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Legislating Environmental Justice in New York with Prof. Rebecca Bratspies and Hannah Perls

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Hannah Perls: Welcome to Clean Law from the Environmental and Energy Law Program at Harvard Law School. I'm Hannah Perls, a staff attorney with EELP, and in this episode, I'm joined by Professor Rebecca Bratspies at the City University of New York School of Law to discuss the recent passage and significance of three environmental justice laws in New York. Professor Bratspies is the founding director of the Center for Urban Environmental Reform, which works with marginalized communities looking to advocate for environmental justice. She is an appointed member of New York City's Environmental Justice Advisory Board and EPA's Children's Health Protection Advisory Committee.

Among other initiatives, Professor Bratspies is deeply involved in the push to transform the Rikers Island Correctional Facility into a renewable energy center. She is also an internationally recognized expert on environmental justice and the human right to a healthy environment, most recently receiving the prestigious Legal Specialist Award from the Center for International Sustainable Development Laws Human Rights Program. Finally, as we discuss in the episode, Professor Bratspies is the co-creator of a comic book series about environmental justice. One note for our listeners, this episode was recorded in mid-July before Congress passed the Inflation Reduction Act. We hope you enjoy this podcast.

Welcome Professor Bratspies, and thank you for joining us in Clean Law.

Prof. Bratspies Thank you. I'm delighted to be here today.

Hannah Perls: So I want to set the stage a little bit. We are recording this episode in mid-July when many of us are still reeling from the Supreme Court's decision in West Virginia, the EPA, which limited the agency's authority to regulate greenhouse gases from power sector, and formally adopted something called the major questions doctrine, which effectively allows federal courts to strike down agency regulation that they think is especially significant, or where Congress hasn't explicitly authorized the agency to do that significant thing. And in practice, this means that federal agencies are now going to be heavily scrutinized and even discouraged from adopting big significant rules to address novel issues including climate change. Now, we're not going to dive into this case today, but I think it really drives home that if we're looking for ambitious, timely progressive action on climate and the environment, we're going to have to look to the states.



And as you know, well, New York has emerged as one of the leading states passing EJ related legislation and even a state constitutional amendment. And the Biden administration has even drawn on some of those laws to design its own EJ agenda, including the Justice 40 Initiative. So in this episode, we're going to focus on the good news. We're going to do a deep dive into some of those laws, how they came to be, and now the implementation challenges that New York regulators are facing. So with that stage set, but before we dive into laws themselves, I just want to make sure our listeners know who you are and learn a bit about your background. So Professor Bratspies, can you just tell us a bit about your professional journey? How did you first get interested in the law and then specifically environmental justice and human rights?

Prof. Bratspies

I'd be glad to. I'm a somewhat accidental lawyer. I originally intended to be a scientist. I have an undergraduate degree in biology, and I was actually in a PhD program studying genetic engineering. When I realized that I was spending much more of my time and I was actually much more interested in the social implications of science and technology than I was in doing primary scientific research. And I grew up in a steel town. I grew up in Bethlehem, Pennsylvania. Bethlehem Steel was the largest steel plant in the world for many, many years. The whole facility, which is a large part of the town I grew up in, is a giant Superfund site. As a kid, I saw how pollution impacted the lives of those who lived near the Steel. We called it the Steel. I also saw that to get a good union job, the good union jobs at the plant, it really, really helped, in fact, it was almost a requirement to be white and to be male.

And if you got one of those jobs, you could afford to live farther away from the Steel and with its noise and its pollution. And so really early on, I learned a lesson about who benefits from polluting activity as opposed to who bears the brunt of the pollution and burdens that polluting activity creates. And that lesson connected with my interest in the social implication of science, made me think, "I want to be a lawyer. I want to be able to think about structural inequalities and ways to solve them." And I teach at CUNY, City University of New York, we're an access school. We're created by statute and we have a dual mission, to produce lawyers who are dedicated to the public interest and to diversify the profession by providing legal education for historically excluded groups. I'm very proud to be part of that work. And so that's how I got here.

Hannah Perls:

I really love the name of the center that you helped found. So it's the Center for Urban Environmental Reform, and the Center has this really fascinating tagline to quote, "It's promoting environmental democracy and citizen participation." And I am in love with this phrase, environmental democracy. Can you just talk a bit about what that term means to you and your colleagues and how do you go about promoting environmental democracy?

Prof. Bratspies

Environmental justice has two basic aspects, fair treatment and meaningful involvement in decisions about the environment. And to me, environmental democracy is about making sure that there really is meaningful involvement,



that people who are affected by decisions get to be part of making that decision, making the trade offs between benefits and burdens and who will benefit and who will burden. And my conviction is that the more we have meaningful involvement in decision making, the more we will have fair treatment in those decisions. So I really spend a lot of time thinking about how to make decision processes more accessible to more people linguistically, technically, and make it easier for people to show up and have their voices heard, and then to try to make those voices once they're heard, to be listened to and respected, and to have an actual impact on what the decision that emerges looks like. And that's where the comic books come in.

Part of my mission and part of CUER's mission more broadly is to help build the next generation of environmental leaders committed to environmental justice, committed to that meaningful participation and fair treatment. So I live in New York City, I live in a very urban place, and I do a lot of work in public schools in the city. And when I go into classrooms, the first question I ask is, do you live in an environment? There's always a kid or sometimes more than one who says "No." Because for them the environment is somewhere else. The environment is a pristine place with trees and bunnies, and I'm all in favor of protecting trees and bunnies, believe me, I'm in favor of that. But I also think we need to protect people and we need to protect the places that people live.

And that's the core of environmental justice, is protecting the environment that people are living in and experiencing. We are becoming more and more urban, both as a country and as a planet. So this matters more and more. And that's where the comic books come in, *Mayah's Lot* and *Bina's Plant* tell the stories of young people who organize their urban communities to build positive environmental change, to ward off environmentally undesirable neighbors, and to instead replace those with environmentally positive and economically positive alternatives. And they're really fun.

Hannah Perls:

And they're beautiful. So you create them in partnership with artist Charlie Lagreca-Velasco and he's just extraordinarily talented. We're going to include a link to the comic books in our show notes. One thing I really appreciate about the comic books is they do a fantastic job of embodying a lot of the specific challenges that New Yorkers face around environmental justice. And you talked about your background in growing up in Bethlehem, Pennsylvania, and the unique industries and challenges around environmental justice there.

So before, again, I keep teasing we're going to talk about these laws and we will, but before we get there, I think it's really important for our listeners to get a sense of what are the unique environmental justice challenges in New York. And I'm not just talking about the real impacts, but also the structural tenets or histories that these outcomes are based on. So the history of redlining, the history of where industries were located, which communities tend to be overly burdened by those industries. So can you talk a bit about what are some of the things that you see in New York that might be consistent across the country



when we talk about environmental injustice and what impacts or industries or political phenomena are really unique to New York as a state?

Prof. Bratspies

Sure. But I want to start the story earlier because this story goes all the way back to dispossession of the Lenape and Canarsie peoples who are the original inhabitants of this land who are still here and are the traditional custodians of this land. Everybody focuses on recent history, but I think it's really important to start there and to point that out, that the story of New York as a city begins with this possession. And New York is a beacon for immigrants, and it's an amazing city on so many levels. And both of those things are true at the same time.

So to answer your question specifically though, during the New Deal, the Federal Housing Authority created low cost mortgages that were guaranteed by the government, and that opened up home ownership to an entirely different swath of people. And at the same time, the federal government intentionally cut black and brown communities out of that prospect. The government literally excised those communities from the maps of where it would offer those loans. So that's what we call redlining. The drawing a red line around black and brown communities and saying, "We're not going to offer loans in there." And then also denying loans to a particularly black Americans when they tried to buy houses elsewhere.

A lot of the segregation that we have in our country was intentionally created by the government and was driven by the government. And that's true across the country. New York then compounded this legacy. Robert Moses, who was the planning commissioner among other things, there's a great book about him, the Power Broker, that describes his unique role in designing the highways and bridges in New York. Well, he intentionally, Robert Moses intentionally built highways through the middle of immigrant and black and brown communities. And that obviously devastated these communities. And then generations of politicians steered polluting infrastructure into those same communities. And then on top of that, regulators failed to protect these communities with rigorous environmental enforcement. And the resulting environmental inequalities are what we're grappling with now.

And I just want to give you one concrete example of what some of that looks like. It's going to pick up after Robert Moses built the highways and the bridges, in 2000. So it's somewhat recent history. So in 2000, New York was in the middle of deregulating its power industry. California, which had already deregulated, was suffering rolling blackouts. The governor of New York at the time, Governor Pataki insisted that New York was "A day away from the situation in California." And this was a pretext. It was a pretext for what was known as the Power Now program. Power Now was a drive to site peaker plants, plants that turn on for peak energy generation. So, when everybody turns on their air conditioners.



Prof. Bratspies

To site these facilities on an emergency basis across New York City, all of them were sited in environmental justice communities with no consultation, no environmental assessment, and no consideration of alternatives. The mantra of keeping the lights on was used to steamroll this process. And it's important to know that at the time, the notion of keeping the lights on was demonstrably false. It's not just in retrospect that we say, hey, we didn't need this. At the time, it was clear that California's rolling blackouts and brownouts, were due to market manipulation. Largely by Enron, but not entirely, and not a shortage of capacity. In fact, in New York, contemporaneous official estimates showed that New York City had enough power without these peaker plants to meet the expected load. Now, part of the justification for skipping environmental assessment or community consultation for these facilities was that they were going to be temporary.

They were a three year emergency response to this made up non-existing crisis. But guess what? They're still there. Anyone born the year those plants were installed can legally vote and drink in New York. They're still there. They're still spewing particulates and nitrous oxides into communities that were overburdened before those facilities were added. And as a result of this, not the only environmental justice, but I think it's a good example of the way that polluting infrastructure, undesirable neighbors are channeled into environmental justice communities. And as a result, just sort of on sheer statistics, a black child in New York City is 42% more likely to have asthma than a white child, eight times more likely to be hospitalized for asthma related illness, and two or three times as likely to miss days of school. Those same disparities hold true for adults, they hold true for cardiovascular disease, for pulmonary disease, and the COVID-19 pandemic sort of tracked that same inequality. And the health implications of this are devastating.

But you know what? Health implications are only the beginning of the story. Asthma is the number one cause of days missed from school. Guess what's the number one predictor of involvement with the criminal justice system? Days missed from school. The same neighborhoods that suffered from overpolicing in New York City and the unconstitutional stop-and-frisk policy that drove mass incarceration here in the city. Are also the neighborhoods that were overburdened with polluting infrastructure and exposed to disproportionate pollution loads. So we see multiple strands of structural racism coalescing to impact the lives of young people in these communities. And quite frankly, as a parent, as a human being, that makes me really angry. And that's part of why I founded CUER and why we are so committed to making sure that communities get to speak for themselves and that their voices are part of the political discussion around these choices we have to make about infrastructure.

Hannah Perls:

So really, I mean, the history you provided is fantastic. The content is not fantastic. And I wanted to just pull out a few strands that I think directly feed into some of the laws that we're going to talk about, some of the problems that these laws seek to redress. So we have this really long and persistent history of



disinvestment. We have the accumulation of undesirable infrastructure in communities. There's, as you mentioned, the very real public health and environmental disparities, and then these broader correlations between these health disparities and quality of life as a whole, and how all these things are tied together. And they're very much rooted in this history of structural racism. And so I think the hard question that many people are grappling with, and certainly the Biden administration is grappling with, is how do you begin to untangle that deeply interconnected and persistent system of structural and environmental racism?

And I think New York is really exciting because we don't just have one law. We have a series of laws that work together to try and start to really grapple with these thorny issues. And so I want to flag the three laws that we're going to talk about in this episode, and then we'll walk through them chronologically so our listeners have a sense of where they came from and what they do. We're going to be talking about two laws and one constitutional amendment, just to be really specific. The amendment is section 19, which guarantees the right to clean air, clean water, and a healthful environment. We have the Climate Leadership and Community Protection Act or CLCPA. And then we have the latest environmental justice law, which has yet to be signed by the governor. We're expecting it will be signed by the governor this summer, and that's S8830 But we're just going to call it the cumulative impacts law. And I wanted to start, again, I want to move through these chronologically. So I really wanted to start with Section 19 with the constitutional amendment.

Prof. Bratspies

So very exciting. In November of 2021, New Yorkers voted more than two to one to add an environmental amendment to the state constitution. Support for the measure was overwhelming, and it cut across the party and regional identities that we think define people in the state. So we see this large percentage of the population agreeing that everybody should have the right to breathe clean air, drink clean water, and live in a healthful environment. And that right extends to every person, not just those who are wealthy, not just those who live in the right zip codes, not just those with the right education, the right jobs, the right complexion, accent, or religion. Every person. Every person in New York is entitled to breathe air that won't make them sick, to drink water that won't poison them, and to live, work and play in an environment that's not toxic.

And that's incredible, right? And that's not just law, that's constitutional law. Part of that body of rules, doctrine and practice that define what we are as a community and how all political communities in the state have to operate. And I would be remiss if I didn't point out that as we are talking here in July of 2022, the UN General Assembly, which is sitting in New York City, is considering and will soon adopt a resolution recognizing the human right to a healthy environment. So human rights are sort of coming full circle in New York in a way that's very exciting, I think.



Hannah Perls:

I think one thing that you've written about that is really exciting. I mean, there's many ways I think that this amendment filters into how legislators and regulators think about other laws. But one thing that you've written about is that this amendment gives "substantive heft to procedural rights." And certainly for environmental lawyers, we think about the National Environmental Policy Act a lot. We think about procedural rights and how we miss that substantive component. If you find this, you must do X. Right? That action is often missing. And so I find this idea of giving substantive heft to procedural environmental rights really fascinating. And I was hoping you could talk a bit about what you mean. How does this amendment change the way New York looks at their environmental laws?

Prof. Bratspies

Well, of course, that's an open question, right? It's only been on the books for six months and the first cases are just starting to be filed. But what this amendment does is it gives New Yorkers an independent way to challenge government decisions about the trade offs between economic and environmental priorities. Communities that have been treated as sacrifice zones can now say, hey, you are not protecting my constitutional right to breathe clean air. Yes, maybe each one of these facilities has a permit, but that's not good enough because the air that I'm breathing is violating my constitutional right to breathe clean air. And you government have an obligation to do something about that. We'll see how this plays out.

I'm very optimistic about this. I think it's going to make a big difference. I think it's going to make a difference in the courts. But more importantly, I think it's going to make a difference in how government actors view their task, because their task has changed. Because the constitution, right? Obviously every environmental regulator in the state is governed by the statutes that the legislature has passed, giving them authority and by the constitutional parameters under which they operate. And those constitutional parameters now require them to think about whether or not individuals are being deprived of the constitutional right to breathe clean air, drink clean water, and live in a healthy environment.

Hannah Perls:

I think that's a great way of framing it, that we have a new infrastructure upon which these specific parameters and mandates must be built. And so it fundamentally changes the water that we're swimming in. We're really mixing metaphors here, but I think our listeners get it.

And I wanted to move now some really exciting mandates in the CLCPA, the Climate Leadership and Community Protection Act. It passed July 18th, 2019. It has some really significant greenhouse gas reduction requirements to reduce greenhouse gas emissions economy wide by 40% by 2030. And what I find particularly exciting is this requirement that the state invests at least 35% of the benefits from clean energy, energy efficiency, and other programs in "disadvantaged communities." I'm guessing a lot of our listeners are having Justice40 bells go off in their heads. So President Biden, on his first day in



office, issued an executive order establishing the Justice40 initiative, which is modeled off of these mandates in the CLCPA.

And I bring in the Biden administration because I think the CLCPA and Justice40 give us this great comparison case study and what you can accomplish when you have a law in the books that mandates implementing regulations. Versus trying to accomplish the same thing through executive discretionary authority. So you don't have a cooperating congress, maybe you don't have cooperating courts. The federal government's really trying to accomplish these goals with the authority it has, but New York is really going above and beyond. So I want to dig into the CLCPA and ask what you're seeing. Again, it's a new law, but are you seeing differences in how agencies are allocating their money already? Are you seeing differences in where they are considering these types of projects and how is that different from what we might be able to accomplish at the federal level?

Prof. Bratspies

I'm going to first tell you some exciting developments that I think are really positive, and then I'm going to raise some concerns because like everything, this is a really complex and moving situation. As you pointed out, this is a very new law. We're making this road by walking it. I was talking earlier about peaker plants and right, they're the facilities that come on to provide peak power demand. So they don't run very often, but they run when the system is being used the most heavily. So when everybody comes home from work and turns on their air conditioner, the peaker plants will kick on for a couple hours to meet that demand. And then once the peak of demand is over, they turn back off. They're very dirty. And the startup and shutdown is the dirtiest part of operation. Well, there's one in Astoria, Queens. Astoria is the neighborhood that I happen to live in. It is home to 60% of the generating capacity of New York City, and it is part of what is known as asthma alley. An area of the city where asthma rates are much higher than the rest of the city.

Prof. Bratspies

And that's in part due to the power plants, but there are two airports nearby. There are a lot of highways. There's a lot of trucking there. There's a lot of contributions to the air pollution in this area. But certainly, the power plants are a very significant percentage of that. It's also near the largest public housing project in the country, Queensbridge houses. There are a number of housing projects in this neighborhood. And one of the Peaker Plants, which is owned by out-of-state investors, was looking for permission to expand, a gas-fired Peaker Plant.

Now the CLCPA commits New York to a hundred percent zero carbon electricity by 2040, so it made no sense for them to even be proposing expanding a gas-fired power plant, let alone in this already overburdened neighborhood. And there was a lot of public attention to this particular application. It was one of the first applications after the CLCPA was enacted. So people were looking at it as a test case. It also was a particularly egregious situation given the environmental justice concerns. And the Department of Environmental



Conservation actually wound up turning down the air permit for this facility and doing so because building a gas-fired power plant would be inconsistent with the CLCPA. And interestingly, given all of the language in the CLCPA about the need to pay attention to disproportionate impacts, the Department of Environmental Conservation offered a second rationale, which was based on environmental justice. And I think that might be the first time in New York that environmental justice was used as a reason to turn down an existing facility's request to expand.

Just a couple weeks ago, the Department of Environmental Conservation also turned down an air permit renewal for the Green Age Generating Station, which is not in New York City, it's in far west of New York. It's a power plant that was dedicated almost exclusively to Bitcoin mining. It didn't provide any electricity to the community or to the grid. And again, under the CLCPA, the Department of Environmental Conservation said, "There is no ongoing public need for this facility and it is incompatible with the climate objectives laid out in the CLCPA."

So on the positive side, we're really seeing decisions based on the criteria laid out in the facility. We're also seeing significant movement in siting renewables. And there just was a big approval of electronic transmission lines that will bring carbon free energy into the city from upstate. Those are very exciting.

There are also some concerns. The draft map for identifying disadvantaged communities is out right now for comment, and there's some real concerns with how disadvantaged communities were identified. If you look at the map for New York City, some highly gentrified neighborhoods like Hudson Yards, it's a very fancy new neighborhood on the west side of Manhattan. It's identified as a disadvantaged community, which is just crazy. Whereas a lot of neighborhoods in Southeast Queens that really struggle with environmental justice, they are overburdened with waste transfer stations, they're right near the airport, they have terrible traffic, they're subject to flooding. They were not identified as environmental justice communities. And part of the problem is that as this map is being developed for the state of what are the disadvantaged communities, you really need local knowledge. You really need people who can be part of the process who know what's going on on the ground in a really granular kind of way. And it goes back to that environmental democracy point we started with. So I'm going to comment on this. If this comes out before the comment period ends at the end of August, I encourage all of you to take a look at it and make your voice heard.

Hannah Perls:

I think it's a great transition to now talk about the Cumulative Impacts Bill, because many of the issues that you mentioned as the basis for why DEC was denying his permits are things that are now going to be enshrined within the Cumulative Impacts Bill in terms of prohibiting newly permitted facilities or modifications that would contribute to the cumulative pollution burden within already overburdened communities. And this is very similar to the New Jersey Environmental Justice Law that many of our listeners are probably aware of.



So without getting too into the details, cause we've done a lot of detail, but we're all nerds, so we're all interested in the details. But I wanted to talk about this new EJ bill in the context of the Section 19 amendment and the CLCPA. So if we put all these things together, again, we're in hypothetical land, but how do all of these things come together to change the way that regulators might make decisions in ways that if we just had one of them, it wouldn't happen?

Prof. Bratspies

Well first I really hope the governor signs it. And the Governor Hokel, if you're listening, please sign it. We're waiting for you. Just this past week, Governor Hokel signed three bills that are related to the CLCPA and environmental transition, but she didn't sign the Cumulative Impacts Bill. And I can't imagine she's not going to sign it, but it is very nerve wracking waiting for it to be signed. The CLCPA has a lot of elements that direct attention to mitigating impacts in environmental justice communities. But the Cumulative Impacts Bill requires. It gives explicit authority for an agency to deny a permit based on cumulative impacts. That's a really big deal. It's a big deal because it gives regulators clear authority to do something they might be a little bit nervous to do otherwise because they're thinking, "I have to defend this in court."

Both the Astoria generating facility that I talked about and the Bitcoin mining facility are challenging the DEC's decision saying that the DEC doesn't have the authority to deny their permit requests. The Cumulative Impacts Bill is unambiguous statutory authority to make choices about environmental justice, so that's really important. Again, the constitutional amendment, we don't exactly know how it's going to play out. But it, again, puts a thumb on the scale for environmental justice. It makes it clear that these are factors that government decision makers must consider.

But I also think it's going to reach beyond government. Because private actors shape their choices based on what they think the law will allow them to do. And they are, in general, not interested in providing more public benefit than the law requires or minimizing harm more than the law demands. Well, the law is now going to demand a lot more from them and require a lot more from them as well. And I think that most private actors are going to internalize that and start proposing very different kinds of things. And that kind of cascade is really going to be very positive for the environment in New York and quite frankly, also for the economy in New York. Because it's very clear that green technology is going to be an environmental boon for whatever places install it, develop it, and build a workforce around it.

Hannah Perls:

I'm guessing for many of our listeners, that they listen to you talk about all of the great things that will come out of these bills. A lot of folks are wondering, how in the heck did these things get passed? And I promise we're definitely going to get to that. I think the political process is the crucial part of this episode. But before we get there, you had mentioned how these laws provide explicit authority for agencies to prioritize environmental justice concerns and whether they deny or approve a permit. This is something that is certainly being



debated at the federal level with EPA, I think, leaning into or trying to find ways that it can source that authority in existing statutes. But that's really challenging, and there's some very significant legal concerns there. So the fact that we have this go out and do it in the statute in New York is a huge, huge deal.

I also wanted to have you talk a bit about some of the other procedural guardrails that agencies are putting in place to ensure that these big proactive environmental justice goals translate to real impacts on the ground. And I'll give you an example when I'm thinking about. One heavily debated issue right now is carbon capture and sequestration where the administration is talking about it. They funded it in the bipartisan infrastructure law. And yet you have organizations like the White House Environmental Justice Advisory Council saying that carbon capture and sequestration should not be considered a quote unquote benefit under Justice 40. These are things that we don't want to count towards that 40% tally of benefits for EJ communities. And so there's a lot of give and take, and there's a lot of devil in the details when it comes to, how do we define what is a benefit? How do we decide how these things should be implemented to make sure we achieve these big lofty EJ goals? So I was hoping you could talk a bit about what is happening in New York. What are some of these policy guardrails that are being put in place either through the laws or by agencies to make sure we get real results on the ground?

Prof. Bratspies

Well, again, with the caveat that all of this is a work in progress, the CLCPA did a couple of really important things. One of the important things that the CLCPA did was create community advisory panels. And these are people who are appointed because of their expertise in environmental justice to be advising the government as we develop the regulations and protocols for implementing the CLCPA.

So again, going back to that point of environmental democracy, people from impacted communities are speaking for themselves to the regulators as part of the process of developing what the regulations should be. And that will give us very different regulations than we would get otherwise. Because when people are in the room and they speak for themselves about their communities, it matters, and it changes the trajectory of defining what the problem is and what the possible solutions are.

The CLCPA itself has some important guardrails. It allows for the possibility of offsets, but keeps that to a very small percentage of the reductions that the law requires in terms of carbon emissions. Offsets can't exceed, I think it's 15% of 1990 emissions, so it's a very small percentage of the state's current emissions that can be the subject of offsets. And the law says in more than one place that these offsets cannot burden environmental justice communities.



And another really important thing that the CLCPA does that I would really like to see done on the federal level and elsewhere is that it ties offsets geographically to the polluting infrastructure.

Prof. Bratspies

So offsets have to be within 25 miles of the source and must be actual environmental benefits to the area that is adversely impacted by the source. So it sort of slices through that is carbon capture a benefit and says, unless this is actively benefiting the area that is being burdened, it is not going to be considered an offset for purposes of this law. It also excludes biofuels. The law just flat out excludes biofuels and prohibits waste to energy facilities. So it cuts out that what if we burn methane in a good way kind of discussion that I'm sure other people know way more about and can talk about and probably have on this podcast.

Hannah Perls:

We did. We had a series on environmental racism in North Carolina and talked about some of these biogas facilities that are being proposed and the greenwashing that can happen when you don't have these guard rails in place that say, you know what, we've done the numbers, we've looked at the ways that these facilities operate and it turns out this just isn't a good idea. But I think what your example really highlights is that when you don't have those clear yes or no parameters in place or we're going to allow this, but only in certain situations, it gets really messy really, really fast. So I just think those details are so important to highlight as part of this overarching infrastructure that New York has put in place.

I think it's also a great transition to think about, you mentioned you want to see this on the federal level, we want to see it in other parts of the country. The fundamental question here is how did New York get these laws passed? And specifically what about the political process can we pull out as lessons learned for other states that might be interested in doing or building a similar infrastructure? So can you talk a bit about how these laws came to be, which organizations or entities were really fundamental to getting these passed, who was the opposition, how did they overcome that opposition, how can we do this everywhere?

Prof. Bratspies

Okay. Well, with the caveat that I'm speaking on the very edges of what I know about, I'll tell you what I think, and that is that political organization is key. New York had been struggling trying to pass a climate bill for a long time. It had passed the Assembly and gone to die in the Senate. And the reason it had gone to die in the Senate was that there was a small subset of Democratic legislators in the Senate who caucused with the Republicans and gave the Republicans control of the body, and a number of people who were deeply concerned about climate change, climate justice among other things, created a political campaign connecting those legislators in general. They called themselves the Independent Democratic Caucus, and again, they caucused with the Republicans giving them control of the body. And so a campaign was developed called the No IDC Campaign, which let voters know this was



happening because low-information voters may not have realized that the Democrat they were voting for was actually working with the Republicans and not with the Democrats.

So they made a big campaign about the way that this handful of Democratic legislators was blocking change in New York, was blocking a host of progressive legislation around housing, around climate, around worker rights, and ran a public information campaign about that and it was highly effective. And almost all of those legislators lost their seats and were replaced with Democrats who caucused with the Democrats. And that created political momentum for these incredibly popular programs. As you've seen, where we started, the Constitutional Amendment, Article 1 Section 19 passed overwhelmingly. It got almost 70% of the vote across party lines. These are really popular initiatives. But cutting through the political noise and the sort of dealing and horse trading and status mongering can be very difficult. And I think that was a really critical moment in New York's trajectory. That is something that people can do in a lot of places, is connecting the dots for how legislators act once they are elected to the Legislature and how that relates to the fate of various policy concerns they may care about.

Now, we also have some incredible advocacy organizations in New York. There are far too many to mention. The biggest and probably most famous ones are WE ACT, which is based in Harlem, UPROSE, which is based in Brooklyn, and the New York City Environmental Justice Alliance. But there are many, many more. These organizations are dedicated to making sure that communities understand what's going on and making sure that the voices of people who typically aren't listened to are raised in the forum where decisions are made and their advocacy has made a profound difference. We've also elected some really dedicated and savvy legislators who champion these issues.

I guess what I would say, the lesson that I've learned from this, and I've been tangentially involved in a lot of these things, I'm much more involved with some campaigns in New York City and in local laws in New York City than I have been in the statewide campaigns, but I've been involved in these as well, but the lesson that I've really learned is push for your ideas. Don't pitch what you think could happen. Don't sort of settle ahead of time for half a loaf or a quarter loaf. Be audacious. Demand what you want. Don't wait for the right moment to have a plan. Make plans and push for them and the right moment will arrive. And you might not get everything you want. You might have to compromise, but for sure you're not going to get what you want if you aren't asking for it, if you aren't demanding it.

Hannah Perls:

I think that's as good a note as any to conclude or wrap up the episode. But before we do, I want to make sure that you have an opportunity, is there anything else that you would really love for our listeners to know or that you want to tell them about, either New York or your work at the center or any of the upcoming opportunities for advocacy?



Prof. Bratspies

Two things. One is that the environmental justice comic books are available for free download for non-profit use. Please take them, use them, do whatever you want with them. Let us know because we always like to keep track of what's happening with them. And the only thing I'd really like to add that we didn't talk about is a campaign that I am deeply involved in and that is about Renewable Rikers, which is a plan that was encoded in local law, in New York City law to shut Rikers Island as a correctional facility. Rikers Island has been rated as one of the worst prisons in the world, and it is literally a penal colony. It is an island that is attached to the rest of New York City by one bridge and people are sent there to be out of sight, out of mind. It's a terrible, terrible place.

Under New York City law, it must close by 2027. And Renewable Rikers is a plan for transformative environmental justice. It's a plan to take the island and turn it into a renewable energy center and a waste water treatment center in order to remove polluting infrastructure from the neighborhoods that were most burdened by mass incarceration and are the same neighborhoods we've been talking about in terms of being overburdened with environmental pollution. I think it's a tremendously exciting model and it's going to happen, and we'll see what it brings. But I think that bringing together these different strands of social justice is a way forward. It is so important that we simultaneously tackle the problem of decarceration and decarbonization, and I encourage all of you to think about that in all of your work as well.

Hannah Perls:

We'll definitely include a link to that work in the show notes as well as to the center itself. Professor Bratspies, thank you so much for your advocacy and for joining us on Clean Law. It's been a real pleasure to talk with you.

Prof. Bratspies

Thank you so much. It's really been nice talking with you.

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The Center's EJ comic book series

- [Mayah's Lot](#)
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