

ENVIRONMENTAL JUSTICE INDEX II

Denis Binder¹

Five years ago, I compiled an index of environmental justice cases.² The time has come to update this index in light of the substantial increase in environmental justice litigation.

The goal is to again present an index of primary case law. For consistency purposes, I have only included cases published in the *West Reporter System*, *West Law*, or in loose-leaf services because they are readily available in law libraries. I have not included jury verdicts³ and unpublished trial court opinions.

Law review articles⁴ and other secondary authority⁵ lie outside the scope of this index. The secondary literature is both extensive and excellent.⁶ This index also excludes the developing area of state statutes⁷ and administrative law materials, such as regulations and hearings.⁸

With these premises in mind, certain observations are in order. First, the case law has truly multiplied geometrically in the preceding five years. The original index included a number of historical cases, which may not have, on the surface, presented environmental justice issues,⁹ perhaps because such legal arguments were unavailable earlier. Cases, of course, have to be pled with recognized causes of action. Today, litigation is widely pursued throughout the judicial system with a significant number of state cases.

Second, certain long-standing problems, such as freeway siting disputes, are still with us, as are attempts to exclude minority developments from affluent communities.

Third, a wide variety of causes of action are now alleged. Significantly, as with other actions against local governmental bodies, 42 U.S.C. § 1983 has become a very

¹ Professor, Chapman University School of Law.

² Denis Binder, *Index of Environmental Justice Cases*, 27 URB. LAW. 163 (1995).

³ One of the most famous examples is a jury in Louisiana awarding \$2.5 billion in punitive damages to residents of a predominately black neighborhood in New Orleans. The case involved no deaths, limited property damages, and mostly minor injuries, such as sore throats and burning eyes, when a railroad tank car ignited, causing a chemical fire which burned for 1 ½ days. 1,000 residents were evacuated. See Pamela Coyle, *Making a Case for Change*, 83 A.B.A. J. 38.

⁴ For listings of law review articles, see especially Robert W. Collin, *Review of the Legal Literature on Environmental Racism, Environmental Equity, and Environmental Justice*, 9 J. ENVTL. L. & LITIG. 121 (1994); Vicki Been & Francis Gupta, *Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Claims*, 24 ECOLOGY L.Q. 1, 3 n.1 (1997); and Craig Anthony (Tony) Arnold, *Planning Milagros: Environmental Justice and Land Use Regulations*, 76 DENV. U.L. REV. 1, nn. 1 & 5 (1998).

⁵ See especially KENNETH A. MANASTER, ENVIRONMENTAL PROTECTION AND JUSTICE: READINGS AND COMMENTARY ON ENVIRONMENTAL LAW AND PRACTICE (1995).

⁶ See e.g., Eileen Gauna, *Federal Environmental Citizen Provisions: Obstacles and Incentives on the Road to Environmental Justice*, 22 ECOLOGY L.Q. 1 (1995); Eileen Gauna, *The Environmental Justice Misfit: Public Participation and the Paradigm Paradox*, 17 STAN. ENVTL. L.J. 3 (1988); Robert M. Collin and Robin Morris Collin, *The Role of Communities in Environmental Decisions: Communities Speak for Themselves*, 13 J. ENVTL. L. & LIT. 37 (1998); and Gerald Torres, *Environmental Justice: The Legal Meaning of a Social Movement*, 15 J.L. & COM. 597 (1996).

⁷ See Been & Gupta, *supra* n.3 at 4, n.7.

⁸ See, e.g., "In the Matter of the Appeal of the People United for a Better Oakland," Bay Area Air Quality Management District Docket No. 3165 (April 2, 1998).

⁹ See especially *Nicholson v. Conn. Halfway House, Inc.*, 218 A.2d 383 (Conn. 1968).

popular cause of action. Indeed, much of the litigation involving local disputes has been filed in federal court utilizing federal causes of action. Title VI of the Civil Rights Act of 1964 is also very popular, as are various constitutional theories.

In presenting the cases this year I have listed cases not only by the nature of the factual dispute, but, also by specific causes of action. I accept at face value both the facts and causes of action pled. The goal is to simply present a ready reference of published litigation, and not act like an umpire in assessing the success of the claims.¹⁰

One final caveat is in order. While attempting to be inclusive, I recognize that some cases may have been overlooked. If so, they will be included in subsequent indices.¹¹

NATURE OF DISPUTE

DENIAL OF PERMITS

Fountain Church of God in Christ v. Charter Township of Scio, 40 F. Supp. 2d 899 (E.D. Mich. 1999) (churches);

Jackson v. City of Auburn, Ala., 41 F. Supp. 2d 1300 (M.D. Ala. 1999) (duplexes);

Woodwind Estates, Ltd. V. Gretkowski, 39 F. Supp. 2d 537 (M.D. Pa. 1999) (subdivisions).

DISCRIMINATORY ENFORCEMENT OF HEALTH AND SAFETY CODES

Barnes Found. v. Township of Lower Merion, 982 F. Supp. 970 (E.D. Pa. 1997);
Contreras v. City of Chicago, 920 F. Supp. 1370 (N.D. Ill. 1996); *aff'd in part*, 119 F.3d 1286 (7th Cir. 1997).

DISCRIMINATORY ENFORCEMENT OF ZONING LAWS

Riley v. Town of Bethlehem, 44 F. Supp. 2d 451 (N.D.N.Y. 1999).

DISPARATE PROVIDING OF PUBLIC SERVICES

Hawkins v. Town of Shaw, Miss., 437 F.2d 1286 (5th Cir. 1971);

Johnson v. City of Arcadia, Fla., 450 F. Supp. 1363 (M.D. Fla. 1978).

FAIR HOUSING ACT/COMMUNITY LENDING

Jones v. Office of the Comptroller of the Currency, 983 F. Supp. 197 (D.D.C. 1997).

HIGHWAYS

Bryant v. N. J. Dep't of Transp., 1 F. Supp. 2d 426 (D.N.J. 1998);

Bryant v. N. J. Dep't of Transp., 998 F. Supp. 438 (D.N.J. 1998);

Bryant v. N. J. Dep't of Transp., 987 F. Supp. 343 (D.N.J. 1998);

¹⁰ Cf. *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n.*, 449 F.2d 1109, 1119 (D.C. Cir. 1971).

¹¹ All suggestions for inclusion in future indices will be greatly appreciated. We have included cases in this index which were omitted in the earlier index. See, e.g., *Detroit Branch, NAACP v. City of Dearborn*, 434 N.W.2d 444 (Mich. 1988), *leave to appeal denied*, 433 Mich. 906 (1989).

Jersey Heights Neighborhood Ass'n v. Glendening, 2 F. Supp. 2d 772 (D. Md. 1998), *aff'd in part, rev. in part*, 174 F.3d 180 (4th Cir. 1999).

HIGHWAY SOUND BARRIERS

Tolbert v. Ohio Dep't of Transp., 172 F.3d 934 (6th Cir. 1999).

INDUSTRIAL FACILITY

A to Z Paper Co., Inc. v. Carlo Ditta, Inc., 720 So. 2d 703 (La. Ct. App. 1998) (cement plant).

LOCAL OPPOSITION TO TOWNHOUSES/PUBLIC HOUSING

Township of South Fayette v. Allegheny County Hous. Auth., 27 F. Supp. 2d 582 (W.D. Pa. 1998).

LOW INCOME HOUSING

Tyler v. Cisneros, 136 F.3d 603 (9th Cir. 1998).

PUBLIC HOUSING

Glendale Neighborhood Ass'n v. Greensboro Hous. Auth., 956 F. Supp. 1270 (M.D.N.C. 1996);

Township of South Fayette v. Allegheny County Hous. Auth., 27 F. Supp. 2d 582 (W.D. Pa. 1998).

REFUSAL TO ANNEX PREDOMINATELY AFRO-AMERICAN HOUSING PROJECT

Burton v. City of Belle Glade, 966 F. Supp. 1178 (S.D. Fla. 1997);

West Dallas Coalition for Env'tl. Justice v. United States, 29 ENV'T'L L. REP. 20, 420, 1998 WL 892122 (N.D. Tex. 1998);

West Dallas Coalition for Env'tl. Justice v. United States, 1999 WL 102810 (N.D. Tex. 1999).

RESIDENTIAL HOME FOR MENTALLY RETARDED

De Jesus-Keolamphu v. Village of Pelham Manor, 999 F. Supp. 556 (S.D.N.Y. 1998).

RESTRICTING USE OF CITY PARKS TO RESIDENTS

Detroit Branch, NAACP v. City of Dearborn, 434 N.W.2d 444 (Mich. 1988), *leave to appeal denied*, 447 N.W.2d 751 (Mich. 1989); 433 Mich. 906 (1989).

STATE ENVIRONMENTAL POLICY ACTS

Chinese Staff & Workers Ass'n v. City of New York, 502 N.E.2d 176 (N.Y. 1986) (Luxury condominium that would displace low-income residents).

STATE LAW SUITS

Alabama:

Horn v. City of Birmingham, 718 So. 2d 694 (Ala. 1998).

Louisiana:

A to Z Paper Comp., Inc. v. Carlo Ditta, Inc., 720 So. 2d 703 (La. Ct. App. 1998).

Texas:

Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Env'tl. Justice, 962 S.W.2d 288 (Tex. Ct. App. 1998).

URBAN RENEWAL

Hispanics United of DuPage County v. Village of Addison, Ill., 988 F. Supp. 1130 (N.D. Ill. 1997) (judicially approved settlement).

WASTE FACILITIES

Chester Residents Concerned for Quality Living v. Seif, 132 F.3d 925 (3d Cir. 1997), *cert. granted*, 524 U.S. 915 (1998), 118 S. Ct. 2296, *dismissed as moot*, 524 U.S. 974 (1998), 119 S. Ct. 22 (permit revoked);

Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Env'tl. Justice, 962 S.W.2d 288 (Tex. Ct. App. 1998);

Horn v. City of Birmingham, 718 So. 2d 694 (Ala. 1998) (settlement/attorney fees);

South Bronx Coalition for Clean Air, Inc. v. Conroy, 20 F. Supp. 2d 565 (S.D.N.Y. 1998).

CAUSES OF ACTION/CLAIMS PLED

FIRST AMENDMENT

Barnes Foundation v. Township of Lower Merion

Burton v. City of Belle Glade

Contreras v. City of Chicago

FOURTH AMENDMENT

Contreras v. City of Chicago

FIFTH AMENDMENT

Hill v. City of Houston

West Dallas Coalition for Environmental Justice v. United States

EIGHTH AMENDMENT

Hill v. City of Houston

THIRTEENTH AMENDMENT

Burton v. City of Belle Glade

FOURTEENTH AMENDMENT – Due Process Clause

Barnes Foundation v. Township of Lower Merion

Contreras v. City of Chicago

Hill v. City of Houston
Riley v. Town of Bethlehem
Tyler v. Cisneros

FOURTEENTH AMENDMENT – Equal Protection Clause

Barnes Foundation v. Township of Lower Merion
Burton v. City of Belle Glade
Contreras v. City of Chicago
Hill v. City of Houston
Jackson v. City of Auburn, Alabama
Jersey Heights Neighborhood Association v. Glendening
Riley v. Town of Bethlehem

FIFTEENTH AMENDMENT

Burton v. City of Belle Glade

COMMERCE CLAUSE:

Riley v. Town of Bethlehem

42 U.S.C. § 1981

De Jesus-Keolampho v. Village of Pelham Manor
Foundation Church of God in Christ v. Charter Township of Scio
Riley v. Town of Bethlehem
Tolbert v. State of Ohio Department of Transportation
Woodwind Estates, Ltd. v. Gretkowski

42 U.S.C. § 1982

Foundation Church of God in Christ v. Charter Township of Scio
Riley v. Town of Bethlehem
Tolbert v. State of Ohio Department of Transportation
West Dallas Coalition for Environmental Justice v. United States

42 U.S.C. § 1983

Barnes Foundation v. Township of Lower Merion
Burton v. City of Belle Glade
Contreras v. City of Chicago
De Jesus-Keolampho v. Village of Pelham Manor
Foundation Church of God in Christ v. Charter Township of Scio
Hill v. City of Houston
Jackson v. City of Auburn, Alabama
Jersey Heights Neighborhood Association v. Glendening
Riley v. Town of Bethlehem
Tolbert v. Ohio Department of Transportation
Tyler v. Cisneros
Woodwind Estate, Ltd. v. Gretkowski

42 U.S.C. § 1985

De Jesus-Keolamphu v. Village of Pelham Manor
Hill v. City of Houston
Riley v. Town of Bethlehem

42 U.S.C. § 1986

Hill v. City of Houston

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Bryant v. New Jersey Department of Transportation
Burton v. City of Belle Glade
Chester Residents Concerned for Quality Living v. Seif
De Jesus-Keolamphu v. Village of Pelham Manor
Hispanics United of DuPage County v. Village of Addison, Illinois
Jersey Heights Neighborhood Association v. Glendening
South Bronx Coalition for Clean Air, Inc. v. Conroy

FAIR HOUSING ACT

De Jesus-Keolamphu v. Village of Pelham Manor
Glendale Neighborhood Association v. Greensboro Housing Authority
Hispanics United of Du Page County v. Village of Addison, Illinois
Jackson v. City of Auburn, Alabama
Jersey Heights Neighborhood Association v. Glendening
Jones v. Office of Comptroller of the Currency

ADMINISTRATIVE PROCEDURE ACT

Glendale Neighborhood Association v. Greensboro Housing Authority
Jones v. Office of the Comptroller of the Currency
Tyler v. Cisneros
West Dallas Coalition for Environmental Justice v. United States

FEDERAL AID TO HIGHWAY ACT

Jersey Heights Neighborhood Association v. Glendening

NATIONAL HISTORIC PRESERVATION ACT

Tyler v. Cisneros

RESOURCE CONSERVATION AND RECOVERY ACT

West Dallas Coalition for Environmental Justice v. United States

NEPA

Jersey Heights Neighborhood Association v. Glendening
South Bronx Coalition for Clean Air, Inc. v. Conroy
Tyler v. Cisneros

VOTING RIGHTS ACT

Burton v. City of Belle Glade

STATE CLAIMS

Bryant v. New Jersey Department of Transportation (New Jersey)

De Jesus-Keolamph v. Village of Pelham Manor (New York)

Foundation Church of God in Christ v. Charter Township of Scio (Michigan)

Hill v. City of Houston (Texas)

Jersey Heights Neighborhood Association v. Glendening (Maryland)

Riley v. Town of Bethlehem

South Bronx Coalition for Clean Air, Inc. v. Conroy (New York)

Woodwind Estates, Ltd. V. Gretkowski (Pennsylvania)