



Arnold & Porter

Innovative. Integrated. Industry-Focused.

ELI Summer School: Environmental Justice

Stacey Sublett Halliday | July 22, 2026

Roadmap

Defining Terms & Level Setting

The Current Landscape

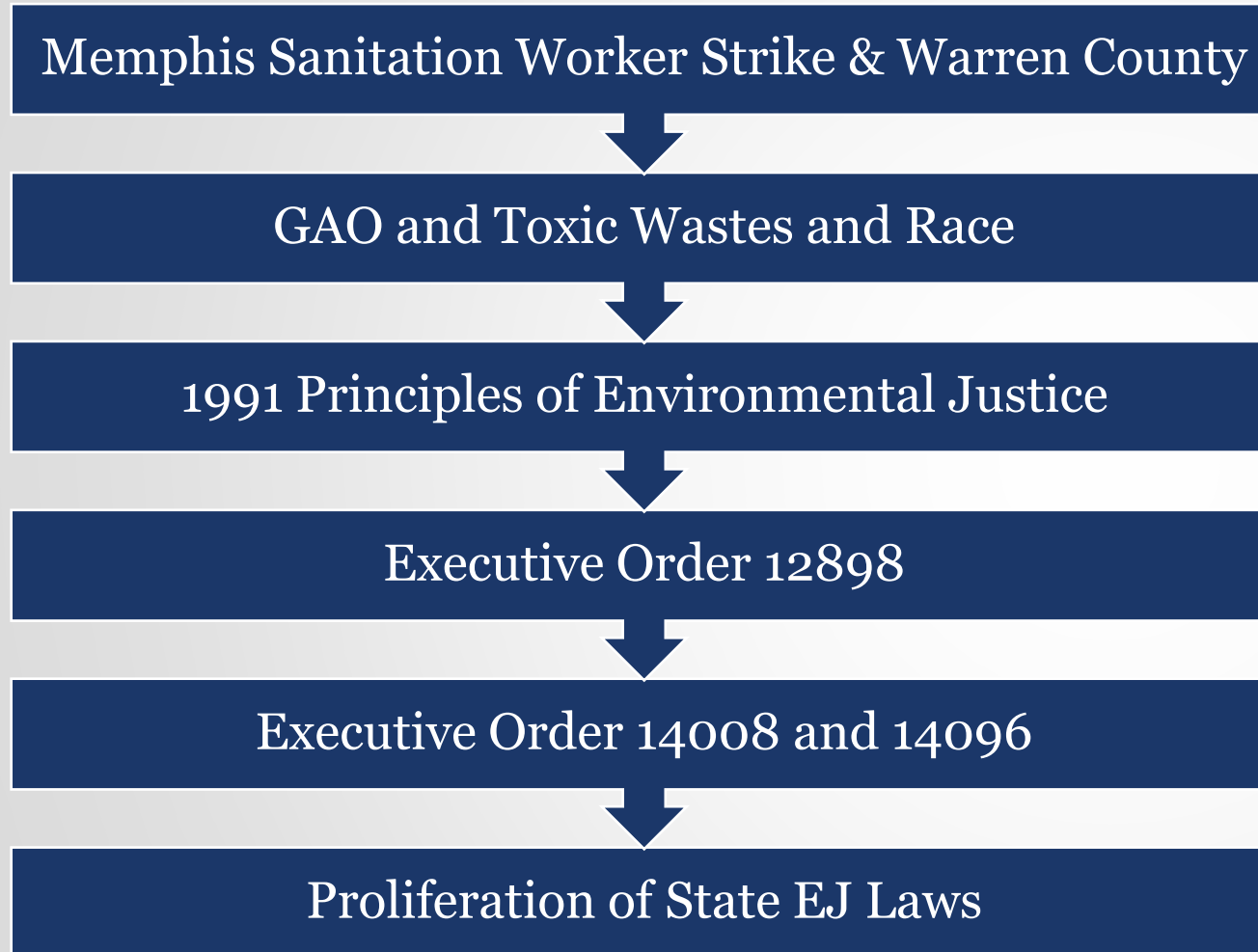
Considerations for Practitioners

The Road Ahead: What's Next?



Defining Terms & Level Setting

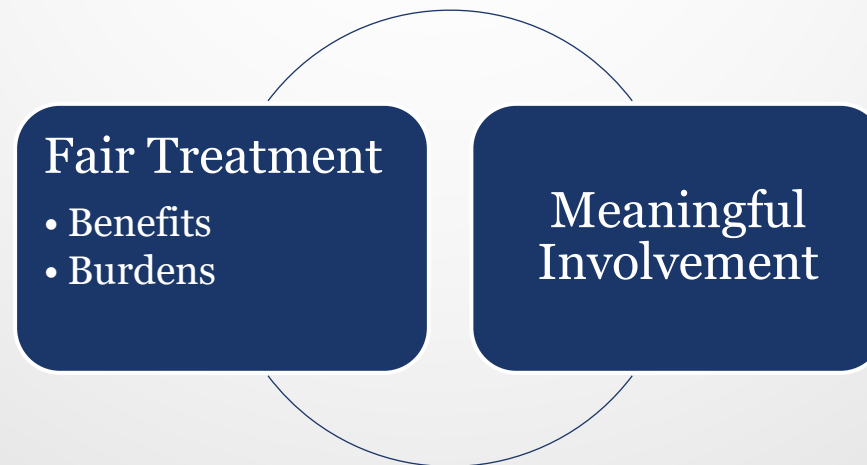
What is “environmental justice”?



What is “environmental justice”?

It depends.

- Definition can vary widely depending on context, jurisdiction and community – often with roots in former US EPA definition.
 - **New Jersey:** “Fair treatment and meaningful involvement of all people regardless of race, color, national origin or income.”
 - **Virginia:** “Fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability.”
 - **Washington:** “Fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, rules, and policies.”



Whose “fair treatment” and “meaningful involvement”?

It depends.

- Definition of impacted group also varies by jurisdiction and community.
- State law definitions use a range of approaches:
 - Percentile/rank-based classifications; or
 - Fixed threshold; or
 - Hybrid;
 - Narrative/Qualitative Definition
- Communities and advocacy groups may, instead, focus on “frontline” and “fenceline” terminology, which may be self-identified or relational.

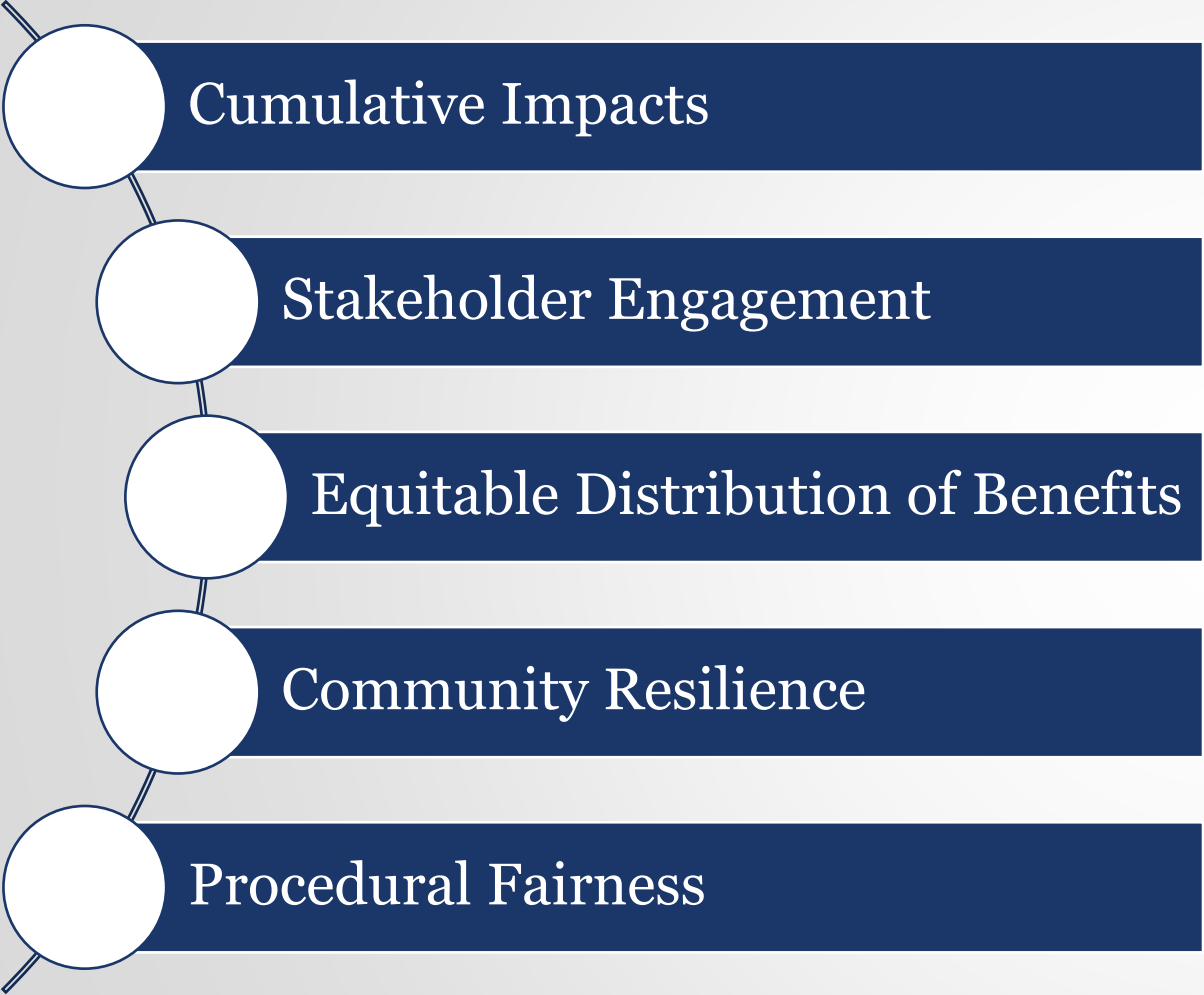
The Current EJ Landscape

Federal Policy Reversal & State Law Expansion

- Since 2020, growing list of states with formal statutory or regulatory environmental justice frameworks
 - Approaches include permitting review requirements, cumulative impact assessment, funding eligibility conditions, and other mechanisms
 - Permitting laws may have implications for stakeholder engagement, project impact analysis, project timelines, and operational continuity
- July 2025 multi-state coalition of Attorneys General issued joint guidance affirming legality of state EJ efforts;
- Infrastructure at state level continues to build



EJ by Another Name: Similar Concepts, New Framing



Cumulative Impacts

Stakeholder Engagement

Equitable Distribution of Benefits

Community Resilience

Procedural Fairness

Example of Conceptual Overlap – *Make America Healthy Again*

- Emphasis on vulnerable individuals and population health;
- Focus on broad, interacting biological and behavioral stressors;
- Considers accumulation of exposure over time;
- Advocacy for reducing children's chemical exposures, ensuring safe drinking water, expanding PFAS regulation, and lead exposure reduction

Shifts in Environmental Justice Advocacy Strategies



- Federal advocacy to state/local policymaking;
- Increased emphasis on cumulative and community-level impacts – not as project focused;
- More expansive and creative litigation, including application of new state laws;
- Use of community-generated and citizen science data to replace federal tools;
- Intensified focus on local land use (incl. opposition to data center development);
- Broader coalitions amongst advocacy groups and national organizations



EJ & Community Organization Defense

EJ advocacy organizations impacted by significant policy shifts, including:

- Tax-exempt status scrutiny;
- Federal grant termination and suspension;
- False Claims Act and certification exposure;
- Governance and fiduciary duty challenges;
- Investigations and information demands

Growing resources for non-profit defense:

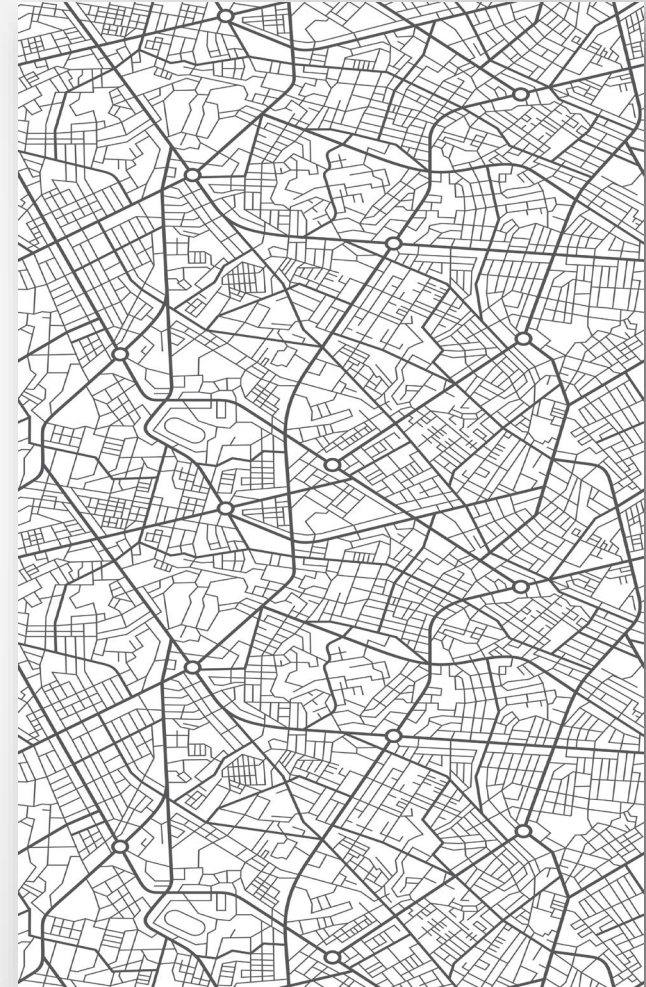
- Pro bono legal network refocusing;
- Foundation and philanthropic support;
- Capacity building for governance, Board management, operational resilience, and grant compliance

Considerations for Practitioners

Redefining EJ Absent Mapping Tools & Federal Guidance

What do we do in a world without EJSCREEN?

- Orphaned state, local, non-profit, and industry EJ programs related to EJ, which incorporated federal definitions, policy, guidance, and mapping tools;
- Challenges of meeting increasingly fragmented state compliance obligations using state mapping tools and unique community definitions;
- Impacts of use of citizen science and preserved federal tools for legal purposes



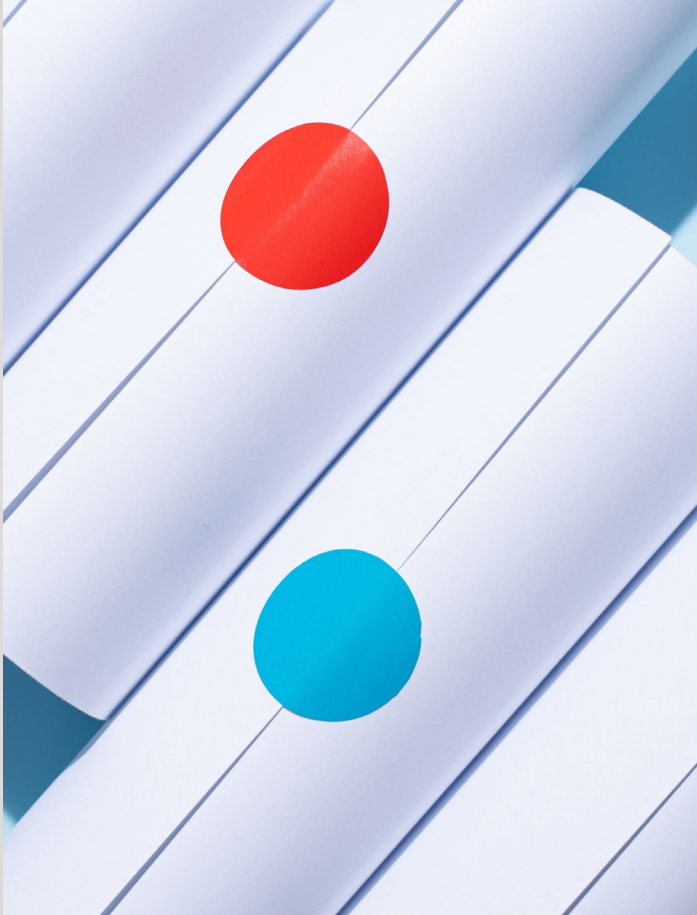
Compliance & Reputational Tensions for Regulated Entities



- Balancing state compliance and federal scrutiny;
- Reassessment of initiatives, reporting, and partnerships related to environmental justice in face of EJ and ESG opposition;
- Reputational challenges with communities and stakeholders, particularly where benefits were allocated or promised;
- Complex choices of how to navigate state/local compliance obligations, stakeholder relationships, and near-term significant opposition at federal level.

What's Ahead?

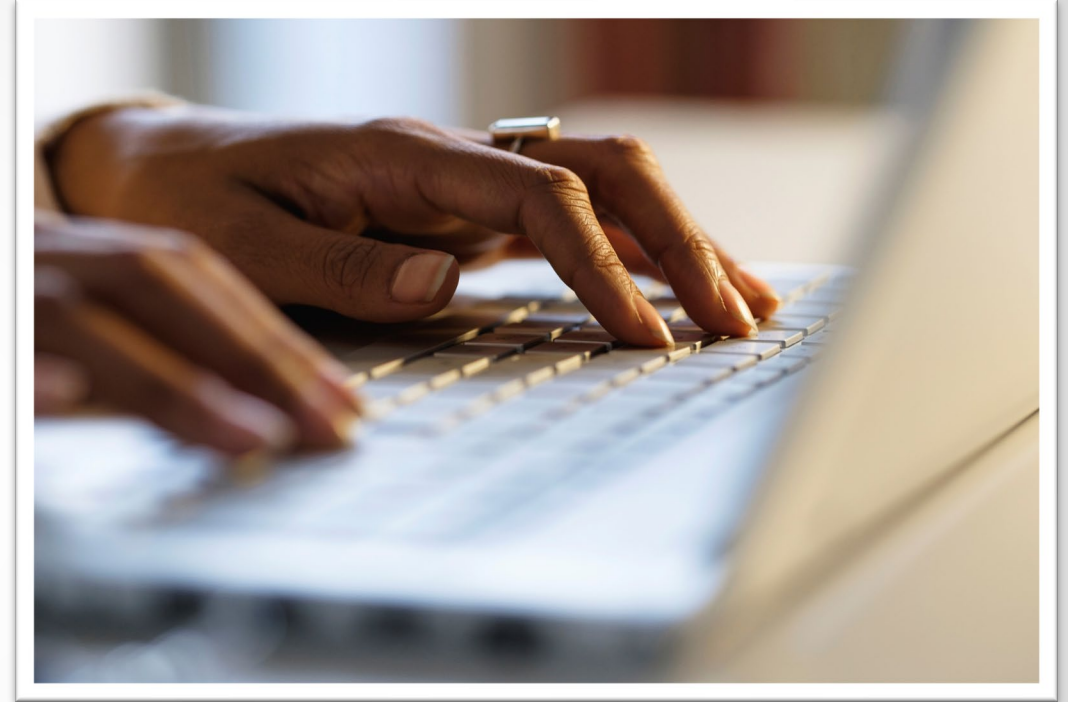
Continued Evolution of State EJ Laws

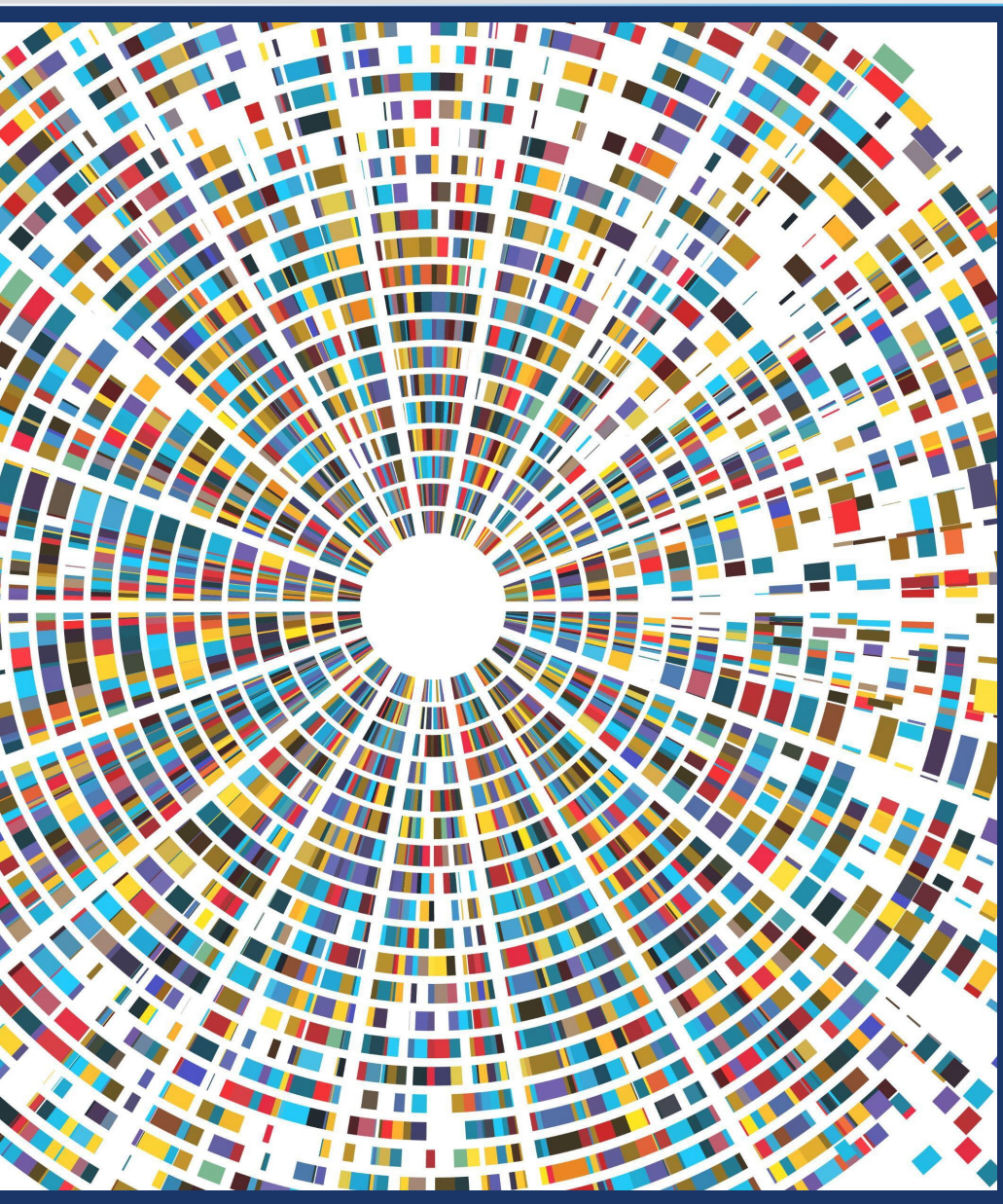


- Continued implementation and enforcement of still “new” state laws;
- Proposed EJ bills in several states, including:
 - Ex. Illinois (HB 5374/SB 3772)
 - Ex. Virginia (SB 425)
- Ongoing Rulemaking for Existing Laws
 - Ex. Minnesota MPCA Cumulative Impacts Rulemaking
- Development of model legislation, including joint initiative from WE ACT and Columbia’s Sabin Center

Local Impacts, Global Reporting: EU CSRD Reporting

- For companies subject to EU Corporate Sustainability Reporting Directive (CSRD), reporting may have EJ implications.
- Includes requirement to report on affected communities (ESRS S3):
 - If company determines that impacts, risks or opportunities related to affected communities are material, must report under ESRS S3, including material positive and negative impacts of operations and value chain on affected communities and actions taken to prevent, mitigate, or remediate impacts.
 - For global companies with U.S. operational footprint in “affected communities,” what EJ-related issues could trigger materiality and corresponding reporting obligations?





Key Takeaways

- ❖ Environmental justice continues to evolve in a new policy environment, presenting new near-term challenges and opportunities.
- ❖ For regulated entities, state EJ laws introduce meaningful compliance requirements, new litigation vulnerabilities, stakeholder-related risks, and tensions with federal opposition.
 - ❖ Continued stakeholder engagement at the community level continues to be an important, ongoing tool for operational stability.
- ❖ New landscape introduces new ways to explore EJ for legal practitioners – including non-profit governance counseling, advising companies on navigating compliance with new state laws, and working on development of model legislation.