in the nation" whose land-use law required statewide consideration of the historical and ongoing environmental injustices experienced by disadvantaged populations.<sup>109</sup> In accordance with California's Government Code, the state's cities and counties with disadvantaged communities are required to adopt an "environmental justice element" in their general plan, the document which guides local development and investment.<sup>110</sup> Environmental justice elements require identification of disadvantaged communities and policy goals to reduce exposure to pollution and promote equal access to public facilities, healthy food, adequate housing, and physical activity.<sup>111</sup>

On its face, the additions to California's land-use law appear to be some of strongest requirements of nationwide environmental justice laws. When successfully implemented, the law is capable of changing zoning restrictions so that poor communities and communities of color are not disproportionately impacted by the presence of new pollutants and other environmental harms.<sup>112</sup> This idealistic outcome is dependent on two assumptions: (1) California towns and counties modify their general plans according to the law and (2) they do so in a way that advantages minority and low-income communities in the best way possible. These assumptions were the most common criticism received by Senate Bill 1000 ("SB 1000"), the bill that led to this amendment in California land-use law.

SB 1000 did not provide enforcement authority or fines for cities and counties that do not comply with the law when adjusting their general plans.<sup>113</sup> Therefore, the California Code amendments act more as a suggestion that cities and counties adopt environmental justice elements to their general plans. More than 140 cities and counties have relayed

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107. See *Environmental Justice Wins in the 2016 Legislative Session*, CAL. ENV'T JUST. ALL., <https://caleja.org/2016/09/environmental-justice-in-the-2016-legislative-session/> (last visited Feb. 17, 2022).

108. CAL. GOV'T CODE § 65302 (West 2022).

109. Kelan Stoy & Nikitas Magel, *Map SB1000 Environmental Justice Compliance with UrbanFootprint*, URBANFOOTPRINT (Sept. 18, 2020), <https://urbanfootprint.com/map-sb1000-environmental-justice-compliance/>.

110. CAL. GOV'T CODE § 65302(a), (h)(1) (West 2022).

111. See *id.* § 65302(h)(1)(A).

112. See Emily C. Dooley, *Environmental Justice Becomes Part of California City Planning*, BLOOMBERG L. (Aug. 27, 2020, 6:00 AM), <https://news.bloomberglaw.com/environment-and-energy/environmental-justice-becomes-part-of-california-city-planning>.

113. *Id.*

their intent to update their general plans by January 1, 2022, the deadline provided by the law.<sup>114</sup> However, the closer this deadline approaches, the more likely it becomes that the majority of California cities and counties are not updating their general plans to comply with the California Code.<sup>115</sup>

*B. Oregon's Land-Use Bill*

Similar to California's land-use bill SB 1000, Oregon's House Bill 2488 ("HB 2488") proposes modification to the state's land-use law to include environmental justice goals.<sup>116</sup> HB 2488 advocates for a community-based approach to environmental justice, ensuring that "all . . . are represented: rural, isolated, urban, disenfranchised, poor, [and] marginalized" populations.<sup>117</sup> As the state's fifty-year-old land-use law currently stands, renters are not included in land-use decisions, only landowners.<sup>118</sup> Thus, this legislation seeks to include the voices that have been historically excluded from the decision making process: "disadvantaged communities."<sup>119</sup> According to the text of the bill, Oregon's disadvantaged communities include those with "low income, very low income[,] or persons of color."<sup>120</sup> This bill also calls on state agencies and local governments to consider the impacts of climate change on disadvantaged communities in order to make equitable land-use decisions.<sup>121</sup> The Oregon American Planning Association notes that these proposed changes are particularly important because there is insufficient data on how Oregon's vulnerable communities will be impacted by climate change.<sup>122</sup> To provide oversight in its goals, HB 2488 also aims to establish an environmental justice advisory committee whose members have academic or professional experience working on environmental and social justice initiatives.<sup>123</sup>

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114. *Id.*; CAL. GOV'T CODE § 65302 (West 2022).

115. California has 482 cities, meaning that the estimate of 140 cities and counties updating their general plan makes this estimate a fraction of California's total cities. *Cities in California*, BALLOTPEdia, [https://ballotpedia.org/Cities\\_in\\_California](https://ballotpedia.org/Cities_in_California) (last visited Feb. 17, 2022).

116. See H.B. 2488, 81st Legis. Assemb., Reg. Sess. (Or. 2021).

117. Cassandra Profita, *Bill Would Add Climate Change, Environmental Justice to State Land-Use Goals*, OPB (Jan. 15, 2021, 9:00 AM), <https://www.opb.org/article/2021/01/15/oregon-lawmakers-bill-climate-change-environmental-justice/>.

118. *Id.*

119. Or. H.B. 2488.

120. *Id.*

121. *Id.*

122. Letter Supporting H.B. 2488, Or. Chapter Am. Plan. Ass'n (Dec. 24, 2020), [https://oregon.planning.org/documents/4782/OAPA\\_Letter\\_of\\_Support\\_HB\\_2488\\_12-24-20.pdf](https://oregon.planning.org/documents/4782/OAPA_Letter_of_Support_HB_2488_12-24-20.pdf).

123. See Or. H.B. 2488.

*C. Virginia Council on Environmental Justice Act*

A 2020 act amended the Code of Virginia to establish the Virginia Council on Environmental Justice (“VCEJ”) as an advisory body to the state’s executive branch.<sup>124</sup> The aim of the VCEJ is to provide policy recommendations to the governor that “protect vulnerable communities from the disproportionate impacts of pollution” and other environmental harms.<sup>125</sup> The VCEJ is largely comprised of individuals that do not have other roles in Virginia government.<sup>126</sup> Representatives include individuals from public health organizations, civil rights groups, and Native American tribes.<sup>127</sup> Virginia’s former Governor, Ralph Northam, stated that the act “will help to ensure communities are directly involved in the decisions that affect them most.”<sup>128</sup> In fact, the VCEJ relied on citizen comments on the environmental concerns in their communities to draft its 2020 Annual Report.<sup>129</sup> To obtain these comments, VCEJ’s Chairs note that they “travel[ed] long distances at great sacrifice so that [they] could hear their voices.”<sup>130</sup> The first true test of the VCEJ’s effectiveness comes at a time where disadvantaged populations located in densely populated areas are contracting COVID-19 at higher rates than the rest of the state.<sup>131</sup> Because these citizens are likely the same ones that face the greatest environmental threats in Virginia, maintaining these connections will assist the VCEJ’s future efforts to identify and recommend solutions to the governor on how to reduce pollution impacts in vulnerable communities.

IV. AN ENVIRONMENTAL JUSTICE BILL TO PREPARE OVERBURDENED  
COMMUNITIES FOR THE STORM AHEAD

*A. Environmental Justice in New Jersey*

Recently, New Jersey has been a hotspot for environmental justice initiatives. On October 29, 2019, New Jersey Governor Phil Murphy

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124. VA. CODE ANN. §§ 2.2-2699.8–12 (West 2020).

125. § 2.2-2699.9.

126. See § 2.2-2699.10 (stating that twenty-one of the VCEJ’s members are to be “nonlegislative citizen[s]” and the remaining six are to be ex-officio).

127. VA. COUNCIL ON ENV’T. JUST., 2020 ANNUAL REPORT 5 (2020).

128. Sarah Vogelsong, *Governor Signs Bill Making Virginia Council on Environmental Justice Permanent*, VA. MERCURY (Mar. 4, 2020, 4:37 PM), <https://www.viriniamercury.com/blog-va/governor-signs-bill-making-virginia-council-on-environmental-justice-permanent/>.

129. VA. COUNCIL ON ENV’T. JUST., *supra* note 127, at 3.

130. *Id.*

131. See *id.*

enacted Executive Order No. 89 (“EO 89”), establishing the Interagency Council on Climate Resilience.<sup>132</sup> Commissioners or other representatives from state agencies such as the New Jersey Department of Environmental Protection (“NJDEP”), Department of Agriculture, and New Jersey Office of Emergency Management serve on the Council and are tasked with developing the Statewide Climate Change Resilience Strategy (“Strategy”).<sup>133</sup> The Strategy must include long-term plans for New Jersey’s coastal communities’ resilience to climate change including assessments of how climate change-related hazards will impact vulnerable communities.<sup>134</sup>

While EO 89 recognizes that minority and low-income communities are especially vulnerable to climate change,<sup>135</sup> suggestions to solve these issues are ongoing. The Strategy was due to Governor Murphy on September 1, 2020.<sup>136</sup> However—likely due to COVID-19 restrictions and delays—NJDEP did not release a draft of the Strategy until April 22, 2021,<sup>137</sup> and a final version was not released until October 12, 2021.<sup>138</sup> In the opening of the Strategy, Governor Murphy explains that the Strategy is one step in a “years-long effort to aid New Jersey communities and institutions in adapting to the realities of climate change.”<sup>139</sup> Further, Murphy notes that the Strategy does not prescribe any regulatory or policy changes, but that the State will develop these changes “through further public discourse.”<sup>140</sup>

Shortly after EO 89’s enactment, New Jersey passed “holy grail” environmental justice legislation regarding the permitting of polluting facilities in disadvantaged communities.<sup>141</sup> This law assures that in communities already experiencing adverse environmental and health impacts from pollution emitted by “industrial, commercial, and governmental facilities located in those communities,” new facilities will not subject these communities to further harm.<sup>142</sup> To accomplish this, the

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132. N.J. Exec. Order No. 89 (Oct. 29, 2019), <https://nj.gov/infobank/eo/056murphy/pdf/EO-89.pdf>.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. N.J. Dep’t. Env’t. Prot. & N.J.’s Interagency Council on Climate Resilience, State of New Jersey Climate Change Resilience Strategy (Apr. 22, 2021) (unpublished draft) (on file with author).

138. N.J. DEP’T. ENV’T. PROT. & N.J.’S INTERAGENCY COUNCIL ON CLIMATE RESILIENCE, STATE OF NEW JERSEY CLIMATE CHANGE RESILIENCE STRATEGY (2021).

139. *Id.*

140. *Id.*

141. See N.J. STAT. ANN. §§ 13:1D-157–161 (West 2020).

142. § 13:1D-157.



law requires permit applicants to conduct assessment reports on how their proposed facilities will impact overburdened communities.<sup>143</sup> Additionally, the permitting process now requires public notification and hearings in overburdened communities, whereby the applicant describes the proposed facilities and its potential adverse impacts and stakeholders can contribute written and oral comments that will be attached with the permit application received by NJDEP.<sup>144</sup> If a proposed facility's assessment report shows that the facility will disproportionately impact overburdened communities, the law now requires the NJDEP to deny its permit application.<sup>145</sup>

The bill that led to this permitting law, Senate Bill 232 ("S232"),<sup>146</sup> faced more than a decade of resistance in the New Jersey legislature before its eventual enactment.<sup>147</sup> One possible reason for this resistance was that the bill was unlike any other piece of environmental justice legislation to date.<sup>148</sup> Unlike its predecessors from other states, S232 differs from other environmental justice legislation in that it has "teeth."<sup>149</sup> Other states with proposed legislation and laws similar to S232 simply require assessment reports as part of their permitting process—now, New Jersey's permitting law is the nation's only law to deny permits to applicants when it is found that their projects disproportionately harm overburdened communities.<sup>150</sup> For this reason, S232 has been called "the strongest bill of its kind."<sup>151</sup>

Next, Executive Order No. 100 ("EO 100") adds to the climate resiliency goals established in EO 89 by requiring the NJDEP to "[i]ntegrate climate change considerations, such as sea level rise, into its

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143. § 13:1D-160; *see supra* note 18 and accompanying text for the definition of "overburdened community."

144. § 13:1D-160(a)(3).

145. § 13:1D-160(c).

146. S. 232, 219th Leg., Reg. Sess. (N.J. 2020).

147. *See* Michael Sol Warren, *Landmark Bill to Protect Poor Communities from Pollution Just Passed N.J. Legislature*, NJ.COM, <https://www.nj.com/news/2020/08/landmark-bill-to-protect-poor-communities-from-pollution-just-passed-nj-legislature.html> (last updated Aug. 28, 2020, 8:43 AM) (noting that versions of S232 date back to 2008).

148. *See New Jersey Passes an Environmental Justice Law with Teeth*, ENV'T SCI. ASSOCS. (Oct. 14, 2020), <https://esassoc.com/news-and-ideas/2020/10/new-jersey-passes-an-environmental-justice-law-with-teeth/#:~:text=What%20does%20this%20mean%3F,a%20proposed%20or%20existing%20facility.>

149. *See id.*

150. Compare CA. PUB. RES. CODE § 21081 (West 2022), with N.J. STAT. ANN. § 13:1D-160(3)(c) (West 2020).

151. *Making the Case for Why New Jersey Needs this Landmark Environmental Justice Law*, NJ SPOTLIGHT NEWS (Nov. 23, 2020), [https://www.njspotlightnews.org/2020/11/why-new-jersey-needs-this-landmark-environmental-justice-law/#:~:text=The%20legislation%20\(S%2D232\),sewage%20plants%2C%20landfills%20and%20others.](https://www.njspotlightnews.org/2020/11/why-new-jersey-needs-this-landmark-environmental-justice-law/#:~:text=The%20legislation%20(S%2D232),sewage%20plants%2C%20landfills%20and%20others.)

regulatory and permitting programs.”<sup>152</sup> Most recently, New Jersey amended its land-use law with the passage of Senate Bill 2607 (“S2607”).<sup>153</sup> The law now requires municipalities’ master plans to include climate-change vulnerability assessments that identify historic and future climate-change related risks in the municipality.<sup>154</sup> Some of the climate-change related risks recognized in the law’s text are sea-level rise, hurricanes, flooding, droughts, and increased temperatures.<sup>155</sup> In addition to identifying these risks, these vulnerability assessments must also identify critical infrastructure in the state that is necessary for evacuation purposes after extreme weather events.<sup>156</sup>

*B. The Shortcomings of New Jersey’s Environmental Justice Laws and Executive Orders*

While New Jersey’s recent laws and executive orders all contain provisions that recognize that overburdened communities are disproportionately impacted by environmental pollution and climate change, none offer recommendations or guidance on how to rectify the historic discrimination in disaster relief experienced by the state’s coastal overburdened communities. To begin, while New Jersey recognizes extreme weather’s impacts on the state’s vulnerable populations in EO 89, its solutions have yet to come to fruition.<sup>157</sup> Next, while S232 is regarded as the nation’s strongest piece of environmental justice legislation, it only addresses overburdened communities’ disproportionate exposure to pollutants,<sup>158</sup> it does not address any harms related to extreme weather. Further, S232 requires public notification of proposed affecting facilities,<sup>159</sup> but does not involve impacted communities in any of the NJDEP’s decision-making processes. Third, EO 100 recognizes that climate change and extreme weather impacts should be incorporated into state agency and municipal planning,<sup>160</sup> but does not require explicit action items that account for overburdened communities’ vulnerability to these impacts. Finally, New Jersey’s land-use law recognizes the risks and impacts associated with climate-change

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152. N.J. Exec. Order No. 100 (Jan. 27, 2020), <https://www.nj.gov/infobank/eo/056murphy/pdf/EO-100.pdf>.

153. Compare N.J. STAT. ANN. §§ 40:55D-28 (West 2021), with S. 2607, 219th Leg., Reg. Sess. (N.J. 2020).

154. § 40:55D-28(b)(2)(h).

155. *Id.*

156. *Id.*

157. See *supra* text accompanying notes 135–40.

158. See *supra* text accompanying notes 141–51.

159. See *supra* text accompanying note 144–45.

160. See *supra* text accompanying notes 152.

induced extreme weather,<sup>161</sup> but leaves out an environmental justice element that requires municipalities to consider disadvantaged communities in land-use decisions.

Even considering their critiques, New Jersey's laws and executive orders are leading by example.<sup>162</sup> Environmental justice legislation is not designed to be all-encompassing;<sup>163</sup> if it were, it would not be passed in any state. Without a tumultuous 2020, S232 may not have received the extra push it needed to end its long journey to codification.<sup>164</sup> Some theorize that a mixture of the COVID-19 pandemic and the Black Lives Matter movement increased the pressure on the New Jersey legislature to account for historic and ongoing discrimination faced by poor communities and communities of color.<sup>165</sup> Yet, S232 cannot be New Jersey's only landmark environmental justice bill because it only skims the surface of extreme weather events' disproportionate impacts on overburdened communities. Given the circumstances of the past two years, it may finally be the case that New Jersey's leaders are open to environmental justice bills reaching the Senate floor.<sup>166</sup> Although it is hard to hypothesize the solutions developed through EO 89's action items, they may need to come in the form of environmental justice legislation in order to rectify the historic discrimination in disaster relief.

### C. *Bill Recommendations*

Keeping in mind the promise and pitfalls of recent environmental justice legislation across the United States, New Jersey can build a bill that addresses the ongoing climate crises' disproportionate impacts on the state's coastal overburdened communities. For simplicity purposes, this proposed bill will be referred to as the "Extreme Weather Environmental Justice Act." This bill should: 1) identify populations most vulnerable to extreme weather; 2) be self-enforcing; and 3) incorporate community input and involvement in state agency decision-making.

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161. See *supra* text accompanying notes 153–56.

162. See Tigue, *supra* note 102 ("Lawmakers in several states, including in Oregon, California and Illinois, have crafted similar legislation [to S232] that they plan to introduce this year.")

163. *But see* Environmental Justice for All Act, S. 4401, 116th Cong. (2020). At the federal level, the Environmental Justice for All Act gets as close to all-encompassing as a piece of environmental justice legislation can get. This bill has thirty sections addressing different aspects of implementing environmental justice law and policy. *Id.* The bill was introduced to the Senate on August 3, 2020. *Id.*

164. See *supra* notes 146–51 and accompanying text.

165. *Id.*

166. See *id.*

First, every environmental justice bill must identify the communities it intends to serve as well as mechanisms to do so. New Jersey's amendment to its land-use law through S2607<sup>167</sup> shares a similarity to changes enacted by California's SB 1000.<sup>168</sup> Broadly, each state's land-use law requires statewide amendment to land-use development plans to include climate resilience measures.<sup>169</sup> The most distinct difference between these laws is that California's requires towns and counties to identify disadvantaged communities and the unique environmental harms and health risks they may face in order to reduce these harms;<sup>170</sup> New Jersey's does not. Thus, modifying New Jersey's land-use law to require municipalities to adopt environmental justice elements in their master plans,<sup>171</sup> similar to how California's land-use law requires towns and counties to adopt environmental justice elements in their general plans,<sup>172</sup> would include consideration of "overburdened communities" in all types of land-use development.

If New Jersey amended its existing land-use law to include environmental justice elements, it could require municipalities to consider overburdened communities—as defined by the state's permitting law—in their development plans beyond the considerations of new pollutants. This tool would prove particularly useful in northern New Jersey towns that are more vulnerable to extreme weather impacts.<sup>173</sup> With it, municipalities could prevent the widespread sale and redevelopment of affordable housing in neighborhoods with considerable amounts of "substantially damaged"<sup>174</sup> homes after extreme weather events. For example, an environmental justice element in the state's land-use law could prevent investment property owners and developers from replacing multi-unit rental dwellings with single-family residential

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167. For discussion of S2607, see *supra* text accompanying notes 153–56.

168. For discussion of SB1000, see *supra* text accompanying notes 113–14.

169. For discussion of New Jersey's climate resiliency goals, see *supra* text accompanying notes 152–56. For discussion of California's statewide amendment to land-use development plans, see *supra* text accompanying notes 108–15.

170. See *supra* text accompanying notes 108–15.

171. See N.J. STAT. ANN. § 40:55D-28 (a)–(b) (West 2020). New Jersey municipalities' master plans are the equivalent to California's general plans. Both documents guide local development. Compare *id.*, with CAL. GOV'T CODE § 65302 (a), (h)(1) (West 2022).

172. See *supra* text accompanying notes 109–11.

173. See *Location Matters: Sandy's Tides Hit Some Parts of the New Jersey Coast Harder than Others*, USGS (Nov. 17, 2016), <https://www.usgs.gov/news/location-matters-sandy-s-tides-hit-some-parts-new-jersey-coast-harder-others>. USGS researchers found that Superstorm Sandy impacted New Jersey's northern coastal counties at greater magnitudes than its southern counties. *Id.*

174. For discussion of "substantially damaged" see *supra* text accompanying notes 77–84.

homes if it would create a loss of affordable housing vital to that neighborhood.

Second, if New Jersey amends its land-use law to require municipalities to adopt environmental justice elements in their master plans, the Extreme Weather Environmental Justice Act will need to incorporate a self-enforcing provision in order to accomplish these goals. Simply put, the Extreme Weather Environmental Justice Act should explicitly provide a fining structure for municipalities that do not comply with the goals and deadlines provided in the act. Without the imposition of fines, municipalities' participation in amending their master plans becomes unintentionally voluntary. Further, with the funds collected from these fines, New Jersey can invest in protective features for homes in overburdened communities.

Third, another key aspect to the Extreme Weather Environmental Justice Act's success is community input. Oregon's land-use law recognizes that planning often takes place without vulnerable stakeholders ever having a chance to provide input for the laws that will ultimately affect them.<sup>175</sup> Without the input and comments of New Jersey's overburdened communities in land-use decisions, development in these communities may not improve the standard of living or build climate resilient structures where they are needed most.

The idea of community involvement in decision-making invites the question of whether state agency representatives to the Interagency Council on Climate Resilience can adequately relay the vulnerabilities of New Jersey's coastal overburdened communities. Virginia's VCEJ Act seems to suggest that diverse perspectives in advisory bodies are necessary to promote environmental justice because the VCEJ's nonlegislative citizen members greatly outweigh ex-officio members.<sup>176</sup> In contrast, Governor Murphy's Interagency Council only includes representatives from state agencies.<sup>177</sup> One of the clearest benefits to including nonlegislative citizens on the Interagency Council on Climate Resilience is that these members will not be concentrated in one area of the state. Most agency representatives likely live and work where policymaking is taking place: the state's capital, Trenton. Both physically and metaphorically, many of the representatives given a seat at the table in state policymaking are distanced from the communities that environmental justice aims to serve if they do not live in those communities themselves. Therefore, the Extreme Weather

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175. For discussion of Oregon's land-use bill, see *supra* text accompanying notes 116–23.

176. For discussion of Virginia's VCEJ Acts, see *supra* text accompanying notes 124–31.

177. See N.J. Exec. Order No. 89 (Oct. 29, 2019), <https://nj.gov/infobank/eo/056murphy/pdf/EO-89.pdf>.

Environmental Justice Act may need to amend Murphy's Interagency Council to include representatives outside of state agencies.

#### V. CONCLUSION

Climate data cannot predict when New Jersey may experience a storm similar in magnitude to Superstorm Sandy. However, empirical data shows that when that storm does come, minority and low-income residents will not recover at the same pace as wealthier, whiter residents. There is no one-size-fits-all solution to the problems that extreme weather events create for overburdened communities. However, environmental justice legislation could bring meaningful steps toward New Jersey's overburdened coastal communities becoming climate resilient. To prepare these communities for the storm ahead, New Jersey should build an environmental justice bill to work in tandem with the solutions proposed by the Interagency Council on Climate Resilience. As environmental justice legislation in other states proves, in order to be effective, this bill should not only identify the communities impacted most by climate change-induced extreme weather, but it should also offer these communities a seat at the table in drafting policy solutions.