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## Environmental Justice Index II

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## ENVIRONMENTAL JUSTICE INDEX II

Denis Binder<sup>1</sup>

Five years ago, I compiled an index of environmental justice cases.<sup>2</sup> 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 verdicts<sup>3</sup> and unpublished trial court opinions.

Law review articles<sup>4</sup> and other secondary authority<sup>5</sup> lie outside the scope of this index. The secondary literature is both extensive and excellent.<sup>6</sup> This index also excludes the developing area of state statutes<sup>7</sup> and administrative law materials, such as regulations and hearings.<sup>8</sup>

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,<sup>9</sup> 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

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

<sup>3</sup> 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.

<sup>4</sup> 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).

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

<sup>6</sup> 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).

<sup>7</sup> See Been & Gupta, *supra* n.3 at 4, n.7.

<sup>8</sup> 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).

<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

## **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);

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

<sup>11</sup> 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)