



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**FORUM ON UNDERSERVED COMMUNITIES AND
the Regulation Process**

**Panel 3: Barriers Preventing Underserved Communities
from Participating in Regulatory Policymaking**

November 10, 2021

TRANSCRIPT
(Not Reviewed for Errors)

Panelists

Suzanne Anarde, Chief Executive Officer, Rural Community Assistance Corporation

Lisa Cylar Barrett, Director of Policy, NAACP Legal Defense & Educational Fund

Eric Rodriguez, Senior Vice President, Policy and Advocacy, UnidosUS

Susan F. Tierney, Senior Advisor, Analysis Group

Moderator

Bertrall Ross, Justice Thurgood Marshall Distinguished Professor of Law, University of Virginia
School of Law

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Transcription of Video

Panel 3

Video Runtime: 1:00:42

1 (Beginning of Audio Recording.)

2 MR. THOMSON: Good afternoon,
3 everyone. I'm Mark Thomson, the Deputy
4 Research Director here at the Administrative
5 Conference of the United States. And I want
6 to welcome you to the third of six panels in
7 ACUS's ongoing forum on underserved
8 communities and the regulatory process.
9 Today's panel focuses on barriers that can
10 prevent members of underserved communities
11 from participating in regulatory policy. We
12 have an extraordinary collection of speakers
13 to address that topic, starting with
14 Professor Bertrall Ross, who will be
15 moderating today's panel.

16 Professor Ross is public member here
17 at ACUS and the Justice Thurgood Marshall
18 Distinguished Professor of Law at the
19 University of Virginia School of Law. He
20 teaches and writes about constitutional law
21 and theory, election law, statutory
22 interpretation and of course, administrative
23 law. And on that note, I will turn it over
24 to Professor Ross.

25 MR. ROSS: Thanks so much, Mark. It's

1 great to be here. Let me just start by
2 describing a report for the Administrative
3 Conference of the United States in 2018, in
4 which Professor Michael Sant'Ambrogio and
5 Glen Staszewski described how so-called
6 sophisticated stakeholders, which included
7 regulated entities, industry groups, and
8 professional associations have dominated the
9 notice-and-comment process while national
10 public interest organizations, regulated
11 beneficiaries, smaller entities, and members
12 of the general public participate much less
13 and sometimes not at all in these processes.

14 These findings accord with previous
15 studies by political scientists and law
16 professors, finding that members of
17 marginalized groups, including racial
18 minorities, and the poor, are mostly absent
19 from administrative processes.

20 These disparities in participation
21 undermine the democratizing objectives of the
22 administrative processes such as notice-and-
23 comment. As Sant'Ambrogio and Staszewski
24 argue the non-participation of important
25 segments of the population in administrative

1 processes undermine the democratic
2 accountability and legitimacy of regulations,
3 thereby reducing their effectiveness as
4 governing tools.

5 Today, I have the pleasure of
6 moderating a panel of esteemed
7 representatives and advocates for underserved
8 communities and groups, who will be
9 addressing questions regarding the barriers
10 to participation in administrative rulemaking
11 and adjudication. For this panel, I'd like
12 to start by introducing Suzanne Anarde. Ms.
13 Anarde is Chief Executive Officer of Rural
14 Community Assistance Corporation or RCAC and
15 a lifelong rural resident, leader, and
16 champion for rural culture.

17 Her 30-year career began in rural
18 Colorado as the founding executive director
19 of the nonprofit building a single purpose
20 organization into a diverse community
21 development entity.

22 Subsequently, as Local Initiative
23 Support Corporation or LISC's Vice President,
24 she led rural LISC's National Community
25 Housing and Economic Revitalization work,

1 partnering with and through rural community-
2 based organizations, serving 2200-plus
3 counties across 45 states.

4 Ms. Anarde is a member of the U.S.
5 Bank Community Advisory Committee and serves
6 as a board member for the National Rural
7 Housing Coalition, California Coalition for
8 Rural Housing and Rural Community Assessment
9 Partnership.

10 Lisa Cylar Barrett is a Director of
11 Policy at the NAACP Legal Defense &
12 Educational Fund, where she leads and manages
13 the policy work for the organization and
14 serves as a member of the senior management
15 team, which develops and executes the
16 strategic direction for the organization.

17 Ms. Cylar Barrett has over 25 years of
18 combined experience in the legal,
19 philanthropic, and nonprofit sectors where
20 she has worked tirelessly to effectively
21 execute multipronged strategies to expand
22 democracy, eliminate disparities, and achieve
23 racial justice.

24 Prior to LDF, Ms. Cylar Barrett served
25 as the Managing Director of Federal Policy at

1 PolicyLink. In that position, she oversaw
2 the development and execution of strategies
3 to advance racial and economic equity on a
4 wide range of issues, including
5 infrastructure, investment, housing,
6 education, transportation, access to healthy
7 food, water, and economic inclusion.

8 And during her tenure at PolicyLink,
9 Ms. Cylar Barrett led many critical federal
10 policy efforts, including the successful
11 efforts that included the Promise
12 Neighborhood Cradle-to-Career program, and
13 other equity focused language in the 2015
14 reauthorization of the Elementary and
15 Secondary Education Act of 1965. Thereby
16 securing a federal program focused on
17 providing critical social and academic
18 support to children and communities of highly
19 concentrated poverty.

20 She also defended the Affirmatively
21 Furthering Fair Housing Rule and advanced the
22 implementation of the authorized Healthy Food
23 Financing Initiative. Susan Tierney is a
24 Senior Advisor at Analysis Group Incorporated
25 in Denver, Colorado. Ms. Tierney is an

1 expert on economics, regulation, and
2 environmental policy affecting the electric
3 and natural gas industries.

4 At Analysis Group, she has served as a
5 consultant to a variety of clients including
6 state governments, environmental groups,
7 foundations, energy companies, grid
8 operators, universities, Indian tribes,
9 consumer groups, and others.

10 Previously, Sue served as the
11 Assistant Secretary for Policy at the United
12 States Department of Energy. And in
13 Massachusetts, she was the secretary of
14 Environmental Affairs Commissioner at the
15 Department of Public Utilities and Director
16 of the state's Energy Facilities Siting
17 Council.

18 Ms. Tierney currently serves on a
19 number of boards including ClimateWorks
20 Foundation, Resources for the future, the Bar
21 Foundation, World Resources Institute, and
22 the Energy Foundation.

23 She chairs External Advisory Committee
24 Council of the National Renewable Energy
25 Laboratory and is a member of several

1 national academies committees, including the
2 Future of Electric Power in America and
3 Accelerating Decarbonization in the United
4 States.

5 And finally, we have Eric Rodriguez.
6 Mr. Rodriguez is the Senior Vice President at
7 UnidosUS, the largest national Hispanic civil
8 rights and advocacy organization in the
9 United States.

10 Mr. Rodriguez oversees the Office of
11 Policy and Advocacy, which is charged with
12 directing the organization's legislative
13 affairs, public policy research, policy
14 analysis, and field advocacy work and is
15 responsible for the UnidosUS federal and
16 state legislative priorities and agenda.

17 From 2007 to 2008, Mr. Rodriguez
18 served as Deputy Vice President for the
19 policy department and previously directed the
20 Policy Analysis Center, a position he held
21 for five years.

22 His background also includes work on
23 such issues as tax policy, Social Security,
24 welfare reform, workforce development,
25 retirement security, as well as housing and

1 financial market regulations. Mr. Rodriguez
2 has authored, coauthored, and supervised the
3 preparation of dozens of policy and research
4 reports, journal articles, and editorials.
5 He has frequently testified at congressional
6 hearings and represented UnidosUS at its
7 research conferences, policy conferences, and
8 symposium.

9 Mr. Rodriguez serves as on the boards
10 of the Food Research and Action Center, the
11 Fair Election Center, and the NCLR Action
12 Board. And prior to joining UnidosUS, Mr.
13 Rodriguez was a Congressional Hispanic Caucus
14 Institute fellow and served in the U.S.
15 Representative Nydia Velazquez's office.

16 Okay, so that's it for introductions
17 of the esteemed panelists. And let me just
18 kind of start by providing -- opening with a
19 question that I will direct at Eric.

20 So let me start with you Eric, with
21 the who question, which I think is
22 appropriate, speaking to a panel comprised of
23 representatives of underserved communities
24 and groups.

25 So the queue question is who, if

1 anyone, tends to speak for the interests of
2 underserved communities and agency decision-
3 making processes? And then through what
4 means do these individuals and groups speak
5 for the interests of underserved communities
6 and agency decision-making processes?

7 MR. RODRIGUEZ: Well, thank you. Can
8 you all hear me okay?

9 MR. ROSS: Yep.

10 MR. RODRIGUEZ: Okay, great. Well, I
11 want to thank you for inviting me to be here
12 today. It's a great pleasure. You know, one
13 of the things that UnidosUS is, is an
14 umbrella organization for about 300 community
15 based organizations all across the country
16 who do a range of public services. And
17 they're in many ways our main partners in
18 work with federal agencies, and with
19 Congress, and with others. So that's an
20 important way in which we engage federal
21 agencies. And the question again, Bertrall?

22 MR. ROSS: So it's focusing on the who
23 question, right. So as a representative of
24 Hispanic organizations throughout the country
25 as an umbrella organization, in your

1 engagement with administrative processes, who
2 tends to speak for the interests of
3 underserved communities? And the follow-up
4 question that's related to it, is how do
5 these groups and entities speak for the
6 interests of underserved communities and
7 agency processes?

8 MR. RODRIGUEZ: Yeah, there's a range.
9 And I think part of the question is where do
10 we need to communicate concerns and voice and
11 provide input? For federal agencies
12 generally, it's going to be those
13 intermediaries, those nonprofits who are
14 tracking closely the policy issues who
15 perhaps worked on the legislation that
16 underwrites the law and has a set of
17 constituents that are affected by any agency
18 actions under discussion.

19 In Congress, there's a different set
20 of actors that may be expressing views and
21 perspectives on behalf of communities to
22 lawmakers.

23 There you can have organizations
24 that -- organizing communities, you could
25 have parent organizations, you can have a

1 full range that direct more of their action
2 and their voice to lawmakers and politicians.
3 But a lot of times, they're not the same ones
4 that are directing their action toward
5 federal agencies.

6 That process tends to be, quite
7 frankly, fairly elite for a variety of
8 reasons that will probably come up, you know,
9 during this discussion about some of the
10 barriers that exist for communities to engage
11 where they should in the process of, you
12 know, making, you know, federal rules and
13 regulations and guidance.

14 MR. ROSS: All right. And coming to
15 you Ms. Cylar Barrett, you've worked on
16 regulations recently involving HUD and the
17 affirmative Furthering Fair Housing Rule.
18 That was ultimately issued.

19 In thinking about your extensive
20 involvement with administrative processes,
21 who have you identified as entities and
22 individuals speaking for underserved
23 communities and agency processes, both from
24 the outside perspective of advocacy, but also
25 from the inside perspective within the agency

1 itself?

2 And how do they ultimately engage in
3 this process of speaking for these interests
4 for the interests of underserved communities?

5 MS. BARRETT: Thanks, Bertrall. And
6 let me just say thank you, also, for inviting
7 me to participate. I think this is such an
8 important conversation and I'm so glad to see
9 us having this conversation, not just about
10 how dollars get invested, but how barriers
11 and biases that are embedded into the system
12 preclude underserved communities from
13 engaging in the process.

14 I would agree with Eric that in terms
15 of sort of administrative rulemaking, I think
16 largely, you're seeing response from
17 organizations like ours, right, that national
18 civil rights organizations or organizations,
19 national organizations that are representing
20 particular communities.

21 I will say at least for LDF and also
22 for PolicyLink when I worked at PolicyLink,
23 there often is an effort within those
24 organizations to also engage, you know,
25 grassroots organizations and people in

1 community to ensure that, you know, what we
2 are putting forward is in alignment with what
3 the community would want to say in response
4 to whatever the proposed rule is or proposed
5 initiative is.

6 But, you know, as I think we'll
7 probably get into further in this
8 conversation, sort of the structure and the
9 resources and capacity that are often
10 required to be able to respond, I think has
11 meant, historically that you're having sort
12 of national organizations engage.

13 I'll say another way that a number of
14 our organizations try to ensure that it's not
15 just us speaking for the communities we
16 represent but also representatives from the
17 communities themselves participating is that
18 there are -- when there are opportunities or
19 the ability to engage with community, and
20 then those organizations may take on sort of
21 the responsibility of pulling those comments
22 into a document that a number of folks can
23 sign on to, or draw from, in sharing their
24 own comments and perspectives, you know,
25 often that's happening also so that many

1 times our organizations are trying to help
2 facilitate our communities being involved in
3 that conversation.

4 But I would say, you know, I think
5 we'll get into this later, but there are some
6 things that we might consider that would
7 allow folks in community to engage more
8 directly themselves.

9 To your question about, you know,
10 folks within the administration, I think this
11 is where it's so critical, when we're
12 thinking about nominations and appointments
13 in key positions, that we are expanding or
14 diversifying who's being put into those
15 positions.

16 So they are people that are coming
17 from these communities that have sort of
18 real-life experience in these communities
19 that they will be able to bring to bear in
20 those positions. And as critical decisions
21 are being made, they're bringing that
22 experience into that decision-making process.

23 And so we think it's so important as
24 folks are considering nominees to the high
25 positions, but also, you know, as we think

1 about folks in the career positions and other
2 positions that they are drawing on folks who
3 have experience working in these communities,
4 experience living in these communities, that
5 they will be able to bring to there in their
6 day to day efforts.

7 MR. ROSS: Yeah, important points,
8 because I often feel those nominations to
9 these positions are overlooked (inaudible)
10 administrative agencies and often not
11 realized by the public how critical of a role
12 that they ultimately play in decisions that
13 impact their lives in fundamental ways.

14 Ms. Anarde, you represent rural
15 communities as part of Rural Community
16 Assistance Corporation. And, you know, my
17 sense of rural communities is that they're
18 quite diffuse and dispersed and perhaps
19 organizing them may raise some interesting
20 challenges.

21 And I was wondering in terms of your
22 experience in answering the who question
23 across rural communities, who has served as
24 the representatives or who has spoken for
25 these communities and agency processes, and

1 how have they gone about speaking for these
2 communities?

3 MS. ANARDE: Thank you. And I'm
4 really honored to be part of this panel, and
5 to learn and listen as well.

6 I think the important thing about
7 rural, tribal, and indigenous communities to
8 remember is that, if you've been to one,
9 you've been to one. They're all very
10 diverse, their economies are different.
11 Everything about an individual community is
12 different.

13 We tend to be lumped into this place
14 where, you know, those folks that live off
15 the beaten path, you know, those kinds of
16 things. But I think that who speaks for
17 them? You know, RCAC, we work in the rural
18 Western 13 states, including Alaska and
19 Hawaii. We have 170 employees. Over 100 of
20 those live in work in the communities where
21 we work.

22 So I think, I loved what Lisa talked
23 about, you know, how can we really embody and
24 empower the actual residents of those
25 communities to speak.

1 And so in our world, much like what
2 Eric and Lisa said, it really is the
3 intermediaries. I would say that we are the
4 bridge, sometimes we are the spokesperson,
5 but often we're the bridge between what we
6 are seeing as we're providing technical
7 assistance. I don't call it building
8 capacity, I call it elevating capacity,
9 because our communities have capacity, we
10 just need to elevate it and help them refine
11 it. When we're doing that, we hear and we
12 see a lot of things.

13 So what we try to do is elevate that
14 to, you know, there's strong voices in this
15 space that have connections and have the
16 relationships. So it might be CDFIs, we're a
17 CDFI, it might be intermediaries. We have
18 national collaboratives. The National Rural
19 Housing Coalition is a group of grassroots
20 folks. And when we need to weigh in on USDA
21 502 mortgage cost overruns, that's where we
22 go to try to influence policy or try to
23 influence regulations that can address that.

24 So I think there're a lot of places.
25 I like the umbrella term, because I think

1 there are a lot of collaboratives on there.
2 CDFIs there are nonprofit, grassroots groups
3 who are part of larger networks.

4 And so I think there's an
5 infrastructure that we utilize, but when it
6 comes down to it, I have to agree with Lisa,
7 there are a lot of barriers, and I know we're
8 going to talk about this later, that really
9 diffuse the message that comes from the
10 actual community members. And oftentimes,
11 rural communities, indigenous communities may
12 counter each other. And so there's all of
13 those things trying to figure out because a
14 rural California community is not like a
15 rural New Mexico community, and neither is it
16 on the tribal side.

17 So I think that it's really important
18 is, what is that bridge for their voices to
19 be heard? And who's doing that? And how
20 authentic is that voice?

21 MR. ROSS: Yeah, and we'll kind of
22 move to those issues of meaningful
23 participation on the next question. But
24 before we get there, I wanted to turn this
25 question over to Ms. Tierney. Often, you

1 know, environmental groups, you know, seem to
2 have a pretty well-oiled machine at times in
3 terms of their advocacy. We just saw the
4 COP26 Conference in Glasgow, which was an
5 important conference, which, you know, we'll
6 see how far it moves the needle with respect
7 to this existential issue of climate change.

8 But how have you sort of found it with
9 respect to the environmental groups that you
10 consult with and that you work with, in terms
11 of who is speaking for them in administrative
12 processes and how they are speaking for them?

13 MS. TIERNEY: Thanks for that
14 question, Bertrall. And like everyone else,
15 I really want to thank ACUS for including me
16 in this panel. Suzanne, it's an honor for me
17 as well to listen and learn, too.

18 My angle on this comes not from being
19 a member of a nonprofit, although I am
20 affiliated with some. It's more from having
21 observed public policymaking in regulatory
22 arenas for 30 years. And in the
23 environmental area, there tend to be, I would
24 say, a couple of different intermediary
25 groups that in one way or another show up and

1 represent themselves as being spokespersons
2 or advocates for underserved communities.

3 There are the environmental groups.
4 And one of the things -- and there are big
5 green environmental groups, and then they're
6 quite local environmental groups. They have
7 very different points of view, very different
8 resources, typically. And often they are
9 looking at something from the perspective of
10 the environment first, rather than a set of
11 constituencies that may be worried about the
12 accumulated effects of air pollution from
13 living in a frontline community where there's
14 buses, and diesels, and a power plant, or
15 refinery, a lot of different things going on.

16 And the environmental groups may come
17 in in an invaluable way. But mainly looking
18 at one issue that may be important to that
19 environmental group.

20 There are also in intermediaries that
21 come in the form of consumer advocates, and
22 trying to keep the price of energy low, let's
23 say, so that it is accessible for everybody,
24 including quite poor people. And they tend
25 to be quite hyper focused on dollars, and

1 what's going to go into rates. And that is a
2 critically important function in many of
3 these, you know, approvals of energy
4 facilities or the design of electric and gas
5 rates.

6 But there are sometimes things that
7 could be included in rates that actually are
8 making the energy service more affordable.
9 And so that you see these tensions going
10 across in terms of a single advocacy position
11 that maybe is looking at a disaggregated
12 group of constituencies in a more homogeneous
13 way.

14 So there's -- it's fantastic that
15 these groups are there. They may not always
16 be representing in my arena, in my
17 experience, the issues of real heartbreak and
18 concern for frontline communities.

19 MR. ROSS: So moving forward in terms
20 of -- oh, before I get to the second
21 question, I want to offer to the audience if
22 you have questions, enter them to the Q&A
23 function and I will ask them later on our
24 panel. But let's kind of jump into the
25 issues of participation. And, you know, the

1 separation between participation and
2 meaningful participation. There's processes
3 are quite open. Notice-and-comment process
4 is famous for its democratization of
5 administrative procedures in ways that were
6 quite innovative at the time and still are
7 quite important now. But the participation
8 that they offer is not always meaningful,
9 particularly to underserved communities.

10 I was wondering if the panelists --
11 and I'll switch the order a little bit, but
12 if the panelists could provide some examples
13 of the tangible and practical barriers to
14 meaningful participation in regulatory agency
15 decision making, whether they be technical,
16 legal, financial, informational, or a
17 combination of all the above or others.

18 And so let me just start with you, Ms.
19 Anarde, in terms of speaking from the
20 perspective of the rural, indigenous, and
21 native communities that you represent the
22 barriers to participation and regulatory
23 decision making that you've seen and
24 experienced.

25 MS. ANARDE: Again, I think it boils

1 down to awareness and who is being the bridge
2 for folks. You know, most small communities
3 have a -- you know, they have a city clerk
4 who may be part-time, they have a maintenance
5 guy who does everything, including digging
6 graves.

7 And so if you're looking at it from
8 the local government perspective, they are
9 meaning, you know, they're burning at both
10 ends just to provide services. So then you
11 take a step back and you go to the county
12 level, because that's where the capacity is
13 in the local governments, and you have a
14 county that may have a county seat and that's
15 where they're located. And they're going to
16 view it from the county seat perspective
17 versus all of the little, small, outlying
18 communities.

19 So the first thing is awareness.
20 Like, how do folks understand that they have
21 an opportunity? Number one. Number two, how
22 do they learn how to engage? And I mean,
23 we've read some of the rules. They're
24 complicated, right? And understanding and
25 connecting the dots on how does this impact

1 me in Fowler, Colorado, population 1248,
2 right? How is this going to impact me? And
3 then being able to articulate alternatives or
4 what are -- so it's complicated because of
5 scale, because of the number of folks.

6 But it's also complicated in that the
7 process is often foreign, or slanted towards
8 the micropolitan, or the large community
9 within their county, or within where their
10 collaborative partners are. So you have
11 that.

12 And then you also have like at the
13 tribal level, their governance usually turns
14 over every two years. So you may get like a
15 go-getter in a tribal position, but they're
16 only there for two years.

17 So I think the local government piece
18 it makes it difficult and the sparsity of
19 folks. But I also think that it's an
20 education and it's understanding. And so I
21 think that's where organizations like the
22 ones that are represented on this panel are
23 so important, because we build a
24 relationship, because we're the ones they
25 call when their water system fails. We're

1 the ones that have the circuit rider with the
2 tribe that, you know, they call into the
3 Navajo Nation when their wells go out and
4 COVID is rampant, right?

5 So building on those relationships and
6 building our partners to where we can
7 communicate and they can understand what
8 needs to happen, but it's that link.

9 And we can't be everywhere. And there
10 are organizations like ours, but it really is
11 building the awareness, having access to the
12 internet. And I know broadband is a big word
13 right now, but it's also a really big thing
14 to fix and to make happen.

15 And so, you know, we don't -- rural
16 communities, tribal communities, indigenous
17 communities don't often get information the
18 same way that urban communities do. I have a
19 board member that's in Alaska, and she works
20 for one of the health organizations. She was
21 talking about how hard it is to explain to
22 even health providers and information that
23 there's not a road system. There's no road
24 system there.

25 So it's really I think for rural

1 indigenous tribal communities, it's about
2 having the number of folks that can be aware
3 of getting the information, and then being
4 able to respond, and having that knowledge
5 and that experience base of understanding how
6 things are going to impact and how to
7 respond.

8 MR. ROSS: Yeah, and thinking about it
9 in terms of what you just said, in terms of,
10 you know, often you see desire to be engaged
11 when there's a crisis, right? But when there
12 is kind of the day-to-day life that's
13 happening around us in which policymaking is
14 being made, policy is being made that will
15 influence our lives, right, that chance and
16 opportunity and knowledge or awareness to
17 engage is just not there. And so you often
18 have these underserved communities, they're
19 not sort of active or meaningful participants
20 in the ongoing policy life.

21 Mr. Rodriguez, in terms of your
22 experience that you have found with respect
23 to some of the tangible and practical
24 barriers for meaningful participation?

25 MR. RODRIGUEZ: Yeah, sure. I agree

1 with a lot of what's been said by Suzanne, I
2 mean, look, sometimes the rules are really
3 arcane. The notices are hard to understand.
4 The time period for getting up to speed and
5 to give meaningful and good quality responses
6 is too narrow.

7 You know, it's just it's difficult,
8 even for groups that are paying attention,
9 who are part of the legislative process in
10 some way have a real hard time participating
11 in the rulemaking part of the conversation
12 because it's just too complex.

13 At times, things that are in the
14 notices or Q&A's that feel like they're good
15 proposals like flexibility may actually be
16 bad ones if you're not paying close attention
17 to, you know, the details.

18 And some of the ways that we as
19 intermediaries work with our organizations to
20 make it easier for them to participate are
21 not things that the agencies value, right.
22 Like the sign-on letters that Lisa mentioned
23 or, you know, these form responses, steps
24 that we take to try and make more people
25 participate in the process are also things

1 that don't register that highly for the
2 agency in inputting commentary and that's --
3 of course we worked -- you know, we worked on
4 very serious things from, you know, the
5 Affordable Care Act regulations to the CFPB
6 doing their payday lending rules which can be
7 really complicated again for those that are
8 even following, and Lisa I'm sure can say
9 something about the affirmatively furthering
10 rule that's really -- can be really complex
11 to be able to engage in that process unless
12 you know what you're doing.

13 So there are -- and I haven't even
14 touched on, you know, language barriers to
15 the process for many frontline communities or
16 cultural competency. That's a big part of
17 the process in making sure that that's -- and
18 Lisa mentioned it just right which is, look,
19 when you have a diverse workforce the chances
20 of you getting more cultural competency in
21 the process are a lot higher and oftentimes
22 we're working with agencies that don't have
23 very diverse workforces in place, and that
24 means the task for us is much harder.

25 MR. ROSS: Yeah. Very important

1 points made there. You look at the code of
2 Federal Register you see the thickness of
3 that code, the challenges that you just face
4 trying to make it through different agency
5 regulations whether it will be during this
6 process or after that.

7 And as a person who tries to be
8 knowledgeable on these things that they are
9 challenging to me I can only imagine what
10 those who are not as into it in their day to
11 day lives.

12 And I think that the -- and another
13 important point that you make is, you know,
14 what should the value be of intensity and
15 expression of preferences, right. Even if
16 they do come in a form letter, the fact that
17 it's a form letter that is being signed on by
18 many members of community, how much value
19 should those letters have? You often see
20 decision makers make the point that it is not
21 a referendum these agency processes, but
22 should the intensity of preferences matter
23 and how should they matter are important
24 things to think about.

25 Let me turn it over to you, Ms.

1 Tierney, in terms of thinking about the
2 examples of tangible and practical barriers
3 to meaningful participation.

4 MS. TIERNEY: Well, I agree with
5 everything that's been said so far so I'll
6 try to add a couple of other things as well.
7 How many of your neighbors have ever heard of
8 the Federal Register? I mean, when you think
9 about it we spend our time on these things
10 and even we have to go and find out what's
11 going.

12 So a clear barrier is that when we're
13 talking about underserved and disadvantaged
14 communities, they are disadvantaged in
15 resources, in information, in -- how many of
16 them understand what is adjudicatory process
17 versus a rule-making process?

18 Well, who's even heard of those words
19 except us, you know, this is our professional
20 lives. Bandwidth issues not just broadband
21 but bandwidth issues of being able to attend
22 a public hearing and travel those distances
23 from a rural community to a decision-making
24 center. And some of us have broadband that
25 can do it virtually now, but most people

1 can't.

2 So there's technical skills that are
3 challenging and takes so much time to
4 develop. Access to legal resources. I'll
5 give just two examples. One of them is,
6 let's say it's an energy facility that's a
7 pipeline that's going to be going through a
8 rural neighborhood, or a rural community, or
9 an urban neighborhood, and you have an
10 opportunity to show up in an evening public
11 hearing.

12 You wait for hours to make a three-
13 minute comment. And what can you say in
14 three minutes except, you know, you don't
15 like this thing, and so it comes off as if
16 you're just in opposition to everything.

17 And so there's a context for public
18 hearing comments from the communities which
19 is completely outweighed in decision making
20 records by those who are bringing expert
21 witness, legal briefs, and a variety of other
22 things and are focused on what are the
23 standards that an agency will be bringing to
24 bear in making its decisions.

25 And Eric's comment about this -- oh

1 no, I guess it was yours, Bertrall -- about
2 this not being a referendum, is not just
3 they're not referendum but they're often --
4 there's a disconnect between what people are
5 passionate about and how they think something
6 is going to connect with them and what the
7 agency sees as its standard of review under
8 the law. So those ones are tough.

9 I'm thinking of another example, let's
10 say of the air pollution rules associated
11 with power plants that some of which may be
12 located next to you and some of them are
13 hundreds and hundreds of miles away, and each
14 of them is emitting some kind of pollution
15 into the air.

16 Some of the advocates understandably
17 want to keep the cost of this regulation
18 down, they might like a trading program, so
19 that one power plant can buy the ability to
20 pollute more from somebody who can pollute
21 less. Well, that local community is very
22 unlikely to understand the design of those
23 regulations and what that might mean for
24 them. And so there's just tremendous
25 technical legal awareness, as Suzanne said,

1 barriers that make it so that there is a good
2 record for decision, but not robust with
3 regard to many of these issues.

4 MR. ROSS: Yeah. And I think about
5 the public hearing context in terms of the
6 intimidation factor, right.

7 MS. TIERNEY: So much.

8 MR. ROSS: In the sense that I don't
9 belong at these hearings, my input does not
10 matter, right.

11 MS. TIERNEY: That's scary to see it
12 happen in front of other people.

13 MR. ROSS: It is yeah, absolutely,
14 right. And so the way that these processes
15 are constructed can have an excluding effect.

16 And I'm turning to you, Ms. Cylar
17 Barrett In terms of thinking about the
18 tangible and practical barriers to meaningful
19 participation and I'm thinking about your
20 earlier comments in terms of nominees and
21 such administrative processes and those who
22 are going to be the agency decision makers.

23 I also think about the fact that when
24 you think about people of color any of these
25 administrative processes there's not a lot of

1 folks that look like them that are a part of
2 these processes. So just reflecting your
3 experience with respect to tangible and
4 practical barriers to meaningful
5 participation.

6 MS. BARRETT: Sure. I mean, I would
7 underscore everything that everyone has
8 already said. I think I'll start where Sue
9 and you left off, Bertrall and that's with,
10 you know, public hearings. I think the other
11 consideration in terms of capacity of folks
12 to engage is think about if you're working
13 two or more jobs, do you really have the
14 capacity to or the time to attend an evening
15 hearing as, you know -- even if you have been
16 able to be aware of the hearing, understand
17 the notice or the issue that's being
18 presented, you know, do you have the time and
19 capacity to actually engage in the hearing or
20 for that matter, in writing and submitting
21 comments for a proposed rule-making.

22 And so there's that aspect of people
23 who are many times in these communities and,
24 you know, we're talking about -- as we are
25 talking about underserved communities many

1 times we're talking about individuals who are
2 also living in very impoverished communities.

3 And so do they have the time, the
4 space, the resources to really engage in this
5 process when they're doing everything they
6 can to survive day to day, to work the two
7 jobs, to sit down with their child at night
8 when they come home from their second job
9 before their child goes to bed. I mean, the
10 day to day life and then being able to really
11 take the time to engage in this.

12 And so I do think this idea of we need
13 to make it so much more accessible and easier
14 for folks to engage. Eric mentioned
15 sometimes the language itself of the notice
16 is just intimidating for us, right? Like
17 when you really are engaging in these
18 spaces -- I know there are days where I
19 just -- I'm like okay let me get my head
20 ready to sit down and sort of really read
21 through this notice and understand what it is
22 that's being proposed.

23 And so for someone who's not engaged
24 in that on a day to day basis that's got to
25 be incredibly difficult.

1 And just as Suzanne said the initial
2 awareness and the time factor there was -- I
3 can give an example; there was a proposed
4 rule a few months ago that had a 30-day
5 comment period. And for many organizations
6 this was an issue that I know that they
7 wanted to weigh in on, but maybe we found out
8 about the rule two weeks into the comment
9 period and then you have two weeks to pull
10 together, you know, understanding the
11 comment, pull together your full comments and
12 submit them in addition to everything else
13 that's going on.

14 So not just capacity concerns for
15 individuals in communities, but also for the
16 organizations themselves. And I would say
17 particularly for civil rights organizations,
18 and we certainly saw this over the last four
19 years, you know, issues dealing -- when
20 you're dealing with multiple issues that are
21 impacting your community trying to stay on
22 top of all of those issues and address or
23 respond to each of those proposed rules or
24 engage in hearings or what-have-you, you
25 know, there's a tremendous amount of work

1 that goes into that.

2 And so capacity issues are bound
3 across the board. And then just the idea
4 of -- I think Suzanne mentioned this but, you
5 know, do communities have access to
6 broadband, do they have access to a computer?
7 You know, many times those are the ways that
8 you're responding on these issues and if you
9 don't have the basic equipment to be able to
10 engage, then it makes it even that much more
11 difficult.

12 So I think looking at some ways, one,
13 to have greater transparency about what's
14 happening in these processes, ways to share
15 the material or the information in a more
16 user-friendly way so that the writing isn't
17 so technical and people can actually
18 understand what's happening and engage
19 easily.

20 And then I think also important is for
21 folks to feel like their input isn't going to
22 some void or black hole. For them to
23 understand what the process will be for the
24 consideration of their input and sort of what
25 the outcome will be.

1 So what does that process look like,
2 once I submit a comment who's considering it,
3 how does it get factored in then what
4 happens, how do I find out about the status
5 of whatever is being proposed. How those
6 things are being factored into folks feeling
7 like it's worth the effort to actually engage
8 and that their voice really matters.

9 MR. ROSS: So I want to build off of
10 those comments, Lisa, and actually it's a
11 question that's just been asked by the
12 audience because I think that within your
13 response were some proposals for change,
14 right, and how to make this process
15 potentially more accessible. But Justice
16 Lam -- Justin Lam, excuse me, posed the
17 questions in the Q & A that I'll be off with
18 Eric because you had some comments in your
19 remarks are responsive as well that maybe you
20 could build off of.

21 To what extent can organizations and
22 local State governments reach people in more
23 accessible ways within the current statutory
24 framework of programs? And then what I think
25 is more critical -- even more critical part

1 of the question, What changes might need to
2 be made to either the APA, the Administrative
3 Procedure Act or future statutes to make it
4 easier for folks to participate?

5 So just kind of generally in terms of
6 how do we think about making it easier to
7 participate, what could we change in terms of
8 statutes and practices surrounding
9 administrative processes that would make it
10 easier to participate that's building from
11 what Lisa has already said.

12 MR. RODRIGUEZ: Yeah, thanks for the
13 question. No, I only pretend to be a lawyer
14 in my spare time. But I do have some
15 thoughts of course on this.

16 So one certainly is that we can make
17 the process of engagement more active rather
18 than passive; that's certainly one. There
19 are some existing executive orders that can
20 be enforced and implemented better like the
21 Limited English Proficiency Executive Order
22 through agencies, there's of course the
23 Racial Equity Executive Order that can help
24 to add more data to the process.

25 For instance how many, you know, is

1 anybody counting the comments that come from
2 underrepresented communities and reporting
3 that out, are we looking at numbers as it
4 reflects some of the engagement that we're
5 getting so far and making goals around that.

6 There are certainly a lot of ways that
7 we need -- when we need authentic engagement
8 in our communities, we do focus groups, we
9 find ways to bring people to the table to
10 bring their perspective. It's a part of our
11 processes; we can do it, you can do it. And
12 that is a big way of enhancing engagement,
13 but it starts with the premise that this is a
14 problem that needs to be fixed. And there
15 are better ways of doing this to incentivize
16 engagement.

17 I mentioned earlier that we have a lot
18 of nonprofit community-based organizations
19 that provide a range of services. They are
20 in many ways our partners on this. They can
21 be partners with agencies as well in
22 finding -- and engaging families who would be
23 affected directly by rules and regulations
24 that are being made. But we don't really see
25 that happening in an assertive kind of way.

1 So those are all important ways that
2 we can get true engagement. There's other
3 kinds of ways that people use, for instance,
4 patch-through calls. If somebody is willing
5 to be reached out to and connected to a
6 federal agency because of an issue that
7 matters to them, they're taking an extra
8 step. If they're active enough to do that
9 and register a concern, that should mean
10 something.

11 So there are some other tactics that I
12 think could be put in place. We can also
13 think about government interagency taskforces
14 that's specifically kind of focused on this
15 and deeper engagement from frontline
16 communities.

17 So I think there's a number of things
18 that can be put on the table that I think add
19 at this. Some of which may require additions
20 and changes and tweaks to the law. And
21 personally I really hope that this emphasis
22 currently on racial equity will, in fact,
23 materialize and result in some actual legal
24 and statutory changes to truly incentivize
25 inclusion across our federal agencies in

1 addition to properly implementing some of the
2 rules that we already have in place.

3 MR. ROSS: Yeah. I mean, I see a
4 theme there in terms of having the government
5 look at the people more, go to these
6 communities more rather than demanding that
7 the communities come to them. And when the
8 communities do come to them they should
9 certainly make it as easy as possible for the
10 government to be reached.

11 So turning to you, Ms. Tierney, in
12 terms of responding to that question of to
13 what extent can organizations and local state
14 governments reach people in more accessible
15 ways and what changes might need to be made
16 to either the Administrative Procedure Act or
17 future statutes to make it easier for folks
18 to participate?

19 MS. TIERNEY: I want to affiliate with
20 Eric's comments about finding ways to connect
21 with people, both people in the agencies and
22 people in communities. I'm familiar with one
23 circumstance where a federal agency has
24 preemption authority over facilities -- some
25 energy facilities. And so the people who

1 might be affected by those live 2,000 miles
2 away or in the case of Alaska what, you
3 know -- I guess Alaska is different because
4 it's not an interstate commerce so never mind
5 I'll just put that over there.

6 But there are people who live very far
7 away and not only are they challenged in all
8 the ways that they describe but even their
9 State is challenged for being able to make
10 its voice known.

11 And the one example I'm thinking of,
12 which has been very helpful, is where the
13 state decides that it is going to play a role
14 and go to the different communities that are
15 affected by the proposed facilities, have
16 open meetings, collect information and then
17 move it not in an advocacy way but in a
18 communications channel that has the stature
19 of representing a state actor but is really
20 aggregating different voices where the
21 different voices can't do it themselves.

22 Now, many of the intermediaries on the
23 screen right now, you probably do that which
24 is great. And so having channels that looks
25 as though you are a fair agent in bringing a

1 neutral overlay to the voices from the
2 community could be very helpful.

3 On the Administrative Procedures Act,
4 I'm not sure what to say. I'm going to state
5 a problem without a solution. But many of
6 the things that we're talking about end up --
7 whether it's in housing or civil rights or
8 the environment -- some of the dockets that
9 are either new rules or actual decisions on
10 an applicant or whatever it is, they end up
11 being quite siloed topic.

12 And there are 16 other dockets that
13 really are relevant too. And the people in
14 the communities experience these quite
15 holistically. And they -- you know, why
16 would they know that there's a particular
17 docket like, you know, this particular issue.
18 And so the siloed decision making for
19 communities that experience cumulative
20 impacts across a lot of different themes and
21 systems and so forth.

22 I think that's a -- I know
23 intellectually why we do that, and I know
24 that from a practical point of view we -- you
25 know, the administrative record of one thing

1 is quite tidy than another but maybe finding
2 ways to cross-reference things that are also
3 relevant that communities care about, could
4 be something that we work on to make this
5 more holistic for people who are affected.

6 MR. ROSS: Yeah, great points. I
7 think that there's the siloing impacts the
8 way the interstate communities interact with
9 the administrative State but also the way the
10 administrative state operates in a sense that
11 often sometimes the left hand doesn't know
12 what the right hand is doing even though they
13 should be working together in a coordinated
14 way on these particular issues.

15 Ms. Anarde, In terms of answering the
16 question Justin Lam in terms of to what
17 extent can organizations and local state
18 governments reach the people in more
19 accessible ways and what changes might be
20 made to either the Administrative Procedures
21 Act or future statutes to make it easier for
22 folks to participate.

23 MS. ANARDE: First of all, I'm not a
24 hands-off person when I'm trying to
25 communicate and everything that comes down

1 the pike is very hands-off, right? You don't
2 have a warm body coming to your community to
3 talk about impacts or to get your input.

4 And I think what Lisa has talked about
5 I don't even like to get up and talk about
6 it. I don't -- you know, it's intimidating
7 for me because there's all these nuances that
8 maybe I don't quite understand but I know
9 what the impact is going to be, right.

10 And so I think it's really hard to --
11 I always tease my kids that don't just throw
12 stuff up on the wall and see what sticks,
13 right. Like have a plan and understand what
14 you're doing and why you're doing it. And so
15 I think it's really hard for folks that are
16 in the Beltway or are in that realm of making
17 these rules to understand the unintended
18 consequences if you don't go to the
19 community, if you don't hear those stories
20 directly.

21 Like Eric said, we try to equip our
22 folks all the time, but we know that what's
23 easy for them doesn't matter or have the
24 impact that we want it to have at the powers
25 that be because it really is a power paradigm

1 we're talking about, right.

2 So I think it has to be an investment,
3 and like Sue said some States are really good
4 at it. I would like think RCAC works really
5 hard at it but let me tell you what our
6 barriers are. We have 13 states.

7 That's 13 different state governments,
8 that's however many counties -- I should know
9 that, sorry -- it's a lot. It's also tribes
10 and all these different things we respect
11 them.

12 The other thing I would say about
13 intermediaries is it's really hard to raise
14 money for an advocacy to bridge this. So we
15 do it in many creative ways, which means that
16 we either grow our own or we collaborate like
17 the Partners Parole Transformation, there's
18 six of us, we collaborate on policy issues.

19 But you've got Appalachia, you've got
20 the deep south, you've got the mid-south,
21 you've got the west and we're all trying
22 to -- we've all got day jobs and we're trying
23 to collaborate to have impact in these
24 conversations.

25 So I really think it has to be a two-

1 way conversation. It ends up being one-way
2 and then we cobble back a response as best we
3 can based on -- I loved somebody said
4 resources I think Lisa -- the resources end
5 up -- those resources might be who we have on
6 our staff that understands that issue well
7 enough to dive into that dense document and
8 tell me what I should be saying and what --
9 you know, how it impacts the different areas
10 that we serve, which might be 13 different
11 ways.

12 So I think I really has to be a two-
13 way street, and I know that there's lots of
14 barriers on the other side, so I just want to
15 talk to that. I'm not totally Pollyanna
16 that, why don't you come to our rural
17 communities and talk about it, but I do think
18 there's value in that, right? And if you
19 can't come to the community and talk, have
20 folks like -- I find that at USDA, I've been
21 around so long I have really good
22 relationships. And when they call me and
23 say, "We're thinking about doing this," and I
24 say, "Oh my gosh, no you can't do that
25 because of X, Y, Z," that's a really valuable

1 exchange on both sides.

2 And so I think cultivating those
3 voices whether it's an advisory committee,
4 whether it's putting fellows out, whatever it
5 is, cultivating those voices because if you
6 reach out to those voices, you'll learn a lot
7 that will add value to what you're doing and
8 help you get way down the road to where
9 there's a common period and hopefully there's
10 an onslaught of comments that tell you what
11 you've got wrong.

12 Whereas if they're part of that
13 process of developing those -- the procedures
14 and all of the regulations, it's a lot
15 easier. But it also goes back to -- I think
16 Lisa and Eric have both said it -- you have
17 to have diversity, you have to have folks in
18 the inter-agencies that understand so that
19 it's intuitive.

20 Because if you have to stop and think
21 about it or you have to make those -- have
22 those conversations, it often doesn't happen.
23 But if you have folks that it's intuitive,
24 it's in their gut, rural is my culture,
25 that's how I talk about it, I'm going to

1 instantly be able to say, "That's not going
2 to work because of X, Y, Z." So.

3 MR. ROSS: Yeah. So that kind of
4 leads to the final question. I won't be able
5 to do to the round robin because we only have
6 five minutes, so I'll ask for volunteers in
7 response to the question and it's from an
8 anonymous attendee. And we talked a lot
9 about intermediaries as critical institutions
10 for participation of underserved communities.
11 But we all know also that underserved
12 communities are not monolithic, they're very
13 heterogeneous.

14 The rural communities that you
15 represent, Ms. Anarde, are quite different
16 than the black communities and the racial
17 minority people of color communities that you
18 represent, Ms. Cylar Barrett and Mr.
19 Rodriguez, are very diverse in environmental
20 groups and very diverse goals with respect to
21 who you're representing Ms. Tierney. So how
22 and how -- how do we promote authenticity in
23 the voices that are to be heard from these
24 diverse communities? And this is a very
25 challenging question, I know, and we'll have

1 a little bit of time to answer, but if anyone
2 wants to volunteer a response to the
3 challenges of the diverse communities and the
4 small number of intermediaries that are
5 available to represent.

6 MS. BARRETT: So I'll jump in and just
7 say I think this is where it's so critical to
8 ensure that as many voices as possible can
9 participate in the process so that you are
10 getting the diversity of voices.

11 And so, you know, we've all shared
12 thoughts about ways to do that I think some
13 really practical things in terms of enabling
14 folks in community to really participate have
15 been shared, but also, you know, I mean just
16 looking at how you make the materials I think
17 creating materials for public education about
18 its administrative rule process and how folks
19 can engage and putting those out so that
20 folks are aware that they even have this
21 opportunity to engage.

22 And then I do want to go back to
23 something Sue said about the siloed decision-
24 making that happens. And I know that there
25 have been efforts over the years to do more

1 sort of cross-agency, cross-departmental
2 work. But really thinking through that and
3 figuring that piece out so that the
4 complexity and the burden is really taken on
5 by the administrative agencies and making it
6 easier for folks to engage I think will also
7 encourage a diverse course of voices to be
8 able to be involved.

9 So if I don't -- if I don't have to
10 respond to seven different proposals and
11 instead can respond to three or two, then
12 that allows likely for greater participation
13 and a greater diversity of voices to be
14 engaged in that process.

15 MR. ROSS: Yeah. When you think about
16 democratic processes, whether they be through
17 the administrative state or through
18 legislative channels or critical channels, we
19 think of sort of winners and losers but it's
20 much more than that.

21 It's also the opportunity to have your
22 voice being a part of the conversation and
23 being a part of the decision that's made
24 because that voice had an opportunity to be
25 heard and can influence decisions in small

1 and large ways.

2 And so I appreciate all of you
3 speaking to the challenges with respect to
4 the barriers to participation. There's much
5 more that can be said and needs to be said as
6 part of this conversation going forward.

7 There's much to perform that needs to be
8 heard and I hope that when these informed
9 discussions are ongoing that they will be
10 speaking everything out so all of you who
11 have contributed so much important
12 information for us to understand and to
13 really reflect on with respect to the
14 operations of the administrative state and
15 the interaction of underserved communities
16 with the administrative state.

17 So I hate Zoom appreciation because
18 you can't get the audience clap or anything
19 like that, but I'll throw my little hand clap
20 if I could figure out how to do it. Nope, I
21 can't. Okay. But thank you all and thanks
22 all to the audience that's here and I guess
23 I'll turn it over to Mark.

24 MR. THOMSON: That actually concludes
25 our forum this afternoon. We have another

1 form or another panel in the same forum plan
2 coming up next week. That form is titled
3 Learning from -- the panel rather -- is
4 titled Learning from Past and Present Efforts
5 to Engage with Underserved Communities. You
6 can register for it on the ACUS website. It
7 will run from 3:00 p.m. to 4:00 p.m. Eastern
8 Time on November 16th.

9 So we're looking forward to seeing you
10 all there. And thank you so much on behalf
11 of ACUS to all our panels (inaudible).
12 Thanks everybody.

13 MR. ROSS: Thank you everyone.

14 (End of Audio Recording.)

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Wendy Sawyer, do hereby certify that I was authorized to and transcribed the foregoing recorded proceedings and that the transcript is a true record, to the best of my ability.

DATED this 14th day of January, 2022.

WENDY SAWYER, CDLT