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Environmental Justice Index II

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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 I have not included jury verdicts\(^3\) and unpublished trial court opinions.

Law review articles\(^4\) and other secondary authority\(^5\) 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 statutes\(^7\) 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

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\(^3\) One of the most famous examples is a jury in Louisiana awarding $2.5 billion in punitive damages to residents of a predominantly 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.


\(^7\) *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).

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.\(^\text{10}\)

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.\(^\text{11}\)

**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);


**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**


**DISPARATE PROVIDING OF PUBLIC SERVICES**

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


**FAIR HOUSING ACT/COMMUNITY LENDING**


**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);


\(^{11}\) 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).

HIGHWAY SOUND BARRIERS

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

INDUSTRIAL FACILITY


LOCAL OPPOSITION TO TOWNHOUSES/PUBLIC HOUSING


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);


REFUSAL TO ANNEX PREDOMINATELY AFRO-AMERICAN HOUSING PROJECT

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


RESIDENTIAL HOME FOR MENTALLY RETARDED


RESTRICTING USE OF CITY PARKS TO RESIDENTS


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:

Texas:

URBAN RENEWAL

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

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

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-Keolamphu 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)