

The ESG Paradox Revisited: Integration of Environmental Justice Criteria

Barbara Ballan*

In the age of information and climate disruption, businesses must navigate the perils of environmental degradation and deregulation and the unfolding of an informational and technological revolution. Under this context, companies can utilize innovative reporting frameworks to measure, assess, and disclose their environmental and social impacts, particularly on communities that have been historically and disproportionately affected by corporate decision-making.

This Article explores the paradox that lies at the intersection of two trending acronyms: Environmental, Social, and Governance (ESG) reporting, defined as a metric-driven approach to achieve corporate accountability and which can be imposed mandatorily by public law or voluntarily through Private Environmental Governance (PEG); and Environmental Justice (EJ), a social movement that denounces the unfair distribution of environmental impacts on vulnerable communities, and which has evolved into policies and sophisticated metrics and frameworks to assess inequalities in environmental harms caused by private and public decision-making.

Due to the current political attacks on environmental policies, mandatory ESG remains improbable. Thus, this Article analyzes how businesses are voluntarily disclosing environmental and social impacts. There are compelling reasons that justify the integration of EJ risks into sustainability reporting, including material climate-related risks, investor and consumer preferences, and achieving long-term corporate value.

* Barbara Ballan is an Assistant Professor of Environmental Law at Florida International University. She graduated from Elisabeth Haub School of Law at Pace University with an LL.M. and an SJD in Environmental Law working as the Inaugural Sustainable Business Law Fellow (2024). I am especially grateful to Professors Jason Czarnetzki, Smita Narula, Camila Bustos, and Joshua Galperin for their amazing support and guidance throughout the development and creation of this Article. I also thank Professor Howard M. Wasserman for his thoughtful feedback, and all the attendees at the Olivas Institute for their comments on earlier drafts—particularly Professors Robert L. Fischman and John Strait Applegate, whose insights were invaluable.

Corporate governance, related to corporate design, fiduciary duties, and the role of management, can adapt to integrate EJ considerations, redefining the rules and practices that shape shareholder-management relationships.

This Article argues that EJ risks and opportunities should be material for businesses to disclose. ESG reporting that integrates environmental justice objectives can also promote the long-term viability of a business. In the absence of public regulation, the integration of EJ into voluntary ESG frameworks offers an innovative interim solution for advancing environmental stewardship and responding to the urgent challenges of our time.

I.	Introduction.....	3
II.	Setting the Stage for the ESG and EJ Interplay.....	8
	A. Defining ESG and EJ	9
	1. Environmental, Social, and Governance (ESG).....	9
	2. Environmental Justice (EJ)	14
	B. Applying the Dimensions of Justice to ESG.....	15
	1. The Power of (Dis)Information in ESG: Procedural Justice....	16
	2. Change in Business as Usual: Distributive Justice.....	19
	3. Voluntary “Remedy”: Corrective Justice	25
	4. The Dual Mission Dilemma: Social Justice.....	28
III.	Why Should EJ Criteria be Considered Material for a Business?34	
	A. Climate Justice as Climate-Related Risks	36
	1. Transition Risks and Environmental Justice Impacts.....	36
	2. Physical Risks and Environmental Justice Impacts.....	38
	B. Corporate Value, Branding, and Long-Term Viability of Businesses.....	42
	1. Consumer Trends	43
	2. Long-term Viability.....	43
	3. Beyond-Compliance and Environmental Stewardship.....	44
IV.	The Integration of EJ on Corporate Governance	45
	A. Corporate Design.....	48
	B. Fiduciary Duties & The Business Judgment Rule.....	51
	C. Oversight of ESG Risks.....	53
	D. The Role of Management.....	55
	1. Specialized EJ Committees.....	56
	2. EJ-Related Tracker	57
	3. Disclosing EJ criteria on Voluntary Reporting Frameworks....	58
	4. Corporate Culture and EJ.....	60
V.	Conclusion.....	64

I. INTRODUCTION

Environmental inequities evidence the failure of traditional public environmental law and regulations and highlight the need for the development of innovative regulatory mechanisms. These innovations can come in the form of private environmental governance (PEG)¹ mechanisms and Environmental, Social, and Governance (ESG) metrics which serve as a corporate accountability tool.² ESG reporting frameworks aim to support systemic change³ but are under continuous scrutiny from scholars and market insiders who argue that ESG perpetuates business-as-usual practices rather than meaningfully disrupting extractive or inequitable economic models.⁴

Environmental justice (EJ) and ESG represent well-known terms aiming to address the current social, environmental, and economic challenges of our times.⁵ While ESG functions as a gap-filler for the defects of environmental policymaking,⁶ EJ is itself an expression of those defects—

1. Private environmental governance occurs when corporations act as public entities and perform the environmental functions typically assigned to governments, such as the reduction of negative environmental externalities. See Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 129 (2013).

2. ESG is defined as “a metrics-based approach intended to increase corporate accountability.” Colin Myers & Jason J. Czarnezki, *Sustainable Business Law? The Key Role of Corporate Governance and Finance*, 51 ENV'T L. 991, 997 (2021).

3. John Elkington, *25 Years Ago I Coined the Phrase “Triple Bottom Line.” Here’s Why It’s Time to Rethink It*, HARV. BUS. REV. (June 25, 2018), <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it> [<https://perma.cc/9B94-RMX9>] (observing that the Triple Bottom Line—an archetype for today’s ESG metrics—was meant “as a genetic code...for tomorrow’s capitalism,” but has since been “captured and diluted by accountants and reporting consultants,” leaving the single-bottom-line mindset largely intact).

4. See *Capitalism’t: The Smoke and Mirrors of ESG Investing with Tariq Fancy*, CHI. BOOTH REV. (Sep. 9, 2021), <https://www.chicagobooth.edu/review/capitalisnt-smoke-and-mirrors-esg-investing> [<https://perma.cc/Z9PU-D4PZ>] (discussing how can ESG depicts a dishonest approach to sustainability). But see *The ESG Pushback*, THE HERITAGE FOUND. (May 15, 2022), <https://www.heritage.org/environment/heritage-explains/the-esg-pushback> [<https://perma.cc/2PBC-9HR2>] (stating that ESG works as a progressive social policy). See also Elizabeth Pollman, *The Making and Meaning of ESG* 436-48 (U. of Penn., Inst. for L. & Econ., Research Paper No. 22-23, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219857 [<https://perma.cc/AQZ4-AU73>] (outlining the challenges and critiques of ESG).

5. See Jose Almanzar & Paula Schauwecker, *How ESG Efforts Can Promote Environmental Justice*, 36 AM. BAR ASS’N NAT. RES. & ENV’T 53, 53–54 (analyzing how the effects of climate change can be tackled from both ESG and EJ perspectives).

6. Jim Rossi et al., *The Gap-Filling Role of Private Environmental Governance*, 38 VA. ENV’T L.J. 1 (2020) (stating that private environmental governance works by filling up gaps in public governance). However, ESG can be presented as part of the “neoliberal turn” in environmental regulation that promotes environmental and social regulations by utilizing market-based mechanisms. See Jason J. Czarnezki, *Green Public Procurement: Legal Instruments for Promoting Environmental Interests in the United States and European Union* 14–15 (Dec. 13, 2019) (Ph.D. dissertation, Uppsala University) <https://ssrn.com/abstract=3504676>.

the failure of law and regulation to protect the most vulnerable communities from environmental degradation.⁷

This Article argues that in the face of political deregulation and the erosion of EJ protections, voluntary ESG disclosure frameworks can serve as an interim mechanism for integrating EJ criteria into corporate decision-making and sustainability reporting. ESG frameworks have the potential to operationalize EJ principles by addressing disproportionate harms to vulnerable communities while promoting long-term corporate value. However, there are existing legal and regulatory constraints that businesses must navigate to adopt these disclosures, related to corporate law and governance structures, and the political backlash against both ESG and EJ initiatives.

ESG is often criticized for serving corporate interests and reinforcing the status quo,⁸ thereby creating a paradox: ESG, a corporate tool rooted in neoliberal frameworks, is now being relied upon to advance EJ, a movement historically grounded in resistance to systemic failures. Despite this contradiction, both concepts can work together by assessing criteria and addressing the burdens of social and environmental impacts.⁹ It is within this paradox that new opportunities emerge. Thus, this Article explores how the incorporation of EJ criteria into ESG metrics can serve

7. Laura Pulido, *Geographies of Race and Ethnicity II: Environmental Racism, Racial Capitalism and State-Sanctioned Violence*, 41 *PROGRESS IN HUM. GEOGRAPHY* 524, 524 (2017) (emphasizing the role of the state in protecting the rights and well-being of all individuals, especially those who are most vulnerable to systemic inequalities). Many environmental inequities are sourced from deficiencies in the policy making apparatus. See CLIFFORD VILLA ET AL., *ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION* 24 (3d ed. 2020).

8. Although some commentators trace ESG's origins to the United Nations' sustainability initiatives, particularly the 2004 U.N. Global Compact report *Who Cares Wins* and the subsequent Principles for Responsible Investment, its modern use has largely evolved as a corporate-driven disclosure tool shaped by market-based mechanisms and voluntary private governance. See U.N. Global Compact & Swiss Fed. Dep't of Foreign Aff., *Who Cares Wins: Connecting Financial Markets to a Changing World*, THE GLOBAL COMPACT (Dec. 2004), https://www.unglobalcompact.org/docs/news_events/8.1/WhoCaresWins.pdf [<https://perma.cc/8FDQ-6FKD>]; *Principles for Responsible Investment*, United Nations (2006), <https://www.unpri.org> [<https://perma.cc/F36N-XWS3>]. This Article therefore frames ESG as a paradox in relation to EJ because ESG, despite its sustainability rhetoric, is a product of the same neoliberal regulatory turn that facilitated gaps in environmental protection in the first place. See Jason J. Czarnezki & Katherine Fiedler, *The Neoliberal Turn in Environmental Regulation*, 2016 *UTAH L. REV.* 1, 1–2 (2016) (describing neoliberalism and examples of neoliberal environmental regulations); see also CHI. BOOTH REV., *supra* note 4 (defining ESG as a form of “neoliberalism with moral satisfaction”). But see THE HERITAGE FOUND., *supra* note 4 (stating that ESG works as a progressive social policy).

9. Stacey Halliday et al., *Addressing Environmental Justice as Part of ESG Initiatives*, LAW360 (May 24, 2021), <https://www.law360.com/articles/1384123/> [<https://perma.cc/SS94-7EVY>] *Addressing-environmental-justice-as-part-of-esg-initiatives* (stating that there is an emerging synergy between ESG and EJ in policy trends that seek to protect vulnerable communities from the burdens of environmental harm)

as an innovative tool for addressing environmental injustices while simultaneously advancing businesses' long-term value.

Businesses are evolving in their structure by incorporating more sustainable designs.¹⁰ There has been a shift in environmental governance mechanisms, and private governance is “leapfrogging” traditional governmental approaches by developing and implementing standards more rapidly than public regulatory processes.¹¹ This change reflects a transformation from positive law, rooted in administrative frameworks, to a more private law and governance model.¹² At the same time, technological and artificial intelligence developments further enhance our ability to measure and compare environmental and social impacts, potentially facilitating a coordinated, metrics-driven approach to addressing EJ concerns within ESG frameworks.¹³ In parallel, the rise of activist investors brings hope for change within corporations, challenging the status quo of “business as usual.”¹⁴ However, this shift is not without backlash from conservative factions, and boards face constraints in balancing conflicting interests between shareholder wealth maximization and the pursuit of both profit and purpose.¹⁵

In recent years, an informational revolution has driven the development of tools and innovative metrics to connect environmental justice impacts with vast, publicly available data.¹⁶ Businesses use tools to report on EJ

10. See generally Alan R. Palmiter, *Sustainable Corporations* (1st ed. 2022).

11. See *id.* at 244 (describing “leapfrogging” as the process by which private governance initiatives bypass or outpace traditional public environmental regulation by establishing voluntary standards, monitoring, and enforcement mechanisms where governmental action has proven insufficient or delayed).

12. See *id.*

13. See generally Jason J. Czarnezki et al., *AI & ESG*, 55 LEWIS & CLARK L. REV. ENV'T L. 405, 415 (2025) (describing how ESG can help streamline data collection, identify patterns and trends and enable predictive analytics). See also Palmiter, *supra* note 10, at 244 (describing how the use of AI systems is transforming the way in which information is collected and how the systems are being tasked in applying that information to make decisions that were formerly made by real people).

14. See *infra* Part IV(D)(4); see also Maggie Pahl et al., *Multinational Asset Management Firms & ESG Disclosure Management*, 20 N.Y.U. J.L. & BUS. 577, 588–90 (2024) (documenting the increasing prevalence of shareholder activism aimed at encouraging voluntary ESG disclosure, including through shareholder proposals and informal pressure such as investor letters).

15. The former head of fundamental research at BlackRock Sustainable Investing stated that “Capitalism is a game with rules, and investors can’t just stop playing by those rules, and lose, because it’s ethical,” declaring that the biggest challenge for sustainable investing is the lack of alignment between risk-adjusted financial performance, ethics and the pursuit of impact. Sophie Robinson-Tillett, *Ex-BlackRock Research Head: ESG’s ‘Biggest Sin’ is Conflating Finance, Impact and Ethics*, IPE (Nov. 7, 2023), <https://ipe.com/news/ex-blackrock-research-head-esgs-biggest-sin-is-conflating-finance-impact-and-ethics/10069914.article?adredir=1> [<https://perma.cc/SX4U-BBXC>].

16. For an in-depth review of EJ mapping tools, Hannah Besse & David Rojas-Rueda, *Environmental Justice Mapping Tools in the United States: A Review of National and State Tools*, 962 SCI. TOTAL ENV'T 178449 (2025), <https://doi.org/10.1016/j.scitotenv.2025.178449>

issues, relying on pollution-oriented and demographic indicators to measure impacts on EJ communities.¹⁷

The development and integration of EJ criteria in corporate disclosure frameworks are dependent on corporate governance and legal nuances. Corporate governance establishes the relationship between shareholders and management and the rules and practices of the corporation.¹⁸ Furthermore, corporate governance relates to the fiduciary duties of directors and officers and the existence of court-constructed rules that allow for deference to directors' judgment when they act within the scope of the best interest of the corporation and in good faith.¹⁹ The increasing impact of climate risks has led to a rise in climate change litigation against directors and officers who plaintiffs perceive as neglecting their fiduciary obligations.²⁰ Nevertheless, as the economic system and regulatory landscape remain the same, the system will tend to favor regulations and laws that facilitate the externalization of environmental and social harms, including environmental injustices, while penalizing businesses that choose to internalize these costs.²¹

The political and regulatory landscape adds further uncertainty to mandatory ESG and EJ standards, both in the United States and internationally.²² This uncertainty, combined with the withdrawal of

[<https://perma.cc/CN69-4ZR4>]. See also ENVIRONMENTAL JUSTICE STATE BY STATE, <https://ejstatebystate.org/> [<https://perma.cc/L3KJ-S68F>] (last visited July 31, 2025).

17. See *infra* Part II; see also Clifford Villa et al., ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION 11 (3d ed. 2020) (Carolina Acad. Press). For purposes of this Article, “environmental justice communities” refers to communities—often low-income communities, communities of color, Indigenous communities, or otherwise marginalized populations—that experience disproportionate environmental burdens and risks, limited access to environmental benefits, and historically reduced participation in environmental decision-making processes. In the U.S., the EPA created EJScreen to provide a standardized, nationally consistent tool for assessing environmental justice concerns. However, the rollback of federal tools like EJScreen under the Trump administration has shifted reliance to state-level EJ tools and emerging community-based metrics, highlighting the urgent need for future research into standardized, equitable EJ data frameworks. For an in-depth analysis of EJ mapping tools, Besse & Rojas-Rueda, *supra* note 16. See also ENVIRONMENTAL JUSTICE STATE BY STATE, <https://ejstatebystate.org/> [<https://perma.cc/L3KJ-S68F>] (last visited July 31, 2025).

18. See *infra* Part IV. See also ALAN R. PALMITER, SUSTAINABLE CORPORATIONS 54 (2022) (defining corporate governance as a “framework for the relationship between shareholders and management”).

19. See *infra* Part IV.

20. See, e.g., Lucy Pérez et al., *Does ESG Really Matter—And Why?*, MCKINSEY Q. (Aug. 10, 2022), <https://www.mckinsey.com/business-functions/sustainability/our-insights/does-esg-really-matter-and-why?cid=soc-web> [<https://perma.cc/9M76-WAW8>].

21. See *id.*

22. See Sarah N. Lynch, *Trump administration halts environmental litigation, sidelines lawyers, sources say*, REUTERS (Jan. 24, 2025), <https://www.reuters.com/world/us/trump-administration-halts-environmental-litigation-sidelines-lawyers-sources-2025-01-24/> (stating how EJ employees were placed on paid leave after U.S. President Donald Trump assumed office); See also Ada Recinos,

federal support for EJ initiatives in the U.S., fosters reliance on voluntary, “ad hoc” private governance mechanisms to address sustainability challenges.²³ Companies will likely continue to disclose environmental and social information driven by consumer, investor, and long-term considerations, raising important questions about the legal risks, accuracy, and effectiveness of such reporting.²⁴

In recognition of the legal regulatory vacuum surrounding ESG and the interest for environmental justice data, this Article analyzes how voluntary sustainability reporting frameworks and standards can integrate environmental justice criteria and how EJ tools may fill the gaps in ESG frameworks.²⁵ Part II defines the terms ESG and EJ and explains the importance of understanding these terms together for future environmental policy considerations. Furthermore, it analyzes the intersection of ESG and EJ objectives by evaluating ESG’s capacity to catalyze not only social

Advocacy Groups Respond to Trump Nomination of Climate Risk Obstructionist Paul Atkins for SEC Chair, SIERRA CLUB (Dec. 5, 2024), <https://www.sierraclub.org/press-releases/2024/12/advocacy-groups-respond-trump-nomination-climate-risk-obstructionist-paul> [<https://perma.cc/5E78-EM6X>] (stating how the new nomination of SEC Commissioner would jeopardize the climate-disclosure rule); *See also EU Set to Cut ESG Red Tape as France Adds to Mounting Pressure*, BLOOMBERG (Jan. 22, 2025), <https://www.bloomberg.com/news/articles/2025-01-21/eu-is-set-to-cut-back-esg-reporting-rules-amid-french-demands-m66nq83f> [<https://perma.cc/78DC-FAJQ>] (stating how the EU is facing pressure to scale back its ESG reporting requirements).

23. *See EU Set to Cut ESG Red Tape as France Adds to Mounting Pressure*, BLOOMBERG (Jan. 22, 2025), <https://www.bloomberg.com/news/articles/2025-01-21/eu-is-set-to-cut-back-esg-reporting-rules-amid-french-demands-m66nq83f> [<https://perma.cc/78DC-FAJQ>] (stating how the EU is facing pressure to scale back its ESG reporting requirements).

24. *See, e.g.*, 2025 Workiva Inc., Executive Benchmark on Integrated Reporting 4-11, (2025), <https://www.workiva.com/resources/2025-executive-benchmark-integrated-reporting> [<https://perma.cc/66WC-J375>] (survey of 1,601 global executives and 222 investors finding 85% of companies will press ahead with GHG-emissions disclosure regardless of political shifts, 97% of executives believe strong sustainability reporting yields a competitive edge, and 92% of investors rank data-accuracy as foundational—evidence that market and long-term pressures drive continued E&S disclosure while simultaneously raising concerns over legal exposure, data accuracy, and overall reporting effectiveness). A 2022 survey shows that consumers believe corporate leaders have a particular responsibility to ensure their company is addressing environmental injustice and that environmental justice initiatives should be a priority for businesses. *See Justice For All Survey*, GOLIN (Sep. 7, 2022), <https://golin.com/2022/09/07/justice-for-all-survey/> [<https://perma.cc/3KNZ-KT9B>] (finding that more than 85% of Americans believe environmental injustice is important and that only one third is satisfied with corporate actions). *But see Survey: 80% of Corporations Are Reworking ESG Strategies Amid Policy Shifts*, The Conference Board (May 29, 2025), <https://www.conference-board.org/press/sustainability-under-scrutiny-2025> [<https://perma.cc/JT8M-EZUE>] (finding that 80% of sustainability executives are revising ESG programs—often dropping the term “ESG” altogether—and 90% expect anti-ESG backlash to persist or intensify, underscoring the legal-risk and messaging pressures now shaping disclosure choices).

25. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. 77, 13 (2025) (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

change but also social justice. Part III analyzes how EJ criteria can be integrated into ESG frameworks. This Part explores the reasons why EJ should be considered material for a business to disclose and explores climate justice risks as threats to a firm's long-term viability. Part IV analyzes corporate governance structures, the legal nuances surrounding these structures, and ways in which corporate governance integrates EJ criteria. Part V concludes by reflecting on the paradoxical relationship between ESG and EJ and the importance of understanding this relationship for businesses, policymakers, and EJ advocates. It describes how ESG frameworks can integrate EJ criteria when corporate governance structures are molded accordingly, always considering the "ad hoc" implementation of ESG frameworks to address environmental injustices.

II. SETTING THE STAGE FOR THE ESG AND EJ INTERPLAY

Most of the pressing issues of today are closely interlinked and include environmental, social, and economic considerations found in both EJ and ESG paradigms. In the fight against environmental injustice, ESG metrics provide an alternative method to public governance in addressing EJ issues. ESG disclosure may be used as a tool to enhance procedural rights, access to information, participation, and access to justice while facilitating the incorporation of EJ issues in corporate decision-making.²⁶

However, there are many challenges surrounding the use of ESG mechanisms to solve environmental and social injustices. Informational disclosure can be inaccessible for many EJ communities as they may lack the resources and capacity to interpret the data.²⁷ The environmental, social, and economic consequences of business mismanagement worsen the existential conditions of communities of color.²⁸ The content, data, and definitions of ESG are corporate-made, and often disregard EJ communities, who are the most affected by corporate decision-making.²⁹

The relationship between ESG and EJ reflects the challenges and opportunities of integrating these frameworks, particularly in the context of our relationship with the natural world.³⁰ This shift in perspective

26. See generally Joshua C. Gellers & Chris Jeffords, *Toward Environmental Democracy? Procedural Environmental Rights and Environmental Justice*, 18 GLOB. ENV'T POL. 99 (2018) (assessing the relationship between procedural environmental rights and environmental justice).

27. Handbook of U.S. Environmental Policy (David M. Konisky ed., 2020).

28. See Laura Pulido, Geographies of Race and Ethnicity II: Environmental Racism, Racial Capitalism and State-Sanctioned Violence, 41 PROGRESS IN HUM. GEOGRAPHY 524, 533 (2017).

29. E. Tendayi Achiume, *Ecological Crisis, Climate Justice and Racial Justice*, U.N. Doc. A/77/549 (Oct. 25, 2022).

30. The idea of nature being pristine and untouched, as depicted in Bierstadt landscapes and manifest in the early preservationist movement, is in tension with the reality that humans have already intervened in nature. The concept of "nature as a commodity" inherent in U.S. environmental

creates a tension between environmental preservation and human usage. Additionally, the competition between social concerns and environmental protection often results in tensions that highlight the existing injustices in the distribution of environmental burdens and the use of natural resources.³¹ ESG criteria aim to guide companies toward long-term sustainability and ethical business practices, but they do not address the systemic inequities that the EJ movement exposes. Because ESG frequently treats the “E” and the “S” on separate tracks, it can overlook the connections between corporate conduct and environmental-justice harms.³² For that reason, this Article incorporates EJ criteria into the definition of ESG, requiring the joint measurement of environmental and social effects on overburdened communities.

Part II builds on the relationship between EJ and ESG and analyzes the effectiveness of ESG as a mechanism to address environmental injustices. To that end, this Part employs traditional notions of justice—namely, procedural justice, distributive justice, corrective justice, and social justice—as parameters.³³

A. Defining ESG and EJ

1. Environmental, Social, and Governance (ESG)

For purposes of this Article, ESG refers to three interrelated domains widely employed in investment and disclosure frameworks to report financial and non-financial impacts and opportunities.³⁴ The environmental dimension concerns a firm’s interaction with natural systems, including emissions, energy, water, waste, land use, biodiversity, and climate-related risks.³⁵ The social dimension addresses effects on

protection laws and the ideas of sustainable development coincide with the imperatives of a system driven by the extraction of resources. Ironically, the origins of environmental protection in the United States were driven by American elites who were part of organized hunting clubs that advocated for protected game lands. *See generally* RANDALL K. WILSON, *AMERICA’S PUBLIC LANDS* (2d ed., 2020) (describing the history of public lands in the United States and the dichotomy between commodification of natural resources and environmental protection).

31. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. 77, 136-37 (2025) (describing the separation between the “E” and “S” on ESG).

32. *See generally* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. 77, 83 (2025) (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

33. Villa et al., *supra* note 7, at 6

34. *See U.N. Global Compact*, *Who Cares Wins: Connecting Financial Markets to a Changing World 1–2* (2004) (spelling out “environmental, social and governance issues” as distinct but inter-linked domains).

35. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. 77, 129 (2025) (describing the “Environmental” dimension in ESG reporting).

workers, consumers, suppliers, and communities, in addition to labor conditions and human rights, health and safety, diversity and inclusion, product integrity, and community impacts, including those falling on EJ communities.³⁶ The governance dimension concerns the structures and processes by which corporations are directed and controlled, board composition and oversight, executive compensation, internal controls and compliance, risk management, disclosure practices, and mechanisms for stakeholder engagement.³⁷ As I argue in a separate article, there is a tendency for ESG to treat the “E” and the “S” separately, producing gaps that affect the accuracy and transparency of reporting frameworks.³⁸ To bridge the gaps between the “E” and the “S,” this Article incorporates EJ criteria, particularly within the corporate governance “G” dimension, requiring that environmental and social effects on EJ communities be measured together when relevant.

The term ESG is sometimes used interchangeably with sustainability. Sustainability or sustainable development refers to environmental, social, and economic welfare defined as meeting “the needs of the present without compromising the ability of future generations to meet their own needs.”³⁹ Importantly, as emphasized in the UN Report *Our Common Future*, which provided a widely-cited definition of sustainable development, sustainability includes two critical concepts: “the concept of ‘needs,’ in particular the essential needs of the world’s poor, to which overriding priority should be given,” and “the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.”⁴⁰ This framing underlines that sustainability is not simply an aggregate or abstract goal; sustainable development must prioritize addressing inequality and disproportionate harms to disadvantaged communities.

ESG’s original purpose was to go beyond the aspirational concept of sustainability. ESG encompasses a metrics-driven approach necessary for addressing sustainability challenges.⁴¹ It introduces data that businesses

frameworks). *See, e.g., Materiality Finder, SASB STANDARDS*, <https://sasb.org/standards/materiality-finder/> [<https://perma.cc/6H3V-VBMJ>] (last visited Apr. 6, 2024).

36. *See id.*

37. *See id.*

38. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 *HASTINGS ENV’T L.J.* 77 (2025).

39. World Comm’n on Env’t and Dev., *Our Common Future*, 24, U.N. Doc. A/42/427 (1987).

40. *Id.* at 54.

41. In this Article, sustainability, sustainability reporting standards, and ESG metrics are used interchangeably as terms that define companies’ efforts to disclose information related to “climate change, waste, water and natural resources, and social and employee-related matters such as respect for human rights, workforce diversity, equity and inclusion, and board diversity.” *See* AM. BAR ASS’N, *ESG IN THE BOARDROOM: A GUIDEBOOK FOR DIRECTORS* 150 (Katayun Iris Jaffari & Stephen A.

can use to build upon transparency and accountability in their operations and promote environmental, social, and economic welfare. The term ESG has been “weaponized” and politicized to the extent that the term has become demoralized, prompting companies to refer to it as sustainability.⁴² ESG has also been criticized for its aspirational and hypothetical goals, for lacking a clear pathway for practical implementation, and for being an umbrella term.⁴³

ESG disclosure can be voluntary or mandatory reporting.⁴⁴ Voluntary reporting on ESG matters refers to the voluntary disclosing of sustainability information pursuant to disclosure standards developed by private, nongovernmental actors, while mandatory disclosure of sustainability matters is a governmental regulatory framework that mandates certain businesses for public disclosure.⁴⁵ This Article focuses on voluntary ESG disclosure, borne from Private Environmental Governance (PEG). The evolution of private governance in this field is becoming highly relevant due to continuing public deregulation and the current political landscape, which makes this area of research a fertile ground to explore innovative ways by which society, through corporate actors, can advance the protection of the people and the planet.

For voluntary ESG, reporting materiality is a broad concept by which businesses are required to identify their main sustainability issues to report.⁴⁶ Materiality is context-based and carries different interpretations depending on the context in which it is applied. What is considered “material” by a business is paramount for understanding the relationship

Pike eds., 2022). The term ESG gained traction due to its emphasis on a metric-driven approach to corporate accountability, distinguishing it from the broader and often more nebulous concept of sustainability. Recently, many businesses have shifted away from using “ESG” and have returned to “sustainability reporting” as the preferred term, especially as of 2023. This shift likely stems from the politicization of the term “ESG,” and an effort to diffuse or abstract the concept, allowing companies to sidestep accountability. Despite the evolving terminology, it’s critical to focus on the substance of disclosures—the environmental, social, and governance pillars—rather than the term used. *See e.g.*, Isla Binnie, *BlackRock’s Fink Says He’s Stopped Using ‘Weaponised’ Term ESG*, REUTERS (June 26, 2023, 4:19 PM), <https://www.reuters.com/business/environment/blackrocks-fink-says-hes-stopped-using-weaponised-term-esg-2023-06-26/> [<https://perma.cc/PW96-HXL5>].

42. Binnie, *supra* note 41.

43. Elizabeth Pollman, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403, 436–38 (2024).

44. AM. BAR ASS’N, *supra* note 41, at 150, 159.

45. *Id.* at 150 (defining mandatory and voluntary ESG disclosure frameworks).

46. *See* Ballan, *supra* note 25 (analyzing materiality-based considerations in voluntary ESG reporting).

between ESG and EJ considerations because it determines whether the business chooses to disclose certain EJ information.⁴⁷

In *TSC Indus., Inc. v. Northway, Inc.* the U.S. Supreme Court held that, in order for an omitted fact to be material, there must be “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”⁴⁸ Most investor-oriented reporting frameworks such as the International Sustainability Standards Board (ISSB) adopt the U.S. securities laws view of materiality.⁴⁹ This “traditional financial materiality approach” accounts only for financial-associated risk that impacts from inside the company, as opposed to EJ risks, which have generally been considered impacts happening “outside” the company. Thus, this approach is considered less receptive to EJ as a material topic because the risks to environmental justice communities are not quantifiable as financial losses for the company if they are not internalized.⁵⁰

On the other hand, the EU’s concept of materiality has been expanded to encompass more than traditional financial materiality.⁵¹ Reporting frameworks like the Global Reporting Initiative (GRI) adopt this broader view, known as “double materiality,”⁵² which is much more prone to integrate EJ criteria because it considers environmental and social impacts happening both outside and inside the company.⁵³

47. See generally Barbara Ballan, *Integrating Environmental Justice Criteria into Voluntary ESG Disclosure Frameworks*, AM. BAR ASS’N, SECTION OF ENV’T, ENERGY & RES. (Jan. 21, 2025) (outlining the importance of materiality for EJ considerations).

48. See *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976).

49. See Ballan, *supra* note 25 (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

50. See Matthias Täger, ‘Double Materiality’: *What is it and Why Does it Matter?*, LONDON SCH. OF ECON. AND POL. SCI. (Apr. 21, 2021), <https://www.lse.ac.uk/granthaminstitute/news/double-materiality-what-is-it-and-why-does-it-matter/> [<https://perma.cc/WU5M-TDFE>] (explaining the concept of double materiality); see also Natalie Runyon, *5 Steps to Executing a Materiality Assessment for ESG Risk*, REUTERS (Feb. 21, 2023), <https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/esg-materiality-assessment/> [<https://perma.cc/U2WX-Q8TX>] (explaining the differences between the two types of materiality assessments that companies may undertake).

51. Brian Tomlinson & Lucy Godshall, *Doubling Down: ESG Regulation Gives Materiality a Bigger Stake*, EY (Aug. 22, 2023), https://www.ey.com/en_us/insights/assurance/esg-regulation-gives-materiality-a-bigger-stake [<https://perma.cc/JEX2-PF69>] (describing how the definition of materiality has expanded in the last few years); Ingo Steinhäuser, *Financial Materiality: Understanding the Financial Performance of ESG Strategies*, THOMSON REUTERS (Sep. 7, 2022), <https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/financial-materiality-esg/> [<https://perma.cc/HUV3-2VE6>].

52. See Täger, *supra* note 50.

53. *Id.* (explaining the concept of double materiality); see also Runyon, *supra* note 50 (explaining the differences between the two types of materiality assessments that companies may undertake).

Companies use ESG metrics to demonstrate social and environmental consciousness to investors and consumers, aiming to achieve real long-term value for the corporation.⁵⁴ Regardless of the underlying intentions, ESG disclosure is increasingly demanded by consumers, investors, and other stakeholders.⁵⁵ From an investor's point of view, shareholder activists are using formal and informal avenues to push companies toward voluntary disclosure of environmental and social criteria to influence corporate behavior.⁵⁶

Thus, ESG provides a flexible framework that can vary widely by context and evolve over time, appealing to a broad range of investors and stakeholders.⁵⁷ This flexibility has contributed to its success, but it also introduces challenges, such as difficulty in establishing a direct causal relationship between ESG practices and financial performance, proliferation of ratings that may not align with the purposes of ESG, and potential trade-offs between issues such as carbon emissions and labor interests.⁵⁸ Arguably, ESG can lead to confusion, unrealistic expectations, and greenwashing, which can harm a company's reputation and lead to corporate accountability issues.⁵⁹

Furthermore, the term is criticized for its lack of a fixed definition and potential for sustainability arbitrage, where good performance in one area can mean poor practices in another.⁶⁰ Balancing the interests of environmental and social concerns can also present challenges, leading to conflicts and questions about whether ESG investors truly adhere to their stated goals.⁶¹ The term "ESG" has faced critiques, leading to its censure and even replacement with alternative terms. For instance, BlackRock CEO Larry Fink's annual letter to investors shifted focus towards energy pragmatism, omitting references to ESG.⁶²

54. Myers & Czarniecki, *supra* note 2, at 997 (defining ESG as a "metrics-based approach intended to increase corporate accountability").

55. More Than 680 Financial Institutions with US\$130+ Trillion in Assets Call on Nearly 10,400 Companies to Disclose Environmental Data through CDP, CDP (Mar. 14, 2022), <https://www.cdp.net/en/articles/media/More-than-680-financial-institutions-call-on-nearly-10400-companies-to-disclose-environmental-data-through-CDP> [<https://perma.cc/V7H2-JHSA>].

56. See *infra* Part IV.E.; see also Maggie Pahl et al., Multinational Asset Management Firms & ESG Disclosure Management, 20 N.Y.U. J.L. & BUS. 577, 587 (2024)

57. Pollman, *supra* note 43, at 434.

58. *Id.* at 407.

59. *Id.* at 443; see also Barbara Ballan & Jason J. Czarniecki, *Disclosure, Greenwashing & The Future of ESG Litigation* 81 WASH. & LEE L. R. 545 (2024) (analyzing the impact of ESG disclosure in greenwashing litigation).

60. Pollman, *supra* note 43, at 439-440.

61. See *id.* at 438-439.

62. See *Larry Fink's 2024 Annual Chairman's Letter to Investors*, BLACKROCK, <https://www.blackrock.com/corporate/investor-relations/larry-fink-annual-chairmans-letter> [<https://perma.cc/WCU7-WVTL>] (last visited May 3, 2024); see also Ramsey Touchberry,

Nonetheless, the rapid rise of the term ESG over the last years underscores its integration into the culture of the modern 21st century. ESG has become a central part of global dialogue on corporate governance, management, and investment, serving as a vehicle for incorporating broader social and environmental considerations into business operations and decisions.⁶³

2. Environmental Justice (EJ)

Environmental justice (EJ) is also considered an umbrella term that presents challenges for implementation. One definition of EJ is: “those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities, where people can interact with confidence that their environment is safe, nurturing, and protective.”⁶⁴ Furthermore, EJ can be defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁶⁵ However, some critics argue that the various definitions of EJ are too broad and aspirational, failing to clearly articulate specific objectives and goals.⁶⁶ EJ advocates denounce that the system perpetuates an unhealthy dynamic between racial capitalism and environmental racism.⁶⁷ This systemic dynamic works as a “state-sanctioned racial violence.”⁶⁸ The social and economic costs of capitalist production unequally impact EJ

BlackRock’s Larry Fink Ditches ESG for ‘Energy Pragmatism’, WASH. TIMES (Mar. 26, 2024), <https://www.washingtontimes.com/news/2024/mar/26/blackrocks-larry-fink-ditches-esg-for-energy-pragm/> [https://perma.cc/7QEZ-CG5G] (describing Larry Fink’s letter and the replacement of terms).

63. Pollman, *supra* note 43, at 425–27 (explaining that ESG now functions as a set of “information, issues, factors, or criteria” integrated into mainstream investment analysis and describing the proliferation of frameworks that use ESG to structure investor–corporate dialogue on social questions).

64. Clifford Villa et al., *Env’t Justice: Law, Policy & Regul.* 11 (3d ed. 2020).

65. This was the EPA’s long-treated definition prior to recent federal actions curtailing EJ efforts. See *Environmental Justice-Related Terms As Defined Across the PSC Agencies*, EPA (May 13, 2013), <https://www.epa.gov/sites/default/files/2015-02/documents/team-ej-lexicon.pdf>.

<https://perma.cc/UYF4-KMRZ> This definition continues to function as a baseline because some state laws and policies have adopted similar language. See, e.g., N.J. Stat. Ann. § 13:1D-157 (New Jersey EJ Law); Cal. Gov’t Code § 65040.12(e)(1) (California EJ Law). See also Barbara Ballan, *EJ Metrics and ESG*, AMERICAN BAR ASSOCIATION (Apr. 7, 2026), https://www.americanbar.org/groups/environment_energy_resources/resources/ (explaining that the 2025 rollback of federal environmental justice initiatives and the rise of state EJ tools).

66. See Clifford Villa et al., *Env’t Justice: Law, Policy & Regul.* 11 (3d ed. 2020).

67. See Laura Pulido, *Geographies of Race and Ethnicity II: Environmental Racism, Racial Capitalism and State-Sanctioned Violence*, 41 *PROG. IN HUM. GEOGRAPHY* 524, 529–530 (2017) (linking environmental racism to racial capitalism by showing how state policies and regulatory choices enable the disproportionate exposure of marginalized communities to environmental harm).

68. See *id.* (arguing that environmental racism is constituent of racial capitalism).

communities.⁶⁹ Thus, in order to understand and analyze EJ issues, it is necessary to recognize that environmental racism is a function of racial capitalism and is also linked to the needs of vulnerable communities.⁷⁰

Robert R. Kuehn's four-part taxonomy of environmental justice frames the "justice" element of EJ as (1) distributive justice, (2) procedural justice, (3) corrective justice, and (4) social justice.⁷¹ Each of these notions helps understand the overarching concept of EJ because it allows the reader to conceptualize the different definitions and principles of EJ with particularity and allows a greater awareness of environmental injustices.⁷² The next section analyzes each of these notions and the use of ESG for achieving their objectives.

This Article argues that there is potential for the integration of EJ concerns within the framework of ESG as an alternative governance mechanism. The intersection between the two concepts—especially in terms of policy considerations—is rooted in their shared focus on addressing environmental, social, and economic issues.⁷³ By combining their efforts, these concepts can serve as tools for identifying environmental inequities, informing corporate decision-making, and supporting EJ communities. Furthermore, the scope of EJ should go beyond traditional public regulations and enforcement mechanisms to encompass other forms of governance, including the creation of innovative regulatory mechanisms, such as ESG disclosures.⁷⁴ This underscores the idea that EJ objectives must be analyzed alongside ESG objectives to draw parallels and assess their effectiveness as an alternative mechanism to fight against environmental injustices.

B. Applying the Dimensions of Justice to ESG

By categorizing EJ concerns into the four dimensions of justice (procedural, distributive, corrective, and social), this section provides a framework to apply, analyze, and address various aspects of ESG-related challenges and opportunities related to EJ. This chosen taxonomy moves beyond narrow definitions of EJ and encompasses a more comprehensive

69. The Routledge Handbook of Environmental Justice 61 (R. B. Holifield et al. eds., 2018).

70. Laura Pulido, *supra* note 67, at 530.

71. Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENV'T L. REP. 10681, 10681–82 (2004).

72. *Id.* at 10703.

73. See Jose Almanzar & Paula Schauwecker, *How ESG Efforts Can Promote Environmental Justice*, AM. BAR ASS'N NAT. RES. & ENV'T, Spring 2022, at 53, 53–54 (analyzing how the effects of climate change can be tackled from both ESG and EJ perspectives).

74. Villa et al., *supra* note 7, at 6.

range of concerns.⁷⁵ It recognizes that EJ encompasses procedural and distributive aspects, along with broader social considerations.⁷⁶ However, not all the notions of justice are applied equally across ESG formulations, and the effectiveness of ESG remains unclear when juxtaposed with fundamental notions of EJ.

1. The Power of (Dis)Information in ESG: Procedural Justice

The application of ESG for the pursuit of procedural justice focuses on two key factors: (1) the informational value that ESG can provide to tackle environmental injustices, and, conversely, (2) the challenges that ESG information poses for achieving procedural justice. These challenges are related to access to information, participation, and access to justice of the vulnerable communities to ESG data.

The maxim “what gets measured gets managed” indicates the importance of corporations’ disclosure mechanisms to manage environmental injustices.⁷⁷ Historically, EJ has relied on data and statistical analysis to show environmental injustices and demonstrate that poor communities and minority communities bear a disproportionate share of environmental burdens.⁷⁸ ESG could serve as a useful tool for EJ purposes if applied with the correct metrics and combined with EJ tools.⁷⁹

When voluntarily disclosing ESG, companies choose to disclose environmental, social, and governance information as part of their corporate strategy, for advertising purposes, risk management, and to address shareholders’ interests, aligning with the belief that ESG contributes value.⁸⁰ On the other hand, stakeholders started pressuring regulators to create mandatory disclosures.⁸¹ The U.S. regulation on mandatory reporting is grounded in materiality considerations and specific line-item disclosure requirements by Security Exchange Commission (SEC).⁸²

75. Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENV’T L. REP. 10681, 10688 (2004).

76. *Id.*

77. Palmiter, *supra* note 10, at 349

78. James Salzman & Barton H. Thompson Jr., *Environmental Law and Policy* 39 (5th ed. 2019).

79. *See infra* Part II.B.2. analyzing the use of EJ indicators in ESG metrics for distributive justice purposes.

80. Palmiter, *supra* note 10.

81. *Id.* at 349.

82. To date, the SEC released and later paused the implementation of its final Climate-Related Disclosures rule, aimed at enhancing climate change disclosures by public companies. The decision to pause implementation, announced on April 1, 2024, was likely due to multiple constitutional challenges. *See* Petition for Review, *West Virginia v. U.S. Sec. Exch. Comm’n*, No. 24-____ (11th

There are existing challenges surrounding the use of ESG disclosure for the enhancement of EJ purposes from a procedural justice perspective. First, there is a lack of transparency in the assessment and methodologies used to create the scorecards by ESG ratings⁸³ as well as, second, a lack of consistency in their application.⁸⁴ Third, ESG can refer to “self-created standards” whereby businesses claim to be environmentally friendly without the support of independent third-party certification,⁸⁵ resulting in a so-called “greenwashing” of consumers and investors.⁸⁶

Cir. Mar. 6, 2024). On March 15, 2024, the U.S. Court of Appeals for the Fifth Circuit granted a request from two oilfield companies and temporarily paused the new rules issued by the SEC. Andrew Ramonas, *SEC Climate Disclosure Regulations Paused by Fifth Circuit (2)*, BLOOMBERG L. (Mar. 15, 2024), <https://news.bloomberglaw.com/daily-tax-report-international/sec-climate-disclosure-regulations-paused-by-fifth-circuit-court> [https://perma.cc/27KN-CZQE]. See *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334 (proposed Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, 249); 17 C.F.R. § 270.35d-1 (2023); *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, 87 Fed. Reg. 36654 (proposed June 17, 2022) (to be codified at 17 C.F.R. pts. 200, 230, 232, 239, 249, 274, 279); 29 C.F.R. § 2550 (2022). State lawmaking has also focused on these considerations. For example, California has passed two laws that require companies to disclose their direct and indirect greenhouse gas (GHG) emissions and climate-related financial risks. See *Climate Corporate Data Accountability Act*, S.B. 253, 2023–2024 Leg., Reg. Sess. (Cal. 2023); *Greenhouse Gasses: Climate-related Financial Risk*, S.B. 261, 2023–2024 Leg. Reg. Sess. (Cal. 2023). The European Union has been at the forefront of climate legislation, influencing U.S. legislation and litigation trends. See, e.g., *Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting*, 2022 O.J. (L 322) (recognized as the “Corporate Sustainability Reporting Directive”). In March 2024, the EU Parliament adopted its position on the Green Claims Directive to establish a verification and pre-approval system for environmental marketing claims to protect citizens from misleading ads. See *European Parliament Press Release, Parliament Wants to Improve Consumer Protection Against Misleading Claims* (Mar. 12, 2024).

83. ESG ratings aim to furnish market participants with details on the effectiveness of a company's ESG initiatives, and any possible risks associated with its societal or environmental involvement. Brian Tayan, *ESG Ratings: A Compass without Direction*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 24, 2022), <https://corpgov.law.harvard.edu/2022/08/24/esg-ratings-a-compass-without-direction> [https://perma.cc/K9FQ-JWNT].

84. However, many ESG defenders argue that “having seemingly conflicting information is better than having no information at all.” ALAN R. PALMITER, *SUSTAINABLE CORPORATIONS* 391 (2022).

85. Atsuko Okubo, *Environmental Labeling Programs and the GATT/WTO Regime*, 11 GEO. INT'L ENV'T L. REV. 599, 608 (1999). See also Jason J. Czarnezki et al., *Creating Order Amidst Food Eco-Label Chaos*, 25 DUKE ENV'T L. & POL'Y F. 281, 283–84 (2015).

86. Greenwashing has been defined as “the act of misleading consumers regarding the environmental practices of a company . . . or the environmental benefits of a product or service.” Another category introduced in the context of climate change pertains to “climate washing.” This specific type of greenwashing is expected to increase in the upcoming years and refers to misleading or overstating advertising related to carbon neutral or net zero pledges in the context of climate change. Magali A. Delmas & Vanessa Curel Burbano, *The Drivers of Greenwashing*, 54 CAL. MGMT. REV. 64, 66(2011). See also LISA BENJAMIN ET AL., *THE CLIMATE SOC. SCI. NETWORK, CLIMATE-WASHING LITIGATION: LEGAL LIABILITY FOR MISLEADING CLIMATE COMMUNICATIONS* 4–6 (2022). See also Barbara Ballan & Jason Czarnezki, *Disclosure, Greenwashing & The Future of ESG*

When a business discloses information, it must follow certain regulations and guidelines to mitigate litigation risks associated with ESG disclosure greenwashing.⁸⁷ Greenwashing claims related to ESG disclosure are regulated by both securities laws and regulations⁸⁸ and consumer protection laws and regulations.⁸⁹ Courts must use a materiality standard to assess whether the information being disclosed—or omission not being disclosed—by businesses is relevant enough to be significant to a reasonable investor when making decisions based on financial statements,⁹⁰ or to a reasonable consumer when purchasing a product that promotes ESG qualities.⁹¹ Thus, under this premise, ESG disclosure primarily revolves around shareholders and consumers because litigation risks are predominantly associated with these stakeholders.⁹²

As a result of consumer- and investor-oriented ESG, there is a second challenge: the way ESG data is collected, handled, and processed. Voluntary ESG suffers from a democracy deficit because it lacks participation, reason-giving, and deliberative decision-making.⁹³ ESG as a policy mechanism should be democratic in the decision-making process if it intends to achieve procedural justice.⁹⁴ However, given its origin as a corporate-driven, voluntary initiative, this may be difficult, even impossible, to achieve.

Furthermore, procedural justice entails fair treatment, and demands that the governing rules, regulations, evaluation criteria, and enforcement are applied in a non-discriminatory way.⁹⁵ ESG targets shareholders and consumers. Although the former may include EJ communities, eco-friendly and sustainable products generally leave behind consumers that

Litigation 81 WASH. & LEE L. R. 545 (2024) (analyzing the impact of ESG disclosure in greenwashing litigation).

87. Complaints can also refer to ESG litigation arising from retirement funds beneficiaries suing the fund provider for divesting or for *not* divesting funds in fossil fuel companies. Barbara Ballan & Jason J. Czarnetzki, *Disclosure, Greenwashing & The Future of ESG Litigation*, 81 WASH. & LEE L. R. 545 (2024). *See, e.g.*, Complaint Jury Trial Demanded, *Wong v. N.Y.C. Emps.*, Ret. Sys., No. 652297/2023 (N.Y. Sup. Ct. May 11, 2023).

88. *See generally* Barbara Ballan & Jason Czarnetzki, *Disclosure, Greenwashing & The Future of ESG Litigation*, 81 WASH. & LEE L. REV. 545 (2024).

89. *Id.*

90. *Id.*

91. *See* Paul Munter, *Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors*, U.S. SEC. AND EXCH. COMM'N (Mar. 9, 2022), <https://www.sec.gov/news/statement/munter-statement-assessing-materiality-030922> [<https://perma.cc/JNM6-BRK7>].

92. *See generally* Barbara Ballan & Jason Czarnetzki, *Disclosure, Greenwashing & The Future of ESG Litigation*, 81 WASH. & LEE L. REV. 545 (2024).

93. Joshua Ulan Galperin, *Environmental Governance at the Edge of Democracy*, 39 VA. ENV'T L.J. 70, 76 (2021).

94. *Id.*

95. Robert D. Bullard, *Overcoming Racism in Environmental Decisionmaking*, ENV'T: SCI. AND POL'Y FOR SUSTAINABLE DEV., May 1994, at 10, 12.

represent EJ communities.⁹⁶ Thus, the concept of materiality that covers the ESG disclosure regulatory landscape inherently biases the process by which data is collected and assessed to benefit consumers and lower the risks for shareholders.⁹⁷ As a result, ESG currently exhibits undemocratic characteristics by failing to prioritize procedural justice. Without agreement from all affected parties on a fair process, both distributive and procedural justice will remain elusive. In the absence of such agreement, outcomes will continue to favor consumers and shareholders over environmental justice communities that disproportionately bear environmental harms and remain excluded from ESG decision-making processes.⁹⁸

Overall, while ESG can play a crucial role in enhancing procedural justice, there are significant challenges that must be addressed. The lack of transparency and consistency in ESG assessment and the way ESG data is collected and processed pose significant obstacles in achieving fair treatment for vulnerable communities.

2. Change in Business as Usual: Distributive Justice

Distributive justice can be defined as “the right to equal treatment, that is, to the same distribution of goods and opportunities as anyone else has or is given.”⁹⁹ In essence, distributive justice is concerned with how environmental welfare and environmental degradation are distributed among the society, and the fairness and equity of this distribution.¹⁰⁰ Private-public partnerships can contribute to distributive justice by channeling the environmental and economic benefits of ESG into communities of color and lower-income communities that have historically borne disproportionate environmental burdens. These benefits

96. Alison Stine, *Can You Afford to Be Green When You're Not Rich? I Kept a Diary to Find Out*, THE GUARDIAN (July 29, 2019), <https://www.theguardian.com/lifeandstyle/2019/jul/29/eco-friendly-going-green-poor-cost-diary> [https://perma.cc/3AR8-ARR9] (describing how eco-friendly consumer choices, such as purchasing organic food, or buying sustainable household products, often require higher upfront costs and additional time that are unavailable to many low-income consumers).

97. See Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. at 77 (2025) (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

98. See Medora Lee, 'Woke' or Not, Many Americans Ignore ESG in Investing, Despite Political Tug-of-War, USA TODAY (May 22, 2023), <https://www.usatoday.com/story/money/personalfinance/2023/05/22/woke-esg-investing-americans-care-less/70244847007/> [https://perma.cc/C6K6-4YPV] (showing that most Americans ignore ESG in investing).

99. Ronald Dworkin, *Taking Rights Seriously* 273 (1977).

100. Carolyn Stephens & Chris Church, *Environmental Justice and Health*, INT'L ENCYCLOPEDIA OF PUB. HEALTH 373, 375 (1st ed. 2008).

may include healthier built environments, reduced energy costs, and improved access to sustainable infrastructure.

For example, the green construction movement consists of a practice of the U.S. Green Building Council and the Leadership in Energy and Environmental Design (LEED) certification programs to change the impact of buildings on natural resources and human occupants.¹⁰¹ The movement contributed to the creation and expansion of environmentally friendly technologies and products and provided viable means to businesses to reduce the negative impacts of the buildings they occupy.¹⁰² LEED Certification is required in many local and state governments across the U.S.¹⁰³

Even with political turmoil, commentators predicted that market demand, state incentives, and private certification schemes would keep green construction on track.¹⁰⁴ Federal rollbacks only heighten the moral and financial case for LEED, material transparency, and ESG-oriented real-estate investment, with occupant health now perhaps the most powerful driver of adoption.¹⁰⁵

Furthermore, the process of risk assessment is linked to distributive justice because it focuses on lowering risks related to environmental pollution and climate-related risks that are disproportionately borne by environmental justice communities.¹⁰⁶ In risk assessment, the conditions of exposure to air and water pollutants, toxic chemicals, hazardous waste, and climate-related stressors are defined, adverse effects of a proposed activity are identified, probabilistic relationships between exposure and effect are determined, and overall risks are calculated.¹⁰⁷ By focusing on

101. See *LEED Rating System*, U.S. GREEN BLDG. COUNCIL, <https://www.usgbc.org/leed> [<https://perma.cc/3PW9-V2Q8>] (last visited Apr. 9, 2023).

102. AM. BAR ASS'N, *ESG IN THE BOARDROOM: A GUIDEBOOK FOR DIRECTORS* 223–24 (Katayun Iris Jaffari & Stephen A. Pike eds., 2022). However, LEED Certification has been criticized for its vulnerability to climate-related disasters. See ‘*A contradiction*’: *U.S. subsidizes ‘sustainable’ buildings, but leaves them vulnerable to floods*, POLITICO (Sep. 25, 2023), <https://www.politico.com/news/2023/09/25/leed-buildings-climate-floods-00104477> [<https://perma.cc/N5F7-RXTE>].

103. See *USGBC Policy Library*, U.S. GREEN BLDG. COUNCIL, <https://public-policies.usgbc.org/> [<https://perma.cc/VQX3-ZY7R>] (last visited Oct. 4, 2024).

104. Ken Edelstein, *Will Trump Deconstruct Green Building Progress?*, LIVING BLDG. CHRONICLE (Feb. 6, 2017), <https://livingbuilding.kendedafund.org/2017/02/06/trump-deconstruct-green-building-progress/index.html> [<https://perma.cc/A9T9-ZWHD>] (noting, in 2017, that “the green building industry is driven by market forces and will continue to grow”).

105. Daniel Piselli, *Trump Administration Climate Policy Rollbacks Threaten Occupant Health. Architects and Manufacturers Have a Moral Imperative to Build Without Doing Harm*, ARCHITECT’S NEWSPAPER (Apr. 10, 2025), <https://www.archpaper.com/2025/04/trump-climate-policy-rollbacks-moral-imperative-build-without-harm/> [<https://perma.cc/CU25-J5WX>].

106. Distributive justice refers to “a lowering of risks, not a shifting or equalizing of existing risks.” Villa et al., *supra* note 33, at 12.

107. Philip Weinberg & Kevin Reilly, *Understanding Environmental Law* 24 (4th ed. 2022).

the risk aspect of distributive justice there is a direct outcome for the application of ESG. Notably, ESG is a form of risk management¹⁰⁸ and can serve as an incentive for industries to undertake self-regulation, reduce risky activities, and identify regulatory gaps.¹⁰⁹

Arguably, corporate governance is driven by market practices that emphasize short-term goals that account for the “managerial myopia,” a tendency by corporate managers to prioritize immediate returns over long-term social, environmental, and economic consequences.¹¹⁰ Limited liability in U.S. corporate law encourages the externalization of costs and makes corporations less responsible for environmental and social harms.¹¹¹

In practice, the board of directors and senior management are under significant pressure to deliver short-term results.¹¹² However, ESG data shifts the short-term focus and requires the board of directors to consider and assess the business’ impacts to environmental degradation and human risks in the long-term.¹¹³ Investors and lenders rely on ESG data to assess a firm’s risk exposure as well as its future financial performance.¹¹⁴ Similarly, communities and consumers rely on this data for their advocacy and purchasing decisions.¹¹⁵

The Global Reporting Initiative (GRI) is an ESG framework that adopts a “double materiality” standard, considering both the company’s impacts on the environment and people, as well as the risks to the business itself.¹¹⁶ This approach can be extended to include EJ risks as material risks, developing metrics that assess risk management from this perspective.

108. Adam Gorley, *What is ESG and Why It's Important for Risk Management*, SUSTAINALYTICS (Mar. 2, 2022), <https://www.sustainalytics.com/esg-research/resource/corporate-esg-blog/what-is-esg-why-important-risk-management> [<https://perma.cc/96J4-T8XC>].

109. Villa et al., *supra* note 33, at 12.

110. ERIKA GEORGE, INCORPORATING RIGHTS: STRATEGIES TO ADVANCE CORPORATE ACCOUNTABILITY 47 (2021). *But see* Ken Edelstein, *Will Trump Deconstruct Green Building Progress?*, *Living Building Chronicle* (Feb. 6, 2017), <https://livingbuilding.kendedafund.org/2017/02/06/trump-deconstruct-green-building-progress/index.html> [<https://perma.cc/4QYU-U4CU>] (contending that strong market demand for healthy, energy-efficient buildings provides a counterweight to any federal rollback on LEED and similar certifications).

111. *See infra* Part IV. *See also* Palmiter, *supra* note 10, at 226.

112. *See infra* Part IV. *See also* Palmiter, *supra* note 10, at 144–48.

113. *See infra* Part IV. *See also* Palmiter, *supra* note 10, at 144–48.

114. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. (2025) (assessing how GRI framework incorporates EJ criteria). *See also* Maggie Pahl et al., *Multinational Asset Management Firms & ESG Disclosure Management* 10-11, N.Y.U. L. & BUS. J. (forthcoming 2024).

115. Gorley, *supra* note 108.

116. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. (2025) (assessing how GRI framework incorporates EJ criteria). *See also* GLOB. REPORTING INITIATIVE, A SHORT INTRODUCTION TO THE GRI STANDARDS (n.d.),

For instance, an ESG framework that incorporates EJ criteria may help prevent waste dumps and industrial facilities from being situated in EJ communities by providing data on contamination sites and disproportional environmental burdens. Integrating indicators related to environmental, demographic, epidemiological, and procedural factors into ESG metrics can help address unfair exposure to unhealthy environmental conditions. EJ tools can assist companies in identifying EJ communities during risk assessments and avoiding areas vulnerable to further industrial exposure.¹¹⁷

During the last few years, governments and institutions have developed public tools for industries to report EJ issues.¹¹⁸ In the U.S., chemical industries have reported EJ efforts and the use of the federal tool created by EPA, EJScreen, to identify areas that have been disproportionately impacted by their operations.¹¹⁹ During President Trump's second administration, EPA's EJScreen tool has been discontinued (although there is an available copy online), and it remains uncertain whether businesses will continue to disclose the use of this tool.¹²⁰ Nevertheless, there are other state tools and community tools that may assist companies in disclosing EJ impacts.¹²¹ EJ tools identify areas with environmental quality issues and low-income population indicators.¹²² Businesses can use

<https://www.globalreporting.org/media/wtaf14tw/a-short-introduction-to-the-gri-standards.pdf> [<https://perma.cc/U278-ECET>].

117. See generally U.S. ENVIRONMENTAL PROTECTION AGENCY, EJSCEEN TECHNICAL DOCUMENTATION (July 2024), <https://www.epa.gov/system/files/documents/2024-07/ejscreen-tech-doc-version-2-3.pdf> [<https://perma.cc/547M-Q8J5>]

118. See Hannah Besse & David Rojas-Rueda, *Environmental Justice Mapping Tools in the United States: A Review of National and State Tools*, 962 SCI. TOTAL ENV'T 178449 (2025) (for an in-depth analysis of EJ mapping tools). See also ENVIRONMENTAL JUSTICE STATE BY STATE, <https://ejstatebystate.org/> [<https://perma.cc/M3EF-SAAAY>] (last visited July 31, 2025).

119. See Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. (2025) (stating how chemical companies such as Chemours, Eastman, Dow Chemicals and Dupont stated the use of EJ tools their sustainability reports).

120. See U.S. ENVIRONMENTAL PROTECTION AGENCY, ENVIRONMENTAL JUSTICE SCREENING AND MAPPING TOOL (Version 2.3) (unofficial copy), <https://pedp-ejscreen.azurewebsites.net> [<https://perma.cc/8RHJ-BG3K>] (last visited Jan. 23, 2026); See also *EPA to end environmental justice programs, monitoring tools*, UTILITY DIVE (Mar. 13, 2025), <https://www.utilitydive.com/news/ejscreen-environmental-justice-programs-terminated-epa-zeldin-trump/742532/> [<https://perma.cc/AY4S-2ME8>].

121. See *Can the Environmental Justice Movement Survive Trump's Attacks? This EJ Warrior Says Yes*, NRDC (Apr. 1, 2025), <https://www.nrdc.org/stories/can-environmental-justice-movement-survive-trumps-attacks-ej-warrior-says-yes> [<https://perma.cc/TM24-K6T2>] (stating how the EJ movement can survive by the use of data and EJ tools that empower EJ communities).

122. See, e.g., CAL. OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, CALENVIROSCREEN, <https://oehha.ca.gov/calenviroscreen> [<https://perma.cc/P5MK-7327>] (last visited Apr. 9, 2023); WASH. STATE DEP'T OF HEALTH, WASHINGTON ENVIRONMENTAL HEALTH DISPARITIES MAP, <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map> [<https://perma.cc/M555-2N6R>] (last visited Apr. 9, 2023); N.Y.

these tools to create new certification schemes and track the business progress in EJ indicators. Compliance with these standards can lead businesses to avoid areas mapped and screened for facility siting, while offering support to areas exposed to environmental degradation.¹²³

However, there are several challenges surrounding the effectiveness of ESG capabilities in mitigating risks for EJ purposes. First, these challenges are connected to the procedural injustices related to data acquisition, as mentioned earlier.¹²⁴ Second, there is fragmentation and inconsistency between ESG ratings, methods that these providers use, and available data. This fragmentation arises from the distinct ways businesses conceptualize material ESG risks and subsequently manage them.¹²⁵

As mentioned earlier and throughout this work, the concept of “materiality” is interpreted differently depending on the disclosure regime used to report ESG metrics.¹²⁶ In voluntary and mandatory frameworks, the concept of materiality encompasses both financial and impact risks, including long-term climate-related risks. EJ criteria are often treated as distinct from financial risks in prevailing disclosure regimes; however, many EJ impacts—particularly those related to climate, labor, health, and community displacement—become financially material over the long term through reputational, regulatory, litigation, and operational channels.¹²⁷

STATE DEP’T OF ENV’T CONSERVATION, MAPS & GEOSPATIAL INFORMATION SYSTEM (GIS) TOOLS FOR ENVIRONMENTAL JUSTICE, <https://www.dec.ny.gov/public/911.html> [<https://perma.cc/M555-2N6R>] (last visited Apr. 9, 2023). *See also* Almanzar & Schauwecker, *supra* note 5, at 54.

123. For instance, the city of New York has transformed Riker Island into a renewable energy hub. Similar projects could also be promoted by corporations to maintain a certain score related to ESG sustainability reporting standards. *See, e.g.*, RENEWABLE RIKERS, <https://www.renewablerikers.org/> [<https://perma.cc/HP7L-EMWM>] (last visited Apr. 5, 2023).

124. *See supra* Part II.

125. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. (2025) (describing materiality and the relationship between ESG disclosure frameworks and EJ integration).

126. In U.S. securities laws, a stated or omitted fact is “material” if a “reasonable investor” would be influenced by the business claim in their decision to buy or sell a security—this is the traditional materiality standard used by most investor-oriented voluntary frameworks. *See TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976). On the other hand, the “double materiality” approach adopted by the Global Reporting Initiative (GRI) and EU Directives takes a holistic approach to sustainability considerations and considers businesses’ impacts and opportunities both happening outside and inside the company. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV’T L.J. (2025) (describing how “double materiality” frameworks such as GRI are more receptive to EJ criteria).

127. *See infra* Part III (explaining how environmental justice impacts can qualify as material under both traditional financial materiality and double materiality frameworks, particularly when EJ harms translate into long-term climate risks, litigation exposure, reputational damage, labor disruptions, and regulatory costs).

Additionally, EJ criteria may be more relevant to specific industry settings.¹²⁸ For example, chemical companies consider EJ impacts when disclosing material information because of the effects of their operations on communities of color and the siting of waste disposal facilities.¹²⁹ In the long term, the impact a company may have on EJ communities can affect the company's reputation, thereby influencing its financial returns.¹³⁰ Furthermore, it can affect the people who work inside the company, such as the labor force and employee environments. Notably, these impacts pertain to an "inside" view of environmental justice risks that align with traditional financial materiality notions, as opposed to the "outside" view that incorporates EJ risks as externalities not considered financially material by traditional standards.¹³¹

ESG and climate-related disclosures can create value for a company by influencing its image and consumer attractiveness, while also helping investors assess the long-term viability of the business model, which in turn generates capital over time.¹³² However, the strict definition of materiality in U.S. securities regulation is less receptive to EJ considerations because EJ impacts may be accounted as long-term impacts that happen outside the company. Thus, these impacts are more receptive to inclusion in "double materiality" disclosure frameworks.¹³³

To conclude, the aim of distributive justice to pursue a balance between the distribution of environmental costs and benefits and the proportional allocation to the communities is mostly inconsistent with the traditional notions of ESG. ESG disclosure relies on materiality tests to conduct risk assessments while the reporting mechanisms are uncoordinated to create a coherent data gathering that resolves the distributional crisis that EJ reveals. Moreover, the availability of data alone does not guarantee that

128. See Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. (2025) (describing how the chemical sector utilizes voluntary ESG frameworks to disclose EJ impacts).

129. *Id.*

130. See *The Business Case for Addressing Environmental Justice*, INVESTOR ENV'T HEALTH NETWORK, https://iehn.org/assets/documents/IEHN_BusinessCaseforEnvironmentalJustice.pdf [<https://perma.cc/7Z6N-WEVD>] (last visited Aug. 5, 2024) (assessing how reputational risks develop into material risks).

131. See Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. (2025) (describing different disclosure frameworks and their receptiveness to EJ criteria).

132. See *infra* Part III.

133. See Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. (2025) (describing how "double materiality" frameworks such as GRI are more receptive to EJ criteria).

substantive decisions will be made to avoid siting hazardous industries in EJ communities.¹³⁴

Nonetheless, ESG can still be a valuable risk assessment tool by identifying and addressing environmental injustices, especially when combined with proactive engagement and a commitment to EJ principles.¹³⁵

3. Voluntary “Remedy”: Corrective Justice

Corrective justice is concerned with fairness in assigning punishments for lawbreaking and addressing damages inflicted on individuals and communities.¹³⁶ Corrective justice goes beyond justly administering punishment to lawbreakers and includes a duty to repair losses for which one is responsible.¹³⁷ Notably, proactive approaches can help companies reduce risk and prevent harm to affected communities, especially given the practical and legal challenges of pursuing litigation to remedy environmental injustice.¹³⁸

Furthermore, corrective justice can be implemented both proactively and reactively. Proactive approaches are utilized to anticipate and avoid damage to EJ communities; reactive approaches refer to actions that are made after the damage has been done and cover environmental compliance and litigation.¹³⁹

134. The fact that ESG is mostly voluntary and that a corporation’s main objective is to make a profit strengthens this idea. For example, the placement of industrial facilities tends to be concentrated in low-income neighborhoods due to their lower property values, and private companies tend to target areas where opposition is less likely. This vicious cycle is related to the core concept of for-profit corporations: shareholder wealth maximization, and the materiality assessment, which prioritizes internal economic risks over external social and environmental concerns in risk management decisions. Villa et al., *supra* note 33, at 51–52.

135. The principles of environmental justice are a list of principles adopted by the People of Color Environmental Leadership Summit in 1991. *See* DELEGATES TO THE FIRST NATIONAL PEOPLE OF COLOR ENVIRONMENTAL LEADERSHIP SUMMIT, PRINCIPLES OF ENVIRONMENTAL JUSTICE (1991), <https://www.ejnet.org/ej/principles.html> [<https://perma.cc/R8M6-VUR5>]

136. Aristotle called this type of justice “rectificatory” as it aims to treat all parties equally and restore victims to their pre-unjust activity condition. Kuehn, *supra* note 71, at 10693.

137. *Id.* Actions that raise questions of corrective justice may also involve distributive or procedural justice. Lax enforcement can reflect a failure of government officials to ensure procedural justice and treat all individuals equally. However, it is preferable to view corrective justice as a distinct notion of environmental justice because environmental justice also encompasses private party conduct that can harm individuals or communities without any possible governmental enforcement action.

138. Litigation in the EJ movement has mainly focused on two routes: accountability for procedural justice requirements and using civil rights to affect environmental decisions. Both litigation pathways have encountered many challenges. *See generally* LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 126 (2001).

139. Myers & Czarnecki, *supra* note 2, at 995

On the one hand, reactive ESG strategies involve companies utilizing ESG metrics-based approaches to identify areas of their operations that impact EJ communities and take remedial action to address these issues.¹⁴⁰ This aspect has to do with remedial and corrective elements for EJ communities and is implemented in a company's operation and at every step of the supply chain. For instance, retail operations can be impacted by several aspects of EJ, such as the siting of undesirable facilities like recycling operations, chemicals of concern in products, and the location of warehouses.¹⁴¹ While some retail operations may be directly impacted by EJ considerations, others may be indirectly affected when viewed through an EJ lens.¹⁴² Nonetheless, retailers can benefit from the increased focus on EJ by being perceived as leaders in this area.¹⁴³

On the other hand, proactive approaches can address environmental injustices when companies take intentional and deliberate steps to engage with stakeholders, including local communities, to understand their concerns regarding environmental issues. Companies can then use the information gained to disclose environmental and social information and resolve the issues raised by stakeholders.¹⁴⁴ This approach is related to a "beyond compliance" disposition of firms that showcase an active attitude towards social and environmental concerns that go beyond of what is required by the law or the financial risks.¹⁴⁵ For the effective integration of environmental justice considerations, the rules and practices of corporate governance structures must be adapted to its objectives.¹⁴⁶ For instance, companies can enhance corrective justice by promoting diversity

140. For instance, in the EJ distributive justice dimension, the identification of vulnerable sites with innovative tools and the merger between these tools and EJ tools developed by governmental and private institutions could serve as a potential effective solution. See Heidi Friedman, *Environmental Justice Needs to Be Prioritized in ESG Programs*, BLOOMBERG L. (Nov. 3, 2023), <https://news.bloomberglaw.com/us-law-week/environmental-justice-needs-to-be-prioritized-in-esg-programs> [https://perma.cc/7ATG-A4NT].

141. Tiffin Shewmake, *Environmental Justice and Retail*, RETAIL INDUS. LEADERS ASS'N (July 7, 2021), <https://www.rila.org/blog/2021/07/environmental-justice-and-retail> [https://perma.cc/UJ2E-3VSH].

142. *Id.* The Retail Compliance Center listed important details to take into account: understand EJ compliance requirements, assess environmental impacts, determine overburdened communities, develop an EJ policy plan, engage with communities through an EJ-focused strategy, and include EJ concepts in internal training.

143. *Id.*

144. Almanzar & Schauwecker, *supra* note 5, at 53.

145. See *infra* Part III; See also Jonathan C. Borck & Cary Coglianese, *Beyond Compliance: Explaining Business Participation in Voluntary Environmental Programs*, in EXPLAINING COMPLIANCE: BUSINESS RESPONSES TO REGULATION (Lehmann Nielson & Christine Parker, eds. 2011).

146. See *infra* Part IV.

and inclusion in the boardroom.¹⁴⁷ By having a diverse board, companies can bring different perspectives and experiences to the decision-making process, including those of individuals from communities that have been historically marginalized or disproportionately affected by environmental harm. Educational programs for the boardroom and staff that focus on EJ principles can also be a powerful tool for promoting EJ.¹⁴⁸

These programs can help to raise awareness about the importance of EJ and provide practical guidance on how to incorporate EJ considerations into corporate decision-making. When board members and staff are knowledgeable about EJ principles, they are better equipped to identify and address environmental injustices that may arise in their operations and interpreting ESG data that includes EJ criteria.¹⁴⁹ While it may not always be possible for companies to adhere to all EJ principles in every corporate decision, the mere act of exposing the board and executive teams to these principles can encourage positive change.¹⁵⁰ By incorporating EJ considerations into their decision-making, companies can address the underlying causes of environmental injustices and work towards a more sustainable and equitable future.

Furthermore, in the realm of corrective justice, grievance mechanisms are important tools for addressing environmental injustices. These mechanisms are designed to allow individuals and communities to voice concerns and seek redress for perceived injustices. These grievance mechanisms can be part of ESG disclosure criteria where a company discloses incidents of violations involving environmental injustices and can encompass formal or informal processes. Grievance mechanisms provide organizations with an opportunity to report on social and environmental impact assessments, local community development programs, stakeholder engagement plans, and formal grievance processes.¹⁵¹

147. Recent moves by some large corporations to scale back diversity, equity, and inclusion (DEI) commitments, even after years of public pledges, illustrate why these governance safeguards matter: they reveal how quickly firms may retreat when equity goals are perceived as optional rather than embedded in the corporation's DNA. See Conor Murray, *IBM Reportedly Walks Back Diversity Policies Citing 'Inherent Tensions'—Here Are All the Companies Rolling Back DEI Programs*, *Forbes* (Apr. 11, 2025), <https://www.forbes.com/sites/conormurray/2025/04/11/ibm-reportedly-walks-back-diversity-policies-citing-inherent-tensions-here-are-all-the-companies-rolling-back-dei-programs/> [<https://perma.cc/QAL7-DJQY>] (cataloguing Fortune-500 retreats from DEI in the wake of political backlash).

148. See generally Almanzar & Schauwecker, *supra* note 5, at 53–54.

149. *Id.* at 53.

150. *Id.* at 53–54.

151. For example, in GRI'S General Disclosures, grievance mechanisms are defined as “routinized process through which grievances can be raised and remedy can be sought.” GLOB. REPORTING INITIATIVE, GRI STANDARDS GLOSSARY (2022), See also Barbara Ballan, *The ESG Disclosure*

In summary, ESG can assist in identifying and remedying aspects of a company's operations that affect EJ communities. Proactive engagement, such as promoting diversity and inclusion in the boardroom, providing EJ education, and incorporating EJ considerations into decision-making, is crucial to promoting corrective justice goals. These steps can help address environmental injustices and pursue equity and sustainability objectives.

However, it is important to note that while ESG can be a useful tool, it is still limited in its ability to achieve corrective justice. As mentioned previously, ESG is primarily a voluntary approach and informational tool that serves to disclose data, and not necessarily to drive change. Thus, its impact depends on the extent to which companies choose to adopt it. Other forms of remedy are necessary to address mandatory elements of corrective justice for it to be a legitimate tool.

4. The Dual Mission Dilemma: Social Justice

EJ advocates contend that environmental issues are intertwined with social equity concerns, emphasizing the importance of the "social" component.¹⁵² Although the "S" pillar is included in ESG, the positive social impacts of ESG data are often overlooked.¹⁵³

Critics argue that ESG frameworks lack consistency and fail to reconcile profit motives with environmental and social objectives.¹⁵⁴ Thus, even when applying ESG metrics,¹⁵⁵ big corporations, financial institutions, and their investors are still playing the game of capitalism by which they cannot afford to lose.¹⁵⁶ Consequently, laws, regulations, and governance mechanisms created within this framework, including ESG, are products of the current larger political and economic system that remains

Paradox: Gaps in Environmental Justice Criteria, 32 HASTINGS ENV'T L.J. 32 (2025) (describing GRI and its receptiveness to EJ criteria).

152. Kuehn, *supra* note 71, at 10698.

153. Michael E. Porter et al., *Where ESG Fails*, INSTITUTIONAL INV. (Oct. 16, 2019), <https://www.institutionalinvestor.com/article/b1hm5ghqtj9s7/Where-ESG-Fails> [<https://perma.cc/9KH8-BLBC>] (stating that ESG factors do not highlight areas where businesses have the greatest impact on society).

154. Robinson-Tillett, *supra* note 15.

155. See ANDREW HOWELL & MAXIMILIAN SCHRECK, ENV'T DEF. FUND, CARBON CONUNDRUM: THE CURIOUS CASE OF FINANCED EMISSIONS 2–3 (2023), https://www.edf.org/sites/default/files/2023-09/ESG-EDF_Financed_Emissions.pdf [<https://perma.cc/DGQ2-YZK5>] (explaining how companies may be able to double their funding to a fossil fuel company and still report a decline in financed emissions).

156. The former head of fundamental research at BlackRock Sustainable Investing stated that "Capitalism is a game with rules, and investors can't just stop playing by those rules, and lose, because it's ethical," declaring that the biggest challenge for sustainable investing is the lack of alignment between risk-adjusted financial performance, ethics and the pursuit of impact. Robinson-Tillett, *supra* note 15.

unchanged. Thus, ESG can be seen as a neoliberal approach to environmental regulation.¹⁵⁷

As a result, the “dual mission dilemma” arises when companies attempt to pursue both profit and social and environmental good, potentially conflicting with the notion of social justice itself.¹⁵⁸ While these entities seek to pursue both objectives, providing guidance to fiduciaries when the goals are in conflict can be challenging.¹⁵⁹ The issue with these corporate forms is that they can give the impression that adopting a formal “social mission” is the primary—or only—path to reforming business as usual, which may not be the case.¹⁶⁰

Social justice demands resources and power for every class and accountability for the privileged classes for the way they use resources.¹⁶¹ EJ has been described as the “marriage of the movement for social justice with environmentalism.”¹⁶² EJ advocates believe that environmental problems are intrinsically linked to social equity issues and should be assessed jointly with other sociological factors such as race, ethnicity, class, and culture when deciding environmental policies.¹⁶³ This means that the “[e]nvironmental justice’s focus on social justice reflects reality”¹⁶⁴ because the people who suffer social injustices do not “compartmentalize” their problems.¹⁶⁵ EJ communities are struggling with political, racial, economic, environmental, and social constraints that manifest in their bodies as one result: lack of quality of life as a whole.¹⁶⁶

To integrate the social justice sphere of EJ into ESG disclosure frameworks, it is necessary to understand how scholars currently define the “social” sphere of ESG. The “social” component of ESG refers to “social issues, labor standards, human rights, social dialogue, pay equity, workplace diversity, access to health care, racial justice, customer or

157. This approach can be seen as neoliberalism in the sense that ESG is viewed as a form of private regulation that aims to deploy markets as the solution to environmental problems. *See* Czarnezki & Fiedler, *supra* note 8, at 1–2. (describing neoliberalism and examples neoliberal environmental regulations); *see* Chi. Booth Rev., *Capitalisn’t: The Smoke and Mirrors of ESG Investing with Tariq Fancy* (Sept. 9, 2021), <https://www.chicagobooth.edu/review/capitalisnt-smoke-and-mirrors-esg-investing> [<https://perma.cc/CP6V-HDFX>] (defining ESG as a form of “neoliberalism with moral satisfaction”). *But see* *The ESG Pushback*, THE HERITAGE FOUND. (May 15, 2022), <https://www.heritage.org/environment/heritage-explains/the-esg-pushback> [<https://perma.cc/5L3Q-QSLY>] (stating that ESG works as a progressive social policy).

158. *See* Palmiter, *supra* note 10, at 332.

159. *Id.* at 335.

160. *Id.* at 332.

161. Robert E. Rodes, *Social Justice and Liberation*, 71 NOTRE DAME L. REV. 619, 626 (1996).

162. Kuehn, *supra* note 71, at 10698–99.

163. *Id.*

164. Villa et al., *supra* note 33, at 17.

165. *Id.*

166. *Id.*

product quality issues, data security, industrial relations, or supply-chain issues.”¹⁶⁷ The nature of social impacts can be negative (which accounts for risk assessment) or positive (company’s actions, policies, and investments that positively impact people’s lives).¹⁶⁸ However, these positive impacts in the social sphere are not accounted for in ESG data although profits and social impacts are “inextricably linked.”¹⁶⁹

The ESG movement was preceded by Corporate Social Responsibility (CSR). CSR centers on the firm’s voluntary actions (or omissions) based on shareholder interests guided by a set of principles that can be of moral, ethical, or social values.¹⁷⁰ Thus, it has been criticized for being merely a “public relations tool rather than actually addressing non-financial issues.”¹⁷¹

CSR can be identified in two different models: a conventional model in which shareholders are asked to make concessions for the “social good,” and a second model that considers CSR as a movement that can create a long-term benefit for the corporation.¹⁷² The issue with the second model of CSR is that generally accepted accounting principles report future value benefits as expenses that reduce net income in the accounting period in which they are paid.¹⁷³ Hence, “because it is grounded on cost-benefit analysis, sustainability CSR may not go far enough.”¹⁷⁴

Responding to criticism, PEG in the form of CSR evolved to ESG “as a metrics-based approach intended to increase corporate accountability.”¹⁷⁵ ESG has important informational value, which can be a catalyst for social change.¹⁷⁶ Information generation, analysis, and disclosure to the public have been a cornerstone of environmental law in the U.S. because sunlight can be considered “the most powerful disinfectant.”¹⁷⁷ However, social justice demands both a more just ordering of society in which people’s

167. Jason Saul, *Fixing the S in ESG*, STAN. SOC. INNOVATION REV. (Feb. 22, 2022), https://ssir.org/articles/entry/fixing_the_s_in_esg [<https://perma.cc/F9XZ-5TRQ>].

168. *Id.*

169. Larry Fink, *Purpose & Profit*, BLACKROCK (2019), <https://www.blackrock.com/corporate/investor-relations/2019-larry-fink-ceo-letter> [<https://perma.cc/9HJP-27G5>].

170. Myers & Czarnezki, *supra* note 2, at 997.

171. *Id.*

172. Palmiter, *supra* note 10, at 261.

173. *Id.*

174. *Id.*

175. Myers & Czarnezki, *supra* note 2, at 997.

176. Villa et al., *supra* note 33, at 407.

177. *Id.*

needs are fully met and a transmutation of power, resources, and accountability mechanisms.¹⁷⁸

Arguably, the corporation that promotes ESG can be a hybrid form of a corporate-social institution that addresses social injustices. For example, benefit corporations are hybrid business forms that combine social purpose and investor profitability.¹⁷⁹ Benefit corporations' purposes transcend mere profit-making objectives and seek to create a “material, positive impact on society and the environment.”¹⁸⁰ Corporate directors are required to consider the impact of their decisions on shareholders, employees of the corporation, subsidiaries and suppliers, customers, the community, society, and the local and global environment.¹⁸¹

Benefit corporation statutes specify the basis for directors' decisions, which can be one or a combination of groups.¹⁸² Third-party standards are used to define, assess, and report social and environmental performance, and benefit corporations are subject to self-enforcement through disclosure obligations and benefit enforcement proceedings.¹⁸³ However, the statutes restrict potential plaintiffs to shareholders who can bring derivative actions, and there is no case law or guidance on how courts should analyze such claims.¹⁸⁴

There is a need for a real paradigm shift in corporate culture.¹⁸⁵ This shift is related to the Triple Bottom Line (TBL) movement that pushes businesses to focus on the “people, planet and profit.”¹⁸⁶ The movement's primary objective was to promote system change,¹⁸⁷ but instead, TBL has been utilized as an accounting practice to measure a company's economic, environmental, and social performance over time.¹⁸⁸

178. Kuehn, *supra* note 71, at 10698. *See also* Dana A. Alston, *Introduction to WE SPEAK FOR OURSELVES: SOCIAL JUSTICE, RACE AND ENVIRONMENT 3* (Robert D. Bullard & Dana Alston eds., 1990).

179. *See infra* Part IV. *See also* Palmiter, *supra* note 10, at 334.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 335.

184. *Id.* at 334.

185. Howard Brod Brownstein, *Corporate Culture and Governance*, in AM. BAR ASS'N, *ESG IN THE BOARDROOM: A GUIDEBOOK FOR DIRECTORS* 199 (Katayun Iris Jaffari & Stephen A. Pike eds., 2022).

186. John Elkington, *25 Years Ago I Coined the Phrase “Triple Bottom Line.” Here’s Why It’s Time to Rethink It*, HARV. BUS. REV. (June 25, 2018), <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it> [<https://perma.cc/9B94-RMX9>].

187. *Id.*

188. This TBL definition integrates both CSR and ESG because it acts both as a metrics- and responsibility-based mechanism. However, the traditional notion of TBL presents the same vices that were mentioned previously in terms of “the divergence between the three pillars of sustainability and the TBL—economic equity and welfare versus profit.” Colin Myers & Jason J. Czarneski, *Sustainable Business Law? The Key Role of Corporate Governance and Finance*, 51 ENV'T L. 991, 998 (2022).

Corporate culture as a system change for social justice is one important aspect of the dual mission dilemma:

Culture refers to the shared beliefs and understandings, symbols, and language of a group or society . . . [t]hough it is customary to view culture as the long-term enduring symbols and beliefs of a group or society, culture can also be viewed as an emergent phenomena that is in the process of being created.¹⁸⁹

Culture in social movements is not fixed; it evolves over time and changes depending on the location of the movement's leaders in the social system and equal access to cultural resources.¹⁹⁰ Considering this approach, the ESG movement's cultural stock is related to shareholders' and customers' views on social and environmental welfare beyond profit, which contrasts with the EJ cultural stock. The latter has “roots in the social justice struggles emanating from the period of conquest and slavery; more recently, the images draw on potent symbols of the civil rights movement and the struggles of other people of color in the 1960s and 1970s.”¹⁹¹

Thus, because corporate culture and culture in social movements rely on different social locations, their frames are incompatible with “the skills, orientations, ideologies, and identities of the groups that comprise a particular movement.”¹⁹² This demonstrates that corporate culture and social culture are inconsistent in both their origins and their substantive components.¹⁹³ Notably, after the killing of George Floyd, the concept of Corporate Social Justice (CSJ) emerged as an alternative to CSR. CSJ emphasizes initiatives and programs measured by the lived experiences of groups that are harmed and disadvantaged by society, necessitating a comprehensive approach across all aspects of business.¹⁹⁴ If this concept continues to evolve, the CSJ movement may create a new cultural stock that bridges corporate culture and social culture, potentially aligning the two movements and making them more compatible.

189. Dorceta E. Taylor, *The Rise of the Environmental Justice Paradigm*, 43 AM. BEHAV. SCIENTIST 508, 513 (2000) (emphasis omitted).

190. *Id.* at 513–14.

191. *Id.* at 514.

192. *Id.*

193. *See id.* at 513.

194. *See* Lily Zheng, *We're Entering the Age of Corporate Social Justice*, HARV. BUS. REV. (June 15, 2020), <https://hbr.org/2020/06/were-entering-the-age-of-corporate-social-justice> [<https://perma.cc/T83D-8HMU>].

In synthesis, understanding the “S” in ESG requires a shift in corporate culture that comprehends transformation as a benefit that creates a larger set of opportunities for a business and the financial value of sustainability.¹⁹⁵ It also requires considering that long-term success depends on the viability of the various corporate stakeholders: workers, suppliers, consumers, and investors.¹⁹⁶ Hybrid forms of benefit corporations try to pursue a transformative approach by including ESG sustainability reporting and assessment in their decision-making process, enforcement, and accountability. However, the environmental and social “enhancement” of traditional corporate behavior is reaffirming the existence of mainstream traditional corporate behavior: for-profit corporations.¹⁹⁷ Hence, social vision in “community values” is ultimately displaced by the imposed mission of for-profit corporations: to deliver financial returns to its shareholders.¹⁹⁸

Analyzing the implementation of ESG to address EJ issues is significant due to the connection between corporate behavior and the origin of environmental injustices. Although corporations are considered agents of disruption, they also hold the key to offering partial remedies for mitigating this disruption and restoring balance.¹⁹⁹ Thus, ESG offers valuable information and has established standard-setting and innovative hybrid business models that present alternatives to traditional corporate behavior. However, ESG initiatives and their foundation in the concept of a sustainable corporation guided by a corporate design do not yet guarantee social justice because the shift in corporate culture does not align with the culture of social movements. As a result, the disconnect between corporate culture and social culture obstructs genuine social change for EJ purposes.

Corporations provide resources for certain segments of society while often overlooking the negative impacts on the environment and, consequently, on other segments of society.²⁰⁰ This exacerbates the

195. See Palmiter, *supra* note 10, at 28.

196. *See id.* at 260.

197. *See* Dodge v. Ford Motor Co., 170 N.W. 668 (Mich. 1919).

198. *See* Palmiter, *supra* note 10, at 71

199. *See* Michael P. Vandenbergh & Daniel J. Metzger, *Private Governance Responses to Climate Change: The Case of Global Civil Aviation*, 30 FORDHAM ENV'T. L. REV. 62, 63–70 (2018) (demonstrating how private governance initiatives—such as investor pressure, disclosure requirements, and operational reforms within airlines—can drive emissions reductions even in the absence of effective public regulation).

200. *See* generally Laura Pulido, *Geographies of Race and Ethnicity II: Environmental Racism, Racial Capitalism and State-Sanctioned Violence*, 41 PROGRESS IN HUM. GEOGRAPHY 524, 526 (2017).

environmental racism gap as minorities and low-income communities bear the burden of resource consumption by privileged populations.²⁰¹ Additionally, the lack of effective public policies and control over corporate behavior perpetuates this disparity and creates a differential, negative impact on vulnerable communities.²⁰² The role of the state is pivotal in facilitating progress toward effective EJ solutions and must remain at the forefront of discussions.²⁰³ Ultimately, it is the responsibility of both corporations and the state to work together to address environmental injustices and to promote social and environmental justice. From a corporate level, ESG may be an effective tool that businesses can use to create EJ enhancement.

At the global level, there is an inherent power imbalance between global south states and the power exerted by international financial institutions and transnational corporations that cannot be defeated with the voluntary mechanisms of private governance.²⁰⁴ There is a need for a rights-based approach that addresses and shifts these power imbalances within the international, national, and local spheres through constitutional amendments and international laws and cooperation.

In summary, it is crucial to recognize and address the existing contradiction between ESG and EJ within the social justice notion, which guides the remainder of this work. ESG alone cannot fully tackle the complex issue of environmental inequality from a social justice perspective but may serve as an extra “informational” or “ad-hoc” tool. Achieving environmental and social justice requires proactive engagement and commitment to EJ principles from all sectors of society. The current systems perpetuate environmental injustices, and a paradigm shift in corporate culture towards EJ principles is necessary to correct market failures and address environmental externalities. A collaborative effort between the public and private sectors is needed to bring about the necessary transformation into action.

III. WHY SHOULD EJ CRITERIA BE CONSIDERED MATERIAL FOR A BUSINESS?

There are financial and non-financial considerations that support the integration of EJ criteria into ESG frameworks. These considerations are related to the most pressing challenges of our times, such as climate

201. See generally *id.* at 524.

202. See generally *id.* at 529.

203. See generally *id.*

204. See generally Smita Narula, *International Financial Institutions, Transnational Corporations and Duties of States* (N.Y.U. Sch. of L. Pub. L. & Legal Theory Rsch. Paper Series, Working Paper No. 11-59, 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1922873 [<https://perma.cc/NZ6H-6E2L>].

change, and to people's increasing awareness of these challenges. This section analyses why environmental justice risks and opportunities should be included in sustainability reports.

For clarity, "material" follows the securities-law standard, information a reasonable investor would view as significantly altering the total mix of available information.²⁰⁵ Most investor-oriented frameworks apply this definition of materiality.²⁰⁶ By contrast, double materiality considers not only risks to the firm but also significant impacts on people and the environment.²⁰⁷ This Part explains why EJ qualifies as material under either view.

First, the impact that climate change has on EJ communities is a material topic that a company should consider when analyzing climate-related risks and opportunities because there are economic, social, and environmental risks associated with the changing climate and the disproportionate impact on vulnerable communities. For instance, there are synergies between the disproportionate physical impacts of climate change on these communities and financial systems, such as the real estate market.²⁰⁸ Vulnerable communities purchasing homes in high-risk areas face significant risks, which affect real estate transactions and companies' approaches to mitigation and adaptation efforts.²⁰⁹

Second, considering social and environmental risks and opportunities adds significant value to businesses.²¹⁰ Trends in consumer behavior, increasing awareness of environmental justice issues, and the integration of these issues into corporate governance strategies contribute to the long-term viability of businesses, helping them generate sustained capital over time.²¹¹ Incorporating these disclosures aligns with the evolving regulatory landscape (although, now state-oriented but nonetheless powerful)²¹² and also leads to cost reductions and mitigates potential legal risks.²¹³ In the

205. *See TSC Indus., Inc.*, 426 U.S. at 445.. *See also* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. 77, 79 (2026) (analyzing materiality-based considerations in voluntary ESG reporting).

206. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 HASTINGS ENV'T L.J. 77, 79 (2026) (analyzing materiality-based considerations in voluntary ESG reporting).

207. *Id.*

208. *See infra* Section III.A.2.

209. *See infra* Section III.A.2.

210. *See infra* Section III.B.

211. *See infra* Section III.B.

212. *See, e.g.*, Brian S. Montag et al., *Environmental Justice Update*, K&L GATES (May 5, 2025), <https://www.klgates.com/Environmental-Justice-Update-5-5-2025> [https://perma.cc/AN89-65WP] (describing how the federal roll-back of EJ efforts will encourage states to more aggressively enact and enforce EJ policies).

213. *See infra* Section III.B.

long term, prioritizing EJ considerations and going “beyond compliance” demonstrates environmental and social stewardship, positioning businesses to better navigate future challenges.²¹⁴

A. Climate Justice as Climate-Related Risks

There are existing links between climate-related risks and their disproportionate burden on EJ communities. This subsection assesses how EJ impacts affect the two categories of climate-related risks: (1) transition risks, related to the shift to a low-carbon economy, and (2) physical risks, associated with the physical impacts of climate change.²¹⁵ Transition and physical risks are associated with environmental justice impacts that affect a business’s finances.

1. Transition Risks and Environmental Justice Impacts

Transition risks are the risks associated with an organization’s management and adaptation to the shift to a low-carbon economy (e.g., reducing greenhouse gas emissions and moving toward renewable energy).²¹⁶ Transition risks arise from policy and legal change, technological disruption, market dynamics, and reputational pressures; depending on the nature, speed, and focus of these changes, they can generate significant financial and operational exposure as well as opportunities for firms positioned in low-carbon markets.²¹⁷

Low-carbon emission reduction strategies impact EJ communities, revealing the existing tension between the “E” and “S” in ESG frameworks. Therefore, integrating both dimensions using EJ criteria is essential.²¹⁸ For instance, efforts to reduce carbon emissions by producing electric vehicles (EVs) negatively impact local communities that are near the mining operations or near the factories that produce the parts, particularly due to human rights violations connected to mining operations

214. *See infra* Section III.B.3.

215. *Climate Risks and Opportunities Defined*, EPA, <https://www.epa.gov/climateleadership/climate-risks-and-opportunities-defined> [<https://perma.cc/66V3-CA8K>] (last visited Sep. 7, 2024).

216. *Climate Risks and Opportunities Defined*, EPA, <https://www.epa.gov/climateleadership/climate-risks-and-opportunities-defined> [<https://perma.cc/66V3-CA8K>] (last visited Feb. 26, 2026).

217. *Id.*

218. *See* Alperen A. Gözlügöl, *The Clash of “E” and “S” of ESG: Just Transition on the Path to Net Zero and the Implications for Sustainable Corporate Governance and Finance 18* (Leibniz Inst. for Fin. Rsch. SAFE, Working Paper No. 325, 2021).

for EV batteries.²¹⁹ EJ criteria are relevant in addressing these gaps in ESG because EJ social issues and environmental impacts must be measured concurrently.²²⁰

Considering environmental justice impacts within the definition of transition risks alleviates the tension between conflicting environmental and social disclosure information. For example, mining sector standards could integrate EJ criteria that measure the number of low-income communities affected by mineral extraction operations to assess the risks associated with the transition to lower greenhouse gas emissions.

Furthermore, the green transition affects the workforce because human rights violations create labor-related conflicts that impact businesses financially.²²¹ Impacts on the labor force are related to climate justice.²²² Currently, the EPA's definition of transition risks does not reference human rights or local communities.²²³ However, policy and legal considerations are assessed and include "the failure of organizations to mitigate impacts of climate change, failure to adapt to climate change, and the insufficiency of disclosure around material financial risks."²²⁴ Thus, although human rights and environmental justice concerns are not addressed directly, these risks may be considered indirectly through litigation risks. These risks include claims brought by workers, communities, or investors alleging climate-related harms, labor violations, or failures to disclose material climate and social risks—²²⁵such as lawsuits alleging failures to mitigate or adapt to climate change, inadequate disclosure of climate-related risks, or harms to workers and local communities—that can expose firms to financial and regulatory liability.

219. *Human Rights in the Mineral Supply Chains of Electric Vehicles*, BUS. AND HUM. RTS. RES. CTR., (Sep. 4, 2019), <https://www.business-humanrights.org/en/from-us/briefings/transition-minerals-sector-case-studies/human-rights-in-the-mineral-supply-chains-of-electric-vehicles/> [https://perma.cc/QY75-8VKZ].

220. See Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 U.C. L. ENV'T J. 77 (2026) (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

221. See Gözlügöl, *supra* note 218.

222. EUR. ENV'T AGENCY, EUROPEAN CLIMATE RISK ASSESSMENT, REPORT NO. 01/2024 157 (2024), <https://www.eea.europa.eu/en/analysis/publications/european-climate-risk-assessment> [https://perma.cc/S5M4-8VNQ].

223. Climate Risks and Opportunities Defined, *supra* note 216.

224. Climate Risks and Opportunities Defined, *supra* note 216.

225. See generally THE NETWORK OF CENTRAL BANKS AND SUPERVISORS FOR GREENING THE FINANCIAL SYSTEM (NGFS), https://ngfs.net/sites/default/files/medias/documents/climate_related_litigation.pdf (last visited Apr. 17, 2026). See, e.g., Barbara Ballan & Jason J. Czarnezki, *Disclosure, Greenwashing, and The Future of ESG Litigation*, 81 WASH. & LEE L.R. 545 (2024) (analyzing the impact of ESG disclosure in greenwashing litigation).

2. Physical Risks and Environmental Justice Impacts

Physical risks are associated with the impacts of climate change itself. These include event-driven hazards (such as hurricanes, floods, and extreme heat or cold) and chronic, longer-term shifts (such as sea-level rise, sustained higher temperatures, and changing precipitation patterns) that damage assets, disrupt supply chains and operations, strain workforces, and affect access to water, energy, and other inputs.²²⁶

Extreme weather events disproportionately affect environmental justice communities, and this trend is expected to accelerate as climate change progresses.²²⁷ Climate risks and their financial implications affect the relationship of climate-related risks and environmental justice criteria.

There are three key financial systems at risk due to the changing climate that are intrinsically related to EJ issues.²²⁸ These risks relate to: (1) the insurance system, (2) the real estate market, and (3) community banking.²²⁹

Climate change poses a growing threat to the stability of the financial system, particularly through its disruption of the insurance and housing markets.²³⁰ When climate risks become too unpredictable, insurers often refuse to provide coverage. Without insurance, mortgages cannot be issued and as a result, property values crash. This cascading devaluation creates systemic risks that ripple through local and national economies.²³¹ For investors and financial institutions, climate risk is not just an

226. Climate Risks and Opportunities Defined, *supra* note 216.

227. See generally ENV'T PROT. AGENCY, EPA 430-R-21-003, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES (2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf [<https://perma.cc/5Q69-LZX6>]. See also Madison Condon, *Climate Services: The Business of Physical Risk*, 55 ARIZ. ST. L.J. 147, 186–90 (2023), https://arizonastatelawjournal.org/wp-content/uploads/2023/08/55.1_Condon_Publication.docx.pdf [<https://perma.cc/N4NT-72M9>] (describing how the physical risks of climate change are affecting EJ communities in the U.S. and the use of climate-related data).

228. See Karina French, *What Climate-related Financial Risk Means for Communities: Part 1 – Insurance*, ENV'T DEF. FUND (Feb. 1, 2024), <https://blogs.edf.org/markets/2024/02/01/what-climate-related-financial-risk-means-for-communities-part-1-insurance/> [<https://perma.cc/U5QJ-53JD>]; Jesse Gourevitch, *What Climate-related Financial Risk Means for Communities: Part 2 – Housing & Mortgages*, ENV'T DEF. FUND (Feb. 7, 2024), <https://blogs.edf.org/markets/2024/02/07/what-climate-related-financial-risk-means-for-communities-part-2-housing-mortgage-markets/> [<https://perma.cc/GZP4-V9PD>]; Elle Stephens, *What Climate-related Financial Risk Means for Communities: Part 3 – Community Banking*, ENV'T DEF. FUND (Feb. 15, 2024), <https://blogs.edf.org/markets/2024/02/15/what-climate-related-financial-risk-means-for-communities-part-3-community-banking/> [<https://perma.cc/P4YK-U9VS>].

229. Gourevitch, *supra* note 228.

230. French, *supra* note 228.

231. SENATOR SHELDON WHITEHOUSE, *Whitehouse and Senate Climate Leaders Take Down EPA's Assault on Environmental Protections*, at 1:11–1:49 (YouTube, Apr. 9, 2025), <https://www.youtube.com/watch?v=MdpyIExqzdU> [<https://perma.cc/PAN4-K2ZB>].

environmental issue, it is a direct threat to asset value, credit markets, and broader economic resilience.

The home insurance crisis currently unfolding in Florida is a real-time example of this phenomenon, where insurers are pulling out, premiums are spiking, and property markets are destabilizing.²³² The impact of Hurricane Milton threatens to cause between \$60 billion and \$100 billion in insured losses.²³³

These economic losses would further stress vulnerable communities, particularly those in high-risk areas, making home ownership and financial security more challenging.²³⁴ Spiraling costs have prompted some homeowners to scale back coverage or go uninsured. Black, Hispanic, and Native American households are particularly vulnerable to these trends due to longstanding wealth gaps, lower rates of home equity, and greater exposure to high-risk areas with rising premiums.²³⁵ Thus, the financial impact of unexpected insurance market changes and rising insurance costs can affect household budgets, and reduced insurance availability can increase economic vulnerability, underscoring the need for corporate strategies that integrate both mitigation and adaptation efforts in response to these risks.²³⁶

Second, in the real estate market, climate impacts pose significant risks to vulnerable communities that may be forced to purchase homes in high-risk areas.²³⁷ Pricing of climate risks in mortgages raises several issues, including the potential for perverse incentives that could lead to a practice called “bluelining”²³⁸ or disproportionate pricing for historically marginalized populations.²³⁹ While pricing climate risks could negatively affect low-income and socially vulnerable communities, failing to price such risks could also harm these populations by overlooking the need for mitigation and adaptation efforts.²⁴⁰ In this context, companies should take

232. *Id.* at 2:07.

233. Andy Sullivan et al., *Milton Threatens to Upend Shaky Florida Homeowners Insurance Market*, REUTERS (Oct. 9, 2024), <https://www.reuters.com/world/us/milton-threatens-upend-shaky-florida-homeowners-insurance-market-2024-10-09/> [<https://perma.cc/D86A-KYP2>].

234. *Id.*

235. *Id.*

236. French, *supra* note 228.

237. Gourevitch, *supra* note 228.

238. Bluelining refers to the practice by which insurance companies limit or withdraw coverage in areas at high risk of climate disasters—often communities of color—under the guise of actuarial risk management. Like redlining, which denied financial services to marginalized groups based on race, bluelining reinforces racial and environmental injustice by making essential property insurance inaccessible in already vulnerable neighborhoods. See Jerel M Ezell, *Property Insurance Bluelining as a Social Determinant of Health*, LANCET PLANETARY HEALTH (2025).

239. Gourevitch, *supra* note 228.

240. *Id.*

a “soft-landing” approach by efficiently pricing climate risks while protecting vulnerable populations.²⁴¹ The “soft-landing” approach means balancing financial risk management with social responsibility to ensure that mitigation efforts do not disproportionately harm those most affected by climate change.²⁴²

Third, climate justice risks as climate-related risks are relevant when discussing how community banking services impact vulnerable populations. Disasters like floods or wildfires may affect smaller banks that are at risk of losing access to infrastructure, making it harder for them to provide essential services to local businesses and individuals.²⁴³ For example, during Hurricane Sandy, credit unions lost power and could not process deposits or provide ATM services, leaving members without access to funds for critical needs like food and shelter.²⁴⁴

Thus, incorporating climate justice risks as part of physical risks in ESG reporting frameworks is crucial because the disproportionate impact of climate change on EJ communities presents material financial and non-financial risks for businesses. By including climate justice in ESG reporting, companies can better address both the physical risks of climate change and the broader social implications, ensuring an equitable and sustainable approach when measuring climate change risks.

For instance, sustainability reporting can help companies advance the “soft-landing” approach for the pricing of climate risks described above by measuring and reporting how mitigation efforts are affecting vulnerable communities and balancing the risks and benefits.²⁴⁵ Also, disclosures that incorporate climate justice risks can help companies target corporate governance strategies to build resiliency and protect EJ communities.²⁴⁶

The intersection of climate justice and climate-related risk highlights that climate impacts—and corporate responses to those impacts—are not distributed evenly. Whether climate-related risks are material should therefore account for how corporate mitigation and adaptation strategies affect environmentally vulnerable communities.²⁴⁷

The 2024 European Climate Risk Assessment (EUCRA) report describes the interplay between climate justice and climate-related risks.²⁴⁸

241. *Id.*

242. *Id.*

243. *See* Stephens, *supra* note 228.

244. *Id.*

245. *See* Gourevitch, *supra* note 228.

246. Francesco Bassetti, *Adapting to Rising Climate Risks: A Matter of Justice*, FORESIGHT (April 16, 2024), <https://www.climateforesight.eu/articles/adaptation-climate-risks-climate-justice/> [https://perma.cc/ND8V-558N].

247. *Id.*

248. Eur. Env't Agency, *supra* note 222, at 336–49.

The report states that “climate risks exacerbate structural inequalities and injustices and adaptation to these risks can be more effective when justice is considered.”²⁴⁹ Furthermore, the report describes climate risks and adaptation actions as two intersecting drivers of risk. The report states that European policies and strategies related to adaptation and mitigation give limited attention to the impacts and ability of vulnerable communities to adapt.²⁵⁰ Thus, adaptation and mitigation efforts (and related monitoring and reporting) must be linked to EJ indicators that reveal the impacts and opportunities that affect the distribution of burdens and benefits from climate impacts, and that measure how the most vulnerable communities are affected.²⁵¹

One of the main issues related to climate disclosures and EJ criteria is that communities of color suffer from an information deficit, as less information is generated about climate risks facing these communities compared to white communities.²⁵² This underscores the need for EJ advocates to push for the integration of EJ criteria in ESG disclosure frameworks.

However, there are challenges related to the use and accuracy of climate justice-related information. Most private climate services rely on “upstream climate data and models collected and produced by a vast network of public institutions.”²⁵³ Given that voluntary disclosure frameworks are, by nature, voluntary, the reliance on inaccurate and disorganized large volumes of information, along with the ability to pick and choose which data to disclose, leads to greenwashing scenarios²⁵⁴ and issues with data inequality and the democratization of climate data.²⁵⁵ Additionally, access to localized climate risk information from sophisticated models is often expensive and unregulated.²⁵⁶ Therefore, it is important to support public-private partnerships where the government

249. *Id.* at 337 (“scientific evidence shows that climate risks exacerbate structural inequalities and injustices and adaptation to these risks can be more effective when justice is considered.”).

250. *Id.* at 340–41; *see also* Bassetti, *supra* note 246.

251. *See* Bassetti, *supra* note 246.

252. DIRECTORATE-GENERAL FOR RESEARCH AND INNOVATION (EU), *A EUROPEAN RESEARCH AND INNOVATION ROADMAP FOR CLIMATE SERVICES*, COM (2006). *See also* Madison Condon, *Climate Services: The Business of Physical Risk*, 55 ARIZ. ST. L.J. 147, 187 (2023) (describing how the physical risks of climate change are affecting EJ communities in the U.S. and the use of climate-related data).

253. *See* Condon, *supra* note 252.

254. *See* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 U.C. L. ENV'T L.J. 78 (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

255. *See* Condon, *supra* note 252 (describing the use of climate-related data).

256. Alice C. Hill, *COVID's Lesson for Climate Research: Go Local*, 595 NATURE 9, 9 (2021); *see also* Condon, *supra* note 252 (describing the use of climate-related data).

collaborates with academia and the private sector to develop publicly available models and tools that provide essential information for decision-makers.²⁵⁷

Future research should explore how these collaborations can produce standardized, accessible EJ metrics that support credible ESG disclosure and equitable environmental governance.²⁵⁸

In summary, integrating EJ criteria into ESG frameworks is crucial for businesses to effectively manage climate-related risks and opportunities. The disproportionate impact of climate change on EJ communities highlights the need for companies to consider both transition and physical risks in their climate strategies. By addressing the inherent tensions between environmental and social dimensions through EJ criteria, businesses can better navigate the complexities of the green transition, mitigate financial and legal risks, and foster resilience in vulnerable communities. Moreover, enhancing the accuracy and accessibility of climate data, particularly for marginalized communities, is essential to ensure that climate disclosures are comprehensive and equitable.

B. Corporate Value, Branding, and Long-Term Viability of Businesses

Limited liability corporations often have an inherent incentive to externalize costs.²⁵⁹ However, many companies choose to comply with social and environmental regulations voluntarily due to the added value that these objectives may bring to the business. This alignment influences (1) consumer attraction and advertising trends, (2) the long-term viability of the business, and (3) beyond-compliance and environmental stewardship.

257. See Condon, *supra* note 252, at 156 (noting private climate services rely on upstream climate data/models produced by public institutions). The elimination of EJScreen and the resulting reliance on fragmented state tools and emerging community-generated metrics underscore the growing importance of public-private-community partnerships to fill critical data gaps. Future research should explore how these collaborations can produce standardized, accessible EJ metrics that support credible ESG disclosure and equitable environmental governance. *EPA Removes EJScreen from Its Website*, Env'tl. Data & Governance Initiative (Feb. 12, 2025), <https://envirodatagov.org/epa-removes-ejscreen-from-its-website/> [<https://perma.cc/38GE-RXGV>].

258. J.R. DESHAZO ET AL., UCLA LUSKIN CTR., PATHWAYS TO ENVIRONMENTAL JUSTICE: ADVANCING A FRAMEWORK FOR EVALUATION 20-21 (2012), https://innovation.luskin.ucla.edu/wp-content/uploads/2019/03/Pathways_to_Environmental_Justice.pdf. [<https://perma.cc/S6CP-V4FA>] (stating that community capacity strategies include “collaborations and partnerships, technical assistance, community-based participatory research and other approaches that empower communities and lead to results.”)

259. See Alan R. Palmiter, *Sustainable Corporations* 226 (2022).

1. Consumer Trends

As consumers are becoming more aware of global environmental challenges,²⁶⁰ environmental and social qualities are attracting environmentally conscious or socially concerned consumers who are mindful of people and the planet.²⁶¹ ESG initiatives often involve sustainability marketing, which not only attracts consumers, but also activates consumer preferences and helps identify consumer trends.²⁶² From an environmental justice perspective, a survey found that a large percentage of American consumers believe that environmental justice is very important, but only a few of them are satisfied with the actions taken by companies to address this issue.²⁶³ Furthermore, consumers believe corporate leaders have a particular responsibility to ensure their company is addressing environmental injustice and that environmental justice initiatives should be a priority for businesses of all kinds.²⁶⁴ This survey also found that a large percentage of consumers believe statements are not enough to address social and environmental inequities, underscoring the importance of following the talk and taking action when disclosing EJ information to consumers.²⁶⁵

2. Long-term Viability

ESG reporting enables investors to assess the long-term viability of the company's business model, which, in turn, generates capital over time.²⁶⁶ ESG can create value by producing top-line growth, cost reductions,

260. *An Eco-wakening: Measuring global awareness, engagement and action for nature*, ECONOMIST IMPACT (Sep. 30, 2021), <https://impact.economist.com/sustainability/ecosystems-resources/an-eco-wakening-measuring-global-awareness-engagement-and-action-for-nature> [<https://perma.cc/66LK-CSZ8>].

261. *See Consumers care about sustainability—and back it up with their wallets*, MCKINSEY (Feb. 6, 2023), <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets> [<https://perma.cc/P4N9-TA68>] (finding that there is a link between ESG-related claims and consumer spending).

262. *See* Barbara Ballan & Jason J. Czarnecki, *Disclosure, Greenwashing & The Future of ESG Litigation*, 549, 81 WASH. & LEE L. R. 545 (2024).

263. *See Americans Agree Companies Cannot Address Climate Issues Without Including Racial Justice*, GOLIN (Sep. 7, 2022), <https://golin.com/2022/09/07/justice-for-all-survey/> [<https://perma.cc/C5R4-96SR>] (finding that more than 85% of Americans believe environmental injustice is important and that only one third is satisfied with corporate actions).

264. *Id.*

265. *Id.* (finding that 82% of Americans believe statements are not enough to address social and environmental inequities).

266. Barbara Ballan & Jason J. Czarnecki, *Disclosure, Greenwashing & The Future of ESG Litigation*, 81 WASH. & LEE L. REV. 545, 575 (2024).

regulatory and legal interventions, productivity enhancement, and investment and asset optimization.²⁶⁷

A KPMG report from 2022 highlights that the most direct way to enhance shareholder financial value is through environmental disclosures.²⁶⁸ However, the report also identifies a significant challenge in ESG reporting: the difficulty in aggregating “apples and oranges” due to the wide range of data types covered by ESG, such as carbon footprint, employee experience, and compliance.²⁶⁹

Furthermore, on an international level, there are important initiatives such as the Taskforce on Inequality and Social-related Financial Disclosures (TISFD)²⁷⁰ and the Business and Human Rights Treaty,²⁷¹ which can shape how businesses and investors assess the risks and opportunities of environmental justice concerns.

3. Beyond-Compliance and Environmental Stewardship

Moreover, corporate culture also plays a crucial role in environmental stewardship.²⁷² Many companies adopt “beyond-compliance” strategies, where they engage in voluntary environmental programs and corporate environmental stewardship practices that exceed regulatory requirements.

²⁷³

Studies show that looming regulations, support from top-level management, and proactive community engagement drives companies to

²⁶⁷. See Witold Henisz et al., *Five Ways that ESG Creates Value*, MCKINSEY Q. (Nov. 14, 2019), <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx> [<https://perma.cc/L9QN-NP1N>]; see also Palmiter, *supra* note 10, at 287–95.

²⁶⁸. Mark Golovscenko et al., *How to Determine Where ESG can Create Value*, KPMG, 4 (2022), <https://assets.kpmg.com/content/dam/kpmg/mt/pdf/2022/06/how-to-determine-where-esg-can-create-value.pdf> [<https://perma.cc/9L72-2KRM>] (determining that environmental objectives are the most direct link to financial value).

²⁶⁹. *Id.* at 3.

²⁷⁰. See TASKFORCE ON INEQUALITY AND SOCIAL-RELATED FINANCIAL DISCLOSURES, TISFD, <https://www.tisfd.org/> [<https://perma.cc/68LQ-B9UD>] (last visited Sep. 26, 2024).

²⁷¹. The United Nations is negotiating an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The draft includes provisions that aim to address environmental justice in the context of human rights and corporate activities. See *BHR Treaty Process*, UNITED NATIONS, <https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process> [<https://perma.cc/846E-G7TJ>] (last visited Sep. 26, 2024).

²⁷². See Palmiter, *supra* note 10, at 229 .

²⁷³. See Jonathan C. Borck & Cary Coglianese, *Beyond Compliance: Explaining Business Participation in Voluntary Environmental Programs* in EXPLAINING COMPLIANCE: BUSINESS RESPONSES TO REGULATION (Lehmann Nielsen & Christine Parker, eds. 2011). See also Palmiter, *supra* note 10, at 229

go beyond compliance.²⁷⁴ Such companies often display an “extroverted disposition,” actively seeking input from external communities and environmental advocacy groups.²⁷⁵ For instance, Patagonia has been at the forefront of environmental and social objectives, showcasing beyond-compliance behavior. Among many other sustainability projects, Patagonia Action Works supports grassroots groups in finding solutions for the environmental crisis.²⁷⁶

Furthermore, beyond-compliance attitudes, combined with corporate governance frameworks that are adapted to EJ objectives, are a proactive approach to identifying and avoiding damages to EJ communities within the corrective justice notion of environmental justice.²⁷⁷

IV. THE INTEGRATION OF EJ ON CORPORATE GOVERNANCE

In the realm of corporate law, there are existing laws and regulations that dictate the ability of the board of directors to consider EJ impacts.²⁷⁸ When analyzing ESG disclosure regulations, corporate law creates the framework for the relationship between shareholders and management; a framework known as corporate governance establishes the rules and practices of a corporation.²⁷⁹

Corporate governance represents the “G” in ESG. It encompasses both the system of controls and procedures by which corporations are managed and the overall processes that establish corporate strategy and

274. See Jonathan C. Borck & Cary Coglianese, *Beyond Compliance: Explaining Business Participation in Voluntary Environmental Programs* in EXPLAINING COMPLIANCE: BUSINESS RESPONSES TO REGULATION (Lehmann Nielsen & Christine Parker, eds. 2011). See also ALAN R. PALMITER, SUSTAINABLE CORPORATIONS 229 (2022).

275. See Borck & Coglianese, *supra* note 145.

276. See *Patagonia Action Works*, PATAGONIA, <https://www.patagonia.com/actionworks/about/> (last visited Sep. 26, 2024).

277. The corrective justice notion addresses how EJ communities that suffered environmental harms are being restored and how they are being repaired for their losses. Notably, proactive approaches can help companies avoid risks while also helping EJ communities by preventing damage, given the difficulty EJ advocacy has in litigating for EJ. Litigation in the EJ movement has mainly focused on two routes: accountability for procedural justice requirements and using civil rights to affect environmental decisions. Both litigation pathways have encountered many challenges. LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 126 (2001).

278. The board of directors is generally in charge of implementing and overseeing the material topics that a company chooses to disclose in ESG reporting frameworks. See, e.g., GLOB. REPORTING INITIATIVE, GRI 3: MATERIAL TOPICS 2021, at 8 (2021), <https://globalreporting.org/pdf.ashx?id=12453> [<https://perma.cc/BDZ8-MYFA>] (stating that “the organization’s highest governance body should oversee the process and review and approve the material topics.”)

279. Palmiter, *supra* note 10, at 54.) (defining corporate governance as a “framework for the relationship between shareholders and management”).

performance.²⁸⁰ The most relevant role of corporate governance for purposes of this research is how corporate governance systems shape ESG reporting frameworks and how these systems may integrate EJ criteria. This Part explores the different components of corporate governance systems that contribute to the integration of environmental justice concerns. This Part (1) describes how the corporation is receptive to EJ considerations depending on their sustainable or unsustainable design, (2) explores the set of rules and procedures that dictates whether directors may consider EJ as material topics in a for-profit business, (3) explains how board committees and experts can promote and shape the integration of EJ criteria, and (4) explores the integration of EJ issues into corporate culture.

The board of directors plays an important role in the governance structure because they serve as the nexus between shareholders and managers.²⁸¹ Under U.S. law and in many jurisdictions around the world, the board of directors owe fiduciary duties of care to the corporation, by which they are obliged to act with due diligence and make informed decisions.²⁸² The duty of care owed by directors, coupled with the “business judgment rule” (a court-constructed principle that defers to good faith director’s decisions), are important legal considerations when analyzing the inclusion of EJ in reports.²⁸³ The interlinkages between the information provided by ESG frameworks and the relationship between the duty of care and informed decisions involve important considerations that influence the incorporation of environmental justice impacts when these are deemed material for a company.

Also, the type of corporation determines whether it has a sustainable or unsustainable design and whether it is more or less receptive to disclosing EJ criteria. Therefore, it is the effect and importance of laws surrounding corporate governance and their interplay with reporting frameworks that manage how companies address risks and opportunities. In the realm of corporate law, certain duties and rules govern the behavior of managers and directors, impacting the overall approach to ESG disclosure and the integration of EJ criteria.

Several other issues intersect with corporate governance’s functions, sustainability reporting, and its ability to consider EJ issues as material. For instance, the composition of the board of directors, the inclusion of

280. See Am. Bar Ass’n, *Environmental, Social, Governance: The Professional’s Guide to the Law and Practice of ESG* 245 (Brian Israel, Ellen K Fleishhacker, & Teresa Johnson eds., 2023).

281. See *id.*

282. See *infra* Part IV.

283. See *infra* Part IV. (explaining that the duty of care requires directors to make decisions with due diligence and adequate information, and that the business judgment rule affords judicial deference to those decisions when directors act on an informed basis, in good faith, and in the corporation’s best interests). See also *Smith v. Van Gorkem*, 488 A.2d 858 (Del. 1985).

specialized board committees, the organizational structure, and the expertise of the directors and officers that manage a corporation determine whether EJ criteria can be integrated.²⁸⁴ Furthermore, corporate governance encompasses issues such as policies and practices related to risk management, legal compliance, and business practice and ethics.²⁸⁵ The laws of the place of incorporation and the laws and regulations of the place where the company operates control the scope of the impacts, thus determining the material topics, disclosure requirements, and whether a director can or should consider EJ criteria as material for the corporation and the associated litigation risks.²⁸⁶

Moreover, the governance system of a corporation is influenced by many different stakeholders, which share or differ in interests. The main group of stakeholders are shareholders, creditors, managers and employees, the board of directors, customers, suppliers, and the government.²⁸⁷ But there is a growing trend towards the integration of other stakeholders, including EJ communities that may shape corporate governance systems.²⁸⁸

Due to the growing importance of EJ and the movement's expanding influence on legislation in the U.S. and globally,²⁸⁹ corporate directors must increasingly consider EJ issues as relevant to both risk management and disclosure.²⁹⁰

While federal support for EJ has been significantly rolled back by the federal government, state-level and community-led regulations continue to push the legal landscape forward. For instance, New York's Environmental Justice Law prohibits the approval of permits for projects that would cause or contribute to disproportionate pollution burdens in

284. *See infra* Part IV.

285. *See* Am. Bar Ass'n, *Environmental, Social, Governance: The Professional's Guide to the Law and Practice of ESG* 246 (Brian Israel, Ellen K Fleishhacker, & Teresa Johnson eds., 2023).

286. *See infra* Part IV.

287. *See* Am. Bar Ass'n, *Environmental, Social, Governance: The Professional's Guide to the Law and Practice of ESG* 245 (Brian Israel, Ellen K Fleishhacker, & Teresa Johnson eds., 2023).

288. *See Embracing Environmental Justice Initiatives to Advance Corporate Objectives*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 9, 2023), <https://corpgov.law.harvard.edu/2023/06/09/embracing-environmental-justice-initiatives-to-advance-corporate-objectives/> [<https://perma.cc/K73K-CGL2>].

289. *See generally* *Environmental Justice: Context, Challenges and National Approaches*, OECD Publishing (May 28, 2024), <https://doi.org/10.1787/57616eb4-en> [<https://perma.cc/KNC8-Z7ER>] (highlighting the emergence of EJ across OECD countries and beyond).

290. *See* Ravay Smith et al., *The Evolution of ESG: How Environmental Justice is Strengthening the Movement*, AM. BAR ASS'N. (Nov. 1, 2023), https://www.americanbar.org/groups/environment_energy_resources/resources/trends/2023-november-december/the-evolution-of-esg/ [<https://perma.cc/D8ZZ-CQ8S>].

disadvantaged communities.²⁹¹ Similarly, New Jersey's Cumulative Impacts Law requires environmental assessments for overburdened communities before certain facilities can be sited or expanded.²⁹² California's CalEnviroScreen tool has become a model for integrating environmental and demographic data into permitting and funding decisions.²⁹³ These developments illustrate how EJ norms are being embedded into state regulatory structures, even as federal infrastructure recedes. They also underscore why companies—particularly those operating across multiple jurisdictions—must apply an “environmental justice lens” to ESG disclosure frameworks.²⁹⁴ In the absence of strong federal coordination, voluntary reporting aligned with EJ principles may serve as both a legal risk management strategy and a vehicle for meeting growing investor, consumer, and community expectations.

Consequently, corporate governance systems that allow the integration of EJ are better prepared for the long-term horizons and regulatory landscapes that the EJ movement brings.²⁹⁵ In these cases, the board of directors, specialized committees, and other corporate governance structures can align for the incorporation of EJ criteria into voluntary reporting frameworks.

A. Corporate Design

Whether a corporation is sustainable or unsustainable is determined by the type of corporation and the legal frameworks in which it operates.²⁹⁶ The structure of a corporation also dictates whether EJ risks can be considered material. Most corporations today operate under a limited liability structure, inherently supporting “extractive” behavior due to the principle of limited responsibility for the corporation's obligations by its shareholders.²⁹⁷

291. N.Y. Env't Conservation L. (ECL) § 70-0118 (2024).

292. Env't Justice L., ch. 92, 2020 N.J. Laws 1 (codified at N.J. Stat. Ann. § 13:1D-157 to -161), https://pub.njleg.gov/bills/2020/S0500/232_11.HTM [<https://perma.cc/5WSJ-7A5J>].

293. *CalEnviroScreen 4.0*, STATE OF CAL., <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40> [<https://perma.cc/Z7PD-WPXQ>] (last visited July 30, 2025).

294. *See generally* OECD, *Environmental Justice: Context, Challenges and National Approaches* (2024), <https://doi.org/10.1787/57616eb4-en> [<https://perma.cc/KNC8-Z7ER>] (highlighting the emergence of EJ across OECD countries and beyond).

295. *See, e.g., Environmental Justice Update*, K&L GATES (describing how the federal roll-back of EJ efforts will encourage states to more aggressively enact and enforce EJ policies), <https://www.klgates.com/Environmental-Justice-Update-5-5-2025> [<https://perma.cc/K77E-BUNU>].

296. *See generally* Palmiter, *supra* note 10 (describing the evolution and legal intricacies of sustainable corporations).

297. *See id.* at 105–06.

In limited liability companies, the responsibility for environmental and social harm outside the company is often waived, shifting the corporation's costs onto those who suffer the consequences of environmental degradation.²⁹⁸ The traditional limited liability and for-profit corporate designs significantly impact the inclusion of EJ criteria in ESG frameworks, making the analysis of corporate design crucial. The evolution and redevelopment of corporate designs are transforming corporate governance into systems that promote a sustainable, environmentally, and socially friendly world.²⁹⁹

There have been efforts to create new corporate designs to align social, environmental, and economic objectives aside from the never-ending and insatiable pursuit of generating capital.³⁰⁰ New corporate creatures, such as the benefit corporation, balance traditional nonprofit and for-profit business forms.³⁰¹ The benefit corporation is defined as a hybrid form of social enterprise that allows firm managers to take environmental and social interests into account.³⁰² The benefit corporation has the dual mission to promote social welfare and environmental protection while also creating a profit for the shareholders.³⁰³ Other forms of alternative corporate designs are the low-profit limited liability company (L3C) and the B Corp certification by B Lab.³⁰⁴

Under these corporate designs, directors are prone to disclose EJ criteria in their sustainability reports because they are incentivized to do so.³⁰⁵ Also, directors are less threatened by the risks of litigation related to their

298. For an in-depth analysis of U.S. corporations and how they address sustainability, see generally Palmiter, *supra* note 10.

299. See generally Palmiter, *supra* note 10. (describing the evolution and legal intricacies of sustainable corporations).

300. See Palmiter, *supra* note 10, at 332. (describing the different hybrid social enterprises that combine social purpose and investor profitability).

301. See *id.* at 331–41 (2022) (describing the emergence of the benefit corporation).

302. See Sarah R. Light, *The Law of Corporation as Environmental Law*, 71 STAN. L. REV. 137, 185–90 (2019) (describing the benefit corporation as an incentive to promote environmental values and goals).

303. See *supra* Part II.B (exploring the “dual mission dilemma of ESG” and the relationship of ESG and social justice).

304. The L3C is a limited liability company formed to significantly further charitable or educational purposes and for whom neither income production nor property appreciation may be a significant purpose. If it ceases to pursue its purposes it transforms into an LLC. An L3C may have investor members who can receive unlimited disbursements during its existence or upon dissolution. The B Corp certification is a private certification by a private nonprofit organization, B Lab, which verifies and determines, by conducting an extensive survey, how well the applicant complies with B Lab's standards. Applicants that meet B Lab's standards are licensed with the B Corp mark and are audited on an ongoing basis. See Palmiter, *supra* note 10.

305. See Sarah R. Light, *The Law of Corporation as Environmental Law*, 71 STAN. L. REV. 137 (2019) (describing that corporate law and environmental law should be addressed concurrently when addressing pressing environmental challenges).

fiduciary duties towards shareholders and their duty to deliver returns under traditional for-profit corporations as described below.³⁰⁶

Furthermore, benefit corporations operate under a disclosure model that is broader than traditional for-profits.³⁰⁷ Unlike conventional corporations, benefit corporations are statutorily required to pursue a general public benefit—defined as a positive impact on society and the environment—and may also adopt specific public benefit purposes.³⁰⁸ To operationalize these obligations, benefit corporations must produce periodic benefit reports that disclose how directors balance profit-making with social and environmental objectives.³⁰⁹ Although these reporting requirements are less stringent than those imposed on nonprofits, they occupy a middle ground that creates space for integrating environmental justice considerations into corporate governance and ESG disclosure, particularly where conflicts arise between financial performance and social or environmental impacts.³¹⁰

B corps, benefit corporations, and other hybrid corporate forms and their disclosure requirements can specifically integrate EJ criteria in various ways. For instance, a benefit corporation may contain a specific public benefit objective related to providing low-income or underserved communities with beneficial products or service.³¹¹ In a benefit corporation, directors must consider the impact of their decisions not only on their shareholders, but also on other stakeholders that are beneficiaries of the public benefit. For example, a benefit corporation statute that aims to benefit environmental justice communities as its specific public benefit must include low-income communities, communities of color, and burdened communities as relevant stakeholders, and directors are required to consider the impacts of their decisions on the EJ communities. Thus, disclosure requirements must incorporate EJ criteria and include progress and assessment of environmental justice concerns on their annual benefit reports.

In summary, corporate designs are being transformed and new innovative designs are being introduced. These new forms of understanding and managing corporations allow for an expansive disclosure system that is more receptive to the integration of

306. *Id.* (describing that corporate law and environmental law should be addressed concurrently when addressing pressing environmental challenges).

307. See Dana Brakman Reiser, *Benefit Corporations — A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 591, 615–16 (2011).

308. See *id.* at 598.

309. See *id.* at 603–04.

310. *Id.* at 603–04, 615–16.

311. See Dana Brakman Reiser, *Benefit Corporations — A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 591, 597 (2011).

environmental justice criteria. However, many challenges remain regarding the conflicts between the dual mission of achieving profit and social and environmental goals.³¹²

B. Fiduciary Duties & The Business Judgment Rule

Corporate law governs how corporations are created and the duties directors owe to the corporation. The intersection between the environmental and corporate realms has become increasingly relevant due to the growing recognition that corporate and environmental laws are addressed concurrently to tackle pressing environmental challenges.³¹³

In a corporation, the ultimate responsibility for deciding material topics often lies with the board of directors and senior management.³¹⁴ Under U.S. state law, the board of directors owes fiduciary duties to the corporation, primarily the duty of care and the duty of loyalty.³¹⁵ Public corporations in the U.S. operate under mandatory disclosure rules mandated by federal securities laws, as well as state corporate laws that govern shareholder voting and board decision-making.³¹⁶ These processes are further moderated by judge-created fiduciary duties, which establish the boundaries within which directors and officers can act. These duties also depend on the self-regulatory mechanisms of corporate law, which is where voluntary ESG disclosure frameworks come into play.³¹⁷

The duty of care requires directors to act with due diligence, making decisions based on sufficient information.³¹⁸ However, under the court-constructed principle known as the business judgment rule, when a director exercises its duty of care, courts generally defer to directors' decisions as long as they act in good faith and in the corporation's best interest.³¹⁹

312. See *supra* Part II.B (exploring the “dual mission dilemma of ESG” and the relationship of ESG and social justice).

313. See Sarah R. Light, *The Law of Corporation as Environmental Law*, 71 STAN. L. REV. 137 (2019) (describing that corporate law and environmental law should be addressed concurrently when addressing pressing environmental challenges.).

314. See, e.g., GLOB. REPORTING INITIATIVE, GRI 3: MATERIAL TOPICS 2021, at 8 (2021), <https://globalreporting.org/pdf.ashx?id=12453> [<https://perma.cc/DHM9-6PDQ>] (stating that “the organization’s highest governance body should oversee the process and review and approve the material topics”).

315. See, e.g., *Smith v. Van Gorkem*, 488 A.2d 858 (1985) (discussing a director’s duty of care); *Guth v. Loft*, 5 A.2d 503, 510 (Del. 1939) (discussing a director’s duty of loyalty).

316. See *Palmiter*, *supra* note 10, at 53.

317. See *id.*

318. See, e.g., *Smith*, 488 A.2d 858.

319. See *Smith*, 488 A.2d 858 (defining the business judgment rule as “a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company”).

In determining whether directors complied with their fiduciary duty of care, courts look at factors such as the information available to directors, and whether directors engaged in discussions with advisors, reviewed relevant documents, and reasonably inquired about relevant issues.³²⁰ The board is not required to be informed of every fact, but to be reasonably informed.³²¹

In some instances, corporate law might address deficiencies in environmental law, such as in cases of a parent corporation's compliance with environmental regulations.³²² Corporate law may compel directors to ensure compliance with federal regulations, even when environmental law does not.³²³ For example, under state law, corporate directors' fiduciary duties may require compliance with legal norms, whereas environmental law may fall short. This is often observed in cases like corporate parents' liability under CERCLA for the cleanup of toxic waste sites created by wholly owned subsidiaries.³²⁴

The relationship between these principles and directors' decisions regarding environmental and social impacts can lead to varying outcomes, depending on the position that directors take on these issues and the financial implications for the company. For instance, a director's decision might be viewed as a breach of fiduciary duty (e.g., for failing to consider environmental justice issues or for considering them for the impact they have on shareholders' returns) or it might be protected under the business judgment rule (e.g., if the director acted in good faith after a determination that the impacts are material).

Thus, the fiduciary duties that directors and officers owe to the corporation can be a double-edged sword for shareholders seeking short-term returns. For example, retirement fund beneficiaries have sued their fund providers for either divesting or for not divesting from fossil fuel companies.³²⁵ Complaints may also allege a breach of fiduciary duties by

320. See Am. Bar Ass'n, *Environmental, Social, Governance: The Professional's Guide to the Law and Practice of ESG* 246 (Brian Israel, Ellen K Fleishhacker, & Teresa Johnson eds., 2023).

321. See *id.*

322. See *United States v. Bestfoods*, 524 U.S. 51 (1998).

323. See Alan R. Palmiter, *Sustainable Corporations* 111–18 (2022).

324. *Id.*

325. See, e.g., Complaint, *Wong v. N.Y.C. Emps.' Ret. Sys.*, No. 652297/2023 (N.Y. Sup. Ct. May 11, 2023); Complaint, *Lynn v. Peabody Energy Corp.*, No. 4:15CV00916 (E.D. Mo. 2017). Complaints may also allege breach of fiduciary duties of corporate directors and officers when losses can be attributed to their failure to disclose or to consider ESG-related information. See also Lisa Benjamin, *The Road to Paris Runs Through Delaware: Climate Litigation and Directors' Duties*, 2020 UTAH L. REV. 313, 355–62 (2020) (discussing fiduciary duties in the context of climate risks as new risks and responsibilities for corporate actors).

corporate directors and officers when losses are attributed to their failure to disclose or consider ESG-related information.³²⁶

The fiduciary duties of directors arguably encompass the consideration of sustainability, climate change, and environmental justice risks. Whether or not directors consider environmental or social impacts, courts will give deference to their actions made in good faith and in the best interests of the company under the business judgment rule.³²⁷ Nevertheless, because of the increasing impact of climate risks, there has been a rise in climate change litigation against directors and officers who may be perceived as neglecting their fiduciary obligations by failing to adequately assess, disclose, or manage material climate-related and environmental justice risks.³²⁸ Thus, directors have broad discretion within the business judgment rule to adopt ESG practices that integrate EJ reporting requirements. If directors find that EJ criteria should be considered material for a business, because it signifies a risk or an opportunity as explained above, directors are permitted, or even required, to report disclosure regarding EJ concerns.

Nevertheless, under traditional for-profit corporations that seek short-term gains under a shareholder wealth maximization approach, the integration of EJ concerns would be difficult—or most likely impossible—to achieve. As the economic system and regulatory landscape remain unchanged, the system tends to favor regulations and laws that facilitate the externalization of environmental and social harms, including environmental injustices, while penalizing businesses that choose to internalize these costs.³²⁹

C. Oversight of ESG Risks

The duty to monitor, or oversight, is an obligation that flows from the duties of care and loyalty and has particular significance in approaching

326. *See, e.g.*, Complaint, *Wong v. N.Y.C. Emps.' Ret. Sys.*, No. 652297/2023 (N.Y. Sup. Ct. May 11, 2023); Complaint, *Lynn v. Peabody Energy Corp.*, No. 4:15CV00916 (E.D. Mo. 2017). Complaints may also allege breach of fiduciary duties of corporate directors and officers when losses can be attributed to their failure to disclose or to consider ESG-related information. *See also* Lisa Benjamin, *The Road to Paris Runs Through Delaware: Climate Litigation and Directors' Duties*, 2020 UTAH L. REV. 313, 355–62 (2020) (discussing fiduciary duties in the context of climate risks as new risks and responsibilities for corporate actors).

327. *See* AM. BAR ASS'N, *ESG IN THE BOARDROOM: A GUIDEBOOK FOR DIRECTORS* 38 (Katayun Iris Jaffari & Stephen A. Pike eds., 2022) (describing the business judgement rule as a tool that amplifies directors' discretion over long-term corporate value).

328. *See, e.g.*, Lucy Pérez et al., *Does ESG Really Matter—And Why?*, MCKINSEY Q. (Aug. 10, 2022),

<https://www.mckinsey.com/business-functions/sustainability/our-insights/does-esg-really-matter-and-why?cid=soc-web>. [<https://perma.cc/9M76-WAW8>]

329. *See supra* Part II (describing the paradoxical relationship between ESG and EJ).

sustainability and ESG issues.³³⁰ Delaware courts have interpreted that the duty of oversight is part of the fiduciary duties of directors. In the leading case, *Caremark*, the Delaware court of Chancery expressly recognized the duty of oversight.³³¹

In *Caremark*, the court recognized that directors must have a system in place to monitor and oversee, in good faith, the corporation's compliance with the laws.³³² However, this case has been limited to monitoring fraudulent or criminal conduct. Other legal compliance and monitoring of ordinary business risks typically falls within the presumption of the business judgment rule.³³³ The *Caremark* duties are very difficult to plead and prove for plaintiff stockholders because they do not imply mere business risk-taking.³³⁴ Nevertheless, they still apply to diverse compliance violations, and directors should oversee how the corporation complies with applicable laws and regulations governing its operations.³³⁵

The awareness and emergence of environmental justice concerns is growing.³³⁶ Thus, directors should be informed of the impacts, risks, and opportunities related to EJ because it adjusts to their fiduciary duties of oversight. Voluntary disclosure frameworks must contain EJ disclosures that companies may use to report on their impact.³³⁷ For instance, the board of directors of a renewable industry may use these reports to disclose its climate justice issues, commitments and opportunities to benefit vulnerable communities, and the impacts of siting facilities and operations on these communities.³³⁸ Also, environmental justice-related laws

330. Am. Bar Ass'n, *ESG In The Boardroom*, *supra* note 327, at 39.

331. *In re Caremark Int'l*, 698 A.2d 959 (Del. Ch. 1996).

332. *See* Am. Bar Ass'n, *ESG In The Boardroom*, *supra* note 327, at 39.

333. *See* Am. Bar Ass'n, *Environmental, Social, Governance: The Professional's Guide to the Law and Practice of ESG* 247, 248 (Brian Israel, Ellen K Fleishhacker, and Teresa Johnson eds., 2023).

334. *See* Am. Bar Ass'n, *ESG In The Boardroom*, *supra* note 327, at 40.

335. *See* Palmiter, *supra* note 10, at 226–27 (explaining that directors' oversight obligations extend beyond fraud to "mission-critical" legal compliance, including environmental and safety laws, and that knowingly or recklessly permitting violations of law may constitute a breach of the fiduciary duty of obedience, giving rise to potential *Caremark* liability).

336. *See generally* Environmental Justice: Context, Challenges and National Approaches, Org. For Econ. Co-operation & Dev. *Environmental Justice: Context, Challenges and National APPROACHES*, (OECD PUB'G 2024), <https://doi.org/10.1787/57616eb4-en> [<https://perma.cc/T3CU-KHME>] (highlighting the emergence of EJ across OECD countries and beyond).

337. *See generally* Barbara Ballan, *The ESG Disclosure Paradox: Gaps in Environmental Justice Criteria*, 32 UC ENV'T L.J. 78 (2025) (assessing how ESG voluntary disclosure frameworks incorporate EJ criteria).

338. *Id.* at 118–19 (describing how chemical companies such as Chemours, Eastman, and Dow have incorporated environmental justice considerations into sustainability disclosures, including assessments of manufacturing site locations, use of EPA screening tools to evaluate community-level environmental burdens, and community engagement efforts related to the siting and operation of facilities in historically overburdened communities).

influence the decision of governance bodies to include these criteria in their reporting frameworks. As explained above, in the U.S., there are existing laws, regulations, and orders at both state and federal levels that affect how a company operates in certain geographical areas where environmental justice communities inhabit.³³⁹ Furthermore, compliance and permit requirements are important concerns that should be considered when disclosing EJ-related information.

The laws of the place of operation are also important for compliance and permit requirements receptive to environmental justice concerns.³⁴⁰ In some states that contain environmental justice laws, companies may be required to meet permit requirements and conduct assessments using EJTools. These regulatory requirements are material for a business because they have an economic and financial impact on the business and can incur litigation risks.³⁴¹

In essence, the development and transformation of the regulatory landscape—along with the available public information and tools to measure and assess environmental justice impacts—should incentivize directors to report EJ criteria and push for ESG voluntary frameworks that include EJ criteria on their disclosure requirements. Corporations, standard-setting bodies, and other private environmental bodies need to apply an “environmental justice lens” to ESG disclosure frameworks.³⁴²

D. The Role of Management

The management of EJ-related issues is essential for the effective integration of environmental justice concerns in corporate disclosures and corporate decision-making. The board of directors is “responsible for

339. N.Y. ENV'T CONSERV. LAW § 70-0118 (2024) *see, e.g., Justice40 A Whole-of-Government Initiative*, THE WHITE HOUSE, <https://www.whitehouse.gov/environmentaljustice/justice40/> [https://perma.cc/U7G4-6W9E] (last visited Sep. 11, 2024). The Inflation Reduction Act “provides funding for financial and technical assistance to carry out environmental and climate justice activities to benefit underserved and overburdened communities.” *The Inflation Reduction Act Environmental and Climate Justice Program*, EPA, <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-environmental-and-climate-justice-program> [https://perma.cc/KH7S-6KSA] (last visited Sep. 11, 2024). *See also* Ravay Smith et al., *The evolution of ESG: How environmental justice is strengthening the movement*, AM. BAR ASS'N (Nov. 1, 2023), https://www.americanbar.org/groups/environment_energy_resources/resources/trends/2023-november-december/the-evolution-of-esg/ [https://perma.cc/UTJ6-GS94]

340. *See* Ravay Smith et al., *The evolution of ESG: How environmental justice is strengthening the movement*, AM. BAR ASS'N (Nov. 1, 2023), https://www.americanbar.org/groups/environment_energy_resources/resources/trends/2023-november-december/the-evolution-of-esg/ [https://perma.cc/UTJ6-GS94]

341. *Id.*

342. *See generally* ORG. FOR ECON. CO-OPERATION & DEV., ENVIRONMENTAL JUSTICE, *supra* note 336.

overseeing management's implementation of the board's strategy"³⁴³ and the board needs to be informed about matters affecting their company's strategic, operational and risk management plans. Thus, the information provided to the board needs to be complete and accurate so that the board can satisfy its fiduciary obligations. Consequently, corporate officers need to consider certain factors for the effective integration of environmental justice concerns into corporate decision-making processes.³⁴⁴

1. Specialized EJ Committees

The teams that work in managing and who assess the reports provided to the board must have sufficient technical expertise and be specialized for the effective integration of environmental justice concerns. Management-level committees or specialized committees can ensure the effective integration of EJ criteria. In practice, the size of an EJ committee will depend on the nature and size of the business.³⁴⁵ The trend for ESG-related matters is to incorporate senior management into the committee so that there is sufficient power to implement change.³⁴⁶ However, the majority of the members of these committees must have a certain level of technical ability to accurately address environmental justice concerns.

A specialized EJ committee can integrate EJ concerns into business management and assist the company in setting an EJ strategy by recommending policies and business objectives, identifying EJ communities, assessing and managing EJ risks and opportunities, defining reporting measures within an environmental justice scope, and ensuring the reliability and accuracy of EJ data.³⁴⁷ There are corporate specialized groups, such as steering committees, that are in charge of overseeing a project and ensuring its success, including senior experts and leaders in the EJ space.³⁴⁸

For instance, Dow Chemical reports that it has created an "Environmental Justice (EJ) Steering Team" to "act as the governance structure for issues and opportunities related to EJ," providing enterprise-wide oversight, monitoring contested permits, and advising senior ESG leadership on regulatory and political risks; a separate Social Justice

343. See Am. Bar Ass'n, *Environmental, Social, Governance: The Professional's Guide To The Law and Practice of ESG 273* (Brian Israel, Ellen K. Fleishhacker & Teresa Johnson eds., 2023).

344. *Id.* at 269–275.

345. *Id.* at 269.

346. *Id.*

347. *Id.* at 270.

348. *Id.* at 270.

Council and a newly formed ESG Supply-Chain Due-Diligence Team round out this governance framework.³⁴⁹

2. EJ-Related Tracker

Another way of ensuring the effective integration of EJ concerns is by establishing an EJ-related tracker that tracks regulatory advancements related to EJ in the different jurisdictions in which the company operates.³⁵⁰ By utilizing an EJ-related tracker, a company can mitigate greenwashing litigation risks. This is because the board is informed in advance about what the company would disclose in court and so can be better prepared to defend its position with information that backs up its statements.

ESG-related information that intersects with EJ issues may be disclosed in public filings as part of mandatory disclosure frameworks. The use of an EJ-related tracker becomes imperative to ensure that the ESG information being analyzed aligns with the mandatory requirements.³⁵¹ Also, and as described in this work, companies may report ESG using voluntary reporting frameworks such as GRI or ISSB. When companies disclose EJ-related information using ESG voluntary reporting frameworks, the role of management and the tracking of EJ-related issues is important to ensure transparency, accuracy of information, and data management within the corporate governance system.

For instance, a company may report using GRI Human Rights Management Disclosure, or choose to report on GRI Local Communities and disclose local communities impacts and their vulnerability to operational impacts.³⁵² Thus, the management should consider tracing EJ-related information—such as mapping tools that track regulations within the areas of operation and regulatory tracking services and enforcement actions—to correctly assess the EJ information that is being disclosed in the voluntary reporting frameworks.

349. *See* DOW INC., 2025 PROGRESS REPORT: INTERSECTIONS 103 (2024), <https://corporate.dow.com/content/dam/corp/documents/about/066-00504-01-2024-progress-report.pdf> [<https://perma.cc/G57J-HZBH>].

350. *See* Am. Bar Ass'n, Environmental, Social, Governance: The Professional's Guide, *supra* note 343, at 270.

351. This Article focuses on PEG voluntary ESG frameworks, but there are existing mandatory ESG frameworks incorporated by public law, and the use of an ESG-related tracker becomes imperative because ESG-related information is required by law and disclosed in public filings. *See supra* Part II. *See also* Israel et. al, *supra* note 269, at 270.

352. Ballan, *supra* note 25, at 68.

3. Disclosing EJ criteria on Voluntary Reporting Frameworks

The most relevant voluntary ESG disclosure frameworks—such as the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), the Task Force on Climate-related Financial Disclosures (TCFD), and the International Sustainability Standards Board (ISSB)—do not incorporate accurate reporting requirements that adequately address environmental justice risks and opportunities.³⁵³ However, these frameworks contain disclosures (such as those related to human rights, local communities and Indigenous rights) that are infused with environmental justice considerations.³⁵⁴

The issue with the integration of EJ criteria into the management and corporate governance structure of a company is that this information is reported voluntarily, and the most widely adopted frameworks do not contain disclosure standards that specifically target EJ concerns.³⁵⁵ The absence of EJ-specific disclosures creates uncertainties and inconsistencies when determining what data to collect, analyze, and disclose.³⁵⁶

At least in 2024, companies were reporting the use of the EPA's EJScreen tool to understand the communities around its sites, but there are no available disclosure requirements in existing voluntary frameworks that measure or assess the use of these tools, raising questions about their legitimacy and greenwashing scenarios.³⁵⁷ Thus, EJ leaders, communities, activists, and firms that are committed to EJ concerns should push for the creation and introduction of these disclosures in voluntary reporting frameworks, so that companies can disclose EJ information in a more accurate, transparent, and consistent manner, without incurring litigation risks. The integration of EJ criteria on ESG disclosure frameworks gives companies that want to report on these issues assurance that there is comparability and consistency in EJ reporting.³⁵⁸

When disclosing EJ criteria, companies conduct a separate risk assessment that includes a report on environmental justice risks and opportunities.³⁵⁹ Companies work with experts in the field and confer with

353. *Id.* at 69 (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

354. *Id.* (describing how ESG disclosure frameworks are infused with EJ criteria, particularly through disclosure requirements related to Human Rights).

355. *Id.* at 78 (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

356. Israel et. al, *supra* note 268, at 270.

357. Ballan, *supra* note 25, at 68 (describing the gaps in ESG frameworks for the effective integration of EJ criteria).

358. Israel et. al, *supra* note 269, at 270.

359. Ballan, *supra* note 338, at 118–19 (describing use of EPA screening tools and expert-led community impact assessments).

internal and external consultants who understand complex EJ-related issues, measure demographic and pollution indicators, and understand the geographical and underlying problems and challenges when assessing environmental justice risks and opportunities.³⁶⁰

For instance, companies are starting to report on civil rights issues in separate impact assessment reports that refer to stakeholder's civil rights.³⁶¹ In 2022, WM shareholders voted in favor of a shareholder proposal requesting the public disclosure of the findings of a third-party assessment.³⁶² The report assessed diversity and inclusion, supplier diversity, and environmental justice.³⁶³ The environmental justice report includes a review of the extent to which the company treats communities affected by its operations, including low-income communities and communities of color, fairly and equitably, with opportunities for meaningful involvement.³⁶⁴ WM reported to be using an Environmental Justice Mapping Tool that provides for socio-economic indicators and the use of EPA data related to public health and pollution indicators.³⁶⁵ WM created an Environmental Justice Working Group (EJWG) that oversees any disproportionate impact of its facilities on communities with EJ indicators.³⁶⁶ Furthermore, as explained above, the company established an EJ-related tracker that "tracks environmental compliance and investments in communities with EJ indicators"³⁶⁷ essential for the effective disclosure of EJ impacts, and works to develop other metrics of "fair treatment."³⁶⁸ In its recommendations, the reporter found that the group needs to "continue to seek out metrics of fair treatment and develop specific key performance indicators against which sites can be measured and appropriate responsive actions taken if sites fail to meet expectations."³⁶⁹

360. *Id.* (describing use of EPA screening tools and expert-led community impact assessments).

361. PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, WASTE MANAGEMENT CIVIL RIGHTS ASSESSMENT (2022), <https://sustainability.wm.com/WM-Civil-Rights-Assessment-Report-2024.pdf> [<https://perma.cc/M3Q7-YGVG>] (commissioned by Waste Management following a shareholder proposal on diversity, equity, inclusion, and environmental justice. The report evaluated WM's impacts on overburdened communities and recommended stronger EJ metrics and governance, including establishing a cross-functional Environmental Justice Working Group).

362. *Id.* at 2.

363. *Id.*

364. *Id.* at 7–9.

365. *Id.*

366. *See* PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, WASTE MANAGEMENT CIVIL RIGHTS ASSESSMENT (2022), <https://sustainability.wm.com/WM-Civil-Rights-Assessment-Report-2024.pdf> [<https://perma.cc/M3Q7-YGVG>]

367. *Id.*

368. *Id.*

369. *Id.*

4. Corporate Culture and EJ

Corporate culture is defined as the “attitudes, behaviors and understanding about risk, both positive and negative, that influence the decisions of management and personnel and reflect the mission, vision and core values of the organization.”³⁷⁰ Corporate culture can also be defined as “the self-sustaining pattern of behaviors that determine how things are done.”³⁷¹ A 2021 survey shows that culture is a source of competitive advantage and that culture enables successful internal change initiatives to happen.³⁷²

The analysis and evolution of corporate culture influences how the corporation manages and assesses risks and opportunities related to social and environmental justice issues. The narrative that executives are delivering must be inclusive and consistent, and must include a broader set of stakeholders in the discussions and commitments.³⁷³

For example, taking the necessary actions—including integrating environmental justice criteria into reporting frameworks—must go hand in hand with management leadership behavior and communication with employees and other stakeholders.

Management inside the company must coincide with the statements that a business is disclosing because “values can’t be merely words on the wall.”³⁷⁴ One way to connect EJ disclosures to the corporate culture is to align the values and behaviors of the company’s employees and leadership. The first step is to define the company’s mission and values by aligning them to the principles of environmental justice.³⁷⁵ Under this premise, it is essential that employees’ ideas are valued and respected; the business must foster collaboration with employees and incentivize participation and communication strategies so that the work environment reflects the outside statements.

370. Comm. of Sponsoring Orgs. of the Treadway Comm’n & World Bus. Council for Sustainable Dev., *Enterprise Risk Management: Applying Enterprise Risks Management to Environmental, Social and Governance-Related Risks* 16, (2018), https://docs.wbcsd.org/2018/10/COSO_WBCSD_ESGERM_Guidance.pdf [<https://perma.cc/V3HY-BEXQ>]. See also Israel et. al, *supra* note 269, at 274.

371. PWC 2021 GLOBAL CULTURE SURVEY, PWC (2021), <https://www.pwc.com/gx/en/issues/upskilling/global-culture-survey-2021/global-culture-survey-2021-report.html> [<https://perma.cc/JQ3J-GJC5>].

372. *Id.*

373. See also Israel et. al, *supra* note 269, at 274-275.

374. *What Is Company Culture? Definition & Development Strategies*, FORBES (May 30, 2024), <https://www.forbes.com/advisor/business/company-culture/> [<https://perma.cc/5GMX-V4NZ>].

375. Delegates to the First National People of Color Environmental Leadership Summit, *Principles of Environmental Justice* (Apr. 6, 1996), <https://ejnet.org/ej/principles/> [<https://perma.cc/B45W-5GG9>].

However, in the current political context, where the federal government has actively dismantled EJ efforts and targeted institutions supporting these values, private companies must be especially intentional.³⁷⁶ Activist investors can influence a company's adoption of environmental justice concerns by altering its strategic direction and corporate governance.³⁷⁷

Activist investors are shareholders who use their equity stakes in a company to push for changes in corporate governance, strategy, or operations.³⁷⁸ They differ from traditional investors by not simply seeking profits from stock appreciation but also aiming to influence the company's direction.³⁷⁹ These investors often engage in shareholder activism through proposals, proxy battles, and direct engagement with management to effect changes that can range from financial restructuring to environmental and social responsibility measures.³⁸⁰

The most well-known appearance of ESG-focused activist investing occurred in 2021 when a small hedge fund, Engine No. 1, successfully won three seats on ExxonMobil's board of directors.³⁸¹ The hedge fund campaign aimed to push Exxon to accelerate its efforts to reduce carbon emissions and adopt a more sustainable business model.³⁸² The proposal was supported by the "Big Three" huge institutional investors, BlackRock, Vanguard, and State Street Global Advisors.³⁸³ The campaign demonstrated the potential of activist investors to reshape corporate governance, driving large companies toward more sustainable and socially responsible practices, even in industries historically resistant to such changes.³⁸⁴

376. See *Can the Environmental Justice Movement Survive Trump's Attacks? This EJ Warrior Says Yes*, NRDC (Apr. 1, 2025), <https://www.nrdc.org/stories/can-environmental-justice-movement-survive-trumps-attacks-ej-warrior-says-yes> [<https://perma.cc/NND6-8TAV>] (stating how the EJ movement can survive by the use of data and EJ tools that empower EJ communities).

377. *What Is Activist Investing? A Catalyst for Change*, OLSTEIN, <https://www.olsteinfunds.com/insights/what-is-activist-investing-a-catalyst-for-change> [<https://perma.cc/3MVQ-HDVC>].

378. See Am. Bar Ass'n, *Environmental, Social, Governance: The Professional's Guide to the Law and Practice of ESG 261* (Brian Israel, Ellen K Fleishhacker, and Teresa Johnson eds., 2023).

379. See Neha Gupta, *Feared Activist Hedge Fund Engine No. 1 Pressures Exxon Mobil Corporation (XOM)*, INSIDER MONKEY (Aug. 16, 2024), <https://www.insidermonkey.com/blog/feared-activist-hedge-fund-engine-no-1-pressures-exxon-mobil-corporation-xom-1336270/> [<https://perma.cc/J28U-L82U>].

380. See *id.*

381. See Matt Phillips, *Exxon's Board Defeat Signals the Rise of Social-Good Activists*, N.Y. TIMES (June 9, 2021), <https://www.nytimes.com/2021/06/09/business/exxon-mobil-engine-no1-activist.html> [<https://perma.cc/6VSL-8XYQ>].

382. See *id.*

383. See *id.*

384. See *Stakeholders v. Shareholders: reimagining environmental justice*, JUST ACCESS (Nov. 9, 2021), <https://just-access.de/stakeholders-v-shareholders-reimagining-environmental-justice/> [<https://perma.cc/RK9B-CPQP>].

Activist investors can be a powerful force for integrating environmental justice concerns into corporate governance.³⁸⁵ By pushing for proposals related to how companies manage environmental and social risks, activists can help firms mitigate harm to the environment and address the disproportionate impacts of environmental degradation on marginalized communities.

Shareholder activism can impact environmental justice, as well as human rights and indigenous rights policies. Shareholders can push for the creation of corporate governance mechanisms to integrate EJ considerations, such as a specialized EJ committee or EJ tracker that can help gather the necessary information for reporting on EJ. For instance, in 2009, Newmont Mining shareholders successfully integrated a Community Relations Review, which reviews and evaluates the company's policies and practices related to local communities and has become a critical part of Newmont's operations planning worldwide and.³⁸⁶

Another example is a shareholder resolution at Citigroup, led by a group of investor nuns who have spent years advocating for the bank to issue a report detailing the effectiveness of its policies and practices in respecting Indigenous peoples' rights, based on international human rights standards.³⁸⁷ Although the resolution failed, it garnered enough shareholder support to be resubmitted, sending a clear message "to the bank that human rights violations are bad for business."³⁸⁸ This group, which has introduced similar resolutions for three consecutive years, continues to push for transparency and accountability regarding Citibank's financing of fossil fuel projects on Indigenous lands.³⁸⁹ Their efforts emphasize the ethical and financial risks associated with disregarding Indigenous rights and environmental sustainability.

Moreover, activist investors can propose that corporations disclose their EJ impacts as part of their broader ESG reporting frameworks. This could include requirements to assess and report on how their operations affect vulnerable populations, particularly in areas like pollution, resource

385. *See id.*

386. *See Newmont Releases Independent Community Relationships Review*, NEWMONT (Mar. 9, 2009), <https://www.newmont.com/investors/news-release/news-details/2009/Newmont-Releases-Independent-Community-Relationships-Review/default.aspx>. *See also* Rebecca Adamson, *Investing in Indigenous Communities*, GREEN AMERICA (Oct. 2, 2024), <https://www.greenamerica.org/green-living/investing-indigenous-communities> [<https://perma.cc/L7M6-FLQP>].

387. Keerti Gopal, *Investor Nuns' Shareholder Resolutions Aim to Stop Wall Street Financing of Fossil Fuel Development on Indigenous Lands*, INSIDE CLIMATE NEWS (May 6, 2024), <https://insideclimatenews.org/news/06052024/investor-nuns-citibank-indigenous-land-fossil-fuel-financing/> [<https://perma.cc/TRQ9-CUJW>].

388. *Id.*

389. *Id.*

extraction, and climate change resilience. Such proposals would compel companies to consider the broader social implications of their environmental footprint, making them more accountable to both investors and the communities they impact.

When activist investors win board seats, they gain a direct say in corporate decision-making. They can thereby act as catalysts for change in corporate governance. In the case of ExxonMobil, having three environmentally-focused directors on its board created a clear mandate to address climate risks more seriously.³⁹⁰ This model can be replicated in other industries where corporate governance structures have been slow to embrace EJ principles.

Furthermore, shareholder proposals demanding transparency in reporting environmental justice criteria can also lead to significant regulatory and policy changes within corporations. As these proposals gain traction, companies may adopt voluntary frameworks that require them to assess and mitigate their impacts on vulnerable communities.³⁹¹

Nevertheless, activist investors, institutional investors, proxy advisors, and other stakeholders that support ESG have triggered opposition among investors that support shareholders' capitalism.³⁹² The push and pull of setting environmental and social purposes within a corporate agenda brings challenges for firms that need to balance the concerns of different stakeholders and constituents.³⁹³

For instance, a group of activist investors that proposed a resolution for speeding up reductions of greenhouse gas emissions before the Exxon board were sued by the oil giant, even after the activists dropped their motion.³⁹⁴ Although shareholder activism can be a useful tool to push for corporate reform from the inside and contribute to the integration of EJ concerns, solely relying on these strategies is "unlikely to result in much, no matter how legitimate the cause."³⁹⁵ The real change can be driven by directing investors to push for policymakers to build "regulations, incentives and constraints that will force companies into line."³⁹⁶

390. See JUST ACCESS, *supra* note 383.

391. See *id.*

392. See AM. BAR ASS'N, *supra* note 380.

393. See *id.*

394. Exxon Mobil Corp. v. Arjuna Capital, LLC, et al, 737 F.Supp. 3d 444 (N.D. Texas 2024). The lawsuit was dismissed for being moot after investors backed off of the proposal. See also Sydney Ember, *Exxon Suit Over Activist Investor's Climate Proposal Is Dismissed*, N.Y. TIMES (June 17, 2024), <https://www.nytimes.com/2024/06/17/business/exxon-arjuna-lawsuit-dismissed.html> [<https://perma.cc/CB3G-7M35>].

395. *Investor climate activism isn't working. Here's what would*, WASH. POST (Feb. 20, 2024), <https://washingtonpost.com/opinions/2024/02/20/exxon-investors-climate-change-activism/> [<https://perma.cc/D3YV-RSV3>].

396. *Id.*

Therefore, activist investors can play a pivotal role in reshaping corporate governance and pushing for environmental justice.

V. CONCLUSION

The aim of this Article is to evaluate how two contrasting notions, Environmental Justice (EJ) and Environmental Social Governance (ESG), can work together as evolving and innovative concepts within the realm of private environmental governance (PEG). The main objective is to analyze how voluntary ESG disclosure frameworks can integrate EJ criteria despite their differing nature.

Corporate governance solutions and private environmental governance remedies are an “ad hoc” and temporary fix due to the absence of public regulations.³⁹⁷ Thus, this work does not aim to negate this reality and works by building a framework based on the contextual basis we live in. Through this approach, this work explores the differing goals, challenges, and efforts aimed at reconciling these concepts, particularly regarding EJ’s social justice components. The tension between the profit-making element of corporations and the promotion of social justice becomes a challenge for ESG disclosure to serve as a catalyst for authentic change. Benefit corporations are hybrid business forms that address this tension by pursuing social purpose and investor profitability, although there are still conflicting mandates and purposes between each notion.

ESG voluntary disclosure frameworks can work as a temporary substitute for public environmental governance mechanisms if corporate governance structures adapt and harmonize with environmental justice concerns. Environmental justice concerns should be material for a business to disclose and, as such, the board of directors must be engaged in these issues and create a corporate governance system that is adequate for the inclusion of EJ criteria into their reporting framework. The audit, compensation, nominating and governance, and other committees must be significantly involved with their respective capacities in addressing multiple EJ issues.³⁹⁸ The board of directors should establish mechanisms

397. Some may even call these technocratic or “false solutions” disguised as real solutions that do not change the fundamental power imbalance that the current system perpetuates. “False solutions” to the climate crisis is a term adopted by several NGOs and the UN to address greenwashing and deceptive tactics by corporations. The same term can be extrapolated to describe how the use of voluntary sustainability reporting does not address environmental injustices and is another form of greenwashing. *See supra* Part II. *See also Greenwashing – the deceptive tactics behind environmental claims*, UNITED NATIONS, <https://www.un.org/en/climatechange/science/climate-issues/greenwashing> [https://perma.cc/SU8S-8HDZ].

398. *See* Am. Bar Ass’n, *ESG In The Boardroom: A Guidebook For Directors* 40 (Katayun Iris Jaffari & Stephen A. Pike eds., 2022).

to work with the complexities of corporate governance structures for overseeing EJ impacts.³⁹⁹

Companies that are truly committed to redesigning their DNA to adapt and work with vulnerable communities face significant challenges, but also position themselves to address some of the most pressing issues of our time. Crucially, many firms have an inherent advantage when integrating EJ impacts and opportunities, as these are becoming increasingly financially material and thus relevant for disclosure. Consumers, investors, and other stakeholders are aware of this trend and are demanding corporate accountability, which manifests in ESG disclosure frameworks that contain EJ criteria.

The integration of ESG disclosure frameworks and EJ criteria can result in positive and innovative corporate governance mechanisms, especially when implementing a rights-based approach that takes into account both people and the planet collectively.⁴⁰⁰ These frameworks will continue to exist, and the EJ movement, along with the communities at the forefront of the climate crisis, will continue to push for reform, demanding inclusion and participation. Thus, the inclusion of EJ criteria in these reporting frameworks is an advancement for the EJ movement. Therefore, it is important for corporate directors, consumers, investors, and EJ communities to understand the implications of merging ESG reporting with EJ considerations. The legal frameworks that establish the relationship between the different actors in a corporation, coupled with the intersection between environmental law, corporate law, and corporate governance structures need to align with EJ principles for the effective integration of EJ criteria in voluntary disclosure systems.

Public law is developing mandatory frameworks that adapt to voluntary ESG frameworks, such as the EU's Corporate Sustainability Reporting Directive (CSRD), which institutionalizes the voluntary frameworks created by private environmental governance.⁴⁰¹ As public frameworks

399. *Id.*

400. *See, e.g., Human Rights is at the Heart of Corporate Transparency*, GLOB. REPORTING INITIATIVE (May 5, 2022), <https://www.globalreporting.org/news/news-center/human-rights-is-at-the-heart-of-corporate-transparency/> [<https://perma.cc/H9NJ-GS5F>].

401. *See, e.g., Directive 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting*, 2022 O.J. (L 322) (recognized as the "Corporate Sustainability Reporting Directive"). The CSRD builds on the EU's original ESG reporting framework, the Non-Financial Reporting Directive (NFRD), which also relied on voluntary frameworks such as TCFD reporting requirements. *See MATT HADDON ET AL., THE EVOLUTION OF SUSTAINABILITY DISCLOSURE: COMPARING THE 2022 SEC, ESRS, AND ISSB PROPOSALS, THE SUSTAINABILITY INST. BY ERM (2022)*, <https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/comparing-the-sec-efra-and-issb.pdf> [<https://perma.cc/MGT2-RF99>].

rely on PEG voluntary frameworks, it was imperative to analyze these voluntary systems first.

The maxim “what gets measured gets managed”⁴⁰² highlights the importance of disclosure mechanisms in considering environmental injustices, and voluntary ESG frameworks, when combined with EJ tools, have the potential to address these challenges. The development of mandatory frameworks and the integration of EJ criteria should be the next line of research and inquiry, as governments increasingly look to private models to shape public law. Yet, the challenge remains in ensuring that EJ criteria are effectively measured and managed within these evolving systems.

402. Palmiter, *supra* note 10, at 349.