Pre-Trial Hurdles in Citizens' Environmental Enforcement Actions

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PRE-TRIAL HURDLES IN CITIZENS' ENVIRONMENTAL ENFORCEMENT ACTIONS

"It's not easy being green."¹

I. INTRODUCTION

The rise of citizens' groups bringing suit under federal statutes has resulted in more creative claims for relief than the traditional avenue of statutory enforcement.² Historically, those suing as environmental citizens have utilized statutory law and Constitutional claims to further their arguments.³ However, current case law suggests that the only types of environmental citizen suits that will succeed are those which assert statutory claims.⁴ The federal courts have placed a virtual firewall around constitutional claims used to further environmental objectives, leaving statutory enforcement the only redress for non-governmental organizations.⁵

This note will explore the various ways that environmental citizen

¹ The Muppet Movie (The Jim Henson Company 1979).
⁴ See infra note 52 (illustrating claim preclusion under section 1983 when statutory remedy available).
⁵ See supra note 3 (depicting disfavor for constitutional claims).
groups or individuals can file claims against federal government agencies for environmental enforcement. Part I will focus on the federal environmental statutes, considering the elements required to get a trial on the merits by avoiding a motion to dismiss for failure to state a claim. Part II will consider three different constitutional theories for bringing a claim. Subsection A will discuss the historical value of the equal protection clause and why there may be a resurgence in its use as part of environmental citizen suits. Subsection B will debate whether groups can utilize 42 U.S.C. Section 1983 to bring an environmental claim. Finally, Subsection C will speculate about environmental case law that appears to provide a cause of action under Title VI of the Civil Rights Act.

II. FEDERAL ENVIRONMENTAL STATUTORY LAW

Nearly all environmental statutes contain citizen suit provisions. These provisions allow citizen groups or private citizens to act as private attorneys general and seek statutory enforcement. While the causes of

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7 See Toxic Substance Control Act, 15 U.S.C. § 2619 (1999) (allowing any person to bring suit against any violator including "governmental instrumentality"). The Toxic Substance Control Act ("TSCA") also allows enforcement against the EPA for failure to perform any acts or duties. Id. See Surface Mining Control and Reclamation Act, 30 U.S.C. § 1270 (1999) (allowing any interested person to bring suit against United States or other governmental agency pursuant to the Eleventh Amendment). The Surface Mining Control and Reclamation Act ("SMCRA") also permits a cause of action against state regulatory officials for failure to perform duties laid out in the statute. Id. See Federal Water Pollution Control Act, 33 U.S.C. § 1365 (1999) (permitting suit against any violator including "governmental instrumentality," and EPA for non-performance of statutory duties).

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action for the different citizen suit provisions are different, they have identical standing requirements.\(^8\)

Before a plaintiff group can file a suit, they must send a notice letter to the violator and agencies in charge of enforcement.\(^9\) If the particular statute the group seeks to enforce confers enforcement authority to the state, the group must also notify any state agency charged with environmental enforcement responsibilities.\(^10\) The purpose of the notice requirement is to give the violator an opportunity to make a good faith effort to come into compliance with the relevant environmental statute of which it is in violation and to give the agency a chance to enforce any violations of which it previously was ignorant.\(^11\) Formerly, if a violator did come into statutory compliance or the enforcement agency commenced action against the violator, any suit filed after the sixty-day notice period was dismissed as moot.\(^12\)

violates the conditions of the permit. \textit{Id.} See Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659 (1999) (allowing suit against anyone in violation of statute). Included in the mix of possible defendants are governmental instrumentalities, the United States President, and any other officer of the United States. \textit{Id.} See Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046 (1999) (allowing any person to bring suit against facility violating statute). Under the Emergency Planning and Community Right-to-Know Act, ("EPCRA"), groups can sue the EPA for failure to enforce the provisions of the statute and state governments for failure to make certain information available. \textit{Id.}

\(^8\) See CERCLA, 42 U.S.C. § 9607 (1999) (outlining prima facie CERCLA violation). A prima facie case under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") involves proving that an owner or operator of a facility disposed of hazardous substances that caused a release or threat of release to human health and the environment. \textit{Id.} A prima facie case under the Clean Water Act would involve proving that a facility violated the terms of its NPDES permit. Clean Water Act, 33 U.S.C. § 1311 (1999). These factors do not change the steps that citizen groups need to take before they are allowed to try a case on the merits of these claims. See supra note 6.


\(^10\) See, \textit{e.g.}, FWPCA, 33 U.S.C. § 1370 (1999); SWDA, 42 U.S.C. § 6929 (1999); CAA, 42 U.S.C. § 7410 (1999). Each of these statutes either empowers the states to act in the role of the EPA in enforcing the statues or permits states to have concurrent enforcement statutes as long as the standards enumerated by the state statutes are equally as stringent as their federal counterparts. \textit{Id.}


\(^12\) See \textit{id.} at 60. The court in \textit{Gwaltney} interpreted through Senate Reports about the Clean Water Act that if citizen suits were allowed after the government began enforcement action, the suit would "supplant" rather than "supplement" governmental action. \textit{Id.} The Court held that "[p]ermitting citizen suits for wholly past violations of the Act could undermine the supplementary role envisioned for the citizen suit." \textit{Id.} See also Steel Co. v.
The first pre-trial burden for citizen groups is a showing of Article Three standing. A claim will pass Article Three muster when it asserts "injury in fact." The claim must also assert a connection between the injury and the conduct of the defendant. Finally, prevailing on the claim must remedy the plaintiff’s injury. Unless the plaintiff asserts these three elements in the complaint, the court will dismiss the suit.

The second pre-trial burden is ensuring the organization filing the claim truly represents the wishes of its members. Here, there is also a three-prong test. Individuals must have the ability to sue alone, the suit must be within the scope of the organization, and the individuals must not be required to participate in the litigation. Also, the group must assert that there are ongoing violations, either continuous or intermittent, occur-

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See id. at 560. The “injury in fact” must be “concrete and particularized,” as well as "actual and imminent" as opposed to "conjectural" or "hypothetical." Id.

See id. (setting standard for finding connection). The link between the injury and the conduct of the defendant must be “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some kind of third party not before the court.” Id. at 560 (citing Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976)).

See id. Finally, “it must be ‘likely’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” Id. at 561 (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38, 43 (1976)).


See id. at 343 (outlining three-prong test).

See id. (depicting requirements for standing). The Court found that the requirements for standing were (1) the group’s “members would otherwise have standing to sue in their own right;” (2) “the interest it seeks to protect are germane to the organization’s purpose;” and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” Id.
ring at the time the suit was filed. 21 A court will not hear a claim for "wholly past violations." 22

The final obstacle to avoiding pre-trial dismissal is surviving a claim of mootness. 23 If it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," a case may become moot. 24 If the violations that spark the claim cease at the time of notification and the violator comes into compliance before the suit is filed, the case becomes moot for purposes of awarding injunctive relief. 25 However, a claim for civil penalties is not moot. 26 Keeping the civil penalty is akin to punitive damages in a tort claim, in that it deters violators from committing further violations. 27

By asserting in the claim the three proceeding elements, Article III standing, statutory standing, and a claim that is well established, the group should be able to survive a motion to dismiss and receive a trial on the merits. 28

A recent example of a successful statutory claim is the case of Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 29 involving a violation of the Clean Water Act. In that case, the defendant violated its National Pollution Discharge Elimination System (NPDES) permit by discharging amounts of mercury in excess of its NPDES permit into the North Tyger River. 30 The court granted Article Three standing because affidavits supplied by members of Friends of the Earth stated that they used to fish, swim, and otherwise utilize the river but because of the

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21 See Gwaltney, 484 U.S. at 64 (allowing claim for "good-faith allegation of continuous or intermittent violation").
22 See id. at 64 (holding wholly past violations of Clean Water Act inactionable).
24 See id. at 203 (stating burden of proof on party defending mootness assertion).
27 See Tull v. United States, 481 U.S. 412 (1987) (giving factors considered by legislature). The Tull Court found that "retribution and deterrence" were factors considered during legislative debates on the Clean Water Act. Id. at 422. The Court opined that civil penalties would "deter future violations by basing the penalty on its economic impact." Id. at 423.
28 See infra notes 29-37 discussing the Laidlaw decision.
29 120 S.Ct. 693 (2000).
30 See Laidlaw, 120 S.Ct. at 701.
additional mercury pollution, they had refrained and would continue to refrain from doing so in the future.

The court deemed the affidavits to prove "injury in fact."  

After learning of repeated violations, FOE sent Laidlaw a notice letter and waited sixty days to file suit. Between the time the letter was received and the suit was filed, Laidlaw came into compliance and settled a complaint with the South Carolina Department of Health and Environmental Control, and subsequently brought a motion to dismiss. However, since Laidlaw continued to intermittently violate its NPDES permit throughout the notice period after FOE filed suit, the court found that FOE's claim was not based on wholly past violations. Therefore, the court held that FOE was eligible for relief. While Laidlaw's compliance with the DHEC and subsequent closing of its facility made the claim for injunctive relief moot, civil penalties were still available to deter future violations. Since FOE proved injury in fact through the affidavits of its members, standing through Laidlaw's continuing violations, and a substantive claim for civil penalties, they prevailed.

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31 See id. at 705-6. In Laidlaw, the Court focused on six members of Friends of the Earth who testified as to injury in fact. Id. The injuries claimed by the affiants were loss of fishing, camping, swimming, and picnicking areas; loss of walking and bird watching trails; loss of a place to go boating; and fear of moving near the Laidlaw facility and a reduction in the value of homes around the Laidlaw facility and downstream from it. Id.

32 See id. at 705-6. The Court opined that "plaintiff's adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." Id. (quoting Sierra Club v. Morton, 405 U.S. 727, 735 (1972)).

33 See Id. at 701.

34 See Laidlaw, 120 S.Ct. at 701. There was some evidence of collusion between Laidlaw and DHEC. Id. Laidlaw contacted DHEC and asked DHEC to file a lawsuit against it. Id. DHEC accepted the offer and Laidlaw's attorneys drafted the complaint for DHEC, and the day before the 60-day waiting period for filing suit was over, the two parties settled. Id. With Laidlaw paying only $100,000 in penalties and agreeing to "make every effort to comply with its permit obligations," it seems to have gotten the better end of a bargain. Id. But see supra notes 21 and 25 (holding claim is moot when only for past violations).

35 See id. at 700.

36 See id. at 706. The court reasoned that it could not enjoin behavior that already ceased, but it could deter future violations of the same company at different locations. Id. The Court reaffirmed its holding in Tull by stating that civil penalties "promote immediate compliance by limiting the defendant's economic incentive to delay its attainment of permit limits; they also deter future violations." Id.

37 See id. at 700.
III. CONSTITUTIONAL CLAIMS

A. Equal Protection

To bring an equal protection claim, the plaintiff group must prove that the action of the agency was without any rational basis connecting the alleged discriminatory act to a proper governmental purpose.\textsuperscript{38} The "rational basis" standard of review for actions of government agencies is quite stringent.\textsuperscript{39} If a plaintiff can prove that the governmental agency acted in an arbitrary and capricious manner, the equal protection claim will survive a motion to dismiss.\textsuperscript{40}

\textit{Chesapeake Bay Village, Inc. v. Costle} is a case in which a citizen group brought suit based on an equal protection theory.\textsuperscript{41} In \textit{Chesapeake Bay}, the plaintiff, a developing company, brought suit alleging violations of the FWPCA and the Constitution for irregularities in the process for obtaining a permit to build a sewerage treatment facility.\textsuperscript{42} The plaintiff alleged it suffered injury because population studies included in the report did not take into account its planned development of a significant amount of land, and because Administrators unduly delayed the building of the facility.\textsuperscript{43} The plaintiff's equal protection count accused the defendants of...

\textsuperscript{38} See Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981) (applying rational basis review in case concerning environmental issues). This level of review presumes the absence of a suspect class. \textit{Id.} at 461. The presence of a suspect class, race for example, triggers strict scrutiny review. See \textit{Korematsu v. United States}, 323 U.S. 214 (1944). The question then becomes whether the government had a compelling reason to act in the manner it did. \textit{Id.} at 216. See also infra notes 65-68 discussing Arlington Heights.

\textsuperscript{39} See \textit{Chesapeake Bay Village, Inc. v. Costle}, 502 F. Supp. 213, 226 (D.M.D. 1980). The court held that "under the rational basis test, the state and country defendants may not exercise their authority in an arbitrary and capricious, or unreasonable manner." \textit{Id.}

\textsuperscript{40} See \textit{id.} (maintaining equal protection claim requires showing governmental action not rationally related to governmental purpose). Since the facts in the plaintiff's complaint gave rise to an irrational relationship, the court refused to summarily dismiss the claim. \textit{Id.} See also infra note 43 (discussing \textit{Chesapeake Bay} case). \textit{But see City of Highland Park, Ill. v. Train}, 519 F.2d 681 (7th Cir. 1975). In this case, the city sued the Administrator of the EPA over zoning regulations under an equal protection theory. \textit{Id.} at 683. The court held that zoning laws have the capability of always harming one group over another. \textit{Id.} at 696. The court found that "[i]nherent in all zoning legislation are statutory distinctions which give rise to claims of disparity of treatment." \textit{Id.} This "disparity of treatment" alone, however, was not enough to trigger rational basis review. \textit{Id.}

\textsuperscript{41} \textit{Chesapeake Bay Village, Inc.}, 502 F. Supp. at 213.

\textsuperscript{42} \textit{Id.} at 218.

\textsuperscript{43} See \textit{id.} at 218 (outlining allegations). The plaintiff's complaint alleged, \textit{inter alia},...
"arbitrary and capricious" behavior in denying the plaintiff "equal access to planned public facilities."44

The Maryland District Court announced that rational basis review was the proper standard of review for the equal protection count.45 The issue thus became whether the defendants exercised "their authority in an arbitrary, capricious, or unreasonable manner."46 Since the plaintiff alleged in good faith all of these allegations, the Court would not dismiss the complaint.47 However, Chesapeake Bay Village couched its equal protection claim in terms of a taking under eminent domain which the Court found reasonable and thereby dismissed the equal protection count.48

B. 42 U.S.C. §1983 Civil Action For Deprivation of Rights

42 U.S.C. §1983 provides a cause of action against people who deprive the "rights, privileges, or immunities" of another through statutes or regulations of the United States.49 Citizen groups generally bring §1983 claims concurrently with other statutory violations.50 To successfully assert this type of claim, the plaintiff group must prove the §1983 claim will redress different wrongs than the concurrent statutory enforcement.51 If
the relevant statute is found to be comprehensive, then it will provide the exclusive remedy for any injury associated with it. This statutory exclusivity makes bringing a §1983 claim difficult in the environmental arena, as environmental statutes are usually held to be comprehensive in nature. Therefore, courts consider relief sought under the statute the same relief sought under §1983.

While a §1983 claim is weaker when brought concurrently with a FWPCA violation, it should not be precluded when brought with other environmental statutes. For instance, the plaintiff in *Prisco v. State of New York* brought a §1983 claim concurrently with allegations of CERCLA and RCRA violations, making an interesting case study. In *Prisco*, the plaintiff brought suit because the defendants used a piece of her property illegally as a dump which contained hazardous contaminants. The plaintiff used this scenario to allege a §1983 claim. The defendants argued that under the National Sea Clammers Doctrine, CERCLA and RCRA foreclosed the plaintiff's remedy under §1983.

While conceding to the defendants that the National Sea Clammers

State School and Hospital v. Haldermen. *Id.* at 19 (citing Penhurst State School and Hospital v. Halderman, 451 U.S. 1, 28). The test asks "(i) whether Congress had foreclosed private enforcement of that statute in the enactment [of the statute] itself, and (ii) whether the statute at issue ... was the kind that created enforceable rights." *Id.* The Court never reached the second question because it found "that Congress foreclosed a §1983 remedy under the Clean Water Act." *Id.*

52 See National Sea Clammers, 453 U.S. at 20 (depicting section 1983 claim preclusion). The Court stated "[w]hen the remedial devices provided in a particular act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under §1983." *Id.*

53 See National Sea Clammers, 453 U.S. at 20-21. The court alluded to the fact that because the FWPCA had a citizen suit provision Congress would not have preserved a right to a §1983 claim. *Id.* at 20. Further, the Court concluded that "the express remedies demonstrate[d] not only that Congress intended to foreclose implied private actions but also that it intended to supplant any remedy that otherwise would be available under §1983." *Id.* at 21.

54 See Brewer, 577 F. Supp. at 530 (claiming violation of FWPCA and §1983). The Court dismissed plaintiff's §1983 claim because "[t]he relief which the plaintiff's [sought] under Section 1983 [was] identical to that sought under the FWPCA." *Id.*

55 See supra notes 51-53 (discussing claims brought under FWPCA are comprehensive and therefore preclude §1983 claim)


57 *Id.* at 409.

58 *Id.*

59 See *id.* at 410 (attempting to distinguish between constitutional and statutory rights).
Doctrine did prelude a §1983 claim when a statute redressed the same claim, the court questioned whether "preclusion extends to §1983 actions ... brought alongside or in the place of statutory actions." The Court then discussed two cases that held RCRA claims precluded constitutional claims. Posing two questions, the court reasoned that it should inquire into whether the §1983 claim is an "independent constitutional cause of action, or ... merely a rehash of ... statutory claims" and whether "Congress intended RCRA and CERCLA to be the exclusive avenues through which the plaintiff may assert the type of constitutional claims ... alleged under §1983." Since neither side had briefed the issue, the Court would not render a decision on the issue. However, the Court did express doubt about the viability of the §1983 claim in light of the CERCLA claim.

C. Title VI §§601 and 602

The Supreme Court has only decided one environmental case brought under the guise of Title VI. Arlington Heights set out the test to determine whether there was a violation of § 601. The Court held that to prove an actionable claim under § 601, the plaintiff must prove that the agency decision had both a discriminatory impact on the plaintiff group and that the agency acted with discriminatory intent. Courts interpreting this decision emphasize the importance of the intent element. In fact,

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60 See Prisco, 902 F. Supp. at 410. The court went on to infer that "[i]f the constitutional claim is merely the statutory claim clothed in the language of constitutional violations, it is more likely to be precluded under the statutory scheme." Id.


62 See Prisco, 902 F. Supp. at 410.

63 See id.

64 See Arlington Heights, 429 U.S. at 253. The Court's decision in Arlington Heights was predicated on the decision of Washington v. Davis, where to prove a violation of Title VI § 601, plaintiffs had to prove the governmental action had a disproportionate impact and that the government acted with discriminatory intent. Id.

65 See id.

66 See Arlington Heights, 429 U.S. at 564–65. The Court outlined some factors where evidence of discriminatory intent may be found, if the action "bears more heavily on one race than another," if there is a "clear pattern, unexplainable on grounds other than race," the historical background of the agency decision, "[t]he specific sequence of events leading up to the challenged decision," and "the legislative or administrative history" of the decision. Id.
under present environmental case law, no group has ever satisfied this element.\(^67\)

There is some speculation over whether a group may bring a claim under § 602 of Title VI.\(^68\) Section 602 allows a plaintiff group to assert a claim against a federal agency for having promulgated, enforced, or supported regulations that have a discriminatory impact.\(^69\) This lowers the evidentiary bar for proving intent and allows plaintiffs to use one prong of the intent/impact test.\(^70\) While no court has reached the merits of a claim brought under § 602, the courts who have addressed it believe that a successful claim may be possible.\(^71\)

Finally, in *South Bronx Coalition for Clean Air, Inc. v. Conroy*,\(^72\)


\(^68\) See 42 U.S.C. § 2000d-1. The statute provides in pertinent part that "[e]ach Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken." *Id.*

\(^69\) See *South Bronx Coalition for Clean Air, Inc. v. Conroy*, 20 F. Supp. 2d at 572 (stating § 602 prohibits federal agencies from promulgating regulations with discriminatory impact). *But see Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925 (3d Cir. 1997) (claim brought under § 602). When the case came before the Supreme Court, it was vacated and remanded with an order to dismiss. *Id.*

\(^70\) See *South Bronx Coalition for Clean Air, Inc. v. Conroy*, 20 F. Supp. 2d at 572. The court, citing *Elston v. Talladega County Bd. of Educ.*, set forth a three-part factual determination for meeting the disparate impact burden. *Id.* (citing Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). First, the plaintiff must "demonstrate by a preponderance of the evidence that a facially neutral practice has a disproportionate adverse effect on a group protected by Title VI." *Id.* If accomplished, "the defendant then must prove that there exists a substantial legitimate justification for the challenged practice in order to avoid liability." *Id.* Finally, "the plaintiff will still prevail if able to show that there exists a comparably effective alternative practice which would result in less disproportionality, or that the defendant’s proffered justification is a pretext for discrimination." *Id.* Basically, the plaintiff has to "demonstrate a causal link between the defendant’s challenged practice and the disparate impact identified." *Id.*

\(^71\) See *South Bronx Coalition for Clean Air, Inc. v. Conroy*, 20 F. Supp. 2d at 572. Although the *South Bronx* Court queried that because of *Chester Residents*, there remained no "private right of action under Section 602," instead of dismissing the claim as non existent, it dismissed the claim for want of evidence. *Id.* The Court abstained from answering the substantive question of whether there is a "private right of action under Section 602." *Id.*

\(^72\) See 20 F. Supp. 2d at 565.
developers cited a large industrial, waste transfer, and bus depot development in a primarily minority neighborhood.\textsuperscript{73} Two Environmental Impact Statements showed there would be no adverse effects on the air quality in the area as a result of the new construction.\textsuperscript{74} The gravamen of the Title VI complaint was that "minority residents of the Bronx [would] suffer the noxious effects of garbage to a greater degree than the mostly white resident of Long Island" (where the garbage came from).\textsuperscript{75}

The Court cursorily dismissed the Title VI § 601 complaint because the plaintiffs failed to bring any substantial allegations of discriminatory intent.\textsuperscript{76} However, the Court found the Title VI § 602 complaint to have some merit.\textsuperscript{77} As evidentiary support of discriminatory impact needed to bring a § 602 claim, the plaintiffs established that seventy-nine percent of the area's population were minorities, that the area has one of the highest rates of asthma in the country, that seventeen percent of the children in the community suffer from asthma, and the neighborhood is mainly poor and minority as opposed to the primarily white and middle class communities found on Long Island.\textsuperscript{78} Unfortunately, the Court found this evidence lacking in support of discriminatory impact, and citing plaintiff's counsel's concession at oral argument that the Title VI claim was their weakest, dismissed the claim.\textsuperscript{79}

\section*{IV. CONCLUSION}

In conclusion, citizen enforcement of federal environmental statutes may be the easiest route to accomplishing the goal of protecting one's neighborhood from many ecological and public health conundrums. To assert a claim under a federal statute, the plaintiff group must send a notice letter to the violator and any agencies involved in the enforcement of the

\begin{itemize}
\item[\textsuperscript{73}] Id. at 576–579.
\item[\textsuperscript{74}] Id.
\item[\textsuperscript{75}] See id. at 571–72.
\item[\textsuperscript{76}] See id. at 572. The court found that the "plaintiffs have offered only 'general' and 'conclusory' allegations and their Title VI intentional discrimination [was] therefore dismissed." Id.
\item[\textsuperscript{77}] See id. at 573. The court would not reach the question of whether § 602 gave parties a private right under which to sue after the decision in Chester Residents. Id.
\item[\textsuperscript{78}] See South Bronx Coalition for Clean Air, 20 F. Supp.2d at 573.
\item[\textsuperscript{79}] See id. at 573. The court noted that it would have liked to see "analytical comparison[s] of the subject locations with regard to (1) racial and ethnic composition; (2) volume of waste transferred; (3) volume of waste generated; (4) costs of waste haulage; (5) environmental effects of waste haulage, or (6) health effects of waste "haulage." Id.
\end{itemize}
particular statute. The group may file suit sixty days after receipt of the notice letter. Upon filing suit, the group must be ready to show Article Three standing through injury in fact, the connection between the violator and the injury suffered, and how the claim will remedy the injury. Further the group must also be ready to support statutory standing by showing the individuals have the ability to sue alone, suit is aligned with the purpose of the organization and individual participation is not required. Lastly, the mootness doctrine is less problematic after the *Laidlaw* decision because if there is a reasonable chance that the misconduct will reoccur, a court can enforce a claim even after a violator has come into statutory compliance.

On the constitutional front, citizen environmental claims are not often successful. Current case law seems to preclude enforcement of environmental wrongs under equal protection, § 1983 and Title VI § 601 type claims. However, the Title VI, § 602 claim seems quite promising. Under the right set of facts, courts seem willing to entertain such novelties.

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