

NOTES

OVERLOOKED AND OVERBURDENED: UNINCORPORATED STATUS AND THE FINANCIAL INCENTIVES OF ENVIRONMENTAL INJUSTICE

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Environmental injustice (the siting of polluting facilities) in unincorporated communities of color is not merely a result of bad actors but a foreseeable consequence produced and perpetuated by fragmented legal frameworks that delegate authority to local decisionmakers without accountability, especially in the absence of meaningful democratic representation or judicial review. The result is that county commissioners are incentivized to pursue hazardous land uses in these unincorporated communities through revenue-generating tools like host-fee compensation. This then leads to harm in low-income unincorporated communities of color while also denying them meaningful political power or legal recourse to combat these decisions due in part to their unincorporated status. In spotlighting this underexamined issue, this Note explores how county-level financial incentives, which derive from the siting of solid-waste landfills, unincorporated status, and state and local governance structures, reproduce inequality in environmental decisionmaking.

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“[W]e are only requesting the same rights anyone else in this country has: to live in an environment that is safe for our children and families and which provides a decent quality of life for its citizens.”

— Reverend Ronald C. Smith, 2016¹

INTRODUCTION

Unincorporated communities are ever present but easily overlooked.² It is likely that many people drive through these communities unaware of their unincorporated status. Simply put, unincorporated communities are settled places on the periphery of incorporated city

1. Letter from Rev. Ronald C. Smith, President, Ashurst Bar/Smith Cmty. Org., to Russell A. Kelly, Chief, Permits & Servs. Div., Ala. Dep’t Env’t Mgmt. 4 (Nov. 15, 2016) (on file with the *Columbia Law Review*).

2. See Cristina Gomez-Vidal & Anu Manchikanti Gomez, Invisible and Unequal: Unincorporated Community Status as a Structural Determinant of Health, *Soc. Sci. & Med.*, Sep. 2021, at 1, 2 (“Unincorporated communities are ubiquitous yet overlooked.” (citing Elizabeth Mattiuzzi & Margaret Weir, *Governing the New Geography of Poverty in Metropolitan America*, 56 *Urb. Affs. Rev.* 1086, 1087 (2020) (noting that counties often overlook the needs of the poor))).

boundaries.³ They are communities that lack home rule.⁴ That is, they are not governed by their own local municipal corporation but rather by a larger governmental body—in most cases a county.⁵

Many low-income rural communities are unincorporated, due to a history of segregation and fragmented legal regimes.⁶ This fragmentation makes it difficult for residents in these communities to combat the siting of toxic, polluting facilities.⁷ And it makes it difficult for residents of unincorporated communities forced to host these facilities to bargain for some form of compensation (relief) for bearing the burdens of pollution.⁸ The financial benefits from hosting these facilities flow first through the county commissioners, the arbiters who decide what to site⁹ and where to allocate the fees collected from those sitings.¹⁰

3. See Jameson Christopher Davis, *Never Had a Chance: Understanding the History of How Low-Income and Predominantly Black Unincorporated Communities Evolved to Become Environmental Justice Communities Through State Annexation Laws and Procedures*, 22 *Vt. J. Env't L.* 71, 78 (2022) (noting that though unincorporated communities are “often economically tied to a larger town or city, [they] are excluded from participatory rights such as voting” (citing Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 *Stan. L. Rev.* 931, 933 (2010))).

4. Home rule is the legal authority granted by a state to a local government, giving it a degree of autonomy to govern its own affairs. This allows local governments, like counties, to establish their own charters and pass laws on local matters without needing state permission for each action. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 *Colum. L. Rev.* 1, 10 (1990) [hereinafter Briffault, *Our Localism*] (noting that state home rule provisions generally follow two models: 1) allowing the local municipality full police power over municipal affairs and some immunity from state interference (the original form); and 2) granting police powers subject to legislative authority to “restrict or deny localities a particular power or function”).

5. See Davis, *supra* note 3, at 78 (stating that unincorporated communities are governed by a “larger governmental division, such as a township, county, city, or state” (citing Michelle Wilde Anderson, *Dissolving Cities*, 121 *Yale L.J.* 1364, 1368 (2012); Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 *UCLA L. Rev.* 1095, 1101 (2008))).

6. See Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 *UCLA L. Rev.* 1095, 1129–34 (2008) [hereinafter Anderson, *Cities Inside Out*] (highlighting that unincorporated areas “manifest the legacy of segregation expressed not only in terms of racial separation, but in terms of hierarchies of land quality and location,” as well as a “lack of . . . oversight” when compared to incorporated communities).

7. See *id.* at 1123–24 (noting how unincorporated communities are disadvantaged by hazardous and undesirable land uses in their communities).

8. See Teriana Moore, Pamela Payne-Foster, JoAnn S. Oliver, Ellen Griffith Spears, Christopher H. Spencer, Jacqueline Maye & Rebecca S. Allen, *Community Perspectives and Environmental Justice Issues in an Unincorporated Black Township*, *Int'l J. Env't Rsch. & Pub. Health*, June 2022, at 1, 2 (“Living in an unincorporated city, residents often lack a political voice, have depreciated resources, and limited access to government officials to voice community needs.”).

9. Siting refers to the strategic process of selecting a suitable location for a facility or structure, such as a landfill. See Omar S. Arabeyyat, Nawaras Shatnawi, Mohammad A. Shbool & Ata Al Shraah, *Landfill Site Selection for Sustainable Solid Waste Management*

Environmental injustice in unincorporated communities of color, then, is not just the result of poor decisionmaking by local officials. Rather, it is a foreseeable consequence of disjointed legal frameworks intended to shore up authority without accountability, especially in the absence of meaningful democratic representation or judicial review. To shed necessary light on this neglected topic, this Note explores how county-level financial incentives, which flow from the combination of the siting of solid waste facilities, unincorporated status, and state and local governance structures, reproduce inequality in environmental decisionmaking.

Some scholars argue that providing different forms of monetary relief can benefit the “host communities” chosen as the site of landfills and other sources of pollution.¹¹ Yet other scholars identify the challenges that host communities can face in accessing and negotiating compensation.¹² These challenges are especially apparent in low-income unincorporated communities of color, which lack the luxury of home-rule and political capital and, therefore, bargaining power.¹³

This is all the more apparent when the primary fiscal framework is host-fee compensation, which differs in a critical respect from the corporate–community bargaining frameworks that dominate much of the environmental justice literature.¹⁴ Host fees are payments (cash or in-

Using Multiple-Criteria Decision-Making. Case Study: Al-Balqa Governorate in Jordan, MethodsX, June 2024, at 1, 2 (“Convenient Landfill Site Selection (CLSS) is based on several factors, including land slope, geography, land usage, climate, earthquakes, and distance from metropolitan areas and major highways.”).

10. See Anderson, *Cities Inside Out*, supra note 6, at 1151 (spotlighting how counties depend on the financial incentives from undesirable land uses).

11. See Vicki Been, *Compensated Siting Proposals: Is It Time to Pay Attention?*, 21 *Fordham Urb. L.J.* 787, 788 (1994) [hereinafter *Been, Compensated Siting Proposals*] (urging those interested in environmental justice work to “devote greater attention to compensation proposals, and to begin either to articulate an intellectually rigorous critique of the proposals or to develop a strategy for shaping a compensation practice that is beneficial to the [environmental justice movement]”).

12. See Dorceta E. Taylor, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* 143 (2014) (“[O]ne cannot fully negotiate compensation if one does not know *what* can be negotiated for and *with whom* to negotiate.”).

13. See Gomez-Vidal & Gomez, supra note 2, at 5 (noting how the political exclusion in unincorporated communities causes loss of power over resources and other outcomes).

14. Much of the environmental justice literature discusses compensation as it relates to corporate–community bargains under structures such as community benefit agreements (CBAs) and good neighbor agreements (GNAs). There is very little scholarship tracking the impacts of host-fee compensation on host communities, and of the literature that does exist, much of it is decades old. See Robin R. Jenkins, Kelly B. Maguire & Cynthia L. Morgan, *Host Community Compensation and Municipal Solid Waste Landfills*, 80 *Land Econ.* 513, 513–14 (2004) [hereinafter *Jenkins et al., Host Community Compensation*] (noting that the authors were aware “of only two studies that empirically examine[d] the determinants of host fee compensation at landfills and both

kind gifts) made by landfill companies to local governments to facilitate the siting, expansion, or transfer of landfills within their jurisdiction.¹⁵ Unlike community benefit agreements (CBAs) and good neighbor agreements (GNAs), which are primarily negotiated between the impacted community and the operator,¹⁶ host-fee compensation arrangements are primarily set by statute and grant the local municipality (the county or town) the power to negotiate with the operator and to distribute those fees through the municipality's budgeting process.¹⁷ As this Note explains, the history of the formation of unincorporated communities and host-fee compensation work in tandem, keeping unincorporated communities at a legal and political disadvantage.¹⁸

One community that confronts this situation is the Ashurst Bar/Smith community ("Ashurst Bar"), a small, unincorporated town founded by Freedmen during the Reconstruction period, situated in Tallapoosa County, Alabama.¹⁹ Ashurst Bar, a community that is over 90% Black, has long suffered from segregation, economic disinvestment, and environmental degradation.²⁰ Since the early 1980s, the community has

focus[ed] exclusively on the state of Wisconsin"). Additionally, only a few works "describe case studies of host compensation paid by solid and hazardous waste facilities as well as by various other facilities." *Id.* at 514. See generally Michael O'Hare, Lawrence Bacow & Debra Sanderson, *Facility Siting and Public Opposition* (1983) (studying facility siting and community opposition in New England); Been, *Compensated Siting Proposals*, *supra* note 11, at 788 (seeking to "spur greater attention to the difficult moral and political issues compensation proposals raise by showing that compensation programs are widespread in actual siting practice"); Jeffery J. Himmelberger, Samuel J. Ratick & Allen L. White, *Compensation for Risks: Host Community Benefits in Siting Locally Unwanted Facilities*, 15 *Env't Mgmt.* 647 (1991) (analyzing negotiations over the siting of twenty-four solid-waste landfills in Wisconsin and finding that the level of compensation received was positively associated with the share of facility capacity dedicated to host community use and with poverty in the host area); Allen L. White & Samuel J. Ratick, *Risk, Compensation, and Regional Equity in Locating Hazardous Facilities*, 67 *Papers Reg'l Sci. Ass'n* 29 (1989) (examining the trade-offs among three critical determinants of the effectiveness of waste facility siting: spatial equity, host-fee compensation, and facility costs).

15. Jenkins et al., *Host Community Compensation*, *supra* note 14, at 513.

16. See *infra* section II.A.

17. See *infra* section II.B; see also Jenkins et al., *Host Community Compensation*, *supra* note 14, at 514–15 (outlining the evolution of host-fee compensation).

18. See *infra* section II.B; see also Gomez-Vidal & Gomez, *supra* note 2, at 5 (stating that absent the power to self-govern and requisite political capital, unincorporated communities are effectively left out of the decisionmaking process).

19. See Case: LDF, Earthjustice and the Environmental Justice Law Clinic at Yale Fight Landfill in Historic Black Alabama Community, LDF (Mar. 14, 2018), <https://www.naacpldf.org/case-issue/ldf-earthjustice-environmental-justice-law-clinic-yale-fight-landfill-historic-black-alabama-community/> [https://perma.cc/PZY4-SYP4] [hereinafter LDF, Case Report] ("Many residents of the Ashurst Bar/Smith community can trace their land ownership back multiple generations, some as far back as the era of Reconstruction following the end of de jure slavery.").

20. See *id.* (stating that the community is 98% Black); Irina Zhorov, *In One Alabama Community, Environmental Justice Is Hard to Find, WHYY* (May 19, 2017), <https://whyy.org/articles/for-one-alabama-community-environmental-justice-is-a-hard->

been fighting the Stone's Throw Landfill, which has expanded numerous times, encroaching on land of Black landowners whose families have owned the land for generations.²¹

This Note uses the Ashurst Bar community as a case study to unpack how the relationship between county governments and the unincorporated communities they govern reproduces inequality in environmental decisionmaking. It argues, among other things, that the siting of polluting facilities in unincorporated communities of color is due to legal regimes that delegate environmental authority to county commissioners who do not have the best interests of the unincorporated community at heart. Further, the revenues that flow from the siting of polluting facilities, like solid waste landfills, incentivize county commissioners to continually permit undesirable land use in places like Ashurst Bar. As such, a given county is neither incentivized nor required to devote any portion of this compensation to communities similar to Ashurst Bar themselves. In this way, the impacts of unrepresentative democracy and the politics of pollution incentivize harm in these locales, diluting their political power and narrowing the avenues to legal recourse.

This Note proceeds in three Parts. Part I offers a grounding discussion on unincorporated communities generally—and specifically the Ashurst Bar community and its continued fight for environmental justice. Part II discusses forms of compensation communities typically receive from the siting of a solid waste facility. It analyzes the role of host-fee compensation and its impact on unincorporated communities, using Ashurst Bar as an example. Finally, Part III lays out transformative possibilities to make host-fee compensation more centered on and responsive to host communities, as well as altogether more robust. Most importantly, this Note gives voice to the unheard narrative of a community that remains on the periphery of justice.

I. THE LEGAL, POLITICAL, AND ENVIRONMENTAL MARGINALIZATION OF UNINCORPORATED COMMUNITIES

Discussing unincorporated communities can be highly complex due to the lack of a uniform definition, the political exclusion of residents,

road-to-hoe/ [<https://perma.cc/9HAF-78HX>] (highlighting the history of the socioeconomic and environmental issues the community has grappled with since the opening of the landfill in the 1970s).

21. See Rebecca Beitsch, *Small Town vs. Big Pollution: Black Residents Allege Environmental Racism*, Stateline (Oct. 1, 2018), <https://stateline.org/2018/10/01/small-town-vs-big-pollution-black-residents-allege-environmental-racism/> (on file with the *Columbia Law Review*); Heather Kathryn Ross, *Pulling the Land Out From Under Them*, Earthjustice (Mar. 21, 2016), <https://earthjustice.org/article/pulling-the-land-out-from-under-them> [<https://perma.cc/M38G-3LHQ>].

and fluid boundaries, which can complicate policy implementation.²² Such complexities can ultimately lead to an array of challenges for unincorporated residents, sometimes unintentionally.²³ To offer a plain understanding of what being an unincorporated community can entail, this Part delves into the history and significance of being unincorporated by tracing the history of the Ashurst Bar community. Additionally, it closely tracks democracy and governance concerns that unincorporated communities like Ashurst Bar typically face, as well as how those governance issues impact environmental decisionmaking in such communities.

A. *The Significance of Unincorporation and the History of Ashurst Bar*

There is significant overlap between unincorporated community status, race, and class, as unincorporated areas “reflect regional contexts, including distinctive histories, local economies, and state and county policies (e.g., annexation, incorporation laws, zoning) regulating these settlements.”²⁴ Many of these communities formed due to de facto and de jure segregation rampant throughout the U.S. South.²⁵ As Professor Michelle Wilde Anderson notes, “Self-built, low-income minority settlement at the unincorporated periphery has been widespread since the nineteenth century.”²⁶ These settlements were either bypassed for or denied annexation,²⁷ or were previously incorporated areas that became

22. See Samuel Scott Sanderson, *Sense of Place in an Unincorporated Community: A Study of Lutz, Florida* 61 (May 10, 2013) (M.A. thesis, University of South Florida), <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=5960&context=etd> [<https://perma.cc/TH6D-X67Q>] (finding that being unincorporated uniquely shapes discussions since the “conditions for long-term residence are created by cultural as much as economic factors”).

23. See Danielle Craig & Ali Nejat, *Disasters Outside of Municipal Boundaries: A Systematic Review of the Problems, Solutions, and Challenges of Disaster Resilience in Tribal Lands, Colonias, and Unincorporated Communities*, *Int’l J. Disaster Risk Reduction*, Oct. 15, 2025, at 1, 2 (noting that unincorporated communities tend to be the poorest and most vulnerable to disaster impacts and that the “lack of administrative capacity and organization at the local level” can compound this issue).

24. Gomez-Vidal & Gomez, *supra* note 2, at 3.

25. *Id.*

26. Anderson, *Cities Inside Out*, *supra* note 6, at 1125.

27. *Id.* at 1098 (describing unincorporated urban areas as “low-income, urbanized areas bordering incorporated municipalities but denied or bypassed for annexation for at least twenty-five years”). Professor Anderson uses the term “unincorporated urban areas,” which she defines as

[N]eighborhoods that are: (1) unincorporated (lying outside the borders of any incorporated city); (2) contiguous on one or more sides with a municipal border or lying within the area legally designated for a city’s expected growth (denoted in some states as a sphere of influence or extraterritorial zoning jurisdiction); (3) primarily residential, with densities greater than or similar to adjacent incorporated land; and (4) low-income, as defined by census tract data.

Id. at 1101 (footnotes omitted).

disincorporated.²⁸ According to Professor Anderson, unincorporated communities can generally fall into two categories: “One group lacks one or more vital service, such as piped, potable water A second, often overlapping group faces health risks and depressed land values due to a concentration of a metropolitan area’s [locally] undesirable land uses”²⁹

The Ashurst Bar community formed as a Black settlement on the periphery. Many community residents in Ashurst Bar can trace their roots back to the early Reconstruction era when pioneering, formerly enslaved Black landowners established tight-knit communities across rural regions of the U.S. South.³⁰ Ms. Phyllis Gosa, a community resident,

For the purposes of this Note, and not to confuse the reader, these same descriptions map onto unincorporated rural areas, and therefore, I use the term “unincorporated communities” to signify that mapping.

28. Disincorporation, also known as municipal dissolution, is the process of terminating a political unit of an incorporated municipality. A municipality can either dissolve to reorganize incorporated territory or to disincorporate entirely—in which case it becomes unincorporated. See Michelle Wilde Anderson, *Dissolving Cities*, 121 *Yale L.J.* 1364, 1368 (2012) (noting that municipal dissolution “refers only to the termination of an incorporated municipality where its territory reverts to dependence on county or township government,” making it unincorporated).

29. Anderson, *Cities Inside Out*, *supra* note 6, at 1101–02. Other issues of unavailable or insufficient resources can include the lack of proper “sewage and wastewater disposal; adequate law enforcement and fire protection; street paving, lighting, and traffic control; and/or flood and stormwater control.” *Id.* at 1101; see also Maura C. Allaire, Bianca Brusco, Amal Bakchan, Mark A. Elliot, Mallory A. Jordan, Jillian Maxcy-Brown & Kevin D. White, *Water and Wastewater Infrastructure Inequity in Unincorporated Communities*, *Clean Water*, Dec. 2024, at 1, 8 (noting that, in a dataset representing over 25% of the national population, “[s]ewer coverage rates are significantly lower for unincorporated communities in close proximity to municipal boundaries”); Danielle Zoe Rivera, *Unincorporated and Underserved: Critical Stormwater Infrastructure Challenges in South Texas Colonias*, 16 *Env’t Just.* 203, 204 (2023) (noting the many barriers to stormwater management systems in unincorporated communities and explaining that “dominant theories of rurality in planning and policy have historically prevented an in-depth accounting of the barriers to rural hazard mitigation”); Daeja A. Pemberton, *Comment, Come Hell or No Water: The Story of Sandbranch and the Unincorporated Community Fight for Public Services*, 40 *UCLA J. Env’t L. & Pol’y* 109, 117 (2022) (“Because water is vital to building housing and creating new jobs, a lack of water limits the potential growth of an unincorporated community and prevents residents from investing in industries that could help breathe life into the local economy.” (citing Camille Pannu, *Drinking Water and Exclusion: A Case Study From California’s Central Valley*, 100 *Calif. L. Rev.* 223, 236 (2012))); Erik Neumann, *Josephine County Residents Renew Calls for Fire Protection in Unincorporated Communities*, *OPB* (July 25, 2022), <https://www.opb.org/article/2022/07/25/josephine-county-residents-renew-calls-for-fire-protection-in-unincorporated-communities/> [<https://perma.cc/M83B-6QNV>] (noting how local residents’ calls for a tax-funded fire department have repeatedly been voted down by the county even though many state that the service would improve fire safety in the community).

30. See Nathalie Baptiste, *A Landfill Is Consuming This Historic Alabama Community. The EPA Ignored Complaints. Now the Case Is Closed.*, *Mother Jones* (May 9, 2017), <https://www.motherjones.com/environment/2017/05/alabama-landfill-environm>

recalled that her family still owns the land her formerly enslaved ancestors acquired after Emancipation.³¹ According to Ms. Gosa, her formerly enslaved ancestors passed the land down to their descendants, and the Stone's Throw Landfill has "essentially taken this land away," extinguishing their only connection to their ancestors.³²

In the post-Antebellum and Reconstruction eras, slavery and its remnants forced many Black Americans to settle their own towns at the peripheries of cities.³³ Many of these settlements still exist today.³⁴ Over a thousand Black towns today were founded during the Reconstruction period.³⁵ These towns, both incorporated and unincorporated, can be understood "as settlements that are predominantly inhabited and governed by Black people and were established to create safe and autonomous communities amidst widespread racial discrimination and violence."³⁶ Though these early Black settlers, like those of Ashurst Bar, were able to acquire land that could be passed down from generation to generation, the land they acquired was never prime real estate.³⁷ Most Black-owned land in the South was in "areas with less fertile soil, perhaps

ental-racism/ [https://perma.cc/4HUD-6W27] ("[T]his area became a place where people could trace their ancestry back to the days of post-Civil War America.").

31. Ms. Gosa can trace her family's roots to Ashurst Bar back six generations. She penned an opinion piece in *AL.com* highlighting the Ashurst Community and, more broadly, how landfill sitings in predominantly Black communities are destroying the communities' connections to their ancestors. See Phyllis Gosa, Landfills Are Destroying Alabamians Connections to Their Ancestors, *AL.com* (July 25, 2016), https://www.al.com/opinion/2016/07/landfills_are_destroying_alaba.html (on file with the *Columbia Law Review*).

32. *Id.*

33. See Davis, *supra* note 3, at 77 ("[S]lavery forced many Black Americans to reside in low-income unincorporated communities created by Freedmen.").

34. See, e.g., Pemberton, *supra* note 29, at 111 ("In 1878, twelve former slaves established Sandbranch. After traveling from Louisiana to Texas and not being allowed to travel into town, the freedmen settled in an unincorporated area, became sharecroppers, and built their own community." (footnote omitted)). Sand Branch exists today, despite not having access to drinking water. Bethany Erickson, Decades Later, Sand Branch Still Doesn't Have Drinking Water, *D Mag.* (Feb. 25, 2026), <https://www.dmagazine.com/micropost/sand-branch-water/> [https://perma.cc/RM8R-YJW8].

35. See Tina Grandinetti, Jasmine Rangel & Rasheedah Phillips, PolicyLink, Repairing Roots: Historic Black Towns and Spatial Reclamation 7 (2024), https://policylink.widen.net/s/tf9rkxrb7/pl_repairing_roots_12-06-24 [https://perma.cc/

/Q5CE-QUKF] (noting that over "1,200 historically Black towns were founded during the years of Reconstruction and at the end of the 19th century continuing into the early 20th century, but several were established long before the Civil War").

36. *Id.*

37. See Thomas W. Mitchell, From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common, 95 *Nw. U. L. Rev.* 505, 507, 526 (2001) (noting that African Americans acquired approximately fifteen million acres of land in the South in the fifty years following Emancipation and "were never permitted to purchase any significant amount of prime real estate").

tucked away in the hills, not too close to the main highways or railroads, nor to white schools or churches.”³⁸

This makes Black landownership in historically Black communities all the more important. As Ms. Gosa notes, people in the community “do not want to leave” because of the deep ancestral ties they have to the land.³⁹ Another resident, Rev. Ron Smith, and his family have been actively defending their family land from “literal and figurative encroachment” from the Stone’s Throw Landfill situated in the community.⁴⁰ The land has been in Rev. Smith’s family since 1813, when Rev. Smith’s great-grandfather acquired around six hundred acres through federal land grants for farmers.⁴¹ As Rev. Smith notes, residents are “deeply concerned that the ever-expanding Landfill will do away with the hundreds of years of history” within the community.⁴²

In the 1970s, a landfill was developed in the Ashurst Bar community.⁴³ In 1978, the Barker Landfill began operating, accepting natural waste like wood cuttings and brush, as well as household, industrial, and inert wastes from nineteen counties across Alabama.⁴⁴ That landfill shut down in 1993.⁴⁵ Tallapoosa County, however, against staunch community

38. *Id.* at 526 (internal quotation marks omitted) (quoting U.S. Comm’n on C.R., *The Decline of Black Farming in America* 22–23 (1982)).

39. Carmen Rodgers, *Stone’s Throw Landfill Remains Open Despite Ruling of Harm to Neighbors*, *Outlook* (Feb. 5, 2019), https://www.tpimediagroup.org/alexcityoutlook/news/stone-s-throw-landfill-remains-open-despite-ruling-of-harm-to-neighbors/article_edd0e6cd-106e-5d9d-8161b6a17d9f8b56.html (internal quotation marks omitted) (quoting Rev. Ron Smith) (on file with the *Columbia Law Review*).

40. See LDF, *Case Report*, *supra* note 19.

41. *Id.*

42. *Id.* (internal quotation marks omitted) (quoting Rev. Ron Smith).

43. See Rodgers, *supra* note 39 (noting that the landfill was “started more than 40 years ago and has grown since then”); Zhorov, *supra* note 20 (noting that the landfill opened in the 1970s).

44. See Lani Merritt, *Common Cause: A Comparative Case Study of Three Alabama Communities*, 17 *J. Rural Soc. Scis.* 134, 141 (2001) [hereinafter Merritt, *Common Cause*]; see also Zhorov, *supra* note 20 (stating that the landfill “started out small; at first it only accepted wood cuttings and brush”).

45. See Zhorov, *supra* note 20; see also Ashurst Bar/Smith Cmty. Org., *Timeline of Events* (on file with the *Columbia Law Review*) [hereinafter *ABSCO Flyer*] (n.d.). A likely reason for the closing of the landfill was the U.S. Environmental Protection Agency’s (EPA) promulgation of regulations under Subtitle D of the Resource Conservation and Recovery Act (RCRA) that governed landfill construction and operations. See generally Resource Conservation and Recovery Act, 42 U.S.C. §§ 6941–6949. These regulations substantially increased the costs of solid waste disposal by “requiring safety precautions such as landfill liners, leachate collection systems, and post-closure monitoring plans, all of which imposed costs with large fixed components.” See Jenkins et al., *Host Community Compensation*, *supra* note 14, at 514. As a result, the cost to maintain a landfill exponentially increased, and many small operators and local governments closed or sold their landfills to larger, private landfill operators that “often serviced several towns or jurisdictions.” *Id.* After RCRA’s adoption, the State of Alabama adopted new regulations to manage landfills, and over time, “the number of dumps in the state went from 300 to around 30.” Zhorov, *supra* note 20.

opposition, permitted the reopening of the landfill under new ownership in 1999.⁴⁶ The name of the landfill changed to the Stone's Throw Landfill when it reopened in 2002.⁴⁷

Many older residents in Ashurst Bar did not think the landfill would become what it is today.⁴⁸ As Ms. Gosa notes, once the community realized that the county was bringing household waste to the Stone's Throw Landfill, the residents began to raise their voices.⁴⁹ Nevertheless, the county commission "eventually ruled totally against the people in the [Ashurst Bar] community who tried to stop it and have tried to stop it since the very beginning."⁵⁰ Simply put, the people have been ignored.⁵¹ They have felt betrayed not only by the landfill operators, but by the local government entities that are supposed to protect them: the Tallapoosa County Commission and the Alabama Department of Environmental Management (ADEM).⁵²

Since the reopening of the Stone's Throw Landfill, the community banded together to conduct environmental testing and monitoring,⁵³ hold public demonstrations,⁵⁴ draft opinion editorials,⁵⁵ and file Title VI

46. See Merritt, Common Cause, *supra* note 44, at 142 (documenting that the Ashurst Bar community organized in 1991 when the county officials approved landfill expansion and again in 1999 when the county approved the reopening of the landfill after its 1993 closure).

47. Dennis Pillion, Lawsuit: EPA Ignored Civil Rights Complaints at Tallassee Landfill, AL.com (July 17, 2015), https://www.al.com/news/2015/07/epa_sued_tallassee_landfill.html (on file with the *Columbia Law Review*) (noting that according to Advanced Disposal, LLC—the owner—the landfill was previously closed and reopened as the Stone's Throw Landfill in 2002).

48. See Rodgers, *supra* note 39 (documenting that residents did not think the Landfill would expand from accepting yard trash to household wastes from across the state).

49. *Id.*

50. *Id.* (internal quotation marks omitted) (quoting Phyllis Gosa); see also Letter to Dist. Eng'r, U.S. Army Corps of Eng'rs (June 20, 2003) (on file with the *Columbia Law Review*) (advising that "the citizens and taxpayers of [the Ashurst Bar] community have and still are very much opposed to the existence and any future expansion of the . . . Landfill").

51. See Rodgers, *supra* note 39 (documenting that residents state they have been completely ignored by the county).

52. Zhorov, *supra* note 20.

53. The community has previously partnered with graduate students as part of a practicum course in Public Health and Climate Change at the Yale School of Public Health and in collaboration with the Environmental Justice Clinic at Yale Law School and the Department of Public Health at Tuskegee University. See Robert Dubrow et al., Air Quality Impacts of the Stone's Throw Landfill in Tallassee, Alabama: A Pilot Study 2 (2018) (unpublished report) (on file with the *Columbia Law Review*) (evaluating the potential hazards posed by the "Stone's Throw Landfill on the Ashurst Bar/Smith Community . . . through monitoring ambient (outdoor) air quality and collecting information on the health and perceptions of residents").

54. ABSCO Flyer, *supra* note 45.

55. See, e.g., *supra* note 31 and accompanying text.

discrimination complaints throughout the early 2000s.⁵⁶ The community's latest effort for redress was shut down in 2018, when the EPA closed its Title VI complaint against ADEM "in the face of clear evidence, acknowledged by EPA, that the state's actions caused 'adverse harms' to the residents of the community."⁵⁷

The complaint alleged that ADEM discriminated on the basis of race by reissuing a permit to the Stone's Throw Landfill.⁵⁸ Relying on Alabama's Solid Waste Disposal Act⁵⁹ (SWDA), ADEM contended that the local government, Tallapoosa County, was the authority tasked with considering socioeconomic factors when approving landfill permit applications.⁶⁰ Yet, it seemed that in renewing the permit to the landfill,

56. See LDF, Case Report, *supra* note 19 (noting that the community has filed two Title VI complaints—one in 2003 and the other in 2017—with the EPA's Office of Civil Rights (OCR)). "ABSCO's Title VI complaints allege that ADEM has discriminated against the Ashurst Bar/Smith community by permitting the Stone's Throw Landfill to open and expand its operations in their predominately (98%) Black community without conducting an assessment of the Landfill's disparate and discriminatory" socioeconomic impacts on the community. *Id.* Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in any program or activity that receives federal financial assistance. Civil Rights Act of 1964, 42 U.S.C. § 2000d.

57. See EPA Slams Door to Justice on Historic Black Community, Closes Civil Rights Complaint Against Alabama Environmental Agency, LDF (Dec. 11, 2018), <https://www.naacpldf.org/press-release/epa-slams-door-justice-historic-black-community-closes-civil-rights-complaint-alabama-environmental-agency/> [<https://perma.cc/X288-WDDb>] [hereinafter LDF, EPA Slams Door]; see also Press Release, Keith Rushing, Phoebe Plagens & Marianne Engelman Lado, Historic Black Community Condemns EPA for Failing to Enforce Civil Rights: After Neglecting Investigation for 14 Years, EPA Closes Civil Rights Complaint Filed Against an Alabama State Agency (May 3, 2017), <https://www.naacpldf.org/press-release/historic-black-community-condemns-epa-for-failing-to-enforce-civil-rights/> [<https://perma.cc/6C2Z-6DN8>] (condemning the EPA's decision to close the community civil rights complaint regarding the expansion of the landfill).

58. See Letter from Lilian S. Dorka, External C.R. Compliance Off. Dir., EPA, to Marianne Engelman Lado, Morningside Heights Legal Servs., Leah C. Aden, NAACP LDF, Louis Fisher, NAACP LDF, Inc., Suzanne Novak, Earthjustice & Jonathan Smith, Earthjustice 2 (Dec. 10, 2018), <https://www.naacpldf.org/wp-content/uploads/Preliminary-Findings-Letter-ADEM-16R-17-R4-COMPLAINANTS-12-10-2018.pdf> [<https://perma.cc/Q7NJ-DVWT>]; Letter from Marianne Engelman Lado, Visiting Clinical Professor of L., Yale L. Sch., Yume Hoshijima, Student Clinician, Yale L. Sch., Ama Francis, Student Clinician, Yale L. Sch., Leah Aden, Senior Couns., NAACP LDF, Suzanne Novak, Earthjustice & Jonathan Smith, Earthjustice, to Lilian Dorka, Acting Dir., External C.R. Compliance Off., EPA & Betsy Biffl, C.R. & Fin. L. Off., Off. of Gen. Couns., EPA 1–2 (Apr. 25, 2017) (on file with the *Columbia Law Review*).

59. Under the SWDA, the local government is tasked with, when reviewing solid-waste landfill permit applications, considering *inter alia* "[t]he social and economic impacts that a facility at the proposed location would have on the affected community, including changes in property values, community perception and other costs." See Ala. Code § 22-27-47(b)(11)(f) (2026) (effective May 16, 1989); see also *infra* section III.A.

60. See *infra* section III.A.

Tallapoosa County neglected the socioeconomic impact on the community.⁶¹

B. *Governmental Status and Democracy Concerns in Unincorporated Areas*

It is not uncommon in rural unincorporated communities that residents feel that their local government has let them down.⁶² As Professor Anderson notes, there is a lack of understanding of how counties function as representative democracies—which impacts incorporated and unincorporated communities differently.⁶³

Most unincorporated communities are governed by the county in which they are located.⁶⁴ “Like [cities], counties are a form of general purpose local government” possessing substantial legal power in areas such as land use.⁶⁵ Counties carry out various state functions such as overseeing elections, administering property taxes, and operating local law enforcement.⁶⁶ Counties also differ from cities with respect to the land values and living conditions of their most burdened residents, as well as the political accountability of commissioners.⁶⁷

Professor Rick Su points out this distinction in his analysis of governance in rural America.⁶⁸ As Professor Su argues, rural Americans face many challenges, a primary one being a “crisis of democracy.”⁶⁹ For Professor Su, rural counties lack “‘participatory democracy’ in which ordinary citizens are empowered to set the political agenda, deliberate about possible solutions, and respond collectively through governmental action.”⁷⁰ “[R]ural residents repeatedly complain that their voices are not being heard” on pressing issues impacting their communities.⁷¹

This is the case in Ashurst Bar, where residents have made repeated calls and complaints regarding the Stone’s Throw Landfill in the

61. See Zhorov, *supra* note 20 (noting how community residents felt that the commissioners did not care about their frustrations with the possible landfill expansion).

62. See Rick Su, *Democracy in Rural America*, 98 N.C. L. Rev. 837, 839–40 (2020) (describing how and why rural residents feel disempowered and identifying the primary culprit as the structure of county governance).

63. Anderson, *Cities Inside Out*, *supra* note 6, at 1141–42.

64. See *id.* at 1140 (noting how “counties are the most proximate tier of government for millions of Americans”).

65. *Id.*; see also Briffault, *Our Localism*, *supra* note 4, at 1, 5 (arguing that this substantial legal power can often exacerbate economic and social inequalities by favoring affluent communities in policymaking).

66. Anderson, *Cities Inside Out*, *supra* note 6, at 1140.

67. *Id.* at 1098–99.

68. See Su, *supra* note 62, at 839 (arguing that “rural communities currently lack the power to address many of the challenges they face today and that this powerlessness is rooted in the manner in which rural local governments are defined in American law”).

69. *Id.* at 842.

70. *Id.*

71. *Id.* at 850.

community, including “decreased air quality, vermin infestations, anxiety about adverse health impacts, fear of contaminated water and damage to natural resources and habitats, [and] the displacement of people.”⁷² At no point over the course of decades, however, has there been any recourse or remedy for the community.⁷³

Journalist Irina Zhorov recounts how the Stone’s Throw Landfill “initially opened to save the county money on waste disposal.”⁷⁴ The Stone’s Throw Landfill contributes nearly \$0.5 million annually to Tallapoosa County—about 4% of the county’s budget.⁷⁵ Yet none of that money stays in the community.⁷⁶ None of the Tallapoosa County Commissioners reside in the community or have ties there, and residents state that they rarely see commissioners come around.⁷⁷

Crucial to understanding county governance is the Supreme Court’s decision in *Avery v. Midland County*, which held that the one-person, one-vote rule applies to county governments.⁷⁸ The *Avery* decision gave municipal residents an equal vote as unincorporated residents in county elections.⁷⁹ On its face, the decision intended to protect against voter dilution by ensuring equal representation under the Fourteenth Amendment’s Equal Protection Clause.⁸⁰ As Professor Anderson explains, however, the decision led to the dilution of “political power of unincorporated neighborhoods when compared to populous municipalities.”⁸¹

72. LDF, EPA Slams Door, *supra* note 57 (internal quotation marks omitted) (quoting Jonathan J. Smith, Att’y, Earthjustice).

73. See *id.* (“EPA’s failure to take action reflects a persistent pattern over the course of a decade to allow the continued operation of Stone’s Throw Landfill despite extensive evidence of the racially discriminatory impact of this facility on the predominantly Black Ashurst Bar[] community.” (internal quotation marks omitted) (quoting Leah Aden, Deputy Dir. of Litig., NAACP LDF)).

74. Zhorov, *supra* note 20.

75. *Id.*

76. *Id.* (“Locals deal with the stench and heavy traffic, but the landfill income doesn’t stay there . . .”).

77. *Id.*

78. 390 U.S. 474, 476 (1968) (“[The] application of the one man, one vote principle . . . to units of local government is of broad public importance. We hold that petitioner, as a resident of Midland County, has a right to a vote for the Commissioners Court of substantially equal weight to the vote of every other resident.”).

79. See Anderson, *Cities Inside Out*, *supra* note 6, at 1141–42 (discussing the importance of the *Avery* decision for county governance).

80. *Avery*, 390 U.S. at 478–79 (“In *Reynolds v. Sims*, [377 U.S. 533, 568 (1964)], the Equal Protection Clause was applied to the apportionment of state legislatures. . . . The question now . . . is whether the Fourteenth Amendment likewise forbids the election of local government officials from districts of disparate population. . . . [W]e hold that it does.”).

81. Anderson, *Cities Inside Out*, *supra* note 6, at 1142; see also Richard Briffault, Who Rules at Home?: One Person/One Vote and Local Governments, 60 U. Chi. L. Rev. 339, 396 (1993) (highlighting cases “involving claims that a state improperly extended the local franchise to people who are so much less affected by a local government than other

Prior to *Avery*, some counties gave greater representation to rural or unincorporated areas through practices such as having one commissioner per district regardless of population.⁸² *Avery* required that all districts have roughly equal populations.⁸³ But because unincorporated areas tend to have fewer residents than incorporated cities,⁸⁴ they never stood to gain any political voice under the new *Avery* rule. With representation determined by population, densely populated municipalities within a county dominate the county commission, and as a result, county decisions on things like infrastructure, land use, or public services can tend to reflect the priorities of incorporated residents over the needs of unincorporated residents.

The Ashurst Bar dilemma is a prime example of this reality. Located in the southernmost part of Tallapoosa County, Alabama, the Ashurst Bar community sits about thirty-five miles away from the county seat in the city of Dadeville, yet only about seven miles outside the city of Tallassee in the neighboring Elmore County.⁸⁵ While thirty-five miles away may not seem an arduous distance, it is significant enough for Ashurst Bar residents to be at a political disadvantage. According to Researcher Lani Merritt, this geographic isolation “has contributed to the political isolation of the community, effectively leaving them out of the local

voters that their participation unconstitutionally dilutes the votes of those primarily affected”).

82. See R. Perry Sentell Jr., *Avery v. Midland County*: Reapportionment and Local Government Revisited, 3 Ga. L. Rev. 110, 112 (1968) (“The plan of apportionment challenged . . . was that of the ‘Midland County Commissioners Court,’ composed of five members, four of whom were elected from separate county districts. The population of these districts ranged from . . . 67,906 to . . . 414 . . . [and] 95 percent of the county’s total population resided in one district.” (footnote omitted) (first citing *Avery v. Midland County*, 406 S.W.2d 422, 424–25 (Tex. 1966); then citing *Avery*, 390 U.S. at 476)).

83. *Avery*, 390 U.S. at 484–85 (“We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body.”).

84. See Amel Toukabri & Lauren Medina, Latest City and Town Population Estimates of the Decade Show Three-Fourths of the Nation’s Incorporated Places Have Fewer Than 5,000 People, U.S. Census Bureau (May 21, 2020), <https://www.census.gov/library/stories/2020/05/america-a-nation-of-small-towns.html> [<https://perma.cc/4HXG-X4WN>] (“Of the nation’s 328.2 million people, an estimated 206.9 million (about 63%) lived in an incorporated place as of July 1, 2019.”).

85. Lani Merritt, Historical Patterns of Landfill Locations in Tallapoosa County (Oct. 18, 2000) (unpublished manuscript) (on file with the *Columbia Law Review*) [hereinafter Merritt, Historical Patterns]. It takes about thirty to thirty-five minutes to travel from Ashurst Bar to Dadeville. See Google Maps, “Ashurst Bar Rd, Alabama 36078, USA to Tallapoosa County Commissioners, 125 N Broadnax St, Dadeville, AL 36853, United States”, <https://www.google.com/maps/dir/Ashurst+Bar+Rd,+Tallassee,+AL+36078/Tallapoosa+County+Commissioners,+125+N+Broadnax+St,+Dadeville,+AL> (on file with the *Columbia Law Review*) (last visited Sep. 22, 2026).

political process, and gives them little control over the landfill in their neighborhood.”⁸⁶

The post-*Avery* shift is one of institutionalized political exclusion: Unincorporated communities—often low-income communities of color—are left without adequate representation in decisionmaking that affects their infrastructure, zoning, and environmental health.⁸⁷ Their voting power counts equally in the abstract, but the representational structure ensures their collective preferences carry little influence. This dilution in political voice often leads to high environmental and health inequities, among other consequences.⁸⁸ As Professors Cristina Gomez-Vidal and Anu Manchikanti Gomez highlight, “[C]ommunities with high concentrations of low-income residents of color are often sites of neglect and political marginalization; however, for unincorporated communities, it is the unique status of being without municipal status that codifies, facilitates, and exacerbates inequality, including residential segregation.”⁸⁹

C. *Annexation and Municipal Underbounding*

The opportunity for an unincorporated community to become incorporated—which would afford access to fundamental municipal services likely to increase quality of life—has proven difficult to obtain.⁹⁰ The path to incorporation happens through municipal annexation, which is “the process of legally including within the corporate limits of a city or town an unincorporated area that is outside the municipality.”⁹¹ In reality, Professor Anderson notes, the usual trend is that “municipalities grow around low-income minority communities, leaving them outside the reach of city voting rights and municipal services”—a process known as “municipal underbounding.”⁹²

And within a broader framework of spatial inequality, “municipal underbounding and the unincorporated [communities] it leaves behind

86. Merritt, *Historical Patterns*, supra note 85. For example, after the landfill closed in 1993, then-Tallassee Mayor Bobby Payne worked with Tallapoosa County commissioners on plans to reopen the landfill, estimating that it would save Tallassee around \$50,000 a year. *Id.* Tallapoosa County would benefit economically from the landfill’s operation via host-fee revenue, and the city of Tallassee, part of the neighboring Elmore County, would be able to send its trash to the landfill and free up \$50,000 in the city’s budget. *Id.*

87. See Gomez-Vidal & Gomez, supra note 2, at 5 (noting that because county policymakers serve many constituencies, “[t]he political power of residents to create healthy futures and mitigate harm is eroded when avenues for government accountability are missing”).

88. *Id.*

89. *Id.* at 4.

90. See Davis, supra note 3, at 84 (highlighting the difficulty these communities face in attaining annexation).

91. *Id.* (internal quotation marks omitted) (quoting Md. Mun. League, *Municipal Annexation Handbook* 3 (2013), <https://planning.maryland.gov/Documents/OurWork/MML-Annexation-Handbook.pdf> [<https://perma.cc/85J7-T5FJ>]).

92. Anderson, *Cities Inside Out*, supra note 6, at 1113.

are an incident of inter-jurisdictional segregation.”⁹³ Bringing unincorporated communities into a city or town with established municipal services triggers certain requirements for those municipalities to provide quality health and safety services to annexed areas.⁹⁴ Additionally, annexation solves the post-*Avery* dilemma, granting the newly incorporated community renewed political voice that was lost due to *Avery*’s rule.⁹⁵ In other words, a municipality’s decision to annex an unincorporated community would require the municipality to be accountable to the community, forcing the municipality to support habitability improvements.⁹⁶

Absent a local tier of self-governance and the rejection of annexation, however, the current political arrangements for unincorporated communities hinder the benefits of self-rule.⁹⁷ For instance, in *Holt Civic Club v. City of Tuscaloosa*, the Court upheld an Alabama law that denies unincorporated residents the right to vote in city elections, even as those citizens remain bound by the city’s regulations.⁹⁸ The Court held that residents of Holt, the unincorporated community, did not have the right to participate in the political process of the City of Tuscaloosa merely because they were subject to the city’s police and sanitary regulations, criminal jurisdiction, and business licensing power, ironically concluding that rather than seek a constitutional remedy, the unincorporated residents should seek a political one.⁹⁹

Writing for the majority, Chief Justice William Rehnquist reasoned that the Alabama statutes were a rational legislative response to the problems faced by the state’s burgeoning cities and did not violate the

93. Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 *Stan. L. Rev.* 931, 940 (2010). This variation of interjurisdictional segregation can be understood as the “splintering of metropolitan populations into myriad independent municipalities with distinct economic conditions and racial demographics.” *Id.*

94. *Davis*, *supra* note 3, at 84.

95. *See id.* (stating that annexation grants the newly incorporated community voting power that did not previously exist, increasing its political power and representation).

96. *Id.*

97. Gomez-Vidal & Gomez, *supra* note 2, at 5. Self-rule is synonymous with home rule, a concept of self-governance at the local level that grants a municipality a degree of autonomy to govern itself. *See Nat’l League of Cities, Principles of Home Rule for the 21st Century* 9 (2020), <https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf> [<https://perma.cc/5C5M-NFZM>] (“In simple terms, home rule seeks to align the legal status of local governments with the foundational role they play in our system of governance.”); *see also* Richard Briffault, *Home Rule for the Twenty-First Century*, 36 *Urb. Law.* 253, 257 (2004) (“Home rule gives local governments some control over their own political structure; some authority to adopt new laws and initiate new regulations concerning matters of local concern . . .”).

98. 439 U.S. 60, 62–63 (1978).

99. *See id.* at 74; Anderson, *Cities Inside Out*, *supra* note 6, at 1155 (“[T]he . . . Court found that residents could (and should) seek political, as opposed to constitutional, correction for their woes.”).

Fourteenth Amendment's Equal Protection or Due Process Clauses.¹⁰⁰ Justice Rehnquist argued that the right to vote in state elections gave unincorporated communities the opportunity to take their grievances to the state legislature and advocate to alter their relationship to the city.¹⁰¹ Justice John Paul Stevens's concurring opinion went further to note that "[unincorporated residents] are not without any voice in the election of the officials who govern their affairs. They do vote for the county, state, and federal officials who exercise primary control over their day-to-day lives."¹⁰² Though both opinions "presumed the option for political voice," Professor Anderson questions whether this option is "as meaningful for unincorporated [communities] as it is for residents of their neighboring municipalities."¹⁰³

In sum, residents in unincorporated communities experience institutionalized political exclusion through reliance on distant and constrained county government, diluted voting power, and minimal legal control over their lives.¹⁰⁴ Political exclusion reduces unincorporated residents' influence over resources, power, and government investment to decrease socioeconomic burdens in their community.¹⁰⁵ This is especially so for low-income communities of color that are "systematically targeted for disenfranchisement through evolving policies and practices at the state and local levels associated with lack of incorporation."¹⁰⁶

D. *Unincorporation and What It Means for Land Use*

Part of the disenfranchisement unincorporated communities face is in land use. For unincorporated communities, it is the county, along with state agency partners, that makes infrastructure and land-use decisions on the communities' behalf,¹⁰⁷ and many of these decisions adversely impact unincorporated communities.¹⁰⁸ Access to clean water, adequate sewage disposal, and protection from hazardous pollution are basic conditions of quality residential life.¹⁰⁹ Yet many unincorporated comm-

100. *Holt Civic Club*, 439 U.S. at 75.

101. See *id.* at 73–74 (“[T]his Court does not sit to determine whether Alabama has chosen the soundest or most practical form of internal government possible. Authority to make those judgments resides in the state legislature, and Alabama citizens are free to urge their proposals to that body.”); Anderson, *Cities Inside Out*, *supra* note 6, at 1155.

102. *Holt Civic Club*, 439 U.S. at 77 (Stevens, J., concurring).

103. Anderson, *Cities Inside Out*, *supra* note 6, at 1155–56.

104. Gomez-Vidal & Gomez, *supra* note 2, at 5.

105. *Id.*

106. *Id.*

107. See Anderson, *Cities Inside Out*, *supra* note 6, at 1114 (“Counties, not municipalities, are legally responsible for the initial land-use approvals and service conditions of unincorporated urban areas.”).

108. See *id.* at 1109 (explaining how unincorporated communities are burdened by “dumping of undesirable land uses”).

109. *Id.* at 1106.

unities are overburdened by the concentration of locally undesirable land uses (LULUs), which build up to unleash long-standing damage on land and living conditions.¹¹⁰

In Ashurst Bar, residents claim that smells stemming from the Ashurst Bar Landfill are putrid and emanate daily.¹¹¹ Some residents suffer from health impacts like cancer and chronic respiratory issues that they contend are related to contamination from the landfill.¹¹² Psychologically, many residents deal with the devaluation of their homes as well as constant bombardment and pressure from the landfill to sell their land.¹¹³ According to Ms. Gosa, “[T]hese impacts are allowed to happen because we are Black people. The landfill is running Black people off of their property and leading to Black land-loss.”¹¹⁴

“When undesirable . . . land-use proposals seek approval,” Professor Anderson argues, “county governments have weak political incentives and weak regulatory control to resist on behalf of the [unincorporated community opposing the proposal].”¹¹⁵ The extensive responsibilities of counties demand significant financial resources to service different municipalities and “meet underfunded state mandates.”¹¹⁶ But state legislatures limit the revenue-generating options counties can rely on.¹¹⁷ Thus, many counties depend on property and sales taxes, which “create powerful fiscal incentives to permit [undesirable] development” in unincorporated areas, regardless of the burdens on the local unincorporated community.¹¹⁸ Given the limited number of revenue-generating options, counties use local policy tools—such as zoning and environmental regulations—to attract dirty, but taxable, developments.¹¹⁹

110. *Id.* at 1109 (stating that many unincorporated communities are burdened with LULUs). LULUs refer to the siting of facilities or projects that are often opposed by local communities due to common socioenvironmental effects such as environmental degradation and health impacts. LULUs include, but are not limited to, chemical plants, toxic waste incinerators, landfills, railways, and airports. See *id.* (noting that LULUs include “public disamenities . . . , private disamenities . . . , and chemical and toxic processing facilities”).

111. See Ross, *supra* note 21 (“The smell of rotting garbage wafts through the neighborhood, and vultures surf the stinking air currents like the world’s most unwelcome commuters.”).

112. See LDF, Case Report, *supra* note 19 (listing a number of challenges the community contends stem from the landfill).

113. *Id.*

114. *Id.*

115. Anderson, *Cities Inside Out*, *supra* note 6, at 1151.

116. Gomez-Vidal & Gomez, *supra* note 2, at 4.

117. See *id.* (“[C]ounties have limited revenue-generating options allowed by state legislatures.”).

118. Anderson, *Cities Inside Out*, *supra* note 6, at 1151.

119. Gomez-Vidal & Gomez, *supra* note 2, at 4–5 (“With few revenue-generating options and competition from cities for business investments, counties use or curb local policy tools . . . to attract new, taxable developments. This can result in unsustainable land-

Additionally, rather than reinvesting the fiscal gains back into the local community most affected by the county's decision, those investments end up benefiting more affluent communities elsewhere within the county.¹²⁰ The financial incentives of accepting polluting facilities and other undesirable land uses trump the voices of the unincorporated community most impacted. The result is a plethora of unsustainable land-use sites in unincorporated areas that are more beneficial to corporations, private investors, and county coffers than the community right next door to the sites.

The next Part discusses the different fiscal mechanisms local governments may rely on to garner revenue from solid waste facilities. Particularly, it devotes much-needed attention to host-fee compensation and its unique impacts on unincorporated communities.

II. UNDERSTANDING THE FISCAL ENGINE BEHIND ENVIRONMENTAL HARM: HOST-FEE COMPENSATION

Before discussing host-fee compensation, this Part will first explain the various forms of community compensation,¹²¹ an understanding of which matters because they track the distribution of bargaining power.¹²² The form of community compensation can affect the amount of payment to a host community; it determines who sets those terms and, therefore, who exactly receives compensation.¹²³

A. *The Various Forms of Community Compensation—Beyond Host Fees*

1. *Community Benefit Agreements.* — Among the most common forms of community compensation arrangements are community benefit agreements (CBAs). CBAs are compensation agreements typically negotiated directly between the developer and residents from the impacted community.¹²⁴ In this way, CBAs generally leave local gov-

use practices in unincorporated communities beneficial to . . . county revenues but harmful to residents." (citations omitted)).

120. See Anderson, *Cities Inside Out*, supra note 6, at 1151 ("The weak voices of small low-income communities face a severe challenge to be heard among a county's larger economic interests.").

121. See Alex Geisinger, *The Benefits of Development and Environmental Injustice*, 37 Colum. J. Env't L. 205, 231 (2012) ("Community benefits can take many forms.").

122. See Jenkins et al., *Host Community Compensation*, supra note 14, at 526 (finding that factors such as the community's bargaining power can dictate variations in compensation).

123. See Himmelberger et al., supra note 14, at 648 (interrogating how factors such as host community size and socioeconomic status are tied to the amount of compensation a community may receive).

124. Alejandro E. Comacho, *Community Benefit Agreements: A Symptom, Not the Antidote, of Bilateral Land Use Regulation*, 78 Brook. L. Rev. 355, 361 (2013). Scholars also understand that the term "community benefit agreement" has been used broadly to mean different things in different contexts. For example, Julian Gross states that

ernments out of negotiations, guarding against poor governmental leadership such as overlooking the community impacts of a polluting facility.¹²⁵ Instead CBAs can enable community stakeholders to speak directly for themselves, increasing “intrinsic democratic value beyond mere participant satisfaction.”¹²⁶

In a CBA, community representatives will agree to support the developer’s proposal or promise not to disrupt or delay the project in return for certain assurances, such as local jobs, infrastructure improvements, or donations to a community fund.¹²⁷ Aiming to resolve land use conflicts, CBAs emerged “largely in response to the lack of transparency and stakeholder representation in public land use decisions.”¹²⁸

The success of a CBA, however, relies on sufficient community leverage to force a developer to negotiate.¹²⁹ If a developer realizes that a community lacks leverage, the developer has no incentive to negotiate.¹³⁰ This is the issue for communities like Ashurst Bar, which are small,

“[c]ommunity-based organizations sometimes use the term to describe any community benefits outcome for which they have successfully campaigned.” Julian Gross, *Community Benefits Agreements: Definition, Values, and Legal Enforceability*, 17 *J. Affordable Hous. & Cmty. Dev. L.* 35, 37 (2007). Gross also notes that “local government officials and developers sometimes use the term . . . to describe any set of community benefits commitments on which they agree.” *Id.* This latter framing cuts against the most common understanding that a CBA is primarily between a developer and a community because it involves the local government as a representative player. Therefore, Gross urges that the term CBA be reserved for agreements that are “legally binding contract[s] (or [a] set of related contracts), setting forth a range of community benefits regarding a development project, and resulting from substantial community involvement.” *Id.*; see also Edward W. De Barbieri, *Community Benefits and Alternative Energy Infrastructure Siting*, 42 *Pace Env’t L. Rev.* 202, 207 (2024) (arguing that referring to “[a]greements between a developer and a local government” as community benefit agreements misuses the term).

125. See Comacho, *supra* note 124, at 363 (“CBAs can thus ensure that developers and local governments do not overlook these community impacts when planning or approving development projects.” (citing Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 *UCLA J. Env’t L. & Pol’y* 291, 295–96 (2008))).

126. See *id.* at 365 (“CBAs grant communities, including low-income and minority groups, a voice in the development process, empowering them with a degree of control where corporate interests usually dominate.”).

127. Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 *U. Chi. L. Rev.* 5, 5–6 (2010) [hereinafter *Been, Community Benefits*].

128. Comacho, *supra* note 124, at 361; see also Kristen van de Biezenbos, *Contracted Fracking*, 92 *Tul. L. Rev.* 587, 615 (2018) [hereinafter *van de Biezenbos, Contracted Fracking*] (“[T]he increasing popularity of CBAs has been attributed to the failure of local zoning ordinances to produce coherent and nondiscriminatory land-use rules in communities.” (citing Comacho, *supra* note 124, at 358))).

129. See Geisinger, *supra* note 121, at 241 (“For CBAs to exist, therefore, there must be organized community opposition to a development.”).

130. *Id.* (“[T]he organized opposition must have enough legal or political power to create a need on the part of the developer to negotiate.”).

relatively poor, and lacking in political power. When communities lack leverage, developers are encouraged to negotiate directly with the local government instead, leading to the ills that CBAs are designed to protect against.

Professor Vicki Been points out that CBAs come with other important issues, such as bargaining inexperience among the community representatives and difficulty determining the value of proposed benefits.¹³¹ And since CBAs depend on community leverage and “not on a requirement that a community receive benefits commensurate with the harms” from a proposed LULU, there is little incentive for a developer to provide proportional benefits.¹³² Instead, “when negotiating a CBA, a developer will provide benefits only to the extent necessary to pacify a community group holding leverage,” which may lead to uneven outcomes.¹³³

2. *Good Neighbor Agreements.* — Like CBAs, good neighbor agreements (GNAs) are agreements between communities and developers to address environmental or health concerns from a proposed siting in return for giving the polluter something it values.¹³⁴ GNAs, however, are considered reactive, whereas CBAs are proactive. That is, GNAs “provide a way to bypass litigation in favor of direct negotiation and bargaining in order to mitigate damage [from existing sites] and prevent future incidents.”¹³⁵ Just as problematic for communities like Ashurst Bar, GNAs, too, depend on community leverage.¹³⁶ Polluters will refuse to negotiate GNAs with communities that lack legal and political capital.¹³⁷ Additionally, even if communities have leverage,

131. See Been, *Community Benefits*, *supra* note 127, at 25 (“Community representatives may lack the resources to ascertain what would be the best terms for the community.”).

132. Geisinger, *supra* note 121, at 241.

133. *Id.* As a related alternative to CBAs, Geisinger proposes a “reasonable benefit scheme,” which “condition[s] development on the provision of benefits equal to costs.” *Id.* at 239–40. The reasonable benefit scheme “is based on the recognition that, once sited, certain benefits . . . are not necessarily distributed to those harmed by the LULU. It would not provide any affirmative basis for allowing development . . . [but] would only serve to ensure that benefits will be provided to those who are harmed.” *Id.* at 240.

134. See van de Biezenbos, *Contracted Fracking*, *supra* note 128, at 617.

135. Kristen van de Biezenbos, *Enforcing Private Environmental Governance Standards Through Community Contracts*, 9 *Geo. Wash. J. Energy & Env’t L.* 45, 47 (2018).

136. See van de Biezenbos, *Contracted Fracking*, *supra* note 128, at 617 (“[A] major obstacle in using GNAs is bringing industry to the bargaining table.”).

137. See *id.* at 617–18 (“[P]olluting companies often specifically refuse to enter into negotiations with communities unless that community has some kind of leverage.”); see also Thalia González & Giovanni Saarman, *Regulating Pollutants, Negative Externalities, and Good Neighbor Agreements: Who Bears the Burden of Protecting Communities?*, 41 *Ecology L.Q.* 37, 74 (2014) (“Without significant leverage, codified in the regulatory scheme, communities may be forced to bargain away their rights in order to achieve incremental positive change.”).

they may face other enforcement issues. Ensuring that the polluter uses agreed-upon technologies or methods in a GNA can be challenging for community groups lacking the technical expertise or financial capital to monitor.¹³⁸ Similarly to CBAs, GNAs can leave communities at a major disadvantage.

3. *Tax Schemes.* — Aside from the more community-facing and community-centered compensation frameworks are those negotiated between the developer and the local government—such as target tax schemes or negotiated host fees—which are more common in communities that lack the leverage to negotiate themselves. Targeted tax schemes include sales or property tax abatements, as well as specialized assessments or enterprise funds that capture facility-related revenues for a locality.¹³⁹ Tax abatement agreements offer tax discounts to developers in exchange for commitments of economic growth, jobs, and cash payments.¹⁴⁰ These schemes, however, cause more harm than good for vulnerable communities. For example, Dr. Dorceta Taylor notes how states like Alabama, Louisiana, and Mississippi “structure their taxes and environmental policies to benefit industries” at the expense of community health.¹⁴¹

In Louisiana, an eighty-five-mile stretch of predominantly Black communities has come to be colloquially known as “Cancer Alley” due to

138. See van de Biezenbos, *Contracted Fracking*, *supra* note 128, at 618–19 (explaining various problems that GNAs present, including concessions from communities in favor of polluters, enforcement issues, and stunted structural reforms).

139. See Norton Francis, *Urb. Inst., State Tax Incentives for Economic Development 2–4* (2016), <https://www.urban.org/sites/default/files/publication/78206/2000636-state-tax-incentives-for-economic-development.pdf> [<https://perma.cc/YF82-XKNH>] (describing how states allow local governments to designate specialized tax zones to attract developers).

140. Dylan Baddour, *Local Tax Breaks for LNG Plants Don’t Benefit Communities*, *Report Says*, *Inside Climate News* (Dec. 3, 2024), <https://insideclimatenews.org/news/03122024/lng-plant-tax-breaks-dont-benefit-local-communities/> (on file with the *Columbia Law Review*).

141. Taylor, *supra* note 12, at 144. In Alabama, all equipment, facilities, or materials constructed primarily for air or water pollution control, elimination, or reduction are statutorily exempt from property taxation. Ala. Code § 40-9-1 (2026). The state court, however, construed the statute narrowly to find that the intent of the statute was not “to subsidize the construction of hazardous waste dumps through overall exemptions from ad valorem taxation.” *Id.* See also *Industrial Tax Exemption Program*, La. Econ. Dev., <https://www.opportunitylouisiana.gov/incentive/industrial-tax-exemption> [<https://perma.cc/LLK9-Z7RD>] (last visited Aug. 7, 2026) (“The Louisiana Industrial Ad Valorem Tax Exemption Program (ITEP) offers an 80 percent property tax abatement for up to 10 years on a manufacturer’s new investment.”); Miss. Dev. Auth., *Standard Property Tax Exemptions in Mississippi*, <https://mississippi.org/wp-content/uploads/Standard-Property-Tax-Exemptions-Revised-April-2018.pdf> [<https://perma.cc/C4X6-BKY7>] (last visited Aug. 5, 2026) (stating that property tax exemptions are “available to eligible industries that locate or expand in Mississippi,” which include manufacturers, processors, and refineries).

the high concentration of residents with cancer.¹⁴² Cancer Alley is also home to over 150 petrochemical plants and refineries.¹⁴³ Part of the reason Cancer Alley attracts so many of these polluting facilities is the nearly \$1 billion in tax breaks given to these facilities in the past decade alone.¹⁴⁴ These tax breaks were marketed as opportunities for economic growth and new jobs in the community.¹⁴⁵ Yet researcher Gianna St. Julien found that the facilities brought only twenty-three new jobs to the St. John the Baptist Parish, a predominantly Black parish home to the third-largest oil refinery in the nation.¹⁴⁶

Even more concerning is that in Cancer Alley, people of color make up the majority of the working-age population yet comprise only a fraction of the manufacturing workforce throughout the region.¹⁴⁷ For Cancer Alley, the “benefits” tied to these tax incentives are filled with false promises. As Louisiana environmental advocate Anne Rolfes notes, “[C]ommunity advocates have ‘known for a long time’ that communities most deeply impacted by industry through toxic air emissions and other health risks are rarely offered the jobs industry and state leaders always promise whenever announcing new projects.”¹⁴⁸

Sumter County, Alabama, is another example. In 1979, the county granted a five-year tax exemption to Waste Management to construct a hazardous waste facility in Emelle, a majority-Black and poor town in the county.¹⁴⁹ Today, the landfill is the nation’s largest hazardous waste

142. Leyla Bakhoukh-Choy, “A Horror Story”—How the Law Simultaneously Addresses and Facilitates Environmental Racism in “Cancer Alley”, *Glob. Network Hum. Rts. & Env’t* (Sep. 9, 2024), <https://gnhre.org/?p=18198> [<https://perma.cc/P9JY-PHER>].

143. See *id.* (“The toxic pollution emitted from the over 150 petrochemical plants and refineries in these communities is to blame for these high cancer rates.”).

144. See *id.* (“[T]hese tax breaks amount to nearly 1 billion dollars over the last 12 years.”).

145. Terry L. Jones, In Louisiana’s “Cancer Alley,” Most Oil and Gas Jobs Go to White Workers, *New Research Says*, *WWNO* (Oct. 6, 2023), <https://www.wwno.org/coastal-desk/2023-10-06/in-louisianas-cancer-alley-most-oil-and-gas-jobs-go-to-white-workers-new-research-says> [<https://perma.cc/PW2D-4Y4K>].

146. See *id.* (“We’re talking an estimated [\$34.7 million] in tax breaks . . . and we’re only talking 23 jobs.” (alterations in original)).

147. See *id.* (documenting conversations with local residents who claim that most of the jobs the local government promises from the developments go to white people who live outside the parish). In St. John the Baptist Parish, people of color comprise nearly 70% of the working-age population but only make up 28% of the manufacturing workforce throughout the parish. *Id.*

148. *Id.* Rolfes goes on to add that the promise of new jobs is central to the existence of many of the polluting facilities throughout Cancer Alley, and “[n]ow we have proof” that communities aren’t benefiting from the industry, and are being disproportionately harmed by pollution.” *Id.*

149. See Taylor, *supra* note 12, at 124–27 (documenting the history and impact of the landfill on the local community).

landfill, sprawling over 2,700 acres, and is situated directly over the Eutaw Aquifer, which supplies water to a large portion of the state.¹⁵⁰

At the end of the five-year exemption, Waste Management was denied another tax exemption and sued on that basis, arguing that it was entitled to the exemption because “hazardous waste management is a form of air or water pollution control and . . . its site at Emelle was constructed primarily for that purpose.”¹⁵¹ The Court of Civil Appeals of Alabama disagreed, however, finding that the facility’s primary use of managing hazardous waste did not fit within the intent of the statute because the facility “was not constructed primarily for the purpose of air and water pollution control.”¹⁵² Dr. Taylor notes that the tax receipts were key to county revenues and a main reason for local leaders’ support of the landfill’s construction.¹⁵³

Additionally, the county receives more than \$5 per ton of waste disposed at the landfill.¹⁵⁴ This fee, otherwise known as a “host fee,” is the primary way in which many counties receive revenues from waste disposal facilities in the state of Alabama.¹⁵⁵

B. *Host-Fee Compensation*

Host-fee compensation is payment tied to the operation of a waste, landfill, or industrial facility, designed to reimburse the locality that hosts the site.¹⁵⁶ This section discusses the different forms of host-fee compensation as well as the mechanics behind how host-fee compensation operates. Most importantly, this section shows the impacts

150. Emelle Nation’s Largest Hazardous Waste Landfill, USA, EJAtlas, <https://ejatlas.org/print/emelle-nations-largest-hazardous-waste-landfill-usa> [https://perma.cc/H95D-HB9C] (last updated Apr. 25, 2022).

151. *Chem. Waste Mgmt., Inc. v. State*, 512 So. 2d 115, 116 (Ala. Civ. App. 1987).

152. *Chem. Waste Mgmt., Inc.*, 512 So. 2d at 118. The court also noted that much of the equipment could be “distinguished from the ancillary equipment used to clean rain water and filter air.” *Id.* at 118. To hold for Waste Management, then, “would be, in effect, to provide an incentive for hazardous waste dumps to locate in Alabama.” *Id.* at 119.

153. Taylor, *supra* note 12, at 127.

154. Hazardous Waste Disposal Fee, Ala. Dep’t Revenue, <https://www.revenue.alabama.gov/tax-types/hazardous-waste-disposal-fee/> [https://perma.cc/EB6K-HR9Q] (last visited Aug. 7, 2026) (highlighting the various fees Sumter County receives from the landfill).

155. See Ala. Dep’t Env’t Mgmt., *Lessons From Conecuh County* 10 (2012), <https://www.adem.alabama.gov/programs/land/swreport/Attachment4UnsolicitedStakeholderInput.pdf> (on file with the *Columbia Law Review*) (citing examples of various Alabama counties entering host-fee arrangements).

156. See Jenkins et al., *Host Community Compensation*, *supra* note 14, at 513 (“[H]ost community compensation’ or ‘host fees[]’ consist of cash payments or in-kind gifts that are paid to a community by a landfill company in order to smooth the process of siting, expanding, or transferring ownership of a landfill within the community’s jurisdiction.”).

host-fee compensation can have on unincorporated communities that house solid waste facilities.

1. *The Different Forms of Host-Fee Compensation.* — Host-fee compensation can come in different forms.¹⁵⁷ Among the most common are per-ton charges, through which the county or local government collects a fee for each ton of waste accepted and allocates a share to the host jurisdiction.¹⁵⁸ Another form of host fees are flat annual payments which are fixed yearly sums paid to the local government.¹⁵⁹ There are also revenues or tipping fees allocated among localities—such as a county general fund or district fund.¹⁶⁰

Host fees can also be earmarked, dedicated to certain uses such as road repair, emergency services, landfill monitoring, or community

157. Emma ter Mors, Bart W. Terwel & Dancker D.L. Daamen, *The Potential of Host Community Compensation in Facility Siting*, 11 *Int'l J. Greenhouse Gas Control* 130, 130 (2012) (noting the different types of host community compensation such as monetary incentives and the “offering of ‘public goods,’” as well as the varying functions that compensation can serve, such as sustaining property value guarantees or improving local infrastructure).

158. See Jenkins et al., *Host Community Compensation*, supra note 14, at 513 (“While most states in the United States do not mandate host compensation for solid waste landfills, there are at least four, Georgia, Massachusetts, New Jersey, and Pennsylvania, that require private landfills to pay host communities a fee of at least \$1.00 per ton of waste received.”); Paul Nietfeld & Bailey Payne, *Report to the Benton County Disposal Site Advisory Committee: Calculation of Host Fee Tonnage From ODEQ Disposal Reports 1* (2025), <https://cd.bentoncounty.org/wp-content/uploads/2025/04/Host-Fee-Tonnage-Calculation-Report-Revised-7Apr2025.pdf> [<https://perma.cc/QY5A-XYDZ>] (defining host fee compensation as “a fee calculated by multiplying the intake tonnage of Solid Waste (‘Host Fee Tonnage,’ . . .) by the per-ton factor (the Host Fee rate) for that calendar year”); O’Hare et al., supra note 14, at 84 (showcasing a Massachusetts law specifying a payment of \$1 per ton of waste processed to towns hosting solid waste resource-recovery facilities). The state of Alabama charges \$1 per ton for all waste disposed of in a municipal solid waste landfill and \$0.25 per cubic yard for all waste disposed of in a private solid waste management facility, not to exceed \$1,000 per calendar year. See Ala. Code § 22-27-17 (2026). Additionally, Alabama charges \$1 per ton or \$0.25 “per cubic yard for all waste disposed of in public industrial landfills, construction and demolition landfills, non-municipal solid waste incinerators, or composting facilities, which receive waste not generated by the permittee.” *Id.* These distinctions are important for understanding the revenue that the Stone’s Throw Landfill in Tallapoosa County—a municipal solid waste landfill—generates for the county.

159. See *Host Community Benefits*, WM (Feb. 14, 2018), <https://www.wm.com/us/en/high-acres-landfill/news/host-community-benefits> [<https://perma.cc/5VCX-SYMW>] (documenting that, for the High Acres Landfill in Perinton, N.Y., the town of Perinton and the town of Macedon both receive a “[g]uaranteed \$1 million royalty-per-ton . . . annual cash payment”).

160. For example, in Blount County, Alabama, the county imposes a \$1.50 per ton fee on waste dumped in privately owned solid waste landfills within the county, and the local ordinance mandates a percentage split of the revenue—50% to the county’s general fund and the other 50% to the Blount County Commission, which, on a quarterly basis, returns that share of funds to the Blount County Fire and EMS Association. Ala. Code § 45-5-171. The share of funds to the Blount County Fire and EMS Association is “distributed equally to all volunteer fire departments and rescue squads belonging to the association.” *Id.*

grants.¹⁶¹ In Alabama, there is a state-mandated solid-waste disposal fee that is distributed into dedicated funds with specific purposes, such as the Alabama Recycling Fund,¹⁶² the Solid Waste Fund,¹⁶³ and a percentage paid to ADEM.¹⁶⁴

Additionally, the different host-fee compensation structures can often be intertwined. For example, a locality may collect a per-ton charge from a landfill as well as fees earmarked for establishing community grants for the community most impacted.¹⁶⁵

2. *Host-Fee Mechanics, Indirect Representation, and Fiscal Bypass.* — Host-fee compensation can create explicit fiscal incentives for local governments to welcome—or at least tolerate—polluting facilities.¹⁶⁶ For cash-strapped counties, the revenue can be politically attractive.¹⁶⁷ If the

161. See *id.* (stating that a portion of the Blount County fees are earmarked for emergency services); see also Community Benefits, Arrowhead Env't Partners, <https://www.arrowheadlandfill.com/community> [<https://perma.cc/5XCB-NL7E>] (last visited Aug. 28, 2026) (noting that a portion of host fees is set aside for road maintenance and community education programs in Perry County, Alabama).

162. See Ala. Code § 22-27-17(c)(1) (stipulating that 25% of the fees collected be paid to the Alabama Recycling Fund “to be used by the department exclusively to provide grants to local governments, authorities, and nonprofit organizations for use in developing, implementing, and enhancing local recycling, reuse and waste minimization projects and programs”).

163. See *id.* § 22-27-17(c)(2) (“Twenty-five percent of the fees collected shall be paid to . . . the Solid Waste Fund (SWF), which is hereby created, to be used by the department to pay the costs of remediation, abatement, removal, or other actions related to the closure of unauthorized dumps and landfills . . .”).

164. See *id.* § 22-27-17(c)(3) (“Forty-five percent of the fees collected shall be paid to . . . [ADEM] to be used exclusively to pay the costs of performing its duties under this article and to fund educational programs administered by the department on solid waste management, waste minimization, and recycling.”).

165. The town of Maine, New York, is a good example of this. In Maine, the Broome County Landfill Siting Committee stipulated that the county pay to host communities \$3 per ton of municipal solid waste per year after 1999. Maine, N.Y., Code ch. A533, § 3A (2026). Additionally, in 1993, the Committee recommended to the county legislature that “the Host Community Benefit agreement apportion its funding so that at least 35% is directed to impacted residents, business establishments, and land-owners adjacent to the landfill facility.” *Id.* § 8 (internal quotation marks omitted). The county, however, did not implement this aim due to potential conflicts with Article 8, Section 1 of the New York State Constitution, which “prohibits the gift use of public funds to a private individual, corporation or association.” *Id.* Nevertheless, the county did agree that if Article 8, Section 1 were amended to authorize municipalities to “provide such financial benefits to nearby residents of the Landfill, the parties [would] . . . meet to discuss such modifications . . . [to] allow the Host Communities to dedicate to the benefit of nearby residents a reasonable portion of the financial benefits then being received by the Host Communities from the County.” *Id.*

166. See Gomez-Vidal & Gomez, *supra* note 2, at 4–5 (noting that “counties use or curb local policy tools . . . to attract new, taxable developments,” which can “result in unsustainable land-use practices in unincorporated communities beneficial to corporations, private investors, state, and county revenues but harmful to residents”).

167. See Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* 88 (3d ed. 2008) (“Few communities can afford to turn down money destined for

revenue will benefit the majority of county districts (or the county general fund), then commissioners and officials may have strong motives to approve sitings, even if the environmental costs are borne by a small, marginalized population.¹⁶⁸

In this way, host-fee compensation does not merely compensate for waste; it reconfigures local politics by creating winners (county commissioners and their nonimpacted districts) and losers (unincorporated communities that bear the burden). This phenomenon has unfolded across the state of Alabama, as many county governments have “sold hundreds of acres of land to developers, who [have] built large landfills on the unincorporated fringes of poor Black rural towns, entrenching risks for hazardous environmental exposures for decades.”¹⁶⁹ Understanding these distributional mechanics is therefore central to explaining why landfill sitings are clustered in politically disenfranchised places.

The mechanics of host-fee compensation are tied to the special vulnerabilities of unincorporated communities. Because unincorporated communities are governed by the county where decisions are made by county commissioners who represent larger districts or hold countywide offices,¹⁷⁰ a two-fold problem arises: indirect representation and fiscal bypass.

Indirect representation occurs because residents of unincorporated communities must rely on county representation for influence.¹⁷¹ County political structures, however, are often not responsive to the unincorporated community’s needs, and the unincorporated community itself may lack leverage to influence siting and permitting decisions or to negotiate favorable terms.¹⁷² Accordingly, “[t]he political power of

their coffers, especially if tax revenues are shrinking.”); Anderson, *Cities Inside Out*, *supra* note 6, at 1151 (“Counties’ dependence on property taxes and sales taxes create powerful fiscal incentives to permit such development regardless of its burdens on neighbors.”).

168. See Anderson, *Cities Inside Out*, *supra* note 6, at 1151 (“The weak voices of small low-income communities face a severe challenge to be heard among a county’s larger economic interests.”).

169. Gomez-Vidal & Gomez, *supra* note 2, at 5.

170. See *id.* at 2 (“Unincorporated communities lack local government and therefore must rely on county governments as their primary form of representation.”).

171. See Jaime Cervantes de Reinstein, Ty Pearson, Sebastián Perez, Aditi Peyush, Tyler Webb & Elliot Woods, *Unincorporated Los Angeles: Leveling Inequities in Supervisorial District 2, at 7* (2023), <https://escholarship.org/uc/item/6qz6f7vr/qt6qz6f7vr.pdf?v=lg> [<https://perma.cc/84DK-PZNS>] (noting that the absence of municipal governance in unincorporated areas concentrates service provision and political representation at the county level while also robbing them of the county government representation of city residents).

172. See Gomez-Vidal & Gomez, *supra* note 2, at 5 (noting that the advantages of political “[p]articipation in municipal government decisions” such as residents’ “power to shape social and economic opportunities and risks in their communities” are absent in unincorporated communities, putting unincorporated residents at a disadvantage).

residents to create healthy futures and mitigate harm is eroded when avenues for government accountability are missing.”¹⁷³

This lack of accountability leads to fiscal bypass.¹⁷⁴ Because the revenue from the landfill accrues to the county, it is ultimately devoted to projects and programs in non-impacted districts.¹⁷⁵ Meanwhile, the immediate, localized harms—odors, chronic health risks, and property devaluation¹⁷⁶—are not ameliorated by investment in the impacted community.¹⁷⁷

In Tallapoosa County, which governs Ashurst Bar, the county receives fees from the landfill and puts them into the county’s discretionary fund.¹⁷⁸ The discretionary fund is used countywide, and the county commission decides what programs benefit from the revenue.¹⁷⁹ Under this regime, commissioners representing districts can hoard revenue—either for their constituents or as discretionary revenue dollars—even when a facility is sited in another district. Therefore, the Ashurst Bar community bears the externalities of the landfill without receiving commensurate host fees, either because the fund is pooled and redistributed according to political formulas or because the

173. *Id.*

174. See Anderson, *Cities Inside Out*, *supra* note 6, at 1157 (“In large, highly urbanized counties . . . county government can become a major bureaucracy, accountable foremost to suburban constituencies and other revenue-generating hubs.”).

175. See *id.* at 1151 (highlighting how revenues counties acquire from permitting land-use proposals often “enable new tax-rich development elsewhere in the county”).

176. See *id.* at 1110 (noting that some land uses impose monetary and nonmonetary costs on residents).

177. See Robin R. Jenkins, Kelly M. Maguire & Cynthia Morgan, *Host Community Compensation and Municipal Solid Waste Landfills 5* (Nat’l Ctr. for Env’t Econ., Working Paper No. 02-04, 2002) [hereinafter Jenkins et al., Working Paper] (noting that the compensation received by counties is typically “for goods or services that benefit the entire political jurisdiction, rather than a particular neighborhood or population”); see also de Reinstein et al., *supra* note 171, at 21 (“However, once allocated to the general fund, taxpayers in underinvested communities may never see their tax dollars contribute to any resources specific to their community.”). For unincorporated communities, the local political jurisdiction is the county, and thus, host fee compensation payments would go into the county government’s revenue. Scholars like Vicki Been have warned that analyzing host community compensation at the larger political jurisdiction level, such as counties, masks impacts. See Jenkins et al., Working Paper, *supra*, at 5; Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 *Yale L.J.* 1383, 1386 (1994) (addressing gaps in the research of host communities to explain the demographics of host communities).

178. Cliff Williams, *Landfill Sued Over Possible Pollution Into Water*, *Tallasse Tribune* (Feb. 23, 2023), https://www.tpimediagroup.org/tallassetribune/news/landfill-sued-over-possible-pollution-into-water/article_cea00a55-11b6-59ea-bf5a-2b7dd7f9ae85.html (on file with the *Columbia Law Review*) (last updated Aug. 6, 2025).

179. *Id.*

commissioner may use the funds in ways that do not address the specific harms in the community.¹⁸⁰

Attorney Gavin King, who sued the Stone's Throw Landfill on behalf of Ashurst Bar residents, notes that some of the county fund is distributed to projects and programs nearly fifty miles away.¹⁸¹ Additionally, some of those funds go to investments across Tallapoosa County, rather than benefiting the local community.¹⁸² Indeed, Ashurst Bar residents contend that none of that money comes back to the community.¹⁸³

Further, in Tallapoosa County, the allocation practice appears to divide host-fee revenues equally by commissioner district.¹⁸⁴ There are five county commissioners on the Tallapoosa County Commission,¹⁸⁵ and each commissioner controls an equal share for their district.¹⁸⁶ During the 2018 fiscal year, the five commissioners each received \$88,000 in discretionary funds from the host fees from the landfill.¹⁸⁷

This dynamic creates a classic collective-action problem. A majority of the county officials and non-impact county residents gain enough utility from the host-fee revenue to override the objections of the Ashurst

180. See Zhorov, *supra* note 20 ("Ashurst Bar/Smith bears the burden of the landfill. Locals deal with the stench and heavy traffic, but the landfill income doesn't stay there—it's split across the county.").

181. Williams, *supra* note 178.

182. Telephone Interview with Rev. Ron Smith, Ashurst Bar Community Resident (Aug. 11, 2025) (on file with the *Columbia Law Review*).

183. *Id.*; see also Rodgers, *supra* note 39 (documenting that one community resident stated that the "fees Advanced Disposal pays Tallapoosa County to operate the landfill haven't been used to help the Ashurst Bar and Smith communities"). This seems to be a decades-long phenomenon as documented by Lani Merritt. See Merritt, *Historical Patterns*, *supra* note 85, at 2 ("Tallapoosa County also benefits economically if the landfill is in operation. The county receives all tax revenue (estimated in 1991 to be up to \$500,000 annually) generated from the landfill when it is in operation, and residents of the community receive none.").

184. See Rodgers, *supra* note 39 (explaining that discretionary funds were divided equally among Tallapoosa County commissioners).

185. County Commission, Tallapoosa Cnty., <https://tallaco.com/commission/> [https://perma.cc/9B42-WTG3] (last visited Aug. 6, 2026) ("The Tallapoosa County Commission is made up of five elected members representing the five commission districts of Tallapoosa County.").

186. Rodgers, *supra* note 39.

187. See *id.* According to one report, closing the landfill would "cause adverse harm to Tallapoosa County's financial coffers." Residents Near Stone's Throw Landfill Still Holding Their Noses, Tallapoosa Publishers, Inc. (Feb. 5, 2019), https://www.tpimedia.org/opinion/residents-near-stone-s-throw-landfill-still-holding-their-noses/article_143c2330-0c6f-5def-86b4-711fb06be6fc.html (on file with the *Columbia Law Review*) (last updated July 30, 2025) (stating that closing the landfill would be financially damaging for the county since each commissioner receives thousands in discretionary funds to use as they see fit).

Bar community, which is politically weak in comparison.¹⁸⁸ Ashurst Bar residents have repeatedly voiced that they want the Stone's Throw Landfill "closed or cleaned up before it is too late."¹⁸⁹ But because of the incentive to continually permit the Stone's Throw Landfill's operations, they are routinely ignored. The result is a structural process by which sitings are more likely to take place in unincorporated areas.¹⁹⁰

In this way, host-fee compensation acts more as a political salve than a community-centered remedy. When counties deliver host fees but not local mitigation, the compensation functions as county development revenue rather than community redress. This outcome has several effects. First is the co-opting of local policymakers. Because Tallapoosa County Commissioners enjoy the power of deciding who benefits from discretionary funds, they can deploy funds to win political loyalty elsewhere—such as infrastructure projects outside the unincorporated area—thereby neutralizing cross-district opposition.¹⁹¹ Indeed, the funds from the landfill have been used as "matching grants for volunteer fire departments, to help education programs and purchase equipment for road maintenance."¹⁹² Yet, despite the fact that Ashurst Bar lacks recreational space, is tattered with poor housing, and lacks adequate sewage and water treatment, none of the funds from the landfill have been devoted to these needs.¹⁹³

In sum, host-fee compensation can produce dire problems for politically and economically powerless communities. If the mechanism of compensation systemically diverts benefits away from the community that bears the most risks, then robust interventions are needed to provide those communities with justice.

188. See Merritt, *Historical Patterns*, *supra* note 85, at 2 (noting that the Ashurst Bar community has been effectively left out of the local political process).

189. Tallapoosa Publishers, Inc., *supra* note 187; see also LDF, *Case Report*, *supra* note 19 ("Among many remedies, [the Ashurst Bar community] wants the Landfill to cease operating in their community, or to cease encroaching on their land and way of life, and to remedy the harms that the Ashurst Bar/Smith community has suffered.").

190. See Anderson, *Cities Inside Out*, *supra* note 6, at 1109 (stating that many unincorporated communities are "burdened by more permanent defects that endanger residents' health," and that the burden takes the form of "the concentration of undesirable land uses within the communit[y]"); Gomez-Vidal & Gomez, *supra* note 2, at 6 ("[M]any unincorporated communities are also home to landfills and sewage treatment plants for nearby cities. These communities may face a form of double jeopardy[:]. . . these landfills . . . and sewage treatment plants are physically adjacent, while many of the services they provide are not available to their residents." (citation omitted)).

191. See Williams, *supra* note 178 (noting that the commissioners decide what programs benefit from the discretionary fund and past funds have been devoted elsewhere).

192. *Id.*

193. Rodgers, *supra* note 39.

III. PATHWAYS FOR THOUGHT: COMBATING THE FISCAL EXPLOITATION OF UNINCORPORATED COMMUNITIES

Host-fee compensation, as currently structured, entrenches structural inequality for unincorporated communities because it assumes democratic accountability and equitable fiscal governance that does not exist. Environmental injustice results when the law permits counties to make fiscal decisions that internalize revenue from polluters while externalizing environmental harm onto vulnerable unincorporated communities. This Part proposes remedies to address hardships these communities face that can be readily mitigated and, in the long term, work to expand democratic capacity and accountability.¹⁹⁴ The solutions aim to address administrative regulations, fiscal governance, political incentives, and community empowerment.¹⁹⁵

A. *State Oversight and Its Challenges*

State monitoring of host-fee compensation could solve the problems that host-fee compensation, as currently structured, presents for impacted communities. In Alabama, however, implementing such oversight might be stifled by political reality.

As Professor Su notes, “many of the traditional functions of rural counties . . . have been transferred to state and federal agencies” over the years.¹⁹⁶ In the late twentieth century, “the rise of the environmental protection movement led to the widespread adoption of state environmental laws and the creation of state environmental and conservation agencies dedicated to its enforcement.”¹⁹⁷ The expansion of these state laws led to the “displacement of local regulatory authority.”¹⁹⁸ Therefore, when local concerns arise, the first step for many rural residents is to engage the state; the administrative bureaucracy of the state, in this way, becomes the primary means by which rural conflicts can be resolved.¹⁹⁹ Simply, the state should be attentive to local concerns where the locality does not provide redress. In Alabama, however, state administrative bureaucracy has presented significant challenges for overburdened communities.

194. See Su, *supra* note 62, at 878 (“[E]fforts to address the suffering of rural communities in the short term should be joined with efforts to expand their democratic capacity in the long term.”). Professor Su also raises the question of whether “local empowerment [is] still possible in the rural context.” *Id.* This is a question that scholars should deeply wrestle with.

195. See *id.* (noting that enhancing the democratic capacity of rural areas cannot happen without addressing “the legal and political structure of rural local governments”).

196. *Id.* at 867.

197. *Id.* at 870.

198. *Id.*

199. *Id.* at 871.

Namely, ADEM and the complainants fighting against them are at odds regarding ADEM's authority in siting and permitting decisions.²⁰⁰ The debate centers on how courts should interpret Alabama's Solid Waste Disposal Act (SWDA).

In 1999, the Center on Race, Poverty & the Environment (The Center) filed a Title VI complaint against ADEM on behalf of six environmental justice organizations in Alabama, including the Ashurst Bar community, alleging racial discrimination in the issuance of permits to operate landfills in multiple Alabama counties that adversely and disparately impacted Black residents.²⁰¹ In defense of its decision to grant the permits, ADEM argued that (1) it could only take into account technical factors in permitting decisions, and that socioeconomic factors were the counties' domain,²⁰² and (2) it did not oversee implementation or enforcement of local plans because the SWDA does not grant ADEM that authority.²⁰³

When the EPA investigated the complaint in 2001, however, it found that the SWDA did not limit ADEM's authority.²⁰⁴ First, the EPA contended that the SWDA, "whose 'terms and obligations . . . shall be liberally construed to achieve remedies intended,' gives ADEM broad authority to manage and regulate all aspects of solid waste disposal in

200. See Zhorov, *supra* note 20 (noting that Ashurst Bar residents have felt betrayed by ADEM because ADEM has failed to protect them).

201. See EPA Off. of C.R., Investigative Report for Title VI Administrative Complaint File No. 28R-99-R4, at 3-4 (2003) (on file with the *Columbia Law Review*) [hereinafter EPA Investigative Report] (citing Letter from Luke Cole, Ctr. on Race, Poverty, & Env't, to Carol Browner, EPA Adm'r (Dec. 17, 1999)). The Center brought two allegations against ADEM: (1) that ADEM violated Title VI and EPA's implementing regulations by issuing and modifying permits for four municipal solid waste landfills in Lauderdale County, Jefferson County, St. Clair County, and Walker County, which had the effect of adversely and disparately impacting African American residents in those communities; and (2) that ADEM violated Title VI and EPA's implementing regulations by engaging in a pattern of discrimination against African Americans because it is ADEM's practice to concentrate municipal solid waste landfills in predominantly African American communities, when the landfills service predominantly white communities. *Id.* EPA informed the complainants that it was construing Allegation 1 to assert a claim of disparate impact discrimination and Allegation 2 to assert a claim of intentional discrimination. *Id.* at 5.

202. *Id.* at 12 (reporting ADEM's position that "ADEM is not responsible for deciding where facilities will be sited and cannot consider local social and economic impacts from siting decisions").

203. See *id.* at 13 ("[T]he reason for Alabama's split in landfill permitting responsibilities is to 'allow local host governments the ability to plan for their future solid waste disposal needs and to approve the siting of solid waste landfills within their own local jurisdictions.'" (quoting Letter from James W. Warr, Dir., ADEM, to Ann E. Goode, Dir., EPA Off. of C.R. (Feb. 4, 2000))).

204. See *id.* at 92 ("EPA finds nothing in Alabama's [SWDA], or ADEM's implementing regulations that prohibits or limits ADEM's authority not only to substantively oversee local governing bodies' consideration [of] safety and socio-economic impacts from landfill siting, but to undertake additional, independent analyses of such impacts during the State permitting phase . . . if necessary." (emphasis omitted)).

Alabama.”²⁰⁵ These remedies can include adequately considering socio-economic factors such as race, class, and disparate impact.

Regarding oversight authority, the SWDA directs ADEM, in developing the State Solid Waste Management Plan, to see that “all aspects of local, regional, and state planning, zoning, population estimates, and economics are taken into consideration.”²⁰⁶ Additionally, the SWDA grants ADEM broad authority to “adopt such rules and regulations as may be needed to meet the requirements of [the SWDA]” and directs ADEM to “exercise such regulatory control over the management of solid wastes as may be necessary to enforce the requirements of the department.”²⁰⁷

Simply, local government authority under the SWDA is subordinate to ADEM’s authority. As EPA notes, the SWDA specifies that “in addition to any other approvals which are necessary for any contract between private or corporate agencies and governmental entities for the disposal of solid wastes, approval of the department [ADEM] shall be obtained.”²⁰⁸ Any local government plans must contain “such other information as the department [ADEM] may require by regulations.”²⁰⁹

Because the SWDA articulates an integrated approach to planning for solid waste management in Alabama, ADEM’s oversight authority to engage in additional analysis of siting factors for landfills is not limited.²¹⁰ Accordingly, in approving a local solid waste management plan, ADEM could account for how a locality has contracted with the solid waste facility in how it retrieved revenue from that facility and whether the way that revenue was used created adverse social or economic impacts on the host community. Indeed, the SWDA specifically requires, among other things, that the evaluation of facility sites be based on “social and economic impacts on the host community.”²¹¹ Surely, the revenue that a landfill could generate, and how that revenue is spent, can have a significant social and economic impact on the host community. The Ashurst Bar community has complained to Tallapoosa County and ADEM regarding the problems that the landfill has brought to the community.²¹² These problems are social and economic in nature—

205. *Id.* (alteration in original) (emphasis omitted) (quoting Ala. Code § 22-27-41 (2026)).

206. *Id.* at 93 (emphasis omitted) (internal quotation marks omitted) (quoting Ala. Code § 22-27-45(3)).

207. *Id.* (internal quotation marks omitted) (quoting Ala. Code § 22-27-7).

208. *Id.* (alteration in original) (internal quotation marks omitted) (quoting Ala. Code § 22-27-5(b)).

209. *Id.* (internal quotation marks omitted) (quoting Ala. Code § 22-27-47(b)(13)).

210. *Id.* at 94.

211. Ala. Code § 22-27-40(5).

212. See Zhorov, *supra* note 20 (noting that local residents contend that the landfill owners, county commissioners, and ADEM have not heeded their concerns regarding the landfill).

decreased air quality, diminished property values, and a reduced ability to use and enjoy their land.²¹³

State oversight regarding these issues, however, will only be as effective as the state agency charged with such oversight capabilities. In its investigative report into ADEM's practices, the EPA only noted that ADEM's current administration of the Solid Waste Program could potentially violate EPA's Title VI regulations in the future.²¹⁴ Due to that potential, the EPA offered ADEM a number of recommendations that ADEM has yet to heed.²¹⁵ If this obstructionist stance continues and ADEM's interpretation of its authority holds, then disproportionate environmental decisionmaking is bound to continue in Ashurst Bar.

B. *Transactional Environmental Justice and Community Empowerment*

Factors such as "[t]he direct participation of citizens in host fee negotiations, the community knowledge stemming from having hosted a prior landfill, and the presence of state mandates for minimum host compensation" all lead to a community acquiring adequate compensation.²¹⁶ Notwithstanding that the county and the developer negotiate host-fee compensation, an impacted community's political leverage strengthens its ability to receive an equitable distribution of host-fee

213. See LDF, Case Report, *supra* note 19.

214. See EPA Investigative Report, *supra* note 201, at 95–96 (noting that ADEM's practices could lead to future Title VI violations because of the "potential failure to consider safety or socio-economic impacts could lead to ADEM-permitted landfills that have an adverse disparate impact").

215. Those recommendations were:

[1.] [R]equire that local governing bodies submit to ADEM, along with their local approval of solid waste landfill permit applications, detailed analyses of the six minimum siting factors (as set out in the State's [SWDA] and ADEM's implementing regulations) that were considered by the local body in connection with the site-specific permit; [2.] Where a local body's analyses of the six minimum siting factors is not sufficient (as determined by ADEM) or not done, ADEM should undertake its own consideration of these factors during its permitting of a municipal solid waste landfill; . . . [3.] [P]ut in place a program to oversee local government implementation of local solid waste management plans; and . . . [4.] [I]mplement its own 'recommendations' as contained within Phase II of the State's Solid Waste Management Plan.

Id. at 96 (emphasis omitted); see also Pillion, *supra* note 47 (describing allegations that, ten years after the civil rights complaint, ADEM still "failed to require the Tallapoosa County Commission to use appropriate siting factors before approving the landfill").

216. Jenkins et al., Host Community Compensation, *supra* note 14, at 526 (finding that a community's bargaining position is "critical to the amount of host compensation received").

revenue.²¹⁷ Therefore, any reform of the design of host-fee compensation must take root in community empowerment.

Environmental nonprofit organizations and legal organizations play a crucial role in supporting a community's fight for environmental justice and building community empowerment.²¹⁸ The skillset that these groups possess has been helpful in guiding communities through technical and legal complexities.²¹⁹ Though much of the legal assistance is in the form of litigation, transactional practice—learning how to negotiate better compensation and siting deals—has become equally important for overburdened communities.²²⁰ Transactional environmental justice is necessary because many impacted communities are faced with complex negotiations, if they have the ability to negotiate at all, requiring sound legal counsel.²²¹ And though much of the transactional work occurs with CBAs and GNAs—over which the community is the key negotiator—transactional environmental justice can help communities in the host fee context as well.

Transactional environmental justice can support communities that cannot engage in direct negotiations by working as a monitoring arm, seeking to bring the community's voice to the county's negotiating table. Environmental legal organizations possess substantial transactional expertise, including drafting settlement agreements, designing contracts, and engaging in regulatory compliance work.²²² These organizations could work to develop relationships with county decisionmakers to discuss the importance of things such as earmarking funds for the

217. See *id.* (“Citizens can affect compensation through community involvement by working directly with a landfill. Likewise, citizens can lobby local policymakers to negotiate with landfills for greater compensation.”).

218. See Seema Kakade, *A Contractual Relationship With Environmental Justice*, 73 *Am. U. L. Rev.* 343, 349 (2023) (calling for a “heightened role for environmental nonprofit organizations to support corporate-community agreements through the development of environmental transactional practice groups within their organizations”).

219. See *id.* at 379, 383–84 (stating that “[w]hile many environmental nonprofit organizations pride themselves on litigation work . . . they also have significant expertise in drafting complex settlement agreements with corporations”).

220. See *id.* at 360 (“The challenge of linking transactional law with justice lies within the need to build resources within the legal community. Many legal research resources have traditionally been geared toward litigation-based areas of practice, with only limited availability for helpful print and online research tools for transactional lawyers.” (citing Laura M. Scott, *Transactional Resources: Research Tools for Doing a Deal*, *Duke. U. Sch. L.* (2018), <https://law.duke.edu/sites/default/files/lib/transactional.pdf> [<https://perma.cc/B4WS-A3KB>])).

221. See *id.* at 376 (noting that “information asymmetry, in multiple and complex forms, is an ever present concern in corporate-community agreement negotiations”).

222. See *id.* at 384, 393 (noting the expertise of environmental legal organizations in contract law).

impacted community or drafting ordinances stipulating the devotion of a percentage of funds to the impacted community.²²³

Framed in this way, transactional environmental justice functions as a key bargaining tool. When unincorporated communities are systemically excluded from county governance decisions and elected officials are unreliable in fiscal decisionmaking, transactional environmental justice can seek to act as an alternative, and possibly more effective, form of constraint.²²⁴

C. *From the Ground Up, the Sincere Message to Lawyers*

In the end, the burden of pollution in unincorporated communities will likely not be stopped by the people who do not bear it—those in power. Rather, it is the victims of the pollution who will have to stop the environmental degradation of their community.²²⁵ As Dr. Robert Bullard notes, “[P]eople of color must be empowered through their own organizations . . . if they are to effectively address the problem.”²²⁶ According to Professor Luke W. Cole, this understanding of empowerment is in “direct opposition to traditional environmental lawyering, which has relied on an implicitly paternalistic model of the lawyer as the expert, imposing [their] ideas on [the community].”²²⁷ If environmental justice lawyers are to fully represent the community, they must follow the community’s lead.²²⁸

223. See Maine, N.Y., Code ch. A533, §§ 3, 8 (1996) (recommending to the county legislature that 35% of the host-fee revenue be directed to impacted residents, business establishments, and landowners adjacent to the landfill facility).

224. See Kakade, *supra* note 218, at 393 (“The advantage of thinking about transactional tools is that the contracting parties involved get to choose their own definitions for terms like ‘environmental’ and ‘justice’ and ‘community’ that are relevant to any given context.”).

225. See Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *Ecology L.Q.* 619, 649 (1992) [hereinafter Cole, *Environmental Poverty Law*] (“If environmental degradation is stopped, it will be stopped by its victims.”); see also Stephen Wexler, *Practicing Law for Poor People*, 79 *Yale L.J.* 1049, 1053 (1970) (“If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put [their] skills to the task of helping poor people organize themselves.”).

226. Robert D. Bullard, *Conclusion: Environmentalism With Justice*, in *Confronting Environmental Racism: Voices From the Grassroots* 195, 202 (Robert D. Bullard ed., 1993).

227. Cole, *Environmental Poverty Law*, *supra* note 225, at 649.

228. See Luke Cole, *Lawyers, the Law & Environmental Justice: Dangers for the Movement*, 5 *Race, Poverty & Env’t* 3, 7 (1994) (stating that lawyers must be “on tap, not . . . on top” (internal quotation marks omitted) (quoting Pat Bryant & the Gulf Coast Tenants Org., *The Movement & the Legal Community*, *Race, Poverty & Env’t*, Fall 1994/Winter 1995, at 2, 2)).

Professor Cole termed this sort of client-centered model “environmental poverty law.”²²⁹ Under the environmental poverty law model, lawyers must embrace community empowerment, as it is the process that enables individuals to effectively participate in the efforts to solve pressing issues.²³⁰ Attorneys must assist the community in solving their own problems rather than leading from the front.²³¹

Additionally, the model embraces group representation so that communities can effectively build the people power necessary to win environmental struggles.²³² Group representation intertwines with the principle of empowerment because the dynamics of the community as a whole can drive empowerment in its individual members.²³³

Finally, Professor Cole noted that the law has rarely served to secure the best interests of communities facing environmental injustice.²³⁴ Other means, however, have proved more useful, such as community organizing, administrative advocacy, and leveraging media pressure.²³⁵ For these reasons, lawyers working on behalf of communities should seek the “broadest range of strategies in addressing environmental problems faced by the poor.”²³⁶

CONCLUSION

The structure of host-fee compensation is both insidious and thorny. How is it that a county government can completely bypass the unincorporated community most impacted by a solid-waste landfill by devoting all the revenue the county makes from that landfill elsewhere? It is because of the unincorporation itself—the lack of political voice, the

229. See Cole, *Environmental Poverty Law*, *supra* note 225, at 661–70 (describing the practice of environmental poverty law).

230. *Id.* at 661.

231. See *id.* (noting that “[c]ommunity-based” and “community-led” are key descriptive and prescriptive phrases for the environmental poverty lawyer, who should seek to decentralize power away from herself and to her clients”).

232. *Id.* at 664 (“By representing a group, the attorney provides a basis for forming or strengthening ‘community’ and provides a tangible benefit to those who join the community group.” (citing Wexler, *supra* note 225, at 1054)).

233. *Id.* at 665.

234. Professor Cole wrote that (1) oftentimes “there may not even *be* a legal solution to the problem faced by the community”; (2) “the legal approach may radically disempower a client community and thus should be avoided”; (3) “[t]ranslating a community’s problems into legal language may render them meaningless”; (4) “litigation often abstracts, sanitizes, and transforms human rage and pain and sorrow into a legally appropriate product”; and (5) “lawsuits take fights into the arena most controlled by the adversary and least controlled by the community.” *Id.* at 667 (quoting Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 *Geo. L.J.* 1603, 1710 (1989)).

235. *Id.*

236. *Id.* Professor Cole appropriately noted that such nonlegal strategies will be even more important over time as the courts become more conservative. *Id.* at 668.

depreciation of resources, and the limited access to county officials to adhere to community needs.²³⁷

Understanding that environmental justice solutions must come from the ground up, however, can provide hope for the possibility that community-centered power can flourish. This hope is needed in Ashurst Bar and the countless unincorporated communities facing environmental injustice. The story of the Ashurst Bar community is one of resilience. For far too long, the community has dealt with the historical ills of exclusion and continued degradation due to the lack of democratic agency and the unwillingness of decisionmakers to acknowledge the circumstances perpetuating environmental injustice in the community.

Scholars, researchers, practitioners, and lawyers must focus on developing pathways to give unincorporated communities more of a voice and a seat at the table over the decisions that directly impact them. Only through focused attention to this neglected issue can the roots of justice be established in a place where justice was never meant to exist.

237. See Moore et al., *supra* note 8, at 2.

