A Community Shapes Environmental Justice Legislation
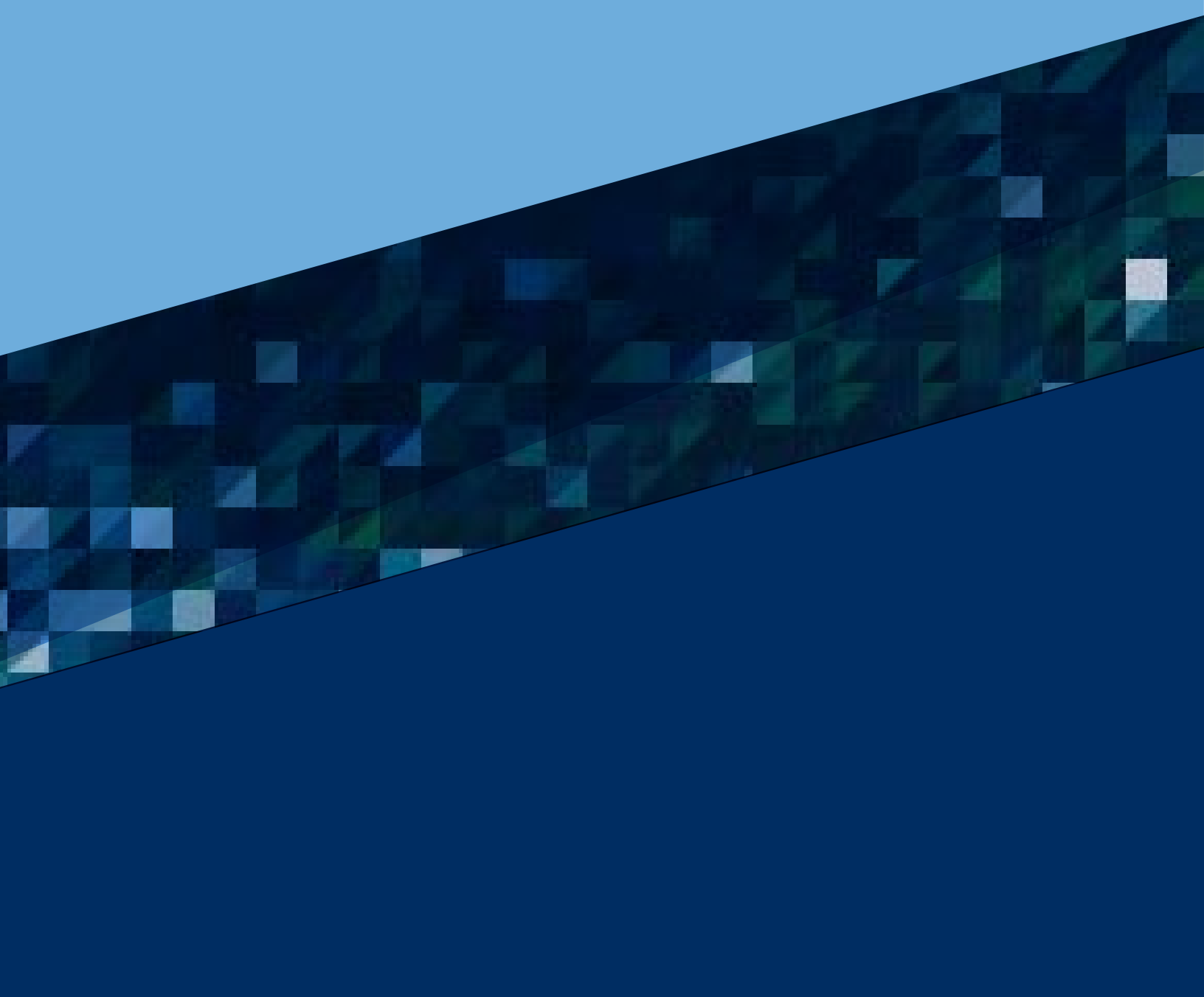
By Lorelei Kelly
January 2022

beeckcenter
social impact + innovation

GEORGETOWN UNIVERSITY

Contents

About This Case Example

This publication utilizes our **Shape, Structure, Share** framework for modern lawmaking. We illustrate this framework through a case example that examines how members of Congress can employ newly available communications technology to invite policy-adjacent communities to be producers of information that help **shape** the content of legislation. Members then **structure** the content for the lawmaking workflow of Congress. The institution **shares** the resulting information with the broader public through its multiple publishing channels. We envision this framework as a positive, forward moving cycle in a modern, representative democracy.

We are also introducing the concept of **"policy-adjacent communities"** in this publication. This concept expands the notion of civic participation to communities as co-creators of policy and as stewards of the policy process. We see the meaningful inclusion of these communities as a constructive way to ameliorate the crisis of democratic legitimacy in American society. Policy-adjacent communities help guide and determine present and future decisions. They offer authentic, local information that is different from typical experts because of their lived experience. Individuals with frontline experience in a policy issue make up a deep reservoir of insights that should be tapped in the lawmaking process. Congress has formally begun to broaden its representative capacity. Pandemic digital adaptation allows Congress to include a greater variety of voices in virtual committee hearings, for example.

We look forward to a future where policy-adjacent communities participate in the formative stages of policymaking and also bolster regular oversight through monitoring implementation and evaluating impacts. We see this civic activity as a **generator of data** for **evidence-based lawmaking** and as trust-building toward a durable and resilient democratic republic.

The information in this case example was gathered and presented by Lorelei Kelly, a fellow at the Beeck Center for Social Impact + Innovation at Georgetown University. It was edited by Taylor Campbell, Katie Sullivan, Grace Lacy-Hansell and Katie Hawkinson. The Beeck Center gratefully acknowledges the efforts and insights of the organizations, individuals, and government agencies that have been working in this ecosystem for years.

This publication is available under a Creative Commons Attribution-ShareAlike license, and should be cited as: Kelly, Lorelei (2022): A Community Shapes Environmental Justice Legislation: Beeck Center for Social Impact + Innovation, Georgetown University, Washington, D.C.

Introduction: Shape > Structure > Share

This case example is based on an unprecedented effort between members of Congress and a geographically diverse, policy-adjacent community. Working together, they built a technology-enabled process to develop the *Environmental Justice for All Act* (**H.R. 2021 or "EJ bill"**) in the House of Representatives. This legislation is designed to prohibit discriminatory environmental impacts on the basis of race, color, or national origin. It also contains provisions to address the cumulative effects of pollution and legal redress.

We are publishing this participatory lawmaking case example using the Shape, Structure, Share framework to illustrate its replicable components. Communities shape the informational content of legislation. Members structure this community information in a format compatible with the lawmaking workflow. Then the institution of Congress shares this collective informational output publicly through its multiple publishing channels.

This case example is also a "how-to" guide. We encourage members of Congress, their staffs, and their committees to refer to this case to include diverse and credible local input to both form and shape legislation. In this case example, the House Natural Resources Committee innovated with the civic technology platform **POPVOX** to allow for remote collaborative editing by the place-based environmental justice community and other stakeholders. Since this bill was introduced, Congress has accelerated digital development with pandemic emergency **rules changes** in 2020 and rolling **recommendations issued** by the Select Committee on the Modernization of Congress. For example, remote video participation in hearings and electronic document submission—formerly in-person and hard copy—have become routine workflow activities.

SHAPE

In reference to contributions from the environmental justice community, the **Community Impacts Report** from the House Natural Resources Committee states, "they helped shape both the policy and a process in keeping with the Chairman's vision of involving the most impacted communities on the front-end of the policymaking process."

The day the *Environmental Justice for All Act* was introduced in Congress was a groundbreaking moment for representative democracy. For the first time ever, lawmakers brought forward a piece of legislation that drew momentum and subject matter expertise from frontline communities across the United States. From the conceptual stages of policy to editing the draft bill online, the law shaping process included individuals whose communities lived daily with toxic health conditions and inadequate legal protections.

> *""Communities of color, low-income communities, Tribal and indigenous communities, rural communities, and other underserved populations are disproportionately burdened by environmental hazards in the United States. Too often, landfills, waste sites, damaging resource extraction activities, and other harmful projects are placed in these communities and operated in a manner that causes disproportionate environmental harm and risks to human health,"* the report continues.

Residents experiencing the adverse health burdens of pollution exist across the United States. Working together from different locations, these individuals sought a legal remedy to achieve environmental justice, and in this way they are an example of a policy-adjacent community. Specifically, they became advocates in a national network of individuals with relevant skills, information and lived experience—one that also shared collective knowledge of how the government works.

Members of Congress, while deciding how to draft their policies, organized a convening of this policy-adjacent community to create an opportunity for them to shape environmental justice legislation. This convening reflected the national scope of environmental injustice. For members, it blurred the political maps that separate communities and constituents. Indeed, one innovative aspect of the committees taking public input is that the activity did not limit the contributions to actual constituents of committee members but rather opened the process more broadly to all Americans.

- □ On June 26, 2019, leading members of the House Natural Resources Committee majority hosted an **Environmental Justice Convening on Capitol Hill** to elevate the voices of communities most impacted by environmental justice issues but traditionally left out of the policy making process.

- □ The lawmakers, led by Chairman Raúl Grijalva and Rep. Donald McEachin, introduced a "Request for Input," hosted on the POPVOX platform, on an Environmental Justice **statement of principles** for the bill they intended to draft, allowing impacted communities to weigh in at early stages of the process.

- □ Fellow committee members offered edits. Then, individuals in the policy-adjacent community—along with other stakeholders—offered critique and contributed comments during this stage.

- □ The committee incorporated these comments into draft bill text along with subsequent line edits.

STRUCTURE

Ideally, deliberation in Congress is a generative process with specific procedures for original input and for blending contributions in a forward moving workflow. According to **Vital Statistics on Congress**, in recent years, House committees have met half as often in comparison to decades past. Party leadership has increasingly bypassed deliberation in committees, a tactic that scholar Barbara Sinclair has named **unorthodox lawmaking**. This shortcutting of the deliberative process eliminates opportunities for broader participation—not only for diverse communities, but also for rank-and-file members themselves. Committees have less power as the deliberative process diminishes. Laws are produced top-down and substantive legislation often gets rolled into huge packages with just a handful of members involved.

The EJ community's contributions to shaping the EJ bill are important because they demonstrate a method to disrupt this top-down trend. Moreover, the process builds a broad and diverse legislative record as well as buy-in because of a more democratic process.

The members who championed the EJ bill expanded participation by opening up key parts of the committee procedure. They structured an open input method by providing a document format compatible with the legislative workflow. Specifically, the staff made the formatted bill available on the **POPVOX "Madison"** platform, which allowed inline comments and suggestions.

The Committee received 350 inline comments on the draft legislation throughout January 2020. Once received, the committee staff incorporated the new input into the draft bill.

SHARE

The steps in the Shape, Structure, Share cycle happened in close sequence and even overlapped. Because of modern **technological progress** and **adaptation**, members of Congress now have opportunities to include a broader cross section of civic voice in their policy making workflow. Electronic document sharing and remote participation outside of Washington, D.C. are two examples of how modernization can improve representative balance in our governing system. Congress itself has significant publishing

UNORTHODOX LAWMAKING

The shortcutting of the deliberative process eliminates opportunities for broader participation — not only for diverse communities, but also for rank-and-file members themselves.

capacity, with myriad channels for sharing information at every layer between individual members and institutional distribution. For example:

▫ The EJ bill **HR 2021** was published in the Library of Congress' official legislation tracking website, **Congress.gov**.

▫ The Natural Resources Committee created and now maintains **an archive** of EJ and associated activities on its House website.

▫ The Committee conducted additional **official hearings** on Environmental Justice.

▫ Members of the Committee took their bill "on the road" with an **EJ Tour**.

▫ Vital parts of HR 2021 were included in **HR 4447**, the majority **Democrats' Energy Legislation**. It passed the House on September 24, 2020 and was handed **off to the Senate**.

▫ **Organizations** and individuals involved in the process **amplified** the institutional communications.

▫ The Senate—led by Senator Tammy Duckworth (IL)—introduced a **companion bill**, creating a bicameral effort.

COMMUNITIES	MEMBERS	CONGRESS
Shape information	Structure information	Shares information
Serious health risks are distributed unevenly and life chances are diminished in identifiable communities across the nation. Over decades, individuals living with environmental injustice became a policy- adjacent community. They helped inform a law that enforces fairness and accountability.	Chair Raul Grijalva (AZ03) and Rep. Donald McEachin (VA04) and the staff of the House Natural Resources Committee have deep institutional knowledge of how to structure information in lawmaking, such as document formats for use with collaborative editing.	The Natural Resources Committee acted as a communications hub for the EJ effort. In addition to individual member communication, Congress shared the bill through institutional channels and parts of it were incorporated into broader legislation.

The **Shape, Structure, Share** framework helps clarify how elected leaders in Congress worked together with a policy-adjacent community to introduce the groundbreaking Environmental Justice for All Act in February 2020. In the following section, we clarify and explain in more detail the steps involved in this achievement.

1. Find civic champions on the inside

Innovative law making requires continual discovery, tradeoffs and blending of new information. Ideally, committees in Congress should seek a broad sample of perspectives, especially from those who would most benefit from congressional action. With the *Environmental Justice for All Act*, the first movers in the House were civic champions Chairman **Raul Grijalva** (AZ-03) and Rep. **Donald McEachin** (VA-04), who recognized the representation and redress gaps in pollution impacts and acted in their institutional capacity to close them.

With his background as a community activist and public servant in southern Arizona, Grijalva was an ideal institutional leader for participatory policymaking. Grijalva's EJ vision and direction started inside Congress when his party was in the minority. He optimized this period of time by building a deeper relationship with the EJ community. Starting with issue round tables and EJ discussion fora organized in Congress, Grijalva and his staff built a pipeline of credible voices and relationships to integrate into the work of the committee in a more holistic fashion.

Grijalva's EJ working group included an EJ advisory panel years before the bill was initiated. For Grijalva, the EJ bill's inclusive process was an extension of an ongoing conversation with individuals in his EJ community. Grijalva and his staff curated participation well in advance to prepare for collaborative bill writing. Because of this detailed advance work, the committee had access to subject matter expertise, on the ground experience, and geographically diverse perspectives—all with extensive personal contacts.

When he became Chair of the Natural Resources Committee in 2019, Grijalva had the conditions aligned to try something new.

McEachin, a lawyer who served as a state legislator and has demonstrated a lifetime commitment to protecting the vulnerable in his Richmond/Southern Virginia district, was Grijalva's colleague and EJ partner. Educated in divinity, McEachin approached the environmental justice issue through a faith-inspired moral and social justice lens.

MOVERS IN THE HOUSE

Chairman **Raul Grijalva** (AZ-03) and Rep. **Donald McEachin** (VA-04) recognized the representation and redress gaps in pollution impacts and acted in their institutional capacity to close them.

These themes were reflected in how he helped structure a lawmaking opportunity inclusive of low-income communities and others so often missing in the powerful arenas where elected leaders establish national priorities.

2. Identify places for trust and relationships

The environmental justice community is a nationwide group of individuals organized around a common interest in environmental health and equity. The EJ community is an example of peer-to-peer organizing that scaled across before it scaled up. After decades of local action, trust building and collaboration, individual EJ advocates came from around the United States for the June 2019 EJ convening on Capitol Hill. The schedule included panelists who shared their lived experience with cancer, asthma, and other diseases resulting from living in disproportionately polluted communities. Panelists also discussed the history of the EJ movement, the meaning of cumulative impact, and the relationship between EJ and civil rights. At the convening, the attendees produced Principles for Legislation on Environmental Justice, and the House Natural Resources Committee drew heavily on these principles to structure the first draft of the Environmental Justice for All Act.

Individuals with shared circumstances across geographically dispersed regions are immensely valuable in politics. The EJ community consists of individuals living with the common threat of pollution across the U.S. Their diverse voices came together, bound by the mutual experience of neglect and adverse health outcomes. Working together with elected leaders, they unified and elevated their voices in new ways using connections provided by a digital capacity only recently available in the legislative workflow. The momentum to propel environmental justice legislation forward came from this network of activists, advocates and movement leaders who shared a common circumstance. This broad national representation made their front line experience the cohesive knowledge of a policy-adjacent community primed to work with like-minded elected leaders in Congress.

PRACTICING SELF-DETERMINATION

The EJ community narrative is rooted in the Jemez Principles. These democratic values create space for individual experience and provide the guidance for each person to speak for themselves. The EJ process revealed a unique **Civic User Experience (CUX)**.

Video clip: **Anthony Karefa Rogers-Wright** and **Taysha DeVaughan** explain the importance of the Jemez Principles for democratic participation. Photo credit L. Kelly.

> *"Over the years, we learned that narrative is vital in policymaking and that if we are not speaking for ourselves, our story can be co-opted and make our work much harder."*

3. Identify (virtual, hybrid, and in-person) spaces for co-creation with policy-adjacent communities

The aspiration to a "more perfect Union" enshrined in the Preamble of the US Constitution reflects how the U.S. was created with the expectation that diverse communities could create a better collective future if they act together. In this sense, Chair Grijalva and Rep. McEachin built a common space where frontline communities dispersed across a broad cross section of the country could make legally-enforceable progress on health conditions. With relationships in place from years of working together, the EJ community and the Natural Resources Committee tried something new to amplify their effort. As Chair, Grijalva had the power to innovate and experiment with new methods in his committee. He decided to use a collaborative editing method provided by the civic tech platform POPVOX. This first-ever initiative created a virtual space for EJ community members and stakeholders to offer edits electronically from any location. Moreover, the committee leadership dedicated staff time to work on assisting participants and drafting the bill. Keep in mind, years of preparation took place in person, online, or in a hybrid format. This unprecedented and continual collaboration between elected leaders and a policy-adjacent community spread across the U.S. resulted in the Environmental Justice for All Act introduced in February 2020.

Video clip: **Yvette Arellano** shares how her work raises awareness of toxic pollution. Photo credit L. Kelly.

> *"Digital tools create an opportunity for harmed communities to share their experience with those in power"*

Achieving regulatory change on **environmental justice** will ultimately be a mutual-aid effort inside, outside, and in-between official power structures. In our case example, the environmental justice advocates understood that decades of damage to their community health was the result of a deficient regulatory system that had written them into the margins. They knew that a positive shift would require long-term involvement, sustained momentum, and a mission to change the law.

RIGHT TO PETITION

The **right to petition** the government in favor of or against policies is a basic American freedom, included in the First Amendment of the U.S. Constitution. What should petitioning look like in the digital era? **Technological advances**—along with the pandemic and threats of violence against members of Congress—have dramatically impacted the conventional workflow of elected leaders.

Ana Parras of **TEJAS** elaborates the civic voice component of the EJ bill. Photo credit L. Kelly.

> *"They did it correctly, they came to the people who are most affected and they said, what do you want to see in this bill?"*

The Environmental Justice for All Act creates powerful legal mechanisms so that harmed communities can hold polluting industries to account for toxic legacies. The **Shape, Structure, Share method** strengthened democracy because it increased legitimacy and accountability in Congress. Legitimacy is the public confidence and momentum that propels a democratic system forward. In U.S. founding documents, it relates to the idea that governments gain their power to secure rights only by the **consent of the governed**. By creating an inclusive, transparent editorial process to shape regulatory language, the EJ bill champions built this vital legitimacy into the law during the formative stages of the bill.

4. Carry the baton forward until issues become law

With few exceptions, a bill expires at the end of a session of Congress if it has not been signed into law. Policy-adjacent communities are uniquely positioned to carry forward the work invested in legislation between sessions of Congress (election cycles of two years) and ensure originating bills are reintroduced until formally signed into law. Communities can also build coalitions and strengthen support for a piece of legislation across congressional districts nationwide. In the EJ case, champions Grijalva and McEachin remained in position to carry the bill forward in Congress and continue to negotiate for the entire bill as well as for separate provisions to be incorporated into larger legislation. The members were determined to not re-create the collaborative process from scratch. To be sure, they expanded the effort by seeking public input via **virtual listening sessions** across the country. Feedback from this continued engagement prompted minor tweaks to the bill.

In contrast to the EJ case, if champions retire or change committees, the policy-adjacent community can play a vital role in maintaining continuity.

Environmental justice is an ongoing and continually emergent issue. For this reason, the public input process for the EJ bill will continue to be active. Chair Grijalva and his colleagues will look for ways to evaluate and incorporate feedback in all future steps of the **legislative process**.

Collaboration might happen during committee **markup sessions**, or in the development of floor remarks, for example. Importantly, continuous engagement with communities will remain vital. To be sure, a critical reason the EJ bill collaboration worked is because the content of the legislation reflected the inclusive values of the process. Transparency and responsiveness, for example, are both policy prescriptions and participation values.

> Bills that pass into law often include the DNA of many prior efforts in lawmaking. In addition to researching legislative history at the **Library of Congress**, **Billmap** or ProPublica's **Represent** trace bills or topics.

KEEP POLICY ALIVE

Carrying the baton also means keeping a policy issue alive and current, even when member champions are in the minority in Congress. Policy-adjacent communities can help keep relationships strong and the policy feedback current. **Members can engage** by convening roundtables, task forces, and **SIDE Events**. The U.S. can also **learn from** other **democracies**. See this **Crowdlaw Catalog** for ideas.

beeckcenter
social impact + innovation

Conclusion

The environmental justice community and the House Natural Resources Committee reached an unprecedented achievement with the introduction of **The Environmental Justice for All Act.** The bill itself is significant, but equally so is the process behind it. The early stage collaborative model it provides is a vital moment for the practice of American democracy. Hundreds of individuals worked together as a policy-adjacent community across congressional districts to **shape** the language of the bill. Members of the Natural Resources Committee—led by Chair Raul Grijalva and Rep. A. Donald McEachin—then **structured** the input so that it could be processed in the legislative workflow. The EJ bill was then **shared** publicly and also incorporated further into lawmaking by Congress through its official channels and methods. This EJ success was possible because champions inside of Congress recognized how modern technology could allow for geographically dispersed communities to collaborate effectively. Grijalva offered these words of advice to his House colleagues:
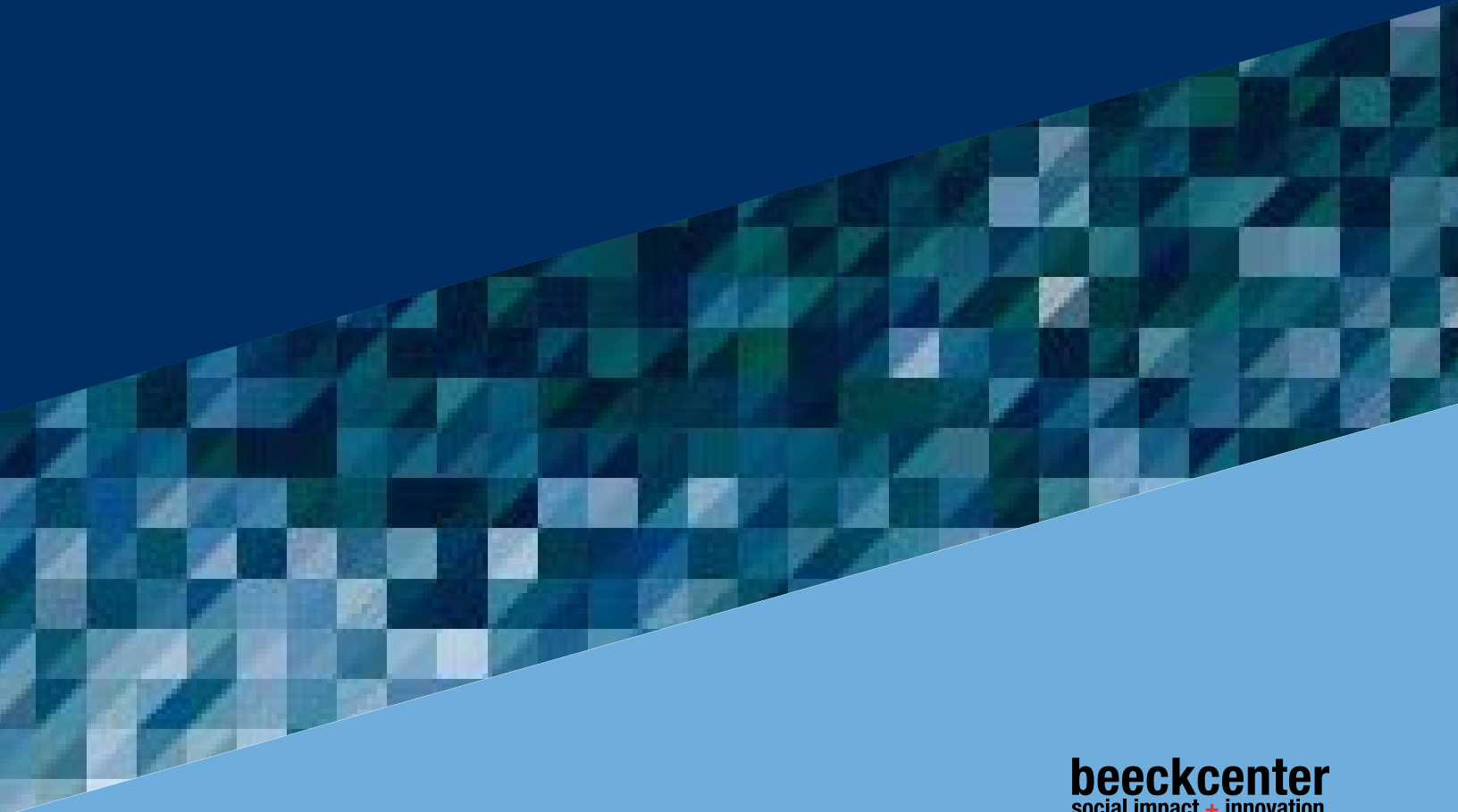
> *"The engagement component is really important and we have the wherewithal now, technologically, to be able to do that. It not only keeps you in contact with your constituents, but also outside your districts. There is a great deal of talent and intelligence to bring to bear on pieces of legislation that you're working on"*

Photo credit L. Kelly

The Environmental Justice for All Act was introduced in Congress at **a press conference** on Capitol Hill. As of this publication date, much of its substance has been rolled into a larger piece of energy legislation and other components are still in process. The House of Representatives **continues to modernize**, creating continual **first mover space** for piloting methods. The collaboration between the Natural Resources Committee and the EJ community is **ongoing**.