

**Is There a Legal Path to Environmental Justice?**  
**Movement-building, strategic litigation, and a case study of Chicago's General Iron dispute**  
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**Abstract:**

This socio-legal research project assesses the role of litigation in environmental justice activist movements, using the planned relocation of the General Iron metal recycling plant in Chicago as a case study. To understand the modern environmental justice landscape, I conducted semi-structured interviews with ten environmental justice activists, plaintiffs, and attorneys, several of whom were involved in the General Iron issue specifically, to answer the research questions (1) What is the role of litigation in today's environmental justice battles, especially on the Southeast Side of Chicago? and (2) What legal strategies are recommended by both the track record of environmental justice litigation in the courts and the needs of environmental justice grassroots movements as reported by organizers? I then analyzed the resulting transcripts for recurring patterns and insights. My interviews with community organizers on Chicago's Southeast Side indicated that the General Iron issue exemplifies a dynamic wherein litigation is one of several elements of a grassroots environmental justice campaign, each essential but none more so than the others. In interviewing attorneys and reviewing the legal literature, I find that environmental justice lawsuits can catalyze political victories and bring attention and credibility to activist movements, even when they do not succeed in the courts. Based on both a review of legal literature and recent jurisprudence and my interviews, I ultimately propose that in the General Iron issue and future environmental justice battles on the Southeast Side, the community could draw on youth organizers to launch a youth plaintiff-led lawsuit employing both state constitutional claims and more traditional environmental law. Consistent with activists' current use of the courts, this lawsuit should be accompanied by a media campaign and efforts to lobby local and state politicians for policy changes. With appropriately specific claims and compelling

plaintiffs, such an effort could set new precedents, breathe life into Illinois' historically limited environmental rights amendment, and succeed where past youth plaintiff cases have failed.

## **I. Introduction**

Environmental injustice, defined here as occurring when environmental burdens disproportionately impact groups that already experience cultural or political marginalization (for example, ethnic minorities, impoverished individuals, and Indigenous peoples in settler states), has received increased attention both in the academy and broader society in recent years (Sze and London 2008, 1, EPA 2021). Low-income communities of color are disproportionately likely to be subjected to hazardous sites and suffer disproportionately from health issues related to poor environmental conditions (EPA 1991, 20). This momentum has been reflected at the federal level in the United States. On his eighth day in office, President Joe Biden released an executive order that, among other things, ordered all federal agencies to develop an environmental justice framework to be incorporated within decision-making and established a National Climate Task Force responsible in part for “deliver(ing) environmental justice” (Executive Order 14007, January 27, 2021).

Increasingly, environmental justice is understood as integral to environmental efforts, largely due to efforts by Black, Latin, and Indigenous activists and thinkers, many of whom are mothers, young people and/or members of the working class. The environmental justice framework argues that in order for any system to meet the needs of the present without compromising the ability of future generations to meet their needs,<sup>1</sup> it must serve constituents equitably. That entails both meeting the differing needs of diverse demographics and addressing challenges in a way that does not privilege some members of society over others or create crises

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<sup>1</sup> Language borrowed from the United Nations Brundtland Commission, which in 1987 defined sustainability as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

further down the line. Mainstream environmentalism, historically led by wealthy white Americans, has been framed as encompassing a narrow, isolated range of ecological issues (Pellow and Bruelle 2005, 16). Within this long-standing mindset, environmentalism is seen as mostly concerned with at-risk ecosystems and species. In fact, environmental justice advocates argue, this could not be further from the truth. The problems we term ‘environmental threats,’ including local-level polluting developments, are not merely threats to the environment; rather, they are also multiplying factors, poised to complicate and worsen virtually every social injustice. Furthermore, environmental threats like air and water pollution also have serious consequences for human communities, and disproportionate impact on those communities that are systematically marginalized by racist zoning laws, implicit bias in health care systems, and other modes of racial and economic oppression.

Increasingly, today’s popular media and policy agendas distance themselves from this historic siloing of environmental and social justice concerns, instead recognizing environmental justice as a goal of both environmental and social movements. At its most basic, environmental justice recognizes (1) that anthropogenic environmental change is occurring, (2) that it disproportionately impacts already-marginalized members of society, and (3) that remedies to environmental problems must also dismantle the social inequities those problems perpetuate in order to effectively address the full scope of the issues they aim to solve.

While recent environmental injustice issues, like Flint, Michigan’s lead-tainted water<sup>2</sup> and the placement of the Dakota Access Pipeline adjacent to Standing Rock Sioux land<sup>3</sup> have

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<sup>2</sup> For more information, including a thorough summary of the causes and response to Flint’s water crisis, see Pauli BJ. The Flint water crisis. *WIREs Water*. 2020;7:e1420. <https://doi.org/10.1002/wat2.1420>

<sup>3</sup> For an Indigenous perspective on the history and politics of the Dakota Access Pipeline (DAPL), see: Whyte, Kyle Powys, *The Dakota Access Pipeline, Environmental Injustice, and U.S. Colonialism* (February 28, 2017). *Red Ink: An International Journal of Indigenous Literature, Arts, & Humanities*, Issue 19.1, Spring 2017, Available at SSRN: <https://ssrn.com/abstract=2925513>

gained new levels of international attention, they are far from new. In the 1960s, 1970s and 1980s, after the 1964 Civil Rights Act and its constituent Title VI prohibited “discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance,” the U.S. saw a number of strikes and protests over environmental injustice issues. Often, the issue at hand was the placement of hazardous waste-generating plants in minority neighborhoods. Some minority communities within urban centers, including the South and West sides of Chicago, Oakland, California, and Harlem, New York, have had near-continuous histories of disparate impact from waste (Baptista 2019, 10). Grassroots efforts to combat corporate, governmental, or private-public decision-making that resulted in disparate environmental burdens were mostly led by working class people of color and met with mixed success. Thus, while environmental justice struggles often focus on the siting or permitting of a specific industrial plant or city landfill, they typically occur in the context of cumulative historic environmental discrimination over time. Thus, it is not just the impact of any one development that activists are concerned about, but rather the marginal impact of additional pollution on an already-burdened community.

The rise of environmental justice activism at the tail end of the 20th century brought with it the establishment of environmental justice litigation, which emerged from existing legal traditions like civil rights law, traditional environmental law, and poverty law. However, law and litigation are famously slow-moving, especially relative to in-the-streets activism, where a single protest can create seismic change in a local or federal matter. The case “widely acknowledged” as the first environmental justice lawsuit, *Bean v. Southwestern Waste Management Corp*, was brought in 1979 over the placement of a garbage dump in Houston’s predominantly Black Northwood Manor neighborhood (Cole 1994, 523). The case was ruled in favor of Southwestern

Waste Management, but despite the loss, *Bean* marked the beginning of legal efforts that paralleled and complemented environmental justice activism.

In the decade following *Bean*, dozens of lawsuits were brought on behalf of low-income communities with claims of environmental injustice (Cole 1994, 523). Almost uniformly, these lawsuits accompanied other forms of advocacy and activism over the matter in question. But even as this field of law developed, influential legal scholars and social scientists outside the legal field expressed skepticism about the potential of the law and court system to actually forward the goals of the environmental justice movement. In particular, a series of influential legal thinkers in the 1990s cautioned against overzealous use of the courts on the grounds that environmental justice lawsuits were unlikely to succeed and could incidentally harm the communities bringing them, while also arguing that environmental justice litigation needed to draw more on lessons from poverty law. Their concerns, explored more thoroughly in the literature review section, set up a fascinating natural experiment that would play out over the ensuing three decades: Were legal academics right to caution against reliance on the courts for environmental justice efforts? Based on the track record of environmental justice litigation in the courts and the needs of environmental justice grassroots movements as reported by organizers, what legal strategies should future litigation employ?

In this research, I reevaluated scholarly claims that litigation is not a productive tool for the U.S. environmental justice movement, using socio-legal interviews with attorneys, plaintiffs, and activists to assess how environmental justice litigation has evolved in relation to the broader environmental justice movement over the intervening 30 years. I used the attempted relocation of Chicago's General Iron scrap metal plant from the wealthy, predominantly white North Side to

the low-income, predominantly Latino Southeast Side as a case study and investigate two key research questions:

- (1) What is the role of litigation in today's environmental justice battles, especially on the Southeast Side of Chicago?
- (2) What legal strategies are recommended by both the track record of environmental justice litigation in the courts and the needs of environmental justice grassroots movements as reported by organizers?

To investigate these lines of inquiry, I drew from review of legal scholarship on environmental justice litigation, including synthesis of the track record of various popular legal strategies, as well as ten semi-structured interviews with community members, attorneys, and activists engaged in the environmental justice movement in Chicago and beyond. Five of my interviewees were directly involved in the General Iron issue, and I use their insights about that case in particular to develop some specific recommendations for similar issues on the Southeast Side moving forwards. This research explores the role of litigation in modern industrial pollution battles on Chicago's Southeast Side, with some results applicable to the broader domestic environmental justice movement. My investigation of the General Iron case study reveals some themes in its circumstances, intra-movement dynamics, and relationship to broader civil rights efforts. I end by mapping out a possible path forward for attorneys and other legal professionals who wish to contribute to environmental justice efforts, including specific legal strategies.

In response to my first research question, I argue that while litigation cannot reliably produce courtroom wins for environmental justice communities, previous literature has underestimated the role of litigation in creating political pressure, generating positive media coverage, and furthering the perceived legitimacy of environmental justice movements - in fact,

litigation may be key to environmental justice victories even when lawsuits themselves fail in the courts. Additionally, my interviews with attorneys and activists indicate that litigation is best seen as a wing of a broader grassroots strategy - essential, but no more so than any other advocacy tool - and that attorneys should take leadership and instruction from activists within impacted communities. Conversations with activists involved in the General Iron movement on the Southeast Side suggest first, that the civil rights movement of summer 2020 was an important catalyst for action on General Iron and second, that the General Iron issue exemplified an integration of community organizers and attorneys that aligns with earlier scholars' call for environmental justice litigation to more closely align with poverty law.

In response to my second research question, I find that interviewees are skeptical about the capacity of litigation to secure wins, but are interested in experimenting with novel strategies in order to draw public attention or create new law and precedents. Based on a synthesis of the literature and these interviews, I ultimately argue that because litigation has not historically brought about concrete legal wins for environmental justice activists, attorneys and community organizers should instead consider wielding litigation as a tool to put pressure on political decision-makers, set precedent or establish standing, move the Overton window on topics like the right to a clean environment, and bring national attention to local issues. For future industrial pollution disputes on the Southeast Side, I outline a potentially potent legal strategy involving youth plaintiffs and the Illinois state constitution in combination with more traditional permitting claims. This strategy is supported by several of my interviewees and promises to bring political and media attention to cases, even if they do not ultimately win in court, while still offering the possibility of precedent-setting legal victories.



In the sections that follow, I offer a short history of environmental justice and environmental justice litigation, then introduce the General Iron case study, explain the role it plays in my research, and contextualize it with background information on Chicago's history of environmental injustice. I briefly give an overview of my conceptual framework, then review and analyze the literature, with particular focus on critics of litigation publishing in the early and mid-1990s. I then explain the methodology of my interview research, including selection of interviewees, research ethics, and approach to interview analysis. Finally, I explore the outcomes of my interviews, explain my resulting legal recommendations, and discuss broader implications for both the General Iron case study and modern environmental justice disputes more generally.

## **II. Background and Context**

Prior to an overview of my theoretical framework and in-depth discussion of the existing literature on environmental justice litigation, it is important to first provide broad context for this research endeavor. In this section, I briefly trace the origins of environmental justice litigation and its relationship to the broader American environmental justice movement. Then, I outline the key legal strategies discussed in this thesis - namely, equal protection and civil rights complaints, the use of traditional environmental law or traditional environmental law applied "with a twist," state constitutional law, and youth plaintiffs. Some of these strategies take advantage of laws explicitly designed to prevent discrimination; others rely on more general environmental avenues. Finally, I provide context for the General Iron issue with a recent history of environmental injustice in Chicago's Southeast Side and surrounding neighborhoods.

### *Litigation catching up to the movement*

The two decades leading up to the unsuccessful *Bean* lawsuit saw multiple domestic battles over perceived environmental discrimination. One key example took place in Houston in

1967, when Black students organized a major protest after a young Black child drowned at the site of a landfill in the predominantly Black Sunnyside neighborhood. In that case, the child's parents sued the city for damages, while the student protesters took to the streets (465 S.W.2d 387 (Tex. Civ. App. 1971)). In other words, while the family's victims sought traditional legal remedy, the activists protesting environmental injustice did not turn to the courts as a part of their advocacy. It would be another decade before activists in the *Bean* issue weaponized litigation in their effort to prevent the construction of another waste site in Houston's Black community.

When *Bean* did occur, however, the lawsuit was a major early event in American environmental justice litigation, and two of the case's architects were key to merging environmental justice theory with environmental justice litigation in practice. Attorney Linda McKeever Bullard represented Margaret Bean and other residents of Houston suing on grounds of discriminatory siting. Her husband, the sociologist Robert Bullard, served as an expert witness and conducted a study of siting in Houston that revealed that toxic waste sites in Houston disproportionately occurred in Black neighborhoods. As a result, *Bean v. Southwest Management Corp* was not only the first instance of a U.S. lawsuit to challenge environmental racism on civil rights grounds, but also spurred the first comprehensive study of environmental racism in an American city.

Although these 1960s and 1970s battles over waste sites laid the groundwork for wide recognition of an American environmental justice movement, many organizations trace the formal beginning of the movement in the United States to the 1982 establishment of a toxic waste landfill in Afton, North Carolina, an impoverished and then-84% Black community. The incident incited a local movement and national outrage, including an Equal Protection lawsuit by the NAACP, although the landfill did ultimately open in Afton (Smith 1997, 326). In 1991 at the

National People of Color Environmental Summit, Reverend Benjamin Chavis coined the term “environmental racism” in response to the Afton issue. Also in attendance at the Summit was Hazel Johnson, a community activist on the Southeast Side of Chicago who is often called “the mother of environmental justice” for her work organizing against pollution, lead poisoning, and food scarcity in predominantly Black and impoverished Chicago neighborhoods (Pellow 2004, 5), as well as both of the Bullards. During the Summit, participants came up with 17 principles of environmental justice that would go on to inform the movement at home and abroad for decades to come (Environmental Justice Network 2022).

The environmental justice movement, it is important to note, was largely founded and led by local activists, not lawyers. As demonstrated by the differences between *Bean* and the earlier Sunnyside protests, which both unfolded in Houston, the earliest environmental justice efforts typically employed traditional acts of protest such as strikes, marches, and lobbying, with litigation introduced later. Legal scholar Gerald Torres notes that “scholars and lawyers have, by and large, been catching up to the grassroots movements (Torres 1995, 600).” Based on both the observations of other scholars and the history of environmental justice law and advocacy, we see that environmental justice litigation evolved reactively, in service of a broader political and social movement, rather than representing the first line of action in environmental justice struggles.

#### *Litigation in American Environmental Justice*

Still, litigation has undeniably played a role in the American environmental justice movement. As discussed above, *Bean* was the first American lawsuit to challenge the location of a waste facility on civil rights, and is considered the starting point of American environmental justice litigation. Although in *Bean*, the court refused to grant the plaintiffs their preliminary

injunction, on the basis that the proportion of solid waste sites in minority neighborhoods in Houston roughly corresponded to the racial makeup of the city, the case still inspired a movement. Following *Bean* (and the Sunnyside protests a decade earlier), Houston restricted garbage dumping in the vicinity of public institutions including schools, a previously unprecedented form of zoning in the city (Smith 1997, 335). The Texas Department of Health also began to require that people and organizations seeking to locate landfills provide demographic data about the planned site, and “the idea of using civil rights law to combat environmental racism was born.” (Smith 1997, 335).

### *Key Strategies in Environmental Justice Litigation*

In the pages to come, this thesis delves further into this precedent set by *Bean*, wherein litigation seemingly contributed to political environmental justice victory even after failing in the courts, and explores the extent to which this narrative arc is key to the role of litigation in American environmental justice movements. First, however, it will be helpful to outline several major strategies in environmental justice litigation discussed throughout this project. The main strategies explored in this paper were determined after a review of the literature and are use of civil rights and equal protection law, use of traditional environmental law or environmental law ‘with a twist,’ state constitutional claims, and the use of youth plaintiffs.

It is worth distinguishing between legal strategies that take advantage of laws explicitly designed to combat discrimination and those that are not specific to discrimination but are still commonly used by attorneys in environmental justice cases. Of the first category, complaints under the Civil Rights Acts of 1964 and 1968 and arguments under the Equal Protection Clause of the federal constitution are the primary tools in environmental justice law. These strategies attempt to apply federal civil rights granted to individual citizens experiencing alleged

environmental injustice. Neither of these strategies has reliably led to courtroom victory - on the contrary, virtually no civil rights or equal protection claims have been legally successful in the environmental context, a fact discussed at length in the next section (Waterhouse 2017, 53).

The second category of legal strategies discussed here are approaches not *explicitly designed* to combat environmental discrimination but employed by environmental justice attorneys in instances of alleged environmental injustice, typically alongside explicitly environmental justice grassroots activists efforts. The most prevalent strategy in this category is undoubtedly traditional environmental law, especially procedural law related to permitting for industrial and public facilities (Cole 1994, 527). In a widely hailed paper, environmental justice attorney and founder of the Center on Race Poverty and the Environment Luke Cole reported that traditional environmental law has a far greater likelihood of success than civil rights or equal protection strategies (Cole 1994, 529). However, it is difficult to ascertain the proportion of successful traditional environmental lawsuits leveraged in instances of alleged environmental injustice, because there is no good way to identify environmental justice-related suits among the many instances of environmental law not linked to alleged injustice.

Luke Cole and others have also advocated the use of traditional environmental laws “with a twist,” meaning that attorneys craft new angles and arguments from existing permitting and procedural laws - for example, in a case in California, Cole and his co-council argued that a toxic waste incinerator in a mostly-Latin community should not proceed because public hearings had been conducted in English, when 40% of the community was monolingual in Spanish. Attorneys successfully argued that this was in violation of California's Environmental Quality Act, which mandates that the public be engaged in the decision-making process for new developments. Both traditional environmental law and environmental laws applied with a twist can pose a challenge

to plaintiffs in that it can be difficult for residents of an impacted community to demonstrate legal standing, especially when the basis for standing is economic harm.

Another strategy discussed in this project does not fit neatly into the two categories outlined above: the use of state constitutions that grant residents the right to a clean and healthy environment. Several states (Montana, Pennsylvania, New York, Hawaii, Massachusetts, and Illinois) grant residents some variation on the right to live in a clean and healthy environment. These constitutional provisions are not designed to deal with discrimination in the way equal protection and civil rights laws are, but they share the rights framework. Simultaneously, strategies employing such provisions could be considered “environmental law with a twist,” per Cole’s framework. On the face, these state-level rights sound like they may resolve many of the concerns of environmental justice advocates within those states: after all, if every resident has the right to a clean and healthy environment, any resident may argue that an incinerator, landfill, or industrial plant being built in their backyard violates that right. In practice, however, application of these state constitutional rights has not been so simple, and perhaps that is partially why this strategy has not become mainstream within the environmental justice movement, although it has been argued that they may afford environmental justice advocates new legal hope (Ewald 2011, 415). Specifically, so-called ‘green amendments’ have been difficult to effectively wield in environmental justice cases because state courts and assemblies in most relevant states have limited the use of these provisions. That said, in some states, including Illinois the constitutional rights can help relax an otherwise difficult-to-achieve standard for establishing standing, even if it does not guarantee success for cases in court (Ewald 2011, 419). In truth, the prospects of a given state constitutional claim must be assessed based on the precedent and text of the constitutional provision of the state in question. For the purposes of this project, which

takes the Chicago-based General Iron issue as a case study, I will focus most of my argumentation on Illinois' constitutional amendment.

A final strategy discussed throughout this thesis has more to do with the framing of the lawsuit than with specific legal argumentation: the use of youth plaintiffs in lawsuits based around the unique interests of youth in preserving natural resources, as the rising generation. This strategy rose to prominence with *Juliana v. United States*, a Supreme Court case in which a group of 21 state plaintiffs were named in a suit against the federal government. *Juliana* received international attention and spurred a series of similar state-level cases across the U.S., most of which relied on the Public Trust Doctrine and were also litigated by the organization behind *Juliana*, Our Children's Trust. None of these cases has achieved straightforward success (some are ongoing), but they have generated significant political attention, gained sympathy from judges, and made international headlines while successfully incorporating young people in legal spaces traditionally closed to them (see: *Juliana v. United States*, *Komor v. United States*, *Aji P. v. State of Washington*, *Reynolds v. State*, *Sinnok v. Alaska*, *Farb v. Kansas*, *Martinez v. Colorado*, *Sanders-Reed v. Martinez*). These cases have not typically included explicit environmental justice argumentation or centered around specific instances of alleged environmental discrimination, instead focusing on a broad claim that states have failed to uphold the Public Trust Doctrine by preserving public lands and resources.<sup>4</sup>

Many of these cases have been dismissed or lost because judges held that a state's public trust doctrine does not apply to atmospheric climate emissions. A public trust doctrine claim could not be used by youth in Illinois because the Illinois public trust doctrine only grants standing to tax-payers. I discuss the use of youth plaintiffs further in the Literature Review and

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<sup>4</sup> In particular, these cases tend to attempt to apply the Public Trust Doctrine to the atmosphere, which has been harmed by climate change. Traditionally, the Doctrine applies mostly to navigable or formerly navigable waters. Thus far, the atmospheric application has not succeeded at the state level.

Results sections, and ultimately argue that looking beyond public trust doctrine claims may give the use of youth plaintiffs new legs for environmental justice cases.

Although *Bean* established a foundation for environmental justice litigation, the burgeoning field has not yet met much success in the courts. In the following section, I assess the potential and limitations of each of these strategies. In the results section, I ultimately argue that one promising legal avenue for the Chicago advocates in General Iron is the use of youth plaintiffs in a multi-faceted lawsuit involving both a state constitutional claim and more traditional environmental law. This approach may attract political and media attention and establish interesting precedent in a way that would significantly benefit the broader movement, even if the suit were to fail in court.

*Chicago: Cradle of Environmental (In)justice*

Thus far, I have given broad context on environmental justice and environmental justice litigation. Equally important to this project, however, is the case study at the heart of my research: the planned (and ultimately thwarted) relocation of Chicago's General Iron scrap metal plant from the wealthy, predominantly white Lincoln Park neighborhood to the low-income and majority-minority Southeast Side. As I explain in the methodology section, the General Iron case exemplifies key elements of modern environmental injustice disputes. Thus, it grounds my exploration of broad socio-legal questions about the relationship between activism and litigation in a particular case with likely applicability to other industrial pollution issues across the nation<sup>5</sup>. Rather than interviewing a random selection of attorneys across the nation, I speak to activists, plaintiffs, and attorneys who have worked - often together - in the same 'environmental justice ecosystem' for some time. This allows for a deeper understanding of *intra-movement dynamics*,

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<sup>5</sup> For instance, see Exide Technologies' now-defunct battery recycling plant in Los Angeles' Vernon neighborhood, industrial developments and pollution in Oxnard, California, and air pollution on the East Side of Houston



as opposed to more individualized, disconnected interview results. Simultaneously, this case study serves to direct my research questions towards a specific, local issue in order to produce some legal recommendation with practical applications to a specific Chicago environmental justice community.

In order to understand the General Iron story, we first must place it in context with Chicago's history as a cradle of both environmental injustice issues and environmental justice movements. Chicago has a long and troubled history of environmental injustice and of responsive movements for environmental justice. In fact, as noted above, Hazel Johnson, widely considered the "mother" of American environmental justice, was a native South Sider and founder of the still-active organization environmental justice group People for Community Recovery, now led by Johnson's daughter, Cheryl. The American Midwest broadly and the area surrounding urban Chicago in particular has served as a center of manufacturing for over a century, a role that has allowed for the construction of major cities, but also devastated low-income communities in rural and urban areas alike with air and water pollution, exploitative labor, and the long term health costs of labor and life in the cradle of American industry. The South and Southeast sides of Chicago and surrounding Northwest Indiana are a key part of this story. In the mid-1900s, these communities supplied the nation's steel, leading to a legacy of economic reliance on industry reliance and accompanying pollution. The region has been unable to shake the pattern of companies establishing factories, generating enormous, toxic pollution, and then leaving - a pattern sustained largely by environmental racism and racist zoning practices (Schukar 2017).

Today, many of the problems Hazel Johnson faced down in the 1970s persist on the Southeast Side - or have been reproduced over the decades. A 2016 *Economist* study titled *Race*,

*Ethnicity, and Discriminatory Zoning* found that as early as 1920, Chicago's high-density zoning policies have shaped the city for over a century. The authors said their finding was consistent with the argument about environmental discrimination put forth by many activists on the South and Southeast sides: namely, that zoning ordinances may have been used by the City to create densely populated, majority minority neighborhoods that then suffer disproportionate environmental health consequences from pollution (Shertzer et. al. 2016, 219). The Southeast Side contains areas zoned for hazardous waste and manufacturing alongside residential and commercial areas, allowing for the toxic combination of polluting industrial plants next to bustling neighborhoods, family homes, and schools.

Since People for Community Recovery was founded, the South and Southeast sides have battled pollution in many forms, including cyanide, coal dust, manganese, lead, petroleum coke, and others. There have been major wins - for instance, Hazel Johnson was at President Bill Clinton's side when he signed Executive Order 12898, which mandated that all federal agencies incorporate environmental justice into their agendas (Pellow 2004, 71). But despite political and organizing victories, minority neighborhoods in Chicago have consistently faced further industrial development and near-constant discoveries of new sources of pollution. It is in this context that the case study for this project, the attempted relocation of RMG's General Iron metal recycling plant, has unfolded on the Southeast Side.

The area is low-income and predominantly Latino, with a relatively large surrounding Black population as well. Prior to the beginning of the General Iron saga in 2018, environmental justice activism and litigation out of the Southeast Side was largely focused on a series of recent industrial pollution threats. The accumulation of stories-high, uncovered piles of petroleum coke (petcoke) on the East side (just across the river from the neighborhood to which General Iron has

attempted to relocate) led to the 2012 formation of the Southeast Side Coalition to Ban Petcoke, an EPA complaint in support of the organization's efforts, and ultimately, successful banning of outdoor storage of the petroleum refining byproduct. According to a lawyer interviewed for this project who was involved in administrative litigation around the petcoke issue, part of the resolution of the petcoke issue was implementation of pollution monitors that uncovered dangerously high levels of magnesium in Southeast Side air, which has led to further advocacy efforts to prevent magnesium pollution from local industrial actors.

In his book *Garbage Wars: The Struggle for Environmental Justice in Chicago*, David Naguib Pellow explains that historically, environmental injustice issues in Chicago have often revolved around recyclers, solid waste landfills, and incinerators. In fact, Pellow argues that because Chicago is a capital of the waste industry itself, "this city must be at the front and center of any history of garbage and environmental justice conflicts in the United States (Pellow 2004, 5)." It is in this context that the proposed General Iron relocation has unfolded as yet another instance of a polluting development planned for Chicago's Southeast Side.

In summer 2018, following explosions at General Iron's North Side plant in Lincoln Park, as well as years of noise and pollution complaints, General Iron's parent company, Reserve Management Group (RMG), announced its plans to relocate the metal shredding and recycling plant to the Southeast Side, just feet from two public schools and in a residential neighborhood (Hawthorne 2018). In June of 2020, the Illinois EPA approved construction of the relocated facility on the Southeast Side. Following this announcement, residents, activists, and local educators coordinated a massive grassroots environmental justice effort against the relocation, including both traditional activist methods and litigation.

In summer 2020, a coalition of long-standing Southeast side environmental justice organizations filed a federal civil rights complaint<sup>6</sup> with the U.S. Department of Housing and Urban Development (HUD). This complaint alleged that the decision to relocate General Iron to the Southeast Side violated the Fair Housing Act, which the city is obliged to adhere to because it received federal HUD funding. In response to the complaint, HUD opened an investigation into the city's decision and instructed Mayor Lori Lightfoot not to issue General Iron a permit until the investigation had concluded (Chase 2020).

In October 2020, residents filed another civil rights lawsuit against the city, alleging that the decision to move the plant to a majority minority community was discriminatory. After the suit failed in federal court when a judge said the plaintiffs failed to prove discriminatory intent by the city, the same three individuals filed a second lawsuit, naming both the city and RMG.

As soon as the planned relocation was announced, and while complaints and suits filtered through federal courts and agencies, activists staged multiple protests and rallies at elected officials' homes, including Lightfoot's residents. They collected hundreds of signatures from Chicago public health experts condemning the relocation (Collaboratory for Health Justice 2022), penned op-eds (Colón and Miller 2021), and in February 2021 launched a month-long hunger strike that attracted national media attention. Protests, press releases, and administrative litigation continued for a year, while RMG sued the city in an attempt to force it to stop delaying issuance of the permit (this suit was dismissed). In February 2022, with investigations and administrative litigation still underway, the City of Chicago elected to reject General Iron's permit, thus blocking its relocation to the Southeast Side.

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<sup>6</sup> This action is henceforth referred to as a fair housing complaint to avoid confusion between it and the civil rights lawsuit also brought in the General Iron matter. The former was an administrative complaint to a federal agency; the latter was traditional litigation brought in court against the city and General Iron's parent company.

In their filings and conversations with the media, activists involved in the litigation were clear that they believed the attempted relocation to be discriminatory. Peggy Salazar, director of one of the Southeast Environmental Task Force, told *The Sun Times*, “Racist policies are killing our neighborhood by making it a dumping ground for the dirtiest and most dangerous polluters” (Chase 2020). The belief that attempts to move the plant to the Southeast Side were made with the intent to further disadvantage a minority and low-income community was echoed by other activists. Jade Mazon, a hunger striker, told *The South Side Weekly*, “People like General Iron and many other companies figure, this is a great place, that community’s already dead, that soil’s already dead, those people are already dying. They’re a sacrificial zone. So let’s come there” (City Bureau 2021).

Clearly, the General Iron issue ignited local, state, and federal action and shed a spotlight on the Southeast Side’s long-fought battle for equitable treatment with regards to industrial pollution. The recency of the General Iron case study makes it particularly interesting for research into today’s environmental justice landscape; one key goal of this research is to propose realistic and strategic new legal avenues for activists to take as they attempt to block the plant’s relocation. Thus, the goal of this thesis is not only to assess the role of litigation in the U.S. environmental justice movement, but also to apply the findings of the findings to a recent case study in Chicago.

Because the attempted General Iron relocation failed while this research was being done, almost nothing has been written about it beyond popular media outlets. As a result, I relied on news coverage and primary sources from the General Iron issue, rather than scholarly analysis. One key contribution of this project will be an assessment of how various legal strategies might

apply to this key modern issue, as well as an assessment of the General Iron case in the context of activist-attorney relations.

### **III. Conceptual Framework**

In this research, I investigate two main research questions:

- (1) What is the role of litigation in today's environmental justice battles, especially on the Southeast Side of Chicago?
- (2) What legal strategies are recommended by both the track record of environmental justice litigation in the courts and the needs of environmental justice grassroots movements as reported by organizers?

In order to answer these questions, I drew on a review of earlier scholarship, analysis of some popular legal strategies, a series of ten socio-legal interviews, and an in-depth look at one particular legal battle over industrial development: the General Iron case study. Putting previous literature in conversation with interviews that were conducted during and immediately after a local dispute over industrial pollution allowed me to incorporate both insights from traditional scholarship with a historical perspective and from modern activists, plaintiffs, and attorneys working on specific issues in the field. Because environmental injustice often erases the humanity, needs, and futures of the communities it burdens, I designed this research project with the intention of engaging directly with the expertise of people on-the-ground instead of relying purely on legal analysis, as more traditional papers have done. Here, I explain the socio-legal framework with which I approached my interviews and then explain and defend use of the General Iron case study. For a more detailed explanation of interviewee selection, research ethics, and the interviewees themselves, please see Section V. (Methods).

#### *Interviews*

This research project includes ten interviews with activists, plaintiffs, and attorneys, mostly based in Chicago. These interviews complement my review of existing legal scholarship and investigation of case law by getting insights from experts who are actually involved in the litigation and thus have a perspective that goes beyond the facts, arguments, and resolutions of cases captured in pure legal theory or case law. It has been demonstrated in quantitative analyses of social science research that in interview-based research, ‘saturation’ of themes tends to occur after between 6 and 12 interviewees (Guest, Bunst, and Johnson 2006, 60). Other authors have reported that further than 20 interviews are ideal to facilitate in-depth interviews and close association with interviewees (Crouch and Mackenzie 2006, 53).

These interviews were designed around the SAGE Encyclopedia of Social Science Research Methods’ materials on semi-structured Interviews. Semi-structured interviews are an effective approach to socio-legal research that have been used by other researchers studying environmental law strategy (Wewerinke 2020, Jodoin 2017). Rather than asking all interviews the same question, a semi-structured interview approach tailors questions to each respondent’s background and path in environmental justice, per the SAGE standards. Such interviews allow for interviewees with different backgrounds to speak directly to their expertise and experience, rather than having to answer a series of form questions directed at all participants. Every interview ended with an open-ended question (“Is there anything I should have asked you but didn’t, or anything else you would like to share about your perspective on environmental justice?”) so that interviewees could “fill in the blanks” of important information left out of the planned interview questions. Finally, unlikely more traditional pre-set form interviews or surveys, socio-legal interviews can adapt as the conversation proceeds, so researchers can pursue interesting lines of inquiry inspired by interviewees’ answers or anecdotes.

In this research, interviews were used to understand the interviewees' experience of environmental litigation and activism, get expert perspectives on the interactions between litigation and grassroots environmental work, and better understand how activists, attorneys, and plaintiffs engaged in modern environmental justice issues think about the prospects of litigation. For example, I asked Chicago-based plaintiffs and lawyers about what strategies in environmental justice litigation they believe to be most promising, what role they believe media coverage played in their case or campaign's trajectory, and how they think attorneys should best engage with community organizers in impacted neighborhoods..

### *General Iron Case Study*

By coupling a review of legal literature and analysis of popular strategies with one-on-one interviews, I developed a more nuanced understanding of strategies possibilities for environmental justice litigation in America today, with particular focus on incidents involving corporate actors and polluting developments. The third key portion of my research is a case study analysis of the relocation of a metal recycling plant from the wealthy, mostly white Lincoln Park neighborhood of Chicago to the majority minority Southeast Side.

A case study is key to this research because it allows for results from the interviews and case law review to be applied to a recent environmental justice struggle in Chicago, rather than remaining abstract. Legal scholars may not have laboratories in a traditional sense, but the courts can be a site of experimentation unto themselves, and narrowing in on the General Iron case study makes it possible to think about how various legal approaches might play out in an important unfolding environmental justice issue. Too often, academic inquiry in environmental studies and allied fields turns topics of study into mere theoretical problems, losing sight of the urgent human rights and conservation agenda implied by climate change, pollution,



environmental injustice, and related issues. This case study approach ensures that this research can provide concrete legal recommendations for a battle impacting real people, right now. Simultaneously, having 5 of 10 interviewees somehow involved in the General Iron dispute allowed me to gain insight into how the intra-movement dynamics played out in this case. Because my conclusions about the interactions between activists, plaintiffs, and attorneys were drawn from people engaged in the same dispute and the same “movement ecosystem,” I was able to get more of a sense of how parties interacted with each other than if I had chosen random activists, attorneys, and plaintiffs from across the country.

General Iron’s relocation makes a particularly good case study for a number of reasons. First, it is located in Chicago, a crib of the environmental justice movement and site of notorious environmental racism (Smith 1997, 330). Secondarily, some interesting elements are at play in the General Iron case study that makes it both legally challenging and nationally important. For one, like many other polluting developments, the primary problematic output of the General Iron plant is air pollution. Air pollution is definitionally diffuse and difficult to trace, but it is also a key piece of environmental injustice in America, because it tends to lead to health issues like lung disease and asthma that disproportionately harm minority and low-income communities (Brown 1995, 15). Additionally, the combination of private and public actors in the General Iron relocation makes it nationally interesting. Although the city was involved in the permitting process for the plant’s relocation, the development itself is run by a private entity. As corporations are both responsible for a significant portion of environmental burdens and often not beholden to the same civil and human rights laws as governmental bodies, cases with corporate defenses are carving out new and important legal territory for the environmental justice movement. In General Iron, community members sued the city, which led General Iron to bring

its own suit against Chicago for stalling the relocation. This exemplifies the often-tangled nature of private/public interactions in environmental justice litigation, making for a key case study. In these ways, General Iron is a ‘typical’ case study - it exemplifies key trends in the field, and allowed me to test the framework developed through interviews and case law review on a real, recent case in order to generate concrete legal recommendations.

#### **IV. Literature Review**

This project sets out to put the historical legal literature on environmental justice and the track record of actual environmental justice litigation in conversation with currently practicing attorneys and activists in the environmental justice space. Here, I review and analyze a variety of scholarly sources assessing the limitations and potential of environmental justice litigation, with a focus on the strategies outlined in the previous section. I then explore the emerging literature on youth plaintiffs, a strategy that has gained traction over the last five years but was not considered by earlier scholars as a possible environmental justice strategy. Finally, I provide a chart summarizing the benefits and drawbacks of each of the strategies discussed in this thesis. In the results section, I revisit each of these strategies to examine how they might play out in the General Iron case study and similar modern cases, and to understand how results from my socio-legal interviews reflect on and complicate the literature.

This review of the literature, demonstrates that many of the scholars assessing the then-young field of environmental justice litigation in the 1990s - and sometimes, later on - had serious doubts about its potential as a tool to close the gap between experience of environmental ills for marginalized versus wealthy white communities, and about the willingness of grassroots activists to make use of the courts, although some proposed paths to effective litigation, including the use of state constitutional claims. This research project puts that literature in

conversation with attorneys, activists, and plaintiffs involved in modern environmental justice debates in order to assess what role litigation can best play today, over thirty years after leaders of the movement gathered at the National People of Color Environmental Summit to coin the term environmental racism.

*Practical Concerns: Discriminatory Intent and Standing*

The literature on environmental justice litigation reflects both deep concern about the prospects of court-based approaches to environmental racism and hope for the future. In particular, a series of scholars in the 1990s argued that civil rights and equal protection suits would not be effective in furthering American environmental justice without structural overhaul, due to the requirement to prove discriminatory intent.

In both civil rights complaints and filings under the Equal Protection Act of the 14th amendment, attorneys must show that decision-makers intended to place unequal burdens on a protected group.<sup>7</sup> Both approaches are especially common in instances of Locally Undesirable Land Uses (LULUs), a frequent subject of environmental justice debates, including the General Iron issue (Latham-1999, Worsham 632). In a LULU dispute, a corporation, government, or private-public partnership typically attempts to locate or expand a landfill, industrial plant, highway, or other dangerous or pollution-generating development in a poor community or a community of color, leading to pushback from the development's would-be neighbors.

But discriminatory intent can be tremendously difficult to prove, especially due to unfriendly precedents that set a high bar for demonstrating intent on the part of would-be defendants. A key precedent was set in a 1976 case in the Chicago suburb of Arlington Heights,

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<sup>7</sup> Technically, Title VI has a provision under which litigants can claim disparate impact as a grounds for their claim, rather than proving discriminatory intent but as many scholars have observed, the Supreme Court has made this incredibly difficult by applying strict scrutiny to claims of disparate impact, a practice established in the 1976 case *Washington v. Davis* (Selmi 337; Cole 1994, 540; Boyle 1993, 953).

where a zoning ordinance barred multi-family housing facilities in the center of the neighborhood. Complainants said that the zoning policy was discriminatory, but the U.S. Supreme Court opted to apply a 5-part test for discriminatory intent (rather than a strict scrutiny test). Under the Arlington Heights standard, judges assess (1) whether the impact of the official action in question falls more disproportionately on one race in such a way that cannot be explained by any factor other than race; (2) the historical context for the decision in question; (3) the ordered events immediately preceding the decision or policy in question; (4) any deviations from the normal decision-making process that occurred in the course of the establishment of the contested decision; and (5) the administrative legislative and history of the decision in question (Collins 1994, 139).

It is not an overstatement to say that the Arlington Heights test, in combination with the strict scrutiny standard established in *Washington v. Davis*, dashed attorneys' hope of consistently using equal protection and, to a lesser extent, civil rights complaints to prevent and mitigate environmental injustice. The five-part test has an insurmountable standard for attorneys pursuing environmental discrimination claims (Collin 1994, 139). Indeed, all subsequent equal protection suits "have encountered the same problem of proving intentional discrimination: after *Washington v. Davis* and *Arlington Heights*, the equal protection clause is no longer a viable cause of action in most cases." (Cole 1994, 540).

Cole's concerns are echoed elsewhere. In 1993, Bob Lee, senior counsel for the NAACP in Los Angeles, said in remarks at the American Public Health Association conference that cases employing equal protection to achieve environmental justice were "sure losers" (Lee 1993; Cole 1994, 541). Sheila Foster, also writing in 1993, provides an interesting argument as to why the post-civil rights movement legal landscape for environmental justice was so stymied by

discriminatory intent standards: she argues that “partly as a result of laws that punish and forbid (overtly racist) behavior, the nature of racism has become appreciably more subtle and structural” (Foster 1993, 773). It may be that aversive racism is indeed more common post-civil rights, but without empirical study, it seems equally likely that the outlawing of many acts of overt racism disincentivized overtly racist actions, leading to an increased focus on subtler forms of racism that already existed, but which activists and attorneys had more resources to focus on following the passage of Title VI and the Equal Protection Clause. Regardless, the literature of the 1990s gave a grim outlook for equal protection and Title VI, unless and until the federal Supreme Court reverses its use of strict scrutiny when assessing alleged violations of Title VI and the Equal Protection Clause.

In terms of sheer legal victories, scholarly concerns about proving discriminatory intent and establishing standing were prescient. Civil rights complaints and equal protection cases have not seen much success in the years since the mid-1990s. Indeed, between the establishment of environmental justice litigation and at least 2017, no civil rights-based challenge to a pollution permit or waste facility siting decision has prevailed in a federal court (Waterhouse 2017, 53). Similarly, of the 247 Equal Protection complaints filed with the EPA between 1993 and 2013, none resulted in a ruling of non-compliance or positive outcome for the complainants (LoPresti 761). As for the matter of standing, as discussed above, traditional environmental law remains a challenge to litigants who wish to combat environmental injustice but cannot demonstrate standing under state procedural laws.

The primary issue of establishing discriminatory intent in a civil rights complaint or filing under the Equal Protection Act may lead litigants down different avenues, such as traditional permitting law or, as Luke Cole advocates, traditional environmental law “applied with a twist”

(Cole 1994, 541). But a drawback to this approach is that it can be prohibitively difficult to establish standing in environmental law cases not explicitly designed to address discrimination. In essence, the requirement of standing necessitates that a litigant can demonstrate that they are an appropriate party to bring a lawsuit, which generally means (at minimum) proving that they are directly impacted by the matter at hand - often, a standard based purely on financial impact. Courts may deny standing to individuals and groups attempting to sue over plants or plant relocation, especially in cases that employ traditional environmental permitting law to target alleged environmental injustice (Ewald 2011, 422). Because these legal avenues are not formally associated with racial discrimination, residents who are experiencing environmental harms they believe to be the result of environmental racism and/or classism (for instance, poor air quality or polluted water due to an industrial plant) may not be able to demonstrate economic harm, which is frequently the standard for environmental law not explicitly crafted to address inequity (American Bar Association).

*Ideological Concerns: Is Environmental Law a Useful Tool for Environmental Justice?*

Some experts have voiced that the at times unachievably high standard of discriminatory intent is reflective of a larger issue: that the law does not sufficiently address the nature of racism as it exists in modern cases of discriminatory pollution. Specifically, the legal scholar Edward Boyle provides more insight on why proving discriminatory intent winds up being so difficult for litigants in environmental justice lawsuits in his 1993 article *It's Not Easy Bein' Green: The Psychology of Racism, Environmental Discrimination, and the Argument for Modernizing Equal Protection Analysis*. Today's instances of environmental injustice, he argues, are primarily the result of aversive racism, wherein decision-makers employ racist attitudes unconsciously during the process of instituting a policy. Boyle writes that an intent standard assures that only the most

obvious cases of environmental racial discrimination are dealt with seriously by the courts, because the nature of aversive racism is such that decision-makers implementing a policy or granting a permit that will lead to serious, disproportionate impact on a marginalized community may not themselves consciously recognize that they are perpetuating existing environmental inequity.

Importantly, some early scholars of environmental justice litigation were pessimistic about its potential in a much broader way. Luke Cole, for example, argued broadly that the “strategic and tactical drawbacks” to lawsuits, especially civil rights complaints, can make legal approaches more trouble than they’re worth for communities suffering from environmental justice issues (Cole 1994, 523). Karen Smith similarly advocated that activists should turn away from the courts almost entirely, instead focusing their efforts on the social realm, based on the belief that U.S. law is structurally insufficient to address environmental justice and provide reparation to its victims (Smith 1997, 531). In sum, these arguments about the usefulness of litigation tend to hinge on the contention that environmental justice issues arise from political and economic conditions that are not well dealt with by judges or in a courtroom context, but instead require political and policy overhaul that is best achieved through grassroots pressure. Additionally, activists’ lack of trust in the courts and legal systems may lead to grassroots organizers not choosing to pursue litigation or not wishing to involve lawyers: Robert Collin contributed to these arguments by noting that, perhaps as a result of litigation’s limited success rate, communities tend to avoid the courts: “Both poor communities and private corporations shun legal processes to resolve their disputes in all but the most acrimonious and inescapable situations” (Collin 1993, 135). Although perhaps foreboding, it is these concerns that most urgently demand a research project like this one that seeks to analyze the lived experiences of

people involved in environmental justice issues and assess whether from their perspective, litigation is a worthwhile strategy in battles against pollution and other forms of environmental discrimination.

*Causes for Hope: State Constitutions and Youth Plaintiffs*

Though infrastructural change has not yet come to federal enforcement of civil rights and equal protection in the environmental justice context, the challenge of standing may be alleviated in states with an enshrined constitutional right to a clean and healthy environment, something noted with hope by scholars both in the 1990s and more recently (Ewald 2011, 421; Popovic 1996, 359). Though historically these constitutional rights have not always been framed as relevant to environmental justice, a 1990s report to the Sierra Club by Neil Popovic argued that strategic state constitutional claims could be used to combat environmental racism in the United States through creative argumentation invoking international human rights norms, and effectively replace the ineffectual strategies of civil rights and equal protection claims (Popovic 1993, 339). However, individual states have very different approaches to the enforcement of these rights; indeed, the lack of specificity and enforceability in many states may partially explain why these state constitutional rights have not yet been successfully leveled in environmental justice cases.

Although seven states have such a provision (Montana, Pennsylvania, New York, Massachusetts, Hawaii, Illinois, and Rhode Island), this research will focus on the constitutional provision of Illinois, because that is the location of the General Iron case study - cases in each of the other states would need to be assessed on the basis of that state's specific provision.<sup>8</sup> The Illinois constitution states that:

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<sup>8</sup> For a comparative analysis of constitutional rights in Montana, Pennsylvania, Massachusetts, Hawaii, Rhode Island, and Illinois see Ewald 2011.



*Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law. ILL. CONsT. art. XI, § 2*

Among states with such enshrined rights, Illinois' is strong in that it is self-executing, meaning that private actors can sue any governmental or private agent on the grounds that the right has been violated without prior legislative action (Ewald 2011, 422). But despite self-execution and a broad approach to standing (people bringing suit under the provision do not need to demonstrate a 'special injury,' making it applicable to plaintiffs who have not or not yet experienced economic or health damages,) the Illinois constitution does allow the state legislature to limit standing for the provision, provided the law does not entirely deprive individuals of standing (Ewald 2011, 425). So far, they have used this privilege to remove motor sports from the purview of the IL Pollution Control Board<sup>9</sup>, to limit standing such that plaintiffs must apply the right to human health, not to the health of ecosystems or non-human species<sup>10</sup>, and to exclude from the provision a renter's right to health and inhabitable living conditions<sup>11</sup>.

Although these limitations suggest the state court's deference to a legislature that has historically championed a narrow interpretation of the environmental rights provision, they do not exclude environmental justice lawsuits based on placement of industrial plants in already-burdened neighborhoods. As a result, while the literature suggests a grim outlook for civil rights and equal protection suits, state constitutional suits should be thought of as possible avenues for environmental justice attorneys and plaintiffs moving forward, in states where they are relevant. Such constitutional provisions may grant standing in lawsuits that rest on

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<sup>9</sup> See *People v. Pollution Control Bd.*, 473 N.E.2d at 455-56;

<sup>10</sup> See *Glisson v. City of Marion*, 720 N.E.2d 1034, 1036 (Ill. 1999)

<sup>11</sup> See *Morford v. Lensey Corp.*, 442 N.E.2d 933, 937 (Ill. App. Ct. 1982)

long-standing permitting law, allowing lawyers to combine traditional and novel legal strategies. This incorporation of multiple claims can help keep a case in play for longer. Additionally, combining traditional environmental law with state constitutional claims as a “twist” (to borrow Luke Cole’s terminology) may be potent. Judges are likely to be familiar with state environmental law, while the novelty of state constitutional claims is likely to attract media and political attention. In states without environmental rights, especially those with a liberal legislature, activists and politicians may consider focusing on a push for such an amendment, which would broaden the litigation possibilities and standing for environmental justice activists.

One other emerging approach worth discussing is one that original scholars of environmental justice litigation, writing in the 1990s, never addressed: the use of young people as plaintiffs in environmental lawsuits. I was inspired to study youth plaintiffs during this research partially by the rise of the strategy in recent U.S. jurisprudence and partially because in my interviews, multiple activists brought up the essential role of youth in supporting the General Iron movement. Youth plaintiffs have become an increasingly popular trend in the United States following the international attention received by *Juliana v. United States* (Barton 2021, 21). However, as explained in the previous section, these cases have achieved little success so far (though several are ongoing and have made promising progress, including *Juliana*). Nearly all of them have rested on the grounds of the federal or state-level public trust doctrine. The cases typically attempt to apply the doctrine to the atmosphere and climate system generally, which is a difficult argument to make, as the doctrine traditionally applies only to navigable waterways and former waterways (Kearney 2004, 800). Some have also focused, unsuccessfully, on federal constitutional claims under the ninth and fifth amendments.<sup>12</sup> These cases have also not focused on specific instances of alleged environmental racism or discrimination, instead tending to claim

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<sup>12</sup> See *Juliana v. United States and Komor v. United States*

generally that a state has failed its young citizens in enforcement or writing of climate policy. However, sometimes youth plaintiff cases are characterized *de facto* by scholars as environmental justice matters because young people are relatively disempowered, and some of the youth plaintiffs involved in recent cases are Indigenous, racial minorities, and/or low-income (Todd 2020, 171; Barton 2021, 47).

One can imagine how youth plaintiffs make for persuasive advocates in instances of environmental racism and discrimination. As the rising generation who will deal with pollution for decades to come, they are among the most vulnerable members of frontline communities - not to mention the fact that developing minds and bodies are especially sensitive to air and water pollution (Calderón-Garcidueñas 2019, 345). Young people have unmatched moral authority and digital organizing capacity as plaintiffs; equally importantly, they are a long-standing cultural symbol of hope for future generations. Indeed, youth plaintiff climate cases have gained judicial sympathy even where they have been unsuccessful: in *Reynolds v. State*, a public trust doctrine case in Florida brought by youth plaintiffs, one of whom was interviewed for this project, the judge dismissed the case but said, “I don’t want anyone to think I am diminishing what your clients’ concerns are. I think they’re legitimate.” and added that he was intentionally writing the ruling so that it would be ripe for appeal (Climate Cast Chart 2022).

I believe that the promise of youth plaintiffs, who attract enormous media attention and political and judicial sympathy, could compound the potential of state constitutional claims in those states with established environmental rights. Indeed, one ongoing case in Montana, *Held v. State*, employs a state constitutional claim alongside a public trust doctrine argument and arguments based in Montana’s state energy policy; the youth plaintiffs were granted standing and a trial date has been set. This is a case that advocates across the nation, but particularly in states

with environmental rights, should watch closely. While *Held* launches a general claim that state energy policy based on fossil fuels violates the constitution, it could serve as a model for environmental justice advocates (including Chicagoans) who wish to launch more specific claims about particular polluting developments.

Examining the track record of environmental justice litigation makes evident that the issues raised by Boyle, Latham-Worsham, Lee, Foster, Cole, Collin, and others with proving discriminatory intent and establishing standing have not been resolved, meaning the equal protection approach and, to a lesser extent, civil rights complaints and traditional environmental law have not found new potential for likely success in the courts. Given that structural changes to the legal infrastructure for civil rights and equal protection in this country have not come about, it seems that those strategies remain unlikely to generate environmental justice wins. But importantly, that does not mean environmental justice litigation is dead in the water. Hope for state constitutional arguments remains, and new strategies like the use of youth plaintiffs should give modern advocates reason to take on daring, precedent-setting cases. This project seeks to assess both attorneys' and activists' attitudes towards the present and future of litigation in the environmental justice movement. Interviews for this project will attempt to assess (1) how attorneys and activists respectively feel about a more activist-involved approach to environmental justice litigation (2) how the dynamic between attorneys and activists played out in General Iron, especially in comparison to other issues interviewees have been involved in and (3) what interviewees see as the best strategy for the environmental justice movement, broadly construed to include litigation, activism, media outreach, and other forms of advocacy.

**Summary Table: Benefits and Drawbacks of Key Environmental Justice Litigation Strategies**

Strategy	Overview	Benefits	Drawbacks
State Constitutional Claims	Some states (HI, IL, PA, MT, NY, RI, MA) have a constitutional provision granting every citizen environmental rights - often, the language “clean and healthy” environment is used.	<ul style="list-style-type: none"> <li>-“Side door” to environmental justice litigation: does not require demonstration of discriminatory intent, only that a citizens’ state constitutional right to a clean or healthy environment was violated</li> <li>-Rights-based litigation can also attract publicity, as the right to a clean environment is novel and unseen at the federal level in the United States</li> </ul>	<ul style="list-style-type: none"> <li>-Only present in Illinois, Hawaii, Pennsylvania, New York, Rhode Island, Massachusetts, and Montana</li> <li>-Often gutted by state courts and state assemblies - in IL and HI in particular, the constitutional environmental provisions have been essentially useless.</li> <li>-In some states, difficult to establish standing, though others eliminate standing issues</li> </ul>
Civil Rights Complaints/ Title VI	Title VI of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance.	<ul style="list-style-type: none"> <li>-Relatively low barrier for standing</li> <li>-Cole argued that civil rights complaints may attract mainstream media attention because of their novelty, and serve a role in judicial education by making judges familiar with environmental justice concerns (Cole 542).</li> <li>-Easily employed via letter to the EPA</li> </ul>	<ul style="list-style-type: none"> <li>-Very difficult to establish discriminatory intent</li> <li>-The novelty that led to publicity in the 1990s has likely worn off. Perhaps other creative approaches to litigation may be more effective in catching national attention and dually educating the judiciary.</li> </ul>
Equal Protection Clause of the 14th Amendment	The Equal Protection clause prohibits any U.S. state from denying equal protection under the law to any person within its jurisdiction	<ul style="list-style-type: none"> <li>-Relatively low barrier for standing</li> <li>-Explicitly connected to discrimination, so the media &amp; public know the charge is environmental racism - less likely to be viewed as dull permitting dispute</li> </ul>	<ul style="list-style-type: none"> <li>-Very difficult to establish discriminatory intent (more so than with civil rights complaints); poor track record and a “last choice” for strategic environmental justice litigation.</li> <li>-Only applies to projects that involve EPA funding, so not usable in exclusively private development projects</li> </ul>
Traditional Environmental Law/Procedural law	Use of state or federal environmental or permitting laws. These laws are intended to conserve natural resources and public interest, but not to prevent environmental inequity	<ul style="list-style-type: none"> <li>-Judges are familiar with challenges and law (Cole 526)</li> <li>-As another “side door” strategy, no need to demonstrate discriminatory intent</li> </ul>	<ul style="list-style-type: none"> <li>-Litigants may struggle to demonstrate standing</li> <li>-Dependent on strength of local and state environmental policy</li> </ul>
Public Trust Doctrine	States are prohibited from abdicating control of publicly held lands, with very few exceptions	<ul style="list-style-type: none"> <li>-Fewer standing issues than some strategies</li> <li>-No discriminatory intent requirement</li> <li>-Room for creative interpretation and argumentation</li> </ul>	<ul style="list-style-type: none"> <li>-Limited to public lands</li> <li>-Conclusively ruled in many states to not apply to atmosphere/air pollution</li> </ul>

## V. Methods

The ten individuals interviewed for this research were a plaintiff in the civil rights lawsuit in court, two attorneys who worked on the administrative housing complaint, two General Iron activists not involved with litigation, a youth plaintiff involved in litigation in another state, an attorney for Our Children's Trust, an NRDC environmental policy expert, and two additional Chicago-based environmental justice attorneys. The interviewees, their roles, and their relation to the General Iron case study are summarized in the table at the end of this section. See the appendix for a list of sample interview questions and a sample email script for reaching out to interviewees.

In order to identify interviewees, I read interviews given to local media outlets by General Iron attorneys, plaintiffs, and activists and reached out to them via email or social media to see if they would consider sitting for a 30-60 minute interview. Once I found an initial attorney, plaintiff, and activist to interview, I employed the 'snowball approach' to find more people: at the end of each interview, I asked the interviewee if they knew of other people whom I should speak to to get an additional perspective.

To ensure that interviewees were able to speak freely, I used a consent form modeled off of Wewerinke and Jodoin as well as a template from UChicago's Institutional Review Board. Interviewees either signed this form or verbally consented to its stipulations. I did not include their names in the recordings or transcripts and in my finished research will refer to them only by general titles like "General Iron Plaintiff" or "Chicago-based Environmental Justice Attorney". A list of sample interview questions is provided in the appendix. Instead of merely looking at whether completed lawsuits successfully achieved their aims through the courts, I asked attorneys and plaintiffs involved in specific environmental justice suits how they measure

success and if they feel their efforts led to political change or change in public perception of the issue, even looking beyond court rulings.

To analyze the interviews for major themes, I transcribed each interview and read through it, flagging important themes via color coding. All recordings were deleted post-transcription. Eventually, four recurring themes emerged from my 10 interviews. I then grouped together the quotes reflecting each of the themes and read them together to better analyze patterns in which interviewees (by profession or geography) were contributing to which themes.

This research plan was submitted to and deemed exempt by the University of Chicago's Institutional Review Board. When reviewing recent jurisprudence, I used summaries and primary sources available for free on Columbia's Sabin Center's Climate Case Chart database.

**Summary Table: Interviewees**

Title	Role	Involvement in General Iron
General Iron civil rights plaintiff	Southeast Side-based educator	Plaintiff in civil rights lawsuit
General Iron activist #1	Southeast Side organizer	Local leader involved in organizations named in administrative fair housing complaint, worked directly with attorneys
General Iron activist #2	Southeast Side organizer	Local leader involved in organizations named in administrative civil rights complaint, did not work directly with attorneys
Non-governmental environmental attorney #1	Chicago-based scholar and leader of an environmental law clinic	Attorney in administrative fair housing complaint representing environmental justice organizations
Non-governmental environmental attorney #2	Attorney for a national conservation organization	Attorney in administrative fair housing complaint representing environmental justice organizations
Non-governmental environmental attorney #3	Chicago-based environmental attorney (declined to speak on the	Declined to speak about General Iron matter

(National organization)	General Iron matter)	
Non-governmental environmental attorney #4	Chicago-based scholar and leader of an environmental law clinic	Not directly involved in General Iron matter
Non-governmental environmental attorney #4 (Our Children's Trust)	Senior litigation attorney with Our Children's Trust	Not directly involved in General Iron matter
Policy expert	Environmental policy strategist at a national conservation organization	Not directly involved in General Iron matter
Youth plaintiff, Reynolds v. State	Youth activist and plaintiff in <i>Reynolds v. State</i> (over 18)	Not directly involved in General Iron matter

## VI. Results

I interviewed ten individuals involved or previously involved with environmental justice advocacy or litigation in Chicago. Five of the ten had additional experience with litigation or activism specifically related to the General Iron case study; a summary table of interviewees is provided in the Appendix. In order to analyze these interviews, I transcribed each and then read through it, marking major themes and key quotes. Here, I provide a summary of four major themes from the interviews, pulling quotes from my interview to elucidate key takeaways. Then, I analyze the potential of the popular environmental justice litigation strategies discussed in the literature review in application to General Iron, and finally, put forth an argument for a novel approach to future environmental justice struggles on the Southeast Side: a multifaceted lawsuit with youth plaintiffs and state constitutional claims.

### *Environmental Justice Litigation: Role, Potential, Prospects*

Four major themes emerged from these conversations about the role of litigation within the larger environmental justice movement, the relationship between attorneys and activists in the General Iron case, and the prospects of environmental justice litigation from the lawyerly



perspective. Below, I explain each finding, showcase a key quote, and explain its importance with further quotes from my interviews.

**Finding 1: Broadly, interviewees said that lawsuits are best seen as a wing of broader environmental justice strategy, rather than a separate effort, and that it is essential for lawyers to let activists lead the way. Both attorneys and activists reported that lawyers' primary contribution is legal knowledge and credentialed authority. In the General Iron issue specifically, activists reported a collaborative relationship with attorneys that reflects a shift from concerns in the 1990s literature.**

**Key Quote:** *"We made it very clear from the beginning that this was not their fight - they were assisting us. Their role was not a leadership role - it was a support role. We're fighting to make decisions for ourselves and we're not going to hand over that power to anyone. They understood that and were respectful of it"* -Activist 1

The first key finding from my interviews was that both attorneys and activists see litigation as an important 'leg' of the environmental justice movement, but not as more or less important than any other portion. This reflected an apparent shift away from attitudes in the 1990s, when scholars reported that environmental law had failed low-income communities and that as a result, grassroots environmental justice activists viewed mainstream environmental groups as obstacles or enemies to progress (Cole 1992, 620).

For example, one activist (henceforth, "Activist 1") Activist 1, first quoted above, offered what they said was an incomplete list of the groups and avenues they believed were essential to success in the General Iron issue: lawyers, hunger strikers, national environmental organizations, supportive local and state politicians, capable reporters, youth activists, local educators, and medical professionals. Much of this was echoed by other interviewees, three of whom

independently said that a combination of lawyers, youth, reporters, hunger strikers, national environmental organizations, and allied politicians were essential to the struggle. Activist 1, who was directly involved in the fair housing administrative complaint said, “I don’t think we could (succeed) without (the legal) component - and I can say the same thing about every other component. We need all the pieces to the puzzle - the lawyers were definitely vital to this - their sincerity and their passion were vital. The lawyers that were working with us are truly invested in us.”

An attorney (henceforth, “Attorney 1”) who worked on the complaint echoed this belief that environmental justice efforts require many fronts, each as important as the other, “Advocacy means using a multitude of tools to try to accomplish the environmental justice goals. That may involve speaking to the press, providing expert commentary, commenting on permits and similar filings, working with neighborhood groups to help them increase their voice, holding press conferences. It’s never going to be just one thing you’re going to win with. You have to pull on every possible string.” A second Chicago-based environmental justice attorney who declined to talk specifically about the General Iron, (Henceforth, “Attorney 2”) spoke more generally about litigation as just one branch of successful environmental justice battles, saying that wins require a combination of advocacy, activism, and media coverage - not just litigation.

The second key component of this takeaway was the idea that attorneys must let activists lead the way in environmental justice efforts, rather than position themselves as leaders. As Activist 1 put it, “We made it very clear from the beginning that this was not their fight - they were assisting us. Their role was not a leadership role - it was a support role. We’re fighting to make decisions for ourselves and we’re not going to hand over that power to anyone. They understood that and were respectful of it - we have to be able to trust them.” Similarly, one of the

three plaintiffs involved in the civil rights lawsuits described her experience navigating media coverage of the lawsuit: “(One of the attorneys) asked me to talk to a journalist. So I said, sure, but I don't want your talking points. I don't want to say what you want me to say. I'm gonna say what feels good to me. And so that's what I loved about the work that we did is that we were allowed to have the voice that made sense to us.” An attorney (henceforth, “Attorney 3”) who worked on the fair housing complaint alongside Attorney 1 made clear that the lawyers also did not see themselves as central to the movement, instead recognizing the essentiality of grassroots components: “The hunger strikers in the General Iron case probably did more to bring attention to and action on that case than a lot of the legal work.”

Each of the activists I spoke with said that lawyers make important contributions to advocacy efforts through formal knowledge of the law and strategic legal thinking. Furthermore, activists said it was helpful to have lawyers present during advocacy meetings and community organizing forums, rather than having litigation work happen concurrently but separate from activism and advocacy. Activist 1 said, “We rely on lawyers for expertise as far as what our rights are and as far as what possible steps are. When we were derailed or batted down, the lawyers kept us in the mix and helped us understand what options we have. Coming from Northwestern, being accredited lawyers - that has weight. We have to trust them.” This was affirmed by attorneys themselves. For example, Attorney 1 stressed that attorneys cannot and should not attempt to take part in or lead every element of an environmental justice efforts, instead deferring to activists as experts: activists the Southeast Side, she said, have “learned from all the fights they’ve been engaged in how to get out in the community and organize. Things like the hunger strike, reaching out to the medical community, marches to public figures’ houses - community organizers are so adept. In some areas where activists are less experienced, lawyers

play a bigger role. But in other areas, we were less involved.” These results from my interviews seem to indicate that at least in some ways, General Iron may be a model of the type of litigation for which Luke Cole advocated in the 1990s after expressing concern that environmental law was a field that fundamentally patronized activist and low-income communities. Cole wrote that “traditional environmental law groups can be most helpful to the environmental justice movement by sharing their skills and knowledge of environmental law.” (Cole 1994 528). While his 1990s writings wax skeptical that this could be achieved, the results from my interviews suggest that at least in the General Iron case, this was precisely the model followed: lawyers shared their expertise and authority, while framing themselves as helpful tools in the movement’s utility belt, but not as the end-all-be-all.

**Finding 2: Enthusiasm for the General Iron case in 2020 and 2021 was related to the George Floyd civil rights movement in summer 2020, reflecting the historical pattern of environmental justice efforts building on civil rights organizing. Activists and attorneys see General Iron as just the latest installment of environmental racism in Chicago and are already preparing for the next fight.**

**Key quote:** *“(At the time of) George Floyd, General Iron had been bubbling up and it was reaching that breaking point of like, okay, they’re about to issue this permit. And in the middle of a pandemic, and it’s a respiratory thing. And in the streets, everyone’s been saying, We can’t breathe and everything’s coming together. We really tried to bridge together all these different groups in my neighborhood...(asking) okay, what does this mean, when we say, black lives matter, or when we can’t breathe? What does this mean for our neighborhood? And so that’s when we got really into the General Iron campaign.” -Activist 2*

A second key takeaway from my interview analysis was that for the activists and organizers involved in the General Iron issue, the movement around the proposed plant relocation felt like an extension of the civil rights actions precipitated by the murder of George Floyd, a Black Minneapolis resident, by police officers. Activists, like the organizer above, spoke specifically to how questions raised by Floyd's murder felt intimately relevant to General Iron: during his killing, bystanders heard Floyd say "I can't breathe" as officers ignored him and continued to press their knees to his back. Because a major concern with the General Iron plant is air pollution leading to poor respiration, this felt poignant for members of the Southeast Side community, which is majority-minority (primarily Latin, with a large Black population as well).

This points to a key continuity between the modern issue of General Iron and historical battles over environmental injustice, which often occurred as a part of or shortly after major civil rights movements across the country (see, for instance, the Sunnyside issue in Houston, which is cited as Houston's only major civil action of the civil rights era). Of course, it is also true that environmental justice litigation was given its legal wings by civil rights law - notably the passage of the 1964 Civil Rights Act and the Fourteenth Amendment, which both gave communities grounds to sue on the basis of environmental discrimination and brought national attention to issues of racial inequity. Further research on cases beyond General Iron is necessary to solidify this connection, but this socio-legal investigation suggests that the civil rights and environmental justice movements are entwined, at least from the perspective of the organizers behind them.

Relatedly, the activists and plaintiff I spoke with, all three of whom were involved directly in the General Iron case, stressed that the General Iron case *must* exist in the context of a larger movement for civil rights and/or environmental justice. They said that no single campaign can secure a safe and healthy environment for the communities that are most likely to face

environmental racism and classism. Each recounted the century-long history of industrial pollution on the Southeast Side and noted that while the proposed General Iron relocation is an important issue to them and their community, they do not see it as the end all be all because they feel that there will always be another development, harmful policy, or inequitable pollution in the air or water supply. Activist 1 mentioned that one issue looming for her coalition is prospective mining and fracking by Ozinga, a Chicago-based concrete company.

The lawyers I interviewed also spoke about the sequential element of environmental injustice(s), especially in Chicago. Attorney 1 talked about how the General Iron issue compounded a history of environmental racism in the area and connected to other issues of racial inequity, saying, “the city signed a term sheet to assist in the relocation this business from a wealthy white neighborhood to the lower income community of color on the Southeast Side, which is already so overburdened by environmental contamination. That serves to entrench the long-term history of racial discrimination in housing in Chicago. You’re making the neighborhood both more dangerous and harder to get out of. It is an entrenchment of racism purposefully brought to Chicago throughout the 20th century through things like redlining and where we put highways.”

Clearly, the movement to prevent General Iron’s relocation arose partially from frustrations about wide-reaching racial injustices nationally, which provides a fascinating parallel to early environmental justice cases like *Bean*, where the civil rights movement of the 1960s inspired environmental justice protests and ultimately litigation. Additionally, my interviews suggest that because of the long history of housing and environmental racism on the Southeast Side, activists and attorneys are already anticipating their next fight.

**Finding 3: Both attorneys and activists testify to non-legal benefits of litigation, including increased political attention, media coverage, and public support. This means that even when litigation does not succeed in the courts, it can still majorly bolster environmental justice movements.**

**Key Quote:** *“You’ve got to fight with everything you’ve got. Not winning in court doesn’t mean losing.”* -Attorney 1

The attorneys (and, to a lesser extent, the activists) I spoke with stressed that litigation’s role in moving forward environmental justice causes goes far beyond courtroom victories. The lawyers noted that the attention from media, the public, and politicians garnered by lawsuits can be equally as important as actual legal wins when it comes to shutting down or avoiding pollution-generating industrial developments. An attorney who was not involved in the General Iron case but works on environmental justice in Chicago (henceforth, “Attorney 4”) said, “the filing of a lawsuit itself attracts attention.” He suggested that the optimal approach is a “both/and” strategy employing both litigation and advocacy, saying “It’s a mistake to think of litigation as a silver bullet. But litigation does help force people to the table, it can lead to settlements that leave people better off, the filing of a lawsuit in itself attracts attention.” Both he and the two General Iron-connected activists added that litigation can provide key documents to activists, informing the direction of their organizing and which decision-makers to target.”

Similarly, Attorneys 1 and 2, both of whom worked directly on the housing complaint, expressed that environmental justice litigation can promote awareness of the issues and spur action. Attorney 1 said of the housing complaint, “I remember hearing that every time one of our issues would make the front page of the *Tribune* in a way that that called out the city, Mayor

Emanuel would drop an F bomb, and he would, you know, call everyone together and say, like, we need to do something about this.”

Speaking about environmental justice litigation more broadly, Attorney 2 expressed a similar sentiment, saying, “it’s really important to get the facts of what is happening out there. If you don’t bring those kind of complaints, the reality of these kinds of issues will be lost. People’s eyes won’t be opened if you don’t keep pushing or fighting.” She added that with many administrative complaints, including the fair housing complaint, litigation can publicize the link between related issues, and force politicians to address their decision-making in public forums: “We thought it was very important to make that link between housing and EJ, for the city to have to answer that, and for HUD to become involved. HUD gives enormous funding to the City of Chicago, and the City has an obligation to promote fair housing. They’re doing just the opposite.”

She also spoke about the civil rights lawsuit brought against the City and General Iron’s parent company, RMG, saying that even though the suit was dismissed in court, it still had an impact: “That civil rights lawsuit that was brought had media attention in the press. It didn’t look good for the mayor. Whether it was the HUD complaint, the people marching in front of her house, the hunger strike - you’ve got to fight with everything you’ve got. Not winning in court doesn’t mean losing.” And of course, the General Iron case study is the perfect encapsulation of political success that came after hard-fought legal battles. Interviewees seem convinced that even though no legal action won in a courtroom, the media and public interest attracted by the civil rights lawsuit and the federal investigations spurred by the administrative housing complaint put political pressure on the City to ultimately deny General Iron its permit.



**Finding 4: Although they say litigation is important for many reasons, including as a catalyst for political change, attorneys and activists are skeptical about the likelihood that environmental justice cases win in courts. As such, attorney interviewees opined that it is important to try many approaches with different lawsuits, targets, and jurisdictions, including strategies to draw public attention to an element of the issue or to create new law and precedents.**

**Key Quote:** *“Law doesn’t seem like it’s going to stop a development until we are rezoned.”*

-Activist 1

A final major takeaway from interviews with attorneys and activists was a general sense that while litigation is important to raising awareness, setting precedent, platforming activists, accessing documents, and amplifying political pressure, attorneys and activists are not necessarily hopeful that environmental justice suits will achieve their ends in court. Interviewees echoed the skepticism reflected in much of the literature reviewed for this project, saying that without policy changes, litigation remains an uphill battle. Attorney 2 told me that “the legal system has worked to limit practical application of environmental rights,” even where they exist, and that creating new environmental justice laws is difficult because the United States has continuously rejected a positive rights framework.

Among attorneys, there was no major consensus about which strategies they see as most likely to succeed when it comes to tackling environmental justice issues like industrial pollution. Each said that they believe the best practice is to strategize based on the particular case, but also try as many approaches as possible given organizational capacity, including suits with different subjects (corporations versus governments), different claims (for instance, civil rights complaints versus traditional permitting lawsuits). This underscores the lack of scholarly consensus on the

best approach to environmental justice litigation, but also shows how case-specific each issue is. A policy expert for the NRDC said that ideally, lawsuits and policy efforts play out at multiple levels (local, state, and federal) and in different jurisdictions. Attorney 3 advocated for focusing on traditional environmental law, like state permitting rules, saying that “environmental justice is more useful as an organizational strategy than as a legal strategy” because often, the values of environmental justice do not transfer well to the courts.

One piece of advice relayed by both Attorneys 1 and 2 was that in general, courtroom litigation of environmental justice issues (like the civil rights lawsuit brought by individual plaintiffs) is prohibitively expensive and intrusive, without enormous payoff in the form of a likely win. Instead they say it’s often more strategic to rely on ‘administrative litigation’ like the fair housing complaint, which involves filing complaints through agencies.

Activist 1 added that suing corporations is difficult, because companies often set aside budgetary funds to pay fines and damages due to lawsuits. “I don’t think (lawsuits) alone will make an impact,” she said, saying that policy changes to zoning on the Southeast Side would be necessary for legal efforts to succeed. “Law doesn’t seem like it’s going to stop a development until we are rezoned. Whatever’s going on with our constitutional rights is in conflict with our area being the only area zoned for hazardous waste across the street from residential and commercial and industrial zoning. This area of Chicago is zoned for all four.”

Last March, the Chicago City Council adopted an industrial air quality and zoning ordinance - originally proposed by the Lightfoot administration - which, among other things, requires industrial actors to hold at least one community meeting in advance of submitting for approval to develop a site and requires that industrial developments “comply with the City’s sustainable development policy” (Klawiter 2022). While such an ordinance may be a step

forward in Chicago's reckoning with environmental injustice, the activists I spoke to were skeptical about whether the ordinance will bring meaningful change, especially because sustainable development goals leave much room for interpretation (Easterly 2014).

## **VII. Recommendations for General Iron and Beyond**

The common themes through these interviews suggest that the role of litigation in the environmental justice movement is not necessarily to achieve wholesale wins in court. Instead, strategic litigation can generate major political pressure and public awareness even when it fails in a legal sense. With that in mind, I am recommending one possible legal avenue that I believe could bring national attention to environmental justice issues on the Southeast Side moving forward. Specifically, I propose that Southeast Side organizers facing present and future instances of discriminatory development consider working with a nonprofit organization like Our Children's Trust to launch a youth plaintiff-led lawsuit that incorporates Illinois' constitutional environmental rights alongside more traditional environmental law.

### *Recommendation Part 1: A State Constitutional Claim, Combined with Traditional Routes*

State constitutional claims are applicable to the General Iron issue and, indeed, the proliferation of industrial developments on the Southeast Side because of article XI, section 2 of the Illinois constitution, which declares,

*"Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."*

*ILL. CONsT. art. XI, § 2*

I believe that a highly publicized lawsuit incorporating this claim would bring national attention to the idea of statewide environmental rights as a path to environmental justice, and

likely intensify pressure on the Chicago government (as well as city and state governments nationwide) to make equitable permitting decisions out of fear of backlash.

In her 2011 review of state environmental rights, Sylvia Ewald characterizes Illinois courts as, “unnecessarily deferential to the legislature's limitations on standing” (Ewald 429). Indeed, as discussed in the literature review section, the court has traditionally deferred to legislative restrictions on the amendment. But the restrictions put forth thus far would not impede invocation of the provision in environmental justice cases. Despite Ewald’s pessimistic, if apt, assessment, Illinois residents have little to lose by using the constitutional provision to establish standing and push for new, more progressive precedent on environmental rights in the states. The proliferation of national and international rights-based cases in the last ten years may encourage the legislature to read the constitution more generously, and a daring state constitutional claim could attract national attention and fuel efforts for environmental rights amendments elsewhere in the country. Importantly, even if the strategy fails, it is sure to attract public attention, provide activist plaintiffs with a large local, state, and national platform, and put political pressure on decision-makers. For these reasons, I recommend it to advocates involved in the General Iron case, as well as to advocates facing future instances of industrial pollution in low-income communities of color in Illinois.

Attorney 2 noted in our interview that while the constitutional amendment has been limited by the state legislature, it does create standing for residents of Illinois to bring claims where they otherwise might not be able to. For this reason, combining a constitutional claim with traditional environmental law claims<sup>13</sup> may be an effective way to keep a claim in court and keep attention on the matter even if the constitutional claim that residents’ right to a clean and health

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<sup>13</sup> This thesis does not go into depth about possible environmental legal strategies available to environmental justice advocates in Illinois because approaches would vary wildly between specific instances depending on the location of the site, industry and chemicals involved, and permitting procedure followed.

environment is dismissed early on. This idea was supported by Attorney 1 who, when asked about this strategy, said that although it may not be successful, such a case would be an opportunity to convince the Illinois supreme court to take on a question of environmental racism and clarify what the constitutional right means practically for the state's residents. She advised that because the constitutional claim itself may not be successful, it would be prudent to attach it to additional, more traditional claims, like state-level permitting law or Illinois' prospective nuisance law. In fact, an Illinois appellate court recently blocked a sand mining facility on the basis of a prospective nuisance claim brought by landowners, and any impacted citizen is permitted to bring such a claim, so it may be a perfect complement to a state constitutional suit.

As an aside, I wish to note that this recommendation is not a challenge to existing administrative efforts. Rather, it would be a complementary effort. Civil rights complaints filed with administrations like the EPA and HUD have been successful in bringing attention and investigations to city-level decision-making, and will no doubt continue to be an important part of environmental justice efforts in Chicago and beyond, due to their cost effectiveness and ability to incite federal investigations. However, after speaking with attorneys and reviewing the literature, it is hard to imagine civil rights lawsuits being a practical mainstay of environmental justice litigation in Illinois or elsewhere. Indeed, the civil rights complaint attempting to prevent the city from issuing General Iron its permit was dismissed; presiding US District Court judge Mary Rowland wrote that the plaintiffs "have not shown a discriminatory purpose behind the move of the facility." Given that history, and the broad difficulty of navigating strict scrutiny, it seems that civil rights cases, though they have the potential to capture public attention, are not likely to lead to concrete courtroom victories. Similar to courtroom civil rights lawsuits, equal protection cases do not offer much promise for environmental justice advocates. Equal protection

was essentially gutted by the Arlington Heights standards established in the 1970s, and no environmental justice attorney I have spoken with advocates for use of equal protection complaints, unless a systematic overhaul in judicial scrutiny occurs. As a result, so I do not recommend their use in the General Iron issue, or in any other instance of modern environmental justice discrimination. Civil rights cases seem to go farther and be more popular, as well as more successful in capturing media attention, and so are preferable to equal protection suits.

*Recommendation Part 2: Inviting Youth Plaintiffs to the Stand*

The second key part of my legal recommendation is that the constitutional suit should be brought by youth plaintiffs - namely, student environmental justice activists already engaged in battling industrial pollution on Chicago's Southeast Side. Bringing the claim with young people as plaintiffs would have numerous benefits. The building momentum of other youth plaintiffs cases (see *Held v. State*, *Juliana v. U.S.*, *Komor v. United States*) demonstrate that youth attract the attention of media, the public, and politicians. I interviewed a youth plaintiff in *Reynolds v. Florida*, a youth case brought on public trust doctrine grounds. While the case did not succeed in court (although the presiding judge expressed sympathy for the plaintiffs' claim), after it was dismissed the plaintiffs involved launched a petition for the state commissioner to create state-level goals to increase renewable energy reliance. Under pressure from supporters of the plaintiffs' efforts, the commissioner eventually granted the petition and began the rulemaking process. The individual interviewed said, "As part of the broader youth plaintiff movement, we encouraged young people to recognize that they can speak out too. We weren't professional activists, just ordinary young people who decided to speak out." Excitingly, there is already an engaged population of young people working on environmental injustice issues on the Southeast side broadly and on the General Iron dispute in particular. Students attending George Washington

high school, one of the schools down the street from the proposed General Iron site, have participated in the hunger strikes and led protests against the plant's relocation (Eilbert and Little 2021). Two students also wrote an op-ed on their experience of environmental racism on the South Side for *Teen Vogue* (Amari Colón and Miller).

Youth plaintiffs have been shown to inspire action beyond their jurisdiction, and can moreover nudge judges and politicians towards more progressive positions on environmental matters. Additionally, each of the attorneys I spoke with cited funding as a major limitation on environmental justice litigation, and much of the litigation for the General Iron issue was done pro bono by local legal clinics. The two attorneys involved in the fair housing complaint both said that funding was one reason they elected not to sue the city or General Iron in court. Youth plaintiffs are charismatic and attached to a broader movement, and so a youth plaintiff-led environmental justice case would likely be picked up by nonprofits like Our Children's Trust, which focus on bringing lawsuits in court despite the time and money required, alleviating the financial considerations that have historically limited some environmental justice issues to administrative litigation. Beyond the expenses of litigation, youth plaintiffs bring another benefit. In my interview with the General Iron civil rights lawsuit plaintiff, she noted that it was difficult to find people to join the lawsuit, because many residents said they did not have time due to work or family commitments or were concerned about the consequences joining a lawsuit might have on their employment. These concerns would largely not be shared by prospectively youth plaintiffs, which could lead to a more substantial lawsuit.

This interview-based project demonstrates that for litigation to effectively serve the environmental justice movement, it must align with the needs and ambitions of the community in question. Based on the General Iron case study, a youth plaintiff claim may accomplish this well.

Both activists and attorneys spoke about the key role of youth in the General Iron issue. When asked about the potential of a youth plaintiff case, Activist 1 said, “Having kids involved with lawsuits would be consistent with the approach so far. I think I have a new project.” Attorney 1 echoed here, saying “I think the youth involvement in the General Iron issue was very important. It was really exciting to see young people stand up and say no, we’re not going to take this.”

Finally, a key benefit to youth plaintiffs is that ordinarily, minors are unable to participate in political processes like voting. A lead attorney for Our Children’s Trust, the international nonprofit that has litigated dozens of environmental youth plaintiff cases, including *Juliana v. United States*, told me, “Children don’t have the political power that adults do - they don’t have a seat at the table, so they need protection and representation in the judicial branch.” Thus, a youth plaintiff-brought case would have the potential to further empower the rising generation of Chicago environmental justice activists, engaging them in decision-making processes that directly impact their futures.

Writing in the 1990s, few legal scholars considered young people an environmental justice population. Today, however, it is obvious that young people of color and low-income youth bear disproportionate harm from pollution and environmental change even relative to older generations in their communities. They will have to live with decisions made by adults today, and if environmental justice is to be achieved, they will need a say in that decision-making. This thesis argues that young people - through the youth plaintiff strategy - could be a balm to the cynicism engendered by decades of failed environmental justice litigation.

## **VII. Conclusion**

Clean air, drinkable water, and ample greenspace are fundamental building blocks of a dignified life. In the U.S., poor people and people of color have been systematically denied these



resources for centuries, a form of discrimination that has often come in the form of waste-producing industrial developments in the heart of marginalized communities. If we—as a society and as legal professionals—seek to combat violence and inequity, we must commit ourselves to fighting environmental injustices at the local, state, and federal levels, especially as the consequences of climate change worsen environmental risks of all kinds. But how does litigation figure into the broader environmental justice movement?

This research suggests that litigation can contribute public attention, political pressure, and previously unavailable information to environmental justice campaigns even when lawsuits fail in court. Administrative lawsuits are cheaper than in-court litigation and can lead to federal investigations into alleged environmental discrimination, as in the General Iron case study.

The poor legal track record of traditional environmental justice litigation—as well as the cynicism of environmental lawyers themselves—makes clear that we cannot expect a lawsuit to ever serve as a ‘silver bullet’ in a dispute over environmental injustice, be it subpar municipal water quality or the placement of a local waste plant or industrial facility. However, the limitations of litigation does not mean that it should be ignored as a tool. Instead, attorneys should commit themselves to collaborating with community organizers in order to strategize how lawsuits can serve as one part of a multifaceted approach to any given environmental justice dispute. In particular, they should consider the ways in which lawsuits that fail to achieve their desired outcome in court can still play a key role in an ultimate victory (such as the denial of an industrial permit by a political actor or a change in zoning policy). To that end, attorneys must take seriously creative legal strategies such as novel invocations of constitutional law and the use of youth plaintiffs.

Engaging young people in such a state constitutional claim could breathe new life into Illinois' constitutional right to a clean and healthy environment, clearing the way to more progressive environmental policy and political decision-making in the future and inspiring attorneys, advocates, and politicians in other states to make use of existing environmental rights amendments or lobby for new ones. Even if these strategies do not achieve their ends in court, they will generate public attention, create political pressure, empower the rising generation of environmental justice activists, and change normative thinking about the limitations of environmental and rights law. Better yet, if such cases achieve even moderate success through the court system, they would set new precedent, leading the way for other Illinois communities and communities in other states with environmental rights to take bold steps towards better environmental justice rulings.

This thesis synthesizes historical insights into environmental justice litigation and assesses the present status of law in the movement. Understanding both the past and present of law in the environmental justice context is key to forging a future for environmental justice in a world that is both newly interested in its goals and under siege from climate change, extreme weather events, and pollution. It is also among the first scholarly efforts to document the recent General Iron dispute, and explores key dimensions of the issue, including the possible relationship between the civil rights movement of summer 2020 and increased interest in environmental justice organizing, as well as the idea that General Iron matched what many say is an ideal model: attorneys taking cues from activists and contributing their skills and accreditations without expecting to be seen as leaders. These findings are interesting and useful, but require further research to be definitively applied outside of Southeast Chicago. While the General Iron case study provides a useful framework for collaborative work between activists

and attorneys, other issues in other jurisdictions face unique challenges, and further case studies would be necessary to produce more comprehensive analysis of the modern environmental justice landscape.

In addition, other types of legal research would help bolster and apply the conclusions of this paper. Given more time and resources, it would be helpful to gain perspective from a systematic review of environmental justice case law in order to understand big-picture trends in legal strategies and case outcomes. Such a review could help paint a much clearer picture of what issues, arguments, jurisdictions, and plaintiffs have the best track record in environmental justice litigation and could seriously contribute to future legal strategizing. Hopefully, this research will serve as one of many bricks in a developing socio-legal literature that seeks to answer urgent, difficult questions about the place of law in the path to a just and sustainable world.

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**Appendix**

Sample Interview Questions: Questions drafted for a prospective interview with an attorney or plaintiff in a domestic environmental justice case.

- (1) When and how did you get involved in environmental policy, advocacy, or litigation?
- (2) How do you view the environmental litigation landscape in Chicago/the region? Do you think environmental justice cases are likely to succeed here? If so/if not, what factors contribute to this success?
- (3) There are obviously a lot of approaches to environmental law: property law, civil liberties complaints, the administrative procedure act. What is your perception of the efficacy of human rights and civil rights frameworks in American environmental law?
- (4) What is the role of “the court of public opinion” in determining the success of EJ cases in the region?
- (5) What was the role of people who are directly affected by General Iron (or: plaintiffs) in deciding to pursue this complaint/suit, and once that decision was made, in designing the strategy around the case?

- (6) Is there a climate justice community in the Midwest?
- (7) What role, if any, did other legal cases play in decision-making about the General Iron case?
- (8) What were you hoping to achieve with this case?
- (9) Do you consider this case a success (thus far)? What factors can help explain the success or failure of your efforts?
- (10) To what extent did your case attract attention from the media? How was the case covered in the media?
- (11) To what extent did the case offer a new way of understanding environmental justice, or change the way environmental justice is understood by key actors?
- (12) To what extent did your case attract attention from policy-makers? How did politicians discuss your case, if at all? Did your case lead to, or contribute to, changes in policy debates and outcomes?
- (13) To what extent did your case exert economic pressure on governments or businesses to change their positions or policies on climate change or related areas?
- (14) To what extent did your case inspire or make it easier to inspire individuals to get involved in protests or marches relating to climate change and environmental justice?
- (15) How did your work on this case connect (or not) with other strategies? media outreach, research, lobbying, grassroots mobilization
- (16) Looking back, what are the limitations of rights-based climate litigation as a tool to address climate change?
- (17) Ask the interviewee if they have any additional closing comment

- (18) Ask the attorneys if they know people who may have helpful insights and be willing to interview

**Sample Interview Request:** Sample text of emails sent to prospective interviewees. Email text varied slightly depending on my familiarity with the source and their role.

Dear NAME,

I hope you're well. My name is Ruby Rorty. I'm a UChicago undergraduate conducting BA thesis research on environmental justice litigation in Chicago, under the mentorship of Sabina Shaikh. This summer, I am investigating existing strategies of environmental justice lawsuits in Chicago, and focusing on the General Iron relocation as a case study.

(NAME, if applicable) recommended I reach out and request to interview you about the landscape of environmental justice litigation in Chicago, because of your work with the ORGANIZATION in Chicago and experience with environmental justice advocacy on the Southeast side. Would you be willing to participate in an hourlong recorded Zoom interview about your experiences and perspective in the field?

If you are able to speak with me, please let me know a day and time that will work for you in the next two weeks. And of course, if you have any questions regarding our research project or the nature of the interview, please do not hesitate to ask. I look forward to hearing from you!

Best,  
Ruby Rorty

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