

2002

Appearing on the Next California Ballot: An Initiative to Ban Information

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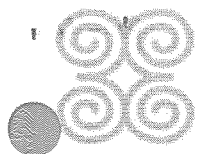
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**Urban Habitat
Second People of Color Environment Summit
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Over the past two decades, the environmental justice movement has provided a framework for identifying and exposing the links between racist development practices, disproportionate siting of toxic facilities, economic depression, and a diminished quality of life in low-income communities and communities of color. The environmental justice agenda has always been rooted in economic, racial, and social justice. By replacing the concept of the environment as a place that is "out there" with one that encompass all of the places where we live, work, and play, struggles for environmental justice address cumulative, synergistic, and multiple impacts that affect the quality of life in our communities. Brownfields and the issues surrounding brownfields redevelopment are crucial points of advocacy and activism for creating substantial social change in low-income communities and communities of color...

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AN INITIATIVE TO BAN INFORMATION

Appearing on the Next California Ballot:

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An Initiative to Ban Information **By Clifford Rechtschaffen**

Ward Connerly, author of the divisive Proposition 209 banning affirmative action in California, is at it again. Connerly has authored a new initiative that will be on the ballot in a special election called for October 7, 2003. The official title is the "Classification of by Race, Ethnicity, Color, or National Origin Initiative" (CRECNO), although voters may have also heard it referred to by the misleading title, "Racial Privacy Initiative." More accurately, as California Lt. Governor Cruz Bustamante has stated, it should be called the "Information Ban Initiative."

The initiative would prevent state and local government agencies from collecting or maintaining any racial or ethnic data in their operations. It is premised on the flawed logic that ignorance is better—that not knowing about societal inequities will make them go away. In reality, however, the measure would do nothing to enhance privacy, since virtually all racial or ethnic data is collected anonymously by government agencies. The measure would, however, have far-reaching impacts on the state's ability to identify racial and ethnic disparities and discrimination in public health, health care, education, contracting, racial profiling and other areas.

Efforts to achieve environmental justice in California would also be greatly hampered. First, a ban on information gathering by state agencies would seriously undermine attempts to document the unfair distribution of environmental hazards and benefits in the state. Numerous studies show that a variety of environmental harms, including air pollutants, air toxics, facilities that report under the Toxic Release Inventory (TRI) program, occupational environmental hazards, hazardous waste treatment, storage and disposal facilities (TSDFs) and childhood lead poisoning^[1], are disproportionately located in communities of color. While disparate harms are also found in low-income communities, most research shows that race is a more significant predictor than income of where environmental burdens are located.^[2]

The Case for Data Collecting

Many studies confirm that significant environmental disparities exist in California. For example, in Los Angeles, children of color, particularly Latinos, are more likely to be in public schools surrounded by heavily polluted air than other schoolchildren (after controlling for other factors).^[3] The average cancer risk from air emissions in the Los Angeles metropolitan area is 35 percent greater for Latinos and 28 percent greater for Asian Americans and African Americans than for whites, after controlling for income, education and numerous other factors.^[4] Likewise, in Los Angeles County, race and ethnicity (both for African Americans and Latinos) are significantly correlated with the neighborhoods in which TSDFs are located.^[5] African-American children in Los Angeles County are more than twice as likely to experience asthma than white children (16 percent to 7 percent).^[6]

Another recent study found that children of color in California are three times more likely to live in high-traffic areas than white children are. (Motor vehicles are the main source of many hazardous air pollutants in the state.)^[7] The Bayview Hunters Point section of San Francisco, where 91 percent of residents are people of color, on a per capita basis has ten times as many water discharges, four times as many air discharges, five times as many facilities storing acutely hazardous materials, three times as many leaking underground storage tanks and four times as many contaminated industrial sites as the rest of the city.^[8]

**Average Personal Risk Index
(Excess Lifetime Cancer Risk)
by Race/Ethnicity for the South Coast Air Basin**

Racial/ Ethnic Group	PRI for Estimated Individual Lifetime Cancer Risk
African-American	63/100,000
Latino	65/100,000
Asian American	63/100,000
Anglos	49/100,000
People of Color	64/100,000
Average Across all Groups	57/100,000

Some of the most important demographic data on which these studies are based comes from the California Department of Finance, the Department of Health, and County Health Departments. If the Connerly initiative were enacted, state and county agencies would be precluded from collecting these data. As leading environmental justice researchers Manuel Pastor and Rachel Morello-Frosch have written, “[t]he Connerly initiative would leave us in the dark about disparities in environmental health.”^[9]

Consequences of CRECNO

The Connerly initiative likewise could severely undermine or negate programs to achieve environmental justice, including important parts of pioneering legislation adopted by California over the past several years. Indeed, recent legislation requires California’s Environmental Protection Agency (Cal/EPA) “to *improve research and data collection* for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations of the state [emphasis added].”^[10]

The environmental justice legislation also requires Cal/EPA to promote the enforcement of health and environmental statutes and conduct its programs and policies “in a manner that ensures the fair treatment of people of all races, cultures, and income levels.”^[11] A number of state

and local agencies in California not covered by the legislation also have adopted environmental justice policies. Many of the tools being considered by Cal/EPA and these other agencies to promote environmental justice could be forbidden by the Connerly initiative.

Additional possible consequences include:

- Agencies could be barred from taking into account the heightened exposures and/or special vulnerabilities of racial or ethnic groups in setting air and water quality standards, approving permits, or making siting decisions.
- Agencies could be precluded from analyzing whether a proposed project would have a disproportionate environmental impact on African American, Latino, or other communities of color in Environmental Impact Reports (EIRs) or other documentation prepared under the California Environmental Quality Act (CEQA).
- Public health departments could be precluded from conducting targeted outreach in African-American and Latino communities where childhood lead-based paint poisoning is several times higher than in white neighborhoods, or conducting research on the causes of high asthma rates among African Americans
- Agencies could be prevented from tracking race-related discrepancies in the enforcement of environmental laws.

The initiative could also greatly undermine one of California's anti-discrimination laws as a tool for fighting environmental inequities. Specifically, California Government Code section 11135 bars racial discrimination by any state agency or entity receiving state funds, including actions that have *discriminatory impacts*.^[12] These protections extend to siting, permitting and other decisions by state and local environmental agencies. They are especially important because they permit impacted communities to go to court to challenge decisions with racially disparate impacts, a remedy no longer available to the public under Title VI of the federal civil rights law. (The recent U.S. Supreme Court's decision in *Alexander v. Sandoval*^[13] ruled that persons who are victims of state or local agency decisions that have racially discriminatory effects do not have the right to sue those agencies for violating Title VI, but rather they are limited to filing administrative complaints with federal funding agencies, such as the EPA.)

If the Connerly measure were enacted, state and local agencies arguably could no longer monitor their decisions to see if they fall disproportionately on certain racial groups, and therefore would no longer be able to comply with the law's anti-discrimination mandate. Likewise, community groups seeking to enforce the law would have great difficulty obtaining the data needed to document the disparate impacts of agency decisions.

Fighting the Information Ban

If there is any good news in all this, it is that scores of civil rights, environmental and environmental justice, public health, and other organizations have come out strongly opposed to the initiative, as have the University of California Regents and many elected officials in California (although to date almost no Republicans). But initiatives in California these days are largely decided by slogans and sound-bites, with distressingly few voters informed about their real consequences. In this money-dominated political environment, opponents of the Information Ban Initiative have their work cut out for them. Defeating this dangerous measure will be difficult, especially since turnout for the special election is predicted to be very low and more weighted toward conservative voters than in a typical election.

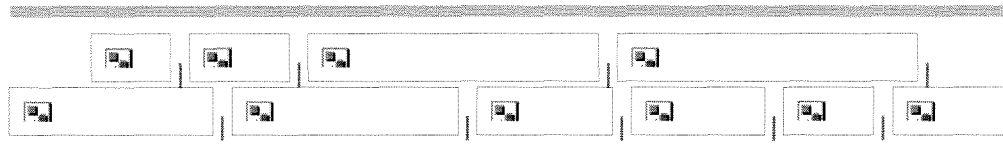
Those who are interested in fighting the Connerly initiative should work in their schools, community organizations, churches, political clubs and other venues to educate friends and colleagues about the initiative. A sample speech and other training materials can be downloaded from the National Lawyers Guild Web site at <http://www.nlg.org/sf/>. Other information about opposing the initiative can be found at www.infomedcalifornia.org or (510) 452-2728.

Clifford Rechtschaffen is a professor at Golden Gate University School of Law, specializing in environmental law. He is a member of the National Lawyers Guild Civil Rights Committee, part of a statewide coalition fighting the Connerly initiative. Thanks to Karen Kramer and Joe Lyou for reviewing an earlier draft of this article.

Footnotes:

- [1] Luke Cole & Sheila Foster, *From the Ground UP: Environmental Racism and the Rise of The Environmental Justice Movement* 167-183 (2000); Clifford Rechtschaffen and Eileen Gauna, *Environmental Justice: Law, Policy and Regulation* 55-76 (2002).
- [2] James P. Lester, David W. Allen & Kelly M. Hill, *Environmental Injustice in the United States* 13-14 (2000).
- [3] Manuel Pastor, Jr., et. al, *Who's Minding the Kids? Pollution, Public Schools and Environmental Justice in Los Angeles?* 83 SOCIAL. SCI. Q. 263 (2002).
- [4] Rachel Morello-Frosch, et al, *Environmental Justice and Southern California's Riskscape: The Distribution of Air Toxics Exposures and Health Risks Among Diverse Communities* 36 URBAN AFF. REV. 551 (2001).
- [5] Manuel Pastor, et. al., *Which Came First? Toxic Facilities, Minority Move-In, and Environmental Justice* 23 J. URBAN AFFAIRS 1 (2001).
- [6] Los Angeles Dep't of Health Services, *Childhood Asthma in Los Angeles County* 6 L.A. HEALTH (2001).

- [7] Robert B. Gunier, et al., *Traffic Density in California: Socioeconomic and Ethnic Differences Among Potentially Exposed Children*, 13 J. EXPOSURE ANAL. & ENVTL EPID. 240 (2003).
- [8] Clifford Rechtschaffen, *Fighting Back Against a Power Plant: Some Lessons from the Legal and Organizing Efforts of the Bayview Hunters Point Community* 3 HASTINGS WEST-NORTHWEST JOURNAL OF ENVIRONMENTAL LAW AND POLICY 407, 414 (1996).
- [9] Manuel Pastor and Rachel Morello-Frosch, *Good Social Science Needs Data on Race*, SJ MERCURY NEWS, April 20, 2001, at B7.
- [10] CAL. GOV'T CODE, §. 71110(d).
- [11] CAL PUB. RES. CODE §§ 71110 (2003).
- [12] 22 Cal. Code Reg. § 98101.
- [13] 32 U.S. 275 (2001).



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