



September 12, 2019

Submitted via email to: [Oversight\\_Clerks@mail.house.gov](mailto:Oversight_Clerks@mail.house.gov)

Rep. Harley Rouda, Chairman  
Subcommittee on Environment  
2157 Rayburn House Office Building

Re: Subcommittee on Environment Testimony

Dear Representative Rouda,

Enclosed, please find a copy of the testimony which I plan to provide at the hearing of the Subcommittee on Environment on Monday, September 16<sup>th</sup>, a short biography, and the "Truth in Testimony" disclosure and certification form.

Sincerely,

*/s/Nick Leonard*

Nick Leonard  
Executive Director  
313-782-3372 | [nicholas.leonard@glelc.org](mailto:nicholas.leonard@glelc.org)

### **Summary of Testimony**

- Communities of color and low income are often disproportionately subjected to environmental risks. These communities are subjected to higher levels of air pollution, are more likely to host a hazardous waste treatment, storage, and disposal facility, and experience higher rates of water shutoffs due to unaffordable water bills when compared to more affluent communities.
- The concerns of communities of color and lower income are not addressed in federal environmental laws or regulations, and many states, including Michigan, have failed to take adequate action to address these issues. Since our environmental laws and regulations ignore the environmental concerns of communities of color and low income, our federal and state agencies that implement these laws must ignore them as well.
- Urgent action is needed to address this injustice in our environmental laws through legislative and regulatory solutions. These solutions must be developed in partnership with residents of communities of color and low income, and they must adequately address the environmental issues that are uniquely impacting these communities on a daily basis.

### **Recommendations**

- Regarding air pollution, require states to consider the cumulative impact of air pollution in vulnerable communities, such as communities of color and low income, and require the denial of new sources of air pollution, or the expansion of existing sources, if the public health risk exceeds an identified standard.
- Regarding hazardous waste facilities, require states to prevent the over-concentration of such facilities in communities of color and low income.
- Regarding drinking water, while many local water suppliers have payment assistance programs, these are often insufficient to address the needs of residents. Income-based water affordability plans can both ensure public water suppliers are financially viable, and can ensure that all people have the ability to afford drinking water. While an increase in federal funds for drinking water infrastructure improvements is absolutely necessary, it must be accompanied by a mandate that all people have the right to affordable water.
- As substantive changes are being made to our environmental laws and regulations to address these important issues, the U.S. EPA should place a greater departmental emphasis on protecting communities of color and lower income by ensuring existing environmental laws and regulations are being complied with in these communities. This could take the form of more aggressive enforcement of existing laws and regulations in communities of color and low income, as well as

more vigorous implementation of the EPA's Title VI non-discrimination regulations, which requires state environmental agencies to adopt and implement non-discrimination programs.

### **Testimony**

My name is Nicholas Leonard. I'm the executive director of the Great Lakes Environmental Law Center, a Detroit-based nonprofit that provides pro bono legal services to help Michigan residents use the law to address environmental issues that are impacting their health and quality of life.

I have had the pleasure of working with residents throughout in Detroit and Southeast Michigan to address a wide variety of environmental issues. I've worked with residents in Southwest Detroit and the Southend of Dearborn to address air pollution; residents on the eastside of Detroit and Hamtramck to address the expansion of a hazardous waste treatment and storage facility; residents on the eastside of Detroit to close down a trash incinerator that was violating air emission limits; and residents throughout Southeast Michigan that are confronting issues of drinking water quality and affordability. Through my work with all of these communities, I've come to deeply understand how our federal environmental laws fail to adequately address the concerns of communities of color and lower income. Today, I'm planning to talk about that failure and how it may be remedied.

I want to start by describing how environmental injustice manifests itself in law or policy. Injustice in law and policy often starts with an absence, specifically the absence of people of color and lower income in creating the law or policy. This absence often leads to the creation of laws and policies that ignore the concerns people of color and lower income. This ignorance, particularly if left unremedied for long periods of time by policymakers, leads many people of color to logically and correctly conclude that while our environmental laws adequately protect respectively whiter and wealthier communities, they fail to protect communities of color. So how is this remedied; I think it's fairly simple: a just environmental law or policy is one that is developed in partnership with communities of color and lower income, and that adequately addresses the unique environmental issues that these communities face on a day-to-day basis.

The environmental injustices here in Southeast Michigan are indicative of similar problems in communities of color across the country. Numerous studies have found that communities of color and lower income are disproportionately exposed to higher levels of air pollution when compared to whiter, more affluent communities.<sup>1</sup> The higher level of exposure likely contributes to racial and ethnic

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<sup>1</sup> See, Ihab Mikati, Adam Benson, Thomas Luben, Jason Sacks, Jennifer Richmond-Bryant, Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status, American Public Health Association, Mar. 7, 2018, available at <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304297>; Michelle Bell and Keita Ebusu, Environmental Inequality in Exposures to Airborne Particulate Matter Components in the United States, Environmental Health Perspectives, Dec. 2012, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3546368/>

disparities in health.<sup>2</sup> Our investor-owned electric utility, DTE, is proposing to increase residential rates by 9%,<sup>3</sup> and is failing to provide low-income residents with access to renewable energy ensuring that such communities will continue to be locked into the fossil fuel economy that is harming their health.<sup>4</sup> Hazardous waste facilities, such as U.S. Ecology's storage and treatment facility on the eastside, are overwhelmingly located in communities of color and lower-income. Safe and affordable drinking water is a current and growing crisis in many low-income communities. Low-income people in Southeast Michigan are paying 10 to 20% of their household income on water bills.<sup>5</sup> This is forcing people into making impossible decisions. A recent survey of low-income residents in Southeast Michigan not only found many families have experienced having their water shutoff, but also found that 84% are cutting back on monthly expenses for things such as food, medicine, and rent to pay their water bills.<sup>6</sup> 51% are switching-off paying their energy bills and water bills on a month-to-month basis in order to afford water.<sup>7</sup>

How has this been allowed to happen? The short answer is our federal environmental laws do not address the concerns of people of color and lower income, and do not provide communities with the adequate legal means to address these concerns on their own. Two bills have been introduced at the federal level to promote environmental justice: the Environmental Justice Act of 2019, introduced by Senator Booker, and; the Environmental Justice Act of 1992, introduced by Congressman John Lewis. Neither has been enacted into law. In the absence of a federal requirement, many states, including Michigan, have failed to take action to address these issues, and the environmental concerns of people of color are being ignored.

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<sup>2</sup> Mercedes Bravo, Rebecca Anthopolos, Michelle Bell, Marie Lynn Maranda, Racial Isolation and exposure to airborne particulate matter and ozone in understudied US populations: Environmental justice applications of downscaled numerical model output, Environment International, Environment International, Volumes 92-93, July-August 2016.

<sup>3</sup> In the matter of the Application of DTE Electric Company for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority, DTE Electric Company's Rate Case Summary, Michigan Public Service Commission, Case No. U-205761, Jul. 3, 2019.

<sup>4</sup> Specifically, DTE recently proposed to primarily develop renewable energy systems to meet demand demonstrated by customers in its Voluntary Green Pricing Program. This Program requires DTE customers to voluntarily pay more for electricity service than would otherwise be required, and is unlikely to be accessible to low-income customers who cannot afford to pay more for electricity service. *See*, In the matter of the application of DTE Electric Company for approval of its integrated resource plan pursuant to MCL 460.6t, and for other relief, 2019 Integrated Resource Plan, Michigan Public Service Commission, Case No. U-20471, Exhibit A-3, Mar. 29, 2019.

<sup>5</sup> Roger Colton, Southeast Michigan: The Economics of Affordable Water, May 2019 (on file with the Great Lakes Environmental Law Center)

<sup>6</sup> Dahlia Rockowitz, Chris Askew-Merwin, Malavika Sahai, Kely Markley, Cria Kay, Tony Reames, Household Water Security in Metropolitan Detroit: Measuring the Affordability Gap, August 2018, available at <https://poverty.umich.edu/10/files/2018/08/PovertySolutions-PolicyBrief-0818-r2.pdf>

<sup>7</sup> Id.

We know communities of color and low income are disproportionately burdened with air pollution. We know hazardous waste facilities are predominantly located in low-income communities of color. However, these concerns are not reflected in our federal environmental laws. This is continuously creating health impacts for communities of color. Today, in Detroit's communities of color, gas-fired power plants are being built, and hazardous waste facilities are being expanded. Because the concerns of communities of color are not reflected in the law and required to be addressed, our agencies that make the decisions regarding whether to allow these facilities to be built or expanded must, in accordance with the law, ignore the concerns of people of color. Put another way, the law ignores people of color, and as a result the agencies in charge of administering these laws do as well.

In regards to drinking water, the federal government's role has largely been twofold: regulating the quality of water provided by public water systems to ensure it is safe to drink, and financing drinking water infrastructure improvements through the drinking water state revolving fund program. However, the federal funds dedicated to drinking water infrastructure improvements is well short of the need. In 2019, Congress appropriated \$1.1 billion for the drinking water state revolving fund program;<sup>8</sup> the U.S. EPA has estimated that approximately \$23.6 billion is needed per year over the next 20 years to make the necessary capital improvements to public water systems to ensure the availability of safe drinking water.<sup>9</sup> Given the shortfall in federal funding, many public water suppliers are increasing water rates and making this essential service unaffordable for low-income people. However, nothing in federal law directly addresses the existing and growing water affordability crisis that is predominantly impacting communities of color and low income, and is sure to worsen in the coming years.

The most significant federal law that does address the environmental concerns of communities of color is Title VI of the Civil Rights Act of 1964, which prohibits state environmental agencies from discriminating on the basis of race, color, and national origin. However, the United States Supreme Court has interpreted this law to only prohibit "intentional" discrimination by state agencies, and not activities that have a disparate impact on communities of color.<sup>10</sup> The U.S. EPA has adopted Title VI regulations that prohibit state agencies from activities that have a discriminatory effect, regardless of intent. Theoretically, residents can submit a Title VI complaint to the U.S. EPA to address violations of the EPA's non-discrimination regulations. However, the EPA's Title VI complaint process has a well-documented history of mismanagement, making it a largely ineffectual.<sup>11</sup>

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<sup>8</sup> U.S. EPA, Annual Allotment of Federal Funds for States, Tribes, and Territories, <<https://www.epa.gov/dwsrf/annual-allotment-federal-funds-states-tribes-and-territories>>

<sup>9</sup> U.S. EPA, EPA's 6<sup>th</sup> Drinking Water Infrastructure Needs Survey and Assessment, <https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment>

<sup>10</sup> See, *Alexander v. Sandoval*, 532 U.S. 275 (2001).

<sup>11</sup> See, *Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898*. U.S. Commission on Civil Rights, September 2016, available at [https://www.usccr.gov/pubs/2016/Statutory\\_Enforcement\\_Report2016.pdf](https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf).; Evaluation of the EPA Office of Civil Rights: Final Report. Deloitte Consulting LLP. March 21, 2011.

Communities of color and low income are facing are currently being disproportionately impacted by a number of environmental risks, from air pollution to unaffordable drinking water. Without federal mandates requiring states to address these issues, most states, including Michigan, have failed to do so. At a minimum, the EPA should diligently administer its regulations prohibiting states from activities that have a disparate impact on communities of color. Even so, we need to change our laws and regulations so that they no longer ignore the long standing concerns of environmental justice communities.

## **Biography**

Nick Leonard is the Executive Director of the Great Lakes Environmental Law Center, a Detroit-based nonprofit organization that provides pro bono legal services to residents, environmental organizations, and policymakers to help address environmental issues that are impacting the health and quality of life of Michiganders. He has worked on a variety of environmental justice issues, particularly in Detroit. He is a 2014 graduate of the University of Michigan Law School, and lives with his wife on the eastside of Detroit.

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074

<http://oversight.house.gov>

September 9, 2019

Mr. Nick Leonard  
Executive Director  
Great Lakes Environmental Law Center  
4444 Second Avenue  
Detroit, MI 48201

Dear Mr. Leonard:

The Subcommittee on Environment invites you to testify at a hearing on Monday, September 16, 2019, at 2:00 p.m., at Kemeny Recreation Center, 2260 South Fort Street, Detroit, Michigan 48217.

The hearing will examine air and water pollution in Michigan, with a specific focus on Detroit and Flint, and on the disparate impacts of pollution on low-income communities and communities of color. The hearing will explore the negative health effects of living in heavily polluted areas as well as community efforts to hold industry and elected officials accountable for past and current actions.

The enclosed Witness Instruction Sheet provides information for witnesses appearing before the Committee. Please note the procedures for submitting written testimony at least two business days prior to the hearing. If you have any questions, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Harley Rouda  
Chairman  
Subcommittee on Environment

Enclosure

cc: The Honorable James Comer, Ranking Member



**Committee on Oversight & Reform**  
**Witness Instruction Sheet**

1. Witnesses should provide their testimony, biography, and "Truth in Testimony" disclosure and certification form via email to [Oversight\\_Clerks@mail.house.gov](mailto:Oversight_Clerks@mail.house.gov) no later than 10:00 a.m. two business days prior to the hearing.
2. Witnesses should also provide a short biographical summary and include it with the electronic copy of testimony provided to the Clerk.
3. At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions. Written testimony will be entered into the hearing record and may extend to any reasonable length.
4. Written testimony will be made publicly available and will be posted on the Committee's website and the U.S. House of Representatives Document Repository. It is therefore recommended that personally identifiable information, such as addresses and phone numbers, not be included in the biographical information.
5. The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.
6. Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
7. Please note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena, or testimony, promptly submit a notice of appearance to the Committee. If this applies to you, please email the address above to acquire this form.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Reform at (202) 225-5051.

# Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)\*, of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: \_\_\_\_\_

Subcommittee: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

Hearing :

Witness Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Witness Type:  Governmental  Non-governmental

Are you representing yourself or an organization?  Self  Organization

If you are representing an organization, please list what entity or entities you are representing:

If you are a **non-governmental witness**, please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current calendar year and previous two calendar years. Include the source and amount of each grant or contract. *If necessary, attach additional sheet(s) to provide more information.*

If you are a **non-governmental witness**, please list any contracts or payments originating with a foreign government and related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current year and previous two calendar years. Include the amount and country of origin of each contract or payment. *If necessary, attach additional sheet(s) to provide more information.*

### False Statements Certification

Knowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001). This form will be made part of the hearing record.

*Nick Leonard*

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Date

**If you are a non-governmental witness, please ensure that you attach the following documents to this disclosure. Check both boxes to acknowledge that you have done so.**

- Written statement of proposed testimony
- Curriculum vitae

\*Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B) shall include—

(i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and

(ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

# Nicholas E. Leonard

313-410-4918 • nicholas.leonard@glelc.org

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## EDUCATION

### **University of Michigan Law School** (Ann Arbor, MI)

- Juris Doctor, May 2014, Cum Laude
- Articles Editor for the Michigan Journal of Environmental and Administrative Law

### **Kalamazoo College** (Kalamazoo, MI)

- Bachelor of Arts, English, June 2009
- Senior Thesis: 'How Inner Cities are Redefining Nature: Ecocriticism and Urban Farming'

## EXPERIENCE

### **Great Lakes Environmental Law Center, Executive Director** (Detroit, MI) 2018-Present

- Supervise all work, including work done by our staff and law student interns and externs
- Lead all project and client development
- Raise revenues through grants, fee for service work, and donations
- Manage the organization's budgets, contracts, finances, and taxes
- Assist local government officials and non-governmental organizations in the development of local environmental policy
- Present educational workshops regarding federal, state, and local environmental regulations
- Develop comments regarding administrative orders and permits
- Develop and lead litigation to address a wide variety of environmental issues throughout the State of Michigan
- Provide pro bono transactional legal services to a variety of urban agriculture enterprises in Detroit

### **University of Michigan Dearborn, Adjunct Lecturer** (Dearborn, MI) Winter Semester 2018

- Designed and taught a 14-week class on environmental law for undergraduate students at the University of Michigan Dearborn, including weekly lectures, quizzes, and exams

### **Great Lakes Environmental Law Center, Staff Attorney** (Detroit, MI) 2016-2018

- Same responsibilities as Interim Executive Director role, except for raising revenues and managing the organization

### **Great Lakes Environmental Law Center, Equal Justice Works Fellow** (Detroit, MI) 2014-2016

- Provided a wide-array pro bono transactional legal services to nonprofit corporations, community organizations, individuals, and for-profit businesses involved in food-related projects in Detroit
- Organized and hosted the Detroit Food Entrepreneur Legal Workshop, which brought together 10 experienced attorneys and 60 Detroit-based food entrepreneurs for a series of legal workshops
- Authored and published the Detroit Good Food Enterprise Legal Handbook, a 60-page reference guide for food-based enterprises on real property law, contract law, employment law, and business law

- Authored and published a 27-page legal handbook detailing how to legally set-up a community land trust organization in the state of Michigan

### **PROFESSIONAL LICENSES**

- Licensed to practice law in Michigan, U.S. District Court Eastern District of Michigan, and U.S. District Court Western District of Michigan
- Member of Editorial Committee, Michigan Environmental Law Journal

### **ACHIEVEMENTS AND AWARDS**

- Spirit of Detroit Award (2017)
- Equal Justice Works Fellowship (2014-2016)
- Wayne State University Public Interest Law Fellowship (Summer 2012)
- Equal Justice America Fellowship (Summer 2012)
- Americorps National Service Education Reward (2011)

### **PUBLICATIONS**

- ‘Unlocking Urban Agriculture’s Potential With Municipal Policy’ Winter 2018 issue of the American Bar Association Natural Resources & Environment magazine
- ‘Utilizing Michigan Brownfield Policies to Incentivize Community-Based Urban Agriculture in Detroit’ Published in Vol. 3, Issue No. 2 of Michigan Journal of Environmental and Administrative Law (2014)
- Detroit Good Food Enterprise Legal Handbook, Self-Published (2014)
- Organizing a Nonprofit Community Land Trust: Considerations in Incorporating a Nonprofit, Drafting Bylaws, and Filing for Tax Exemption, Self-Published (2014)

### **LECTURES & SPEAKING ENGAGEMENTS**

- Guest Lecturer for Cities and Food Seminar at Wayne State University (2017)
- Guest Lecturer for Detroit Revitalization: The Role of Urban Agriculture at University of Detroit Law School (2017)
- Guest Lecturer for Transnational Environmental Law Clinic seminar at Wayne State University Law School (2018, 2017, 2016, 2015)
- Guest Lecturer for Urban Agriculture course at University of Michigan School of Natural Resources (2018, 2017, 2016, 2015)
- Guest Lecturer at Oakland University School of Public Health Regarding the Law and Environmental Justice (2018, 2017)
- Guest Lecturer for Real Property Law class at Wayne State University Law School (2016, 2015)
- Panelist for symposium hosted by the Michigan State University College of Law Journal of Animal and Natural Resource Law (2015)
- Panelist for discussion hosted by the University of Michigan Law School Food Law and Policy Association (2015)