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Meaning of Climate Change

Cap-and-Trade Policies  
and Consumers

A Mandatory Cap-and-  
Trade Program and  
Environmental Justice

Rural Communities and the  
Carbon Offset Market

Green, Healthy Housing

Lawyers and Holistic  
Green Communities

Weatherization Assistance for  
Affordable Multifamily Housing

Urban Agriculture

Green-Collar Jobs

State and Regional Land-Use and  
Transportation Planning

Utilities and the Smart Grid

Health of Communities

Adaptation to Climate Change

Climate Change  
and a Green Economy  
**NEW ADVOCACY  
OPPORTUNITIES**



Sargent Shriver National Center on Poverty Law



# Why Climate-Change Issues Are Relevant to Poverty Law Advocates

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Climate change may be viewed by poverty law advocates as unrelated to the day-to-day survival issues facing poor people, but nothing could be farther from the truth. Not only does climate change relate to our clients' health and financial stability, but also many of the potential solutions to climate change may ameliorate certain aspects of poverty. Here I discuss potential advocacy angles for poverty law advocates to take on climate change.

## Why Worry?

The term "climate change" refers to the warming of the atmosphere caused by the buildup of certain gases that are generated by human activity and trap heat from the sun. Such so-called greenhouse gases are carbon dioxide, methane, and nitrous oxide, among others. Global increases in carbon dioxide are due primarily to fossil fuel use and to a lesser extent land use changes (such as deforestation), while increases in methane and nitrous oxide are due to agriculture.<sup>1</sup> Carbon dioxide is the most important man-made greenhouse gas, and efforts to arrest climate change are focused on reducing carbon dioxide emissions.<sup>2</sup>

The very likely ecological effects of the buildup of greenhouse gases are, among others, hot extremes, heat waves, and heavy precipitation events, along with intense tropical cyclones and hurricanes.<sup>3</sup> These will have a disproportionate impact on low-income communities and communities of color in several respects. Extreme heat leads to increased illnesses and cardiovascular deaths, particularly among the elderly, infants, and African Americans.<sup>4</sup> A major factor underlying these disparities is that poor people and people of color are segregated in inner-city neighborhoods, which

<sup>1</sup>Richard B. Alley et al., Intergovernmental Panel on Climate Change, *Summary for Policy Makers 2*, in CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS (S. Solomon et al. eds., 2007), <http://bit.ly/cITTYL>.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.* at 15.

<sup>4</sup>Rachel Morello-Frosch et al., *The Climate Gap: Inequities in How Climate Change Hurts Americans and How to Close the Gap* 7 (2009), <http://bit.ly/bFI0as>; J. Andrew Hoerner & Nia Robinson, *A Climate of Change: African Americans, Global Warming, and a Just Climate Policy for the U.S.* 10 (2008), <http://bit.ly/cwrMLR>.

have more roads and buildings and less tree cover, allowing for greater buildup of heat during heat waves.<sup>5</sup> Moreover, urban areas tend to have higher levels of air pollution, which also has an impact on the overall health of local inhabitants. In California five of the smoggiest cities are also the locations with the highest projections of ambient ozone increases associated with climate change as well as the highest densities of people of color and low-income residents.<sup>6</sup>

Climate change will not only disproportionately have an impact on the health of low-income communities and communities of color but also have disproportionate economic effects. In the coming decades the cost of basic necessities such as water and electricity are projected to increase as a result of climate change.<sup>7</sup> Low-income households spend disproportionately higher percentages of their household budgets for these basic necessities.<sup>8</sup> Extreme weather events related to climate change may also result in increased homelessness in low-income urban areas due to lack of access to emergency credit and insurance and due to less savings and fewer personal resources generally.<sup>9</sup>

### What Legal Aid Programs Can Do

Although climate change disproportionately affects the health and economic well-being of the poor, there are opportunities for advocacy that will not only benefit the planet but also ameliorate

poverty. Often these advocacy opportunities fall outside the traditional areas of legal services practice such as family law, public benefits, and eviction defense. Also, legal strategies other than litigation may be better suited for legal services programs, which might lack the resources to prosecute complex environmental cases.<sup>10</sup> Discussed below are issues well suited for poverty law advocates' involvement.

**Increasing Weatherization of Poor People's Homes.** Low-income households typically spend 17 percent of their annual income on energy, compared to 4 percent for other households.<sup>11</sup> While some legal services offices help clients obtain financial assistance for energy bills under the federal Low-Income Home Energy Assistance Program (LIHEAP), few offices help clients access the federal Weatherization Assistance Program (WAP), whose grants are intended to increase the energy efficiency of homes occupied by low-income households.<sup>12</sup> The U.S. Department of Energy administers the program, and provides funds to states, which in turn award contracts to local weatherization service agencies. The Energy Department estimates that 38 million households are eligible for WAP assistance, and any household with income under 150 percent of the federal poverty limit is eligible.<sup>13</sup> Legal services programs can inform clients about the availability of WAP and engage in advocacy to target weatherization resources

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<sup>5</sup>Morello-Frosch et al., *supra* note 4, at 8.

<sup>6</sup>*Id.* at 13.

<sup>7</sup>Frank Ackerman et al., *The Cost of Climate Change: What We'll Pay if Global Warming Continues Unchecked*, at v (2008), <http://bit.ly/cdA9wY>.

<sup>8</sup>Morello-Frosch et al., *supra* note 4, at 15.

<sup>9</sup>*Id.* at 17.

<sup>10</sup>For the range of climate-change court cases, see Arnold & Porter, *Climate Change Litigation in the U.S.*, [www.climatecasechart.com](http://www.climatecasechart.com). See, e.g., *Comer v. Murphy Oil USA*, 585 F.3d 855 (5th Cir. 2009), *dismissed en banc*, No. 07-60756, 2010 U.S. App. LEXIS 11019 (5th Cir. May 28, 2010); *Native Village of Kivalina v. Exxon Mobil Corporation*, 663 F. Supp. 2d 863 (N.D. Cal. 2009); *Northwest Environmental Defense Center v. Owens Corning Corporation*, 434 F. Supp. 2d 957 (D. Or. 2006).

<sup>11</sup>U.S. Department of Energy, 2008 Weatherization Assistance Program Briefing Book Links 1–2 (2008), <http://bit.ly/9C6YGK>.

<sup>12</sup>42 U.S.C. §§ 6861 *et seq.* (2005) (implementing regulations codified at 10 C.F.R. §§ 440 *et seq.* (2009)).

<sup>13</sup>U.S. Department of Energy, *supra* note 11.

better to low-income homeowners and renters. Weatherization cuts greenhouse gas emissions by reducing the consumption of fossil fuels. Encouraging low-income families to weatherize their homes will not only reduce their homes' carbon footprint but also cut energy bills for households least able to afford high energy bills.

**Creating “Green Job” Opportunities for Low-Income Workers.** “Green Jobs” refer to long-term and well-paid employment opportunities that “significantly contribute to preserving or enhancing environmental quality.”<sup>14</sup> Most green jobs are projected to require more than a high school diploma but less than a four-year college degree.<sup>15</sup> In 2009 \$500 million was set aside in the American Recovery and Reinvestment Act for the U.S. Department of Labor’s Competitive Grants for Green Jobs Program.<sup>16</sup> Under this initiative funds will go to job training projects in seven industries: energy efficient building, construction and retrofit; renewable electric power; energy-efficient and advanced-drivetrain vehicles; biofuels; deconstruction and materials reuse; energy efficient assessment (residential, commercial and industrial); and manufacturing that produces sustainable products using environmentally sustainable processes and materials.<sup>17</sup> Although the U.S. Department of Labor has already awarded most of the grants, legal advocates for the poor can monitor their implementation.<sup>18</sup>

For programs that can engage in legislative work, advocacy could be directed to establish Green Jobs programs on the state and local level targeted to chronically unemployed workers.

In 2009 Minnesota lawmakers and Gov. Tim Pawlenty enacted a \$2.5 million green jobs bill to prepare low-income Minnesotans for weatherization jobs and renewable energy and energy-efficiency trades. The bill also provides for outreach by community-based organizations about renewable energy and energy-efficiency opportunities; ensures equitable access for disadvantaged women-owned businesses and businesses of color; and requires progress reports on how weatherization programs have explicitly benefited people of color and low-income people.<sup>19</sup>

Another advocacy approach for creating green job training programs is using Section 3 of the Housing and Urban Development Act of 1968, the purpose of which is to “ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.”<sup>20</sup> Section 3 also directs recipients of housing and community development funds to provide opportunities for qualified, low-income business owners to receive preference in bidding on contracts funded by the U.S. Department of Housing and Urban Development (HUD).<sup>21</sup> Using HUD’s Section 3 administrative complaint procedure, legal services advocates were able to establish a preapprentice construction training program for low-income individuals residing in the Long Beach, California, area and a job placement program

<sup>14</sup>Sarah White & Jason Walsh, Greener Pathways: Jobs and Workforce Development in the Clean Energy Economy 6 (2008), <http://bit.ly/9slgh3>.

<sup>15</sup>*Id.*

<sup>16</sup>The program was authorized by Title X of the Energy Independence and Security Act of 2007, codified at 29 U.S.C. § 2916(e) (2005).

<sup>17</sup>Green for All, The American Recovery and Reinvestment Act: Understanding the Competitive Grants for Green Jobs Training 6 (2009), <http://bit.ly/ahzXTI>.

<sup>18</sup>Press Release, U.S. Department of Labor, U.S. Department of Labor Announces Nearly \$190 Million in State Energy Sector Partnership and Training Grants for Green Jobs (Jan. 20, 2010), <http://bit.ly/aYEoTp>.

<sup>19</sup>See 2009 Minn. Laws ch. 138, <http://bit.ly/bMKfRK>.

<sup>20</sup>See Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u(b) (2005); 24 C.F.R. § 135 *et seq.* (2009).

<sup>21</sup>12 U.S.C. § 1701u(d).

for graduates of the construction training program.<sup>22</sup>

**Expanding Access to Mass Transit.**

Low-income households rely heavily on public transportation for travel to work and school. According to the American Public Transportation Association, 20.1 percent of public transit users have annual incomes less than \$15,000, 14.8 percent have annual incomes between \$15,000 and \$24,999, and 30.6 percent have annual incomes between \$25,000 and \$49,999.<sup>23</sup> However, in small urban and rural communities, nearly two-thirds of all residents in these communities have few if any public transportation options, further disadvantaging low-income families who live in those communities.<sup>24</sup> While middle-income Americans spend less than 22 percent of their annual incomes on private transportation, Americans in the lowest 20 percent income bracket, many of whom live in rural settings, spend about 42 percent of their total annual incomes on transportation.<sup>25</sup>

To expand mass transit access for low-income households, legal services advocates can get involved with the development of metropolitan area and statewide transportation plans. Those plans are developed by metropolitan planning organizations (MPOs) mandated by the Federal Highway Act of 1962 for urbanized areas with populations greater than 50,000.<sup>26</sup> These MPOs are composed of representatives from local government

and governmental transportation authorities.<sup>27</sup> One of the most important planning functions of MPOs is the development of a four-year transportation improvement program, where the MPO identifies the transportation projects and strategies that it plans to undertake over the next four years. All projects receiving federal funding must be in the transportation improvement program.<sup>28</sup> There are public involvement requirements—such as solicitation of public comment—that MPOs must follow in the development of four-year programs, as well as the metropolitan area and statewide transportation plans.<sup>29</sup> Increased use of mass transit will not only help low-income households save money and cut greenhouse gas emissions but also produce for inner-city residents a range of health benefits such as lower air pollution, less congested and safer roadways, and increased physical activity.<sup>30</sup>

**Bringing Poor People into Smart-Growth Initiatives.**

The climate-change issue has given further impetus to “smart-growth” initiatives at the federal, state, and local level. The term “smart growth” refers to community planning initiatives designed to arrest urban sprawl. Smart-growth proponents generally advocate development to occur within existing urban and suburban centers and along mass transit routes, increasing the walkability of neighborhoods and preserving farmland and open space. These anti-sprawl

<sup>22</sup>For the administrative complaint process, see 24 C.F.R. § 135.76 (2009). See also Alaric Degrafinried & Catherine Bishop, National Housing Law Project, An Advocate’s Guide to the HUD Section 3 Program: Creating Jobs and Economic Opportunity 13–14 (2009), [www.nhlp.org/files/03%20Sec.%203%20Guide.pdf](http://www.nhlp.org/files/03%20Sec.%203%20Guide.pdf). A copy of the administrative complaint is reprinted in Appendix D (*id.*).

<sup>23</sup>John Neff & Larry Pham, American Public Transportation Association, A Profile of Public Transportation Passenger Demographics and Travel Characteristics Reported in On-Board Surveys 23 (2007), <http://bit.ly/c3yET9>.

<sup>24</sup>American Public Transportation Association, The Benefits of Public Transportation, Mobility for America’s Small Urban and Rural Communities 1 (n.d.), [www.publictransportation.org/pdf/reports/rural.pdf](http://www.publictransportation.org/pdf/reports/rural.pdf).

<sup>25</sup>*Id.*

<sup>26</sup>Federal Highway Act of 1962, 23 U.S.C. § 134 (2005).

<sup>27</sup>Federal Highway Administration & Federal Transit Administration, U.S. Department of Transportation, Metropolitan Planning Organization (MPO) Database (updated June 11, 2010), [www.planning.dot.gov/mpo.asp](http://www.planning.dot.gov/mpo.asp).

<sup>28</sup>Transportation Planning Capacity Building Program, Federal Highway Administration & Federal Transit Administration, The Transportation Planning Process Key Issues: A Briefing Book for Transportation Decisionmakers, Officials, and Staff 9 (n.d.), <http://bit.ly/9TXuQn>.

<sup>29</sup>See generally 23 C.F.R. § 450.212 (2009).

<sup>30</sup>Judith Bell and Larry Cohen, Convergence Partnership, The Transportation Prescription: Bold New Ideas for Healthy, Equitable Transportation Reform in America 13–15 (n.d.), <http://bit.ly/b1cPm7>.

initiatives should result in reduced consumption of fossil fuels particularly in the transport sector, thus slowing climate change resulting from increased carbon dioxide emissions.

A growing number of smart-growth advocates have embraced the concept of equitable development as a smart-growth goal, whereby “everyone—regardless of the neighborhood in which they live—has access to essential ingredients for economic and social success: living-wage jobs, viable housing choices, public transportation, good schools, strong social networks, safe and walkable streets, services, parks, access to healthy food, and so on.”<sup>31</sup> In 2009 three federal agencies (the HUD, the Department of Transportation, and the Environmental Protection Agency) formed the Sustainable Communities partnership “to help American families in all communities—rural, urban and suburban—gain better access to affordable housing, more transportation options, and lower transportation costs.”<sup>32</sup> Planning and capacity-building grants will be awarded by these agencies in the coming year. Likely beneficiaries of the Sustainable Communities partnership are local transit-oriented development projects. These projects involve one or more mixed-use development projects located adjacent to a mass transit station (such as subway, light rail, commuter rail, or bus line).<sup>33</sup>

In communities where transit systems are being expanded, poverty law advocates have advocated the development of affordable housing along transit cor-

ridors and protections against displacement of low-income residents.<sup>34</sup> When pushing for new affordable housing, advocates must exercise care to avoid creating new areas of concentrated poverty or perpetuating patterns of racial segregation.<sup>35</sup> Moreover, poverty law advocates must insist that new transit service transports residents of newly developed affordable housing to areas where jobs are; otherwise low-income households will have to use automobiles to commute to work, resulting in greater greenhouse gas emissions.<sup>36</sup>

A related issue is the potential loss of federally subsidized housing units sited along existing transit corridors. Approximately 65,000 federally subsidized units located in eight major cities and sited within a half-mile of an existing or proposed transit stop are covered by federal rental assistance contracts due to expire before 2012.<sup>37</sup> Preserving these units will not only avoid homelessness but also allow poor people to continue using mass transit, thus avoiding greater use of fossil fuels.

**Helping Low-Income Communities Adapt to Climate Change.** Most of the areas for advocacy discussed so far relate to mitigating the impact of climate change by reducing greenhouse gas emissions. However, the effects of climate change are already upon us, as manifested by widespread changes in precipitation amounts and extreme weather events such as droughts, heavy precipitation events, heat waves, and the intensity of tropical cyclones.<sup>38</sup> Thus legal advocacy

<sup>31</sup>PolicyLink, Equitable Development Toolkit (n.d.), <http://bit.ly/bIYNXA>.

<sup>32</sup>HUD, DOT and EPA Partnership: Sustainable Communities (2009), <http://bit.ly/b3MTIE>.

<sup>33</sup>Reconnecting America, Center for Transit-Oriented Development, Realizing the Potential: Expanding Housing Opportunities Near Transit 6 (2007), <http://bit.ly/bvB265>.

<sup>34</sup>The Housing Preservation Project partnered with several community organizations in the Minneapolis-St. Paul area and developed a series of recommendations to protect and expand housing opportunities for low-income residents along the Central Corridor light rail transit line (see Housing Preservation Project, Summary of Recommendations—April 27, 2010 (2010), <http://bit.ly/bQS58S>).

<sup>35</sup>Vicki Bean et al., Building Environmentally Sustainable Communities: A Framework for Inclusivity 11 (2010), <http://bit.ly/cIKZ1P>.

<sup>36</sup>*Id.* at 14.

<sup>37</sup>Reconnecting America & National Housing Trust, Preserving Opportunities: Saving Affordable Homes Near Transit 1 (2008), <http://bit.ly/aTmZ16>.

<sup>38</sup>Alley et al., *supra* note 1, at 7.

must be directed toward helping communities adapt to the effects of climate change; this is generally referred to as “adaptation.”

One aspect of adaptation relates to how coastal communities can respond to actual or anticipated rise in sea levels due to climate change. Lawsuits alleging that the defendant energy companies contributed to global warming and seeking damages for coastal residents in Alaska and Louisiana have been rejected by the courts. In *Native Village of Kivalina v. Exxon Mobil Corporation* a federal district court dismissed damage claims brought under federal and state common-law nuisance, civil conspiracy, and concert-of-action theories and filed on behalf of a coastal village of Alaskan Native Americans.<sup>39</sup> The court ruled that the case presented a nonjusticiable political question and that the plaintiffs lacked standing for lack of traceability of injury in fact to the defendants’ actions.<sup>40</sup> In *Comer v. Murphy Oil USA* a panel of the Fifth Circuit Court of Appeals initially ruled that plaintiff-property owners on the Mississippi Gulf coast had standing to assert their public and private nuisance, trespass, and negligence-based damage claims and refused to dismiss the case under the “political question” doctrine.<sup>41</sup> After the full court determined to hear the case *en banc*, one justice became recused, leaving only eight judges not disqualified to hear the case.<sup>42</sup> Thereupon the Fifth Circuit ruled that, with the court lacking a quorum, the case could not proceed—and because the effect of granting the *en banc* petition was to vacate the panel’s decision, five of the eight remaining justices ordered the case dismissed.<sup>43</sup>

While litigation has not delivered justice to residents of coastal communi-

ties affected by climate change, other legal strategies may prove more effective. Coastal communities and communities located near flood plains need to plan for infrastructure improvements to withstand rising sea levels and heavy precipitation events. Legal advocates for the poor should investigate whether such planning is already under way and demand that representatives of low-income residents of those communities be part of the planning. Advocates for the poor should become more involved in disaster planning. In 2008 the Legal Services Corporation entered with the American National Red Cross into a memorandum of understanding where the parties agreed to encourage their grantees and local chapters, respectively, to meet and discuss predisaster relief plans and to collaborate on providing services during a disaster.<sup>44</sup> Advocates should also acquaint themselves with the National Disaster Legal Aid Website, which serves as a centralized national resource for legal aid, pro bono, and criminal defender attorneys across the country on legal issues related to all types of disasters, helps recruit and helps mobilize pro bono attorneys in the aftermath of a disaster, and gives accurate and timely information on legal issues.<sup>45</sup>

**Engaging in Transactional Work.** In addition to participating in planning and community development initiatives, poverty law advocates should engage in transactional work to help low-income communities respond to climate change. Transactional work covers legal work related to the establishment of organizations and obtaining funding for those organizations. Legal services offices can help groups incorporate, develop bylaws, and obtain tax-exempt status under Sec-

<sup>39</sup>*Native Village of Kivalina*, 663 F. Supp. 2d 863.

<sup>40</sup>An appeal to the Ninth Circuit Court of Appeals is planned (see Jennifer Koons, *Courts Follow Landmark 2nd Circuit Ruling with 2 Greenhouse Gas Decisions*, NEW YORK TIMES, Oct. 19, 2009, <http://nyti.ms/a994MY>).

<sup>41</sup>*Comer*, 585 F.3d at 860.

<sup>42</sup>*Comer v. Murphy Oil USA*, 598 F.3d 208 (5th Cir. 2010).

<sup>43</sup>*Comer*, 2010 U.S. App. LEXIS 11019.

<sup>44</sup>See Memorandum of Understanding between the American National Red Cross and the Legal Services Corporation (2008), <http://www.lsc.gov/pdfs/redcrossmou.pdf>.

<sup>45</sup>See National Disaster Legal Aid, [www.disasterlegallaid.org](http://www.disasterlegallaid.org).

tion 501(c)(3) of the Internal Revenue Code. Advocates can also identify funding opportunities for community groups and help groups apply for those funds. After assisting a local environmental justice organization incorporate and obtain tax-exempt status, I authored a successful grant application on behalf of the organization to the U.S. Environmental Protection Agency for its climate-change work. Under the grant, the organization will conduct energy-efficient barn raising, where volunteers are recruited to weatherize apartments and homes for low-income residents, and information on the relationship between climate change and weatherization is shared with the residents of the structures weatherized and the community at large.

Another aspect of transactional legal work is the creation of small businesses and worker-owned enterprises. Poverty law advocates could help establish weatherization businesses or cooperatives that employ residents of low-income communities. Legal assistance can be in the form of establishing the legal entity and obtaining start-up financing for these new businesses and enterprises.<sup>46</sup>

**Educating Clients about Climate Change’s Impact on Low-Income Communities.** One reason that poverty law advocates have not become involved in climate-change work is that clients have not pressured legal aid offices to work on this issue. That lack of pressure is largely due to the lack of information available in low-income communities on how climate change will affect poor people and people of color. By using some of the information presented here, legal services offices can help develop and disseminate fact sheets on how climate change will affect their clients.<sup>47</sup> Lawyers are also well positioned to identify other professional groups with expertise on climate change (such as public health professionals and agencies) and arrange to have them speak directly to clients at community forums.



Climate change will be an ongoing issue for poor people for at least the next century. While the issue does not lend itself to the kind of routine casework practiced in many legal services offices, here is a road map on how legal advocates for the poor can deliver climate-change justice to low-income clients and communities, likely to be most heavily affected by climate change.

<sup>46</sup>E.g., Duke University Law School’s Community Enterprise Clinic assisted a regional nonprofit entity to develop a strategy for utilizing renewable energy tax credits to finance sustainable community development activities (see *Making a difference Through Transactional Work*, DUKE LAW NEWS AND EVENTS, Nov. 20, 2008, <http://bit.ly/9dNEyB>).

<sup>47</sup>A recent report on environmental justice and climate change observed that “these kinds of educational materials are sorely needed as the underpinning for engaging broader constituencies on climate change” (Angela Park, *Everybody’s Movement: Environmental Justice and Climate Change* 35 (2009), <http://bit.ly/aRB2O3>).



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