

# ELR

## NEWS & ANALYSIS

### Environmental Justice Index III

by Denis Binder

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*Editors' Summary: This index has been updated to include environmental justice case law since 1999. Following a brief narrative describing the expansion in scope of environmental justice claims, the author categorizes the case law as follows: **Part I, Types of Disputes**, describes the types of grievances that form the basis of these claims, such as the siting of facilities or housing in environmentally hazardous areas. **Part II, Causes of Action**, lists the federal statutes and constitutional amendments under which the claims arise. **Part III, Cases**, is an alphabetical listing of the cases and citations.*

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This Article is the third in a series of environmental justice indices,<sup>1</sup> representing both a decade of extensive litigation and a compilation of earlier cases. The index includes the cases published since 1999, and a few cases added to the earlier indices. As with the first two indices, only cases published in the *West Reporter Series*, *Westlaw*, or in looseleaf services are included.

The index does not include the mere filing of a complaint, law review articles<sup>2</sup> and other secondary sources, books,<sup>3</sup> studies,<sup>4</sup> treatises and casebooks, state and federal statutes, administrative law materials,<sup>5</sup> and Executive Orders or studies.<sup>6</sup> It also does not include state attempts to close environmental law clinics<sup>7</sup> and disputes involving great public-

ity but no published decisions.<sup>8</sup> We are certainly aware of disputes that are resolved short of litigation.<sup>9</sup>

Several changes are made in this index. First, our approach to environmental justice claims is now expanding. Environmental justice can narrowly encompass the siting of locally unwanted land uses in minority- and low-income neighborhoods, exclusionary zoning, and the failure to provide services to these neighborhoods. It is also today the failure of environmental and cleanup programs to respond to the needs of these communities. Thus, the environmental justice claim might not be in a siting decision, but rather in disparate cleanup efforts.<sup>10</sup> It may also involve differences in the manner of how facilities are sited or constructed.

An open issue today is the failure of governmental agencies to abate problems, such as lead paint and lead contamination in the water supply.<sup>11</sup> These cases have underlying environmental justice claims but they are not brought on that basis. In addition, they may include cities, such as De-

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1. See Denis Binder, *Index of Environmental Justice Cases*, 27 *URB. LAW.* 163 (1995); Denis Binder, *Environmental Justice Index II*, 3 *CHAPMAN L. REV.* 309 (2000).
2. See, e.g., Bradford C. Mank, *Are Title VI's Disparate Impact Regulations Valid?*, 71 *U. CIN. L. REV.* 517 (2002).
3. See, e.g., EDUARDO LAO RHODES, *ENVIRONMENTAL JUSTICE IN AMERICA* (Indiana Univ. Press 2003); LUKE W. COLE & SHEILA R. ROSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* (New York Univ. Press 2001).
4. See, e.g., Louisiana Advisory Comm. to the U.S. Comm'n on Civil Rights, *The Battle for Environmental Justice . . . Government, Industry, and the People* (1993).
5. For example, after a complaint to the Ohio Civil Rights Committee of the denial of water to a minority community, the town settled by extending water service to the community. James Dao, *Ohio Town's Water at Last Runs Past a Color Line*, *N.Y. TIMES*, Feb. 17, 2004, at A1.
6. Public Law Research Institute, *Hasting College of Law, Environmental Justice for All: A Fifty-State Survey of Legislation, Policies, and Initiatives*, at <http://www.abanet.org/irr/committees/environmental> (last visited June 27, 2005).
7. For example, 150 law professors rallied in front of the Louisiana Supreme Court on January 7, 1999, to protest restrictions on the Tulane Environmental Law Clinic. *NEW ORLEANS TIMES-PICAYUNE*, Jan. 8, 1999, at A2.

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8. Litigation is but one tool in the battle for environmental justice. A comprehensive environmental justice campaign may include intensive use of the media, including public hearings, press conferences, public relations, and legislative battles.

9. For example, Gigante, a large Mexican supermarket chain, has announced plans to expand into the United States. The Anaheim, California, planning committee rejected granting a liquor license to Gigante, essentially preventing the opening of a store. Litigation was threatened under the North American Free Trade Agreement, but was not necessary because the city council reversed the planning committee. *WALL ST. J.*, Aug. 22, 2002, at B7. The store opened on May 4, 2003.

10. See, e.g., *Broward Garden Tenants Ass'n v. EPA*, 157 F. Supp. 2d 1329 (S.D. Fla. 2001); *Washington Park Lead Comm. v. EPA*, No. 2:98CV421, 1998 WL 1053712, 29 *ELR* 20540 (E.D. Va. 1998).

11. See, e.g., *Johnson v. City of Detroit*, 319 F. Supp. 2d 756 (E.D. Mich. 2004). The U.S. Department of Housing and Urban Development has devoted resources to removing lead paint pursuant to President William J. Clinton's Executive Order No. 12898 and the Residential Lead-Based Paint Hazard Reduction Act of 1992. 42 U.S.C. §4851. See generally Denis Binder et al., *A Survey of Federal Agency Response to President Clinton's Executive Order No. 12898 on Environmental Justice*, 31 *ELR* 11133 (Oct. 2001).

troit, with a minority political structure such that they do not directly include traditional discrimination claims but rather reflect the result of budgetary constraints.

Second, the 10-year span of the indices now allows us to provide updates of earlier decisions.<sup>12</sup> We can also reassess the significance of earlier decisions, which may not have been included in this index.

For example, a controversial case of 25 years ago was the *Poletown Neighborhood Council v. Detroit*<sup>13</sup> decision in Michigan. The Michigan Supreme Court upheld the taking of private land for the construction of a new Cadillac assembly plant. General Motors Corporation had threatened to move the plant outside the state if the city did not cooperate.

The community involved was an ethnically diverse working class neighborhood, originally settled by Polish immigrants, hence the nickname Poletown. The case stood for the proposition that communities could engage in civil improvements,<sup>14</sup> especially through construction projects such as "big box" stores, by condemning privately owned lands. *Poletown* has been cited by a number of courts for the proposition that economic development is a sufficient public use to justify the use of eminent domain. It also became the center of a fundamental dispute involving economic liberties and property rights, which often overshadow the underlying environmental justice claim.

On July 31, 2004, the Michigan Supreme Court unanimously overturned the *Poletown* decision.<sup>15</sup> The federal constitutional due process issue was decided on June 23, 2005, by the U.S. Supreme Court in *Kelo v. City of New London* in a 5 to 4 vote upholding the right of the municipality.<sup>16</sup>

The original index included the famous 1886 case of *Yick Wo v. Hopkins*,<sup>17</sup> an attempt by San Francisco to ban Chinese laundries. A few years later the San Francisco Board of Health responded to reports of nine deaths from bubonic plague by quarantining a predominantly Chinese neighborhood comprising 12 blocks and over 10,000 residents instead of the individual houses.<sup>18</sup> No one would be allowed to enter or leave the neighborhood. The restrictions were not in fact applied to physicians visiting non-Chinese residents of the district. Indeed, the restrictions effectively applied only to the Chinese residents. The district court followed *Yick Wo* in striking it down.

Sometimes communities have related problems. Perhaps the litigation is coincidental, but it may also reflect the underlying socioeconomic nature of the community. Thus, Camden County also saw litigation over lead paint

contamination in the school water supply,<sup>19</sup> and Anniston, Alabama, is the site of the U.S. Army's incineration of sevin nerve gas.<sup>20</sup>

A third major change is to expressly recognize traditional personal injury/civil liability litigation, often through class action suits, as a separate category. Civil liability is a proven means of changing behavior.<sup>21</sup> Large judgments or settlements, especially with punitive damages, in personal injury or class action litigation, send a message to the greater economic or civic community. Our original index included a class action suit arising out of Cancer Alley in Louisiana.<sup>22</sup> Civil litigation/class action suits are formally added to the index this year. Ill-advised siting decisions, as well as subsequent inadequate enforcement or maintenance, result in personal injuries.

Two liability disputes have generated a large number of judicial decisions. An outstanding example of class action litigation involved the leakage of butadiene and subsequent fire from a rail tank car in the Gentilly area of New Orleans, Louisiana.<sup>23</sup> A jury awarded \$2.5 billion in punitive damages, of which \$850 million was ultimately upheld by an appellate jurisdiction.<sup>24</sup> The Louisiana Supreme Court had earlier held it was improper for the court to enter the punitive damages judgment in favor of all 8,000 class members when the jury verdict was only in favor of 20 representative plaintiffs.<sup>25</sup> The case against CSX was settled for \$36 million.<sup>26</sup>

A second case involving pollution on Refinery Row in Corpus Christi, Texas,<sup>27</sup> resulted in total settlements of \$24.6 million.<sup>28</sup> Similarly, a settlement was also reached in the polychlorinated biphenyl (PCB) contamination litigation in Anniston, Alabama.<sup>29</sup>

12. For example, attorneys fees were awarded in *Hispanics United of DuPage County v. Village of Addison, Ill.*, 157 F. Supp. 2d 962 (E.D. Ill. 2001), a follow-up to *Hispanics United of DuPage County v. Village of Addison, Ill.*, 988 F. Supp. 1130 (N.D. Ill. 1999).

13. 304 N.W.2d 455, 11 ELR 20778 (1981).

14. An earlier example is the condemnation four decades ago of a large Hispanic community on Chavez Ravine overlooking downtown Los Angeles for the construction of Dodger Stadium to facilitate the Dodgers' move from Brooklyn, New York. See DON NORMARK, CHAVEZ RAVINE, 1999: A LOS ANGELES STORY (Chronicle Books 1999).

15. *County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004).

16. *Kelo v. City of New London*, No. 04-108 (June 23, 2005). As a matter of federal constitutional law, the Court held that the Due Process Clause of the Fifth Amendment does not preclude state and local governments from exercising their powers of eminent domain to transfer private property from one owner to another. The issue thereby becomes one of state law.

17. 118 U.S. 356 (1886).

18. *Jew Ho v. Williamson*, 103 F.2d 10 (N.D. Cal. 1900).

19. *Camden County Recovery Coalition v. Camden City Bd. of Educ. for the Pub. Sch. Sys.*, 262 F. Supp. 2d 446 (D.N.J. 2003).

20. N.Y. TIMES, Sept. 13, 2003, at A10.

21. As recognized by the Court, damages "can be as effective a means for the infringement of a constitutional right as injunctive relief might be . . ." *Scheurer v. Rhodes*, 416 U.S. 232, 239 (1974).

22. *McCastle v. Rollins Envtl. Servs. of La., Inc.*, 456 So. 2d 612 (La. 1984).

23. *Adams v. CSX R.R. Co.*, 615 So. 2d 476 (La. Ct. App. 1993); *In re New Orleans Train Car Leakage Fire Litig.*, 671 So. 2d 540 (La. Ct. App. 1996); *In re New Orleans Train Car Leakage Fire Litig.*, 675 So. 2d 1120, cert. denied, 519 U.S. 1809 (1996); *In re New Orleans Train Car Leakage Fire Litig.*, 697 So. 2d 239 (La. Ct. App. 1997); *In re New Orleans Train Car Leakage Fire Litig.*, 707 So. 2d 677 (La. Ct. App. 1997); *In re New Orleans Train Car Leakage Fire Litig.*, 728 So. 2d 853 (La. Ct. App. 1999).

24. *In re New Orleans Train Car Leakage Fire Litig.*, 795 So. 2d 364 (La. Ct. App. 2001).

25. *In re New Orleans Train Car Leakage Fire Litig.*, 702 So. 2d 677 (La. 1997). See also *In re New Orleans Train Car Leakage Fire Litig.*, 728 So. 2d 853 (La. 1999); 697 So. 2d 239 (La. 1997). The Louisiana Supreme Court issued many memorandum opinions during the course of litigation. See *In re New Orleans Train Car Leakage Fire Litig.*, 773 So. 2d 147 (La. 2000); 753 So. 2d 217 (La. 2000); 745 So. 2d 626 (La. 1999); 745 So. 2d 621 (La. 1999); 743 So. 2d 654 (La. 1999); 738 So. 2d 585 (La. 1999); 697 So. 2d 1330 (La. 1997); 696 So. 2d 994 (La. 1997); 675 So. 2d 1120 (La. 1996); 675 So. 2d 1121 (La. 1996); 794 So. 2d 954 (La. Ct. App. 2001); 794 So. 2d 955 (La. Ct. App. 2001); 794 So. 2d 956 (La. Ct. App. 2001).

26. N.Y. TIMES, Nov. 22, 2001, at C3.

27. *Amerada Hess Corp. v. Garza*, 973 S.W.2d 667 (Tex. Ct. App. 1996); *Citgo Ref'g & Mktg., Inc. v. Garza*, 94 S.W.3d 322 (Tex. Ct. App. 2002); *Southwestern Ref'g Co. v. Bernal*, 22 S.W.3d 425 (Tex. 2000).

28. Daily Env't Rep. (BNA), Mar. 17, 2000, at 508.

29. State and federal settlements in the Anniston, Alabama, PCB litigation totaled \$700 million, including \$600 million in cash as well as

A Court decision, which is having a major impact on the drafting of environmental justice claims, is *Alexander v. Sandoval*.<sup>30</sup> Alabama is the only state that requires driver's license applicants to take their written exam in English even if they are non-English speaking. Suit was brought pursuant to Title VI of the Civil Rights Act of 1964.<sup>31</sup>

Section 601 prohibits discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.<sup>32</sup> Agencies are authorized by §601 to promulgate regulations to prevent discrimination in any program or activity covered by Title VI.<sup>33</sup> The U.S. Environmental Protection Agency's regulations issued pursuant to Title VI prohibited disparate impacts on racial groups.

The Court in a 5 to 4 decision held a private cause of action exists for intentional discrimination prohibited by §601. However, no private cause of action exists for violation of the disparate impact regulations issued under §602.

*Sandoval's* effect was immediately felt in *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*.<sup>34</sup> The state granted an air pollution permit to a cement processing plant. A community group of African Americans and Hispanic residents alleged the facility would have a racially discriminatory impact on the surrounding neighborhood.

The trial court applied the disparate impact regulation of §602 and issued an injunction five days before *Sandoval* was issued. The decision was withdrawn and the court found for plaintiffs under 42 U.S.C. §1983 based on the §602 violations, thereby indirectly relying upon the regulations for a cause of action.<sup>35</sup> The U.S. Court of Appeals for the Third Circuit reversed,<sup>36</sup> following *Sandoval*, reasoning that a regulation does not create a right enforceable through §1983. The district court then held against the defendants on the grounds of intentional discrimination in permitting the plant.<sup>37</sup>

As in the previous indices, we accept the allegations as pled as true. We also do not attempt to recognize the ultimate success or failure of a lawsuit. However, not all claims of racial discrimination or racism constitute environmental racism.<sup>38</sup>

A question may arise if a case includes environmental justice claims or simply involves traditional not in my back-

yard (NIMBY) opposition. Sometimes a knowledge of the surrounding area reveals the answer. Thus *Communities for a Better Environment v. Cenco Refining Co.*<sup>39</sup> is listed in the index.

A major conclusion from the index is the widespread use of 42 U.S.C. §1983 to bring claims against state and local governments, based on a myriad of underlying federal claims. The claimants are in federal courts on a federal cause of action, thereby avoiding state courts. Conversely, only a few cases were filed in state court. State claims exist, but are attached to the federal claims under pendant jurisdiction. A related observation is that a large number of cases involve constitutional claims, either directly or through 42 U.S.C. §1983.

One limitation on 42 U.S.C. §1983 is that it does not apply to either federal action or unilateral private action.

The Fourteenth Amendment is now as popular as 42 U.S.C. §1983 as a cause of action.<sup>40</sup> The two other popular claims are Title VI of the Civil Rights Act of 1964<sup>41</sup> and Title VIII of the Fair Housing Act of 1968.<sup>42</sup>

Finally, we note again the wide variety of environmental justice disputes.

## I. Types of Disputes

### Civil Rights Attorneys Fees Awards Act of 1976

*Hispanics United of DuPage County v. Village of Addison, Illinois*

### Demolition of Single-Family Homes

*James v. City of Dallas, Texas*

### Denial of Services

*Fallon Paiute-Shoshone Tribe v. City of Fallon*  
*Kennedy Park Homes Ass'n v. City of Lackawanna*

### Discrimination in Rental Housing

*Langlois v. Abington Housing Authority*

### Discrimination in Railroad Safety Measures

*Powers v. CSX Transportation, Inc.*

### Facility Expansion

*North Baton Rouge Environmental Ass'n v. Louisiana Department of Environmental Quality*

### Facility Reopening

*Communities for a Better Environment v. Cenco Refining Co.*

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providing for community clinics and programs. Ellen Barry, A Neighborhood of Poisoned Dreams: Lawsuits Over the Effects of PCB Contamination Gave Hope to Residents of Anniston, Ala., but the Settlements Have Created New Bitterness, L.A. TIMES, Apr. 13, 2004, at A1.

30. 532 U.S. 275 (2001).

31. 42 U.S.C. §§2000d et seq.

32. Id. §2000d.

33. Id. §2000d-1.

34. *South Camden Citizens in Action v. New Jersey Dep't of Env'tl. Protection*, 145 F. Supp. 2d 505, 31 ELR 20358 (D.N.J. 2000).

35. Id.

36. *South Camden Citizens in Action v. New Jersey Dep't of Env'tl. Protection*, 274 F.3d 771, 32 ELR 20425 (3d Cir. 2001), cert. denied, 536 U.S. 939 (2002).

37. *South Camden Citizens in Action v. New Jersey Dep't of Env'tl. Protection*, 254 F. Supp. 2d 486 (D.N.J. 2003).

38. See, e.g., *Hernandez v. City of Rochester*, 212 F. Supp. 2d 143 (W.D.N.Y. 2002); *McGee v. Hayes*, 32 Fed. Appx. 214 (10th Cir. 2002); *Zeigler v. Town of Kent*, 258 F. Supp. 2d 49 (D. Conn. 2003).

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39. 180 F. Supp. 2d 1062 (C.D. Cal. 2001).

40. Of course, Fourteenth Amendment claims may often be brought under 42 U.S.C. §1983.

41. 42 U.S.C. §2000d.

42. Id. §3604.

Facility Siting

*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*

Golf Resort

*Save Our Aquifer v. City of San Antonio*

Landfill Siting

*Franks v. Ross*

Low-Income Housing

*City of Cuyahoga Falls v. Buckeye Community Hope Foundation*  
*Macone v. Town of Wakefield*  
*Pisello v. Town of Brookhaven*  
*Tyler v. Cuomo* (successor to *Tyler v. Cisneros*)  
*Winchester Coalition for Responsible Development v. U.S. Department of Housing & Urban Development*  
*Woodwind Estates, Ltd. v. Gretkowski*

Low-Income Housing Near Superfund Site (Inadequate Cleanup)

*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*

Mass Transit

*Save Our Valley v. Sound Transit*

Only Allowed to Purchase Homes or Live in Neighborhood of Hazardous Waste Recycler

*Achee v. Port Drum Co.*

Personal Injury Litigation

*Achee v. Port Drum Co.*  
*Ball v. Union Carbide Corp.* (radiation contamination)  
*Powers v. CSX Transportation, Inc.*

Corpus Christi Refinery Row

*Citgo Refining & Marketing, Inc. v. Garza*  
*Amerada Hess Corp. v. Garza*

Corpus Christi Refinery Explosion

*Southwestern Refining Co. v. Bernal*

New Orleans Railcar Litigation

*In re New Orleans Train Car Leaking Fire Litigation*

Power Plant

*Sur Contra la Contaminación v. U.S. Environmental Protection Agency*

Rehabilitation of Public Housing

*Darst-Webbe Tenant Ass'n Board v. St. Louis Housing Authority*

School Proposed for Contaminated Site in Poor Neighborhood

*Lucero v. Detroit Public Schools*

Selective Enforcement of Ordinances and Policies

*Eberhart v. Gettys*

Senior Citizen Housing

*Fair Housing in Huntington Committee v. Town of Huntington, New York*

**II. Causes of Action**Administrative Procedure Act

*Darst-Webbe Tenant Ass'n Board v. St. Louis Housing Authority*  
*Sur Contra la Contaminación v. U.S. Environmental Protection Agency*  
*Winchester Coalition for Responsible Development v. U.S. Department of Housing & Urban Development*

Administrative Regulations

U.S. Department of Transportation Regulations  
*Save Our Valley v. Sound Transit*

U.S. Environmental Protection Agency Regulations  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*

U.S. Department of Housing and Urban Development Regulations  
*Winchester Coalition for Responsible Development v. U.S. Department of Housing & Urban Development*

Title VI Regulations  
*Lucero v. Detroit Public Schools*

Executive Order No. 12898

*Langlois v. Abington Housing Authority*  
*Sur Contra la Contaminación v. U.S. Environmental Protection Agency*

Executive Order No. 11063

*Langlois v. Abington Housing Authority*

Clean Air Act

*Communities for a Better Environment v. Cenco Refining Co.*  
*North Baton Rouge Environmental Ass'n v. Louisiana Department of Environmental Protection*

*Sur Contra la Contaminación v. U.S. Environmental Protection Agency*

National Environmental Policy Act of 1970

*Save Our Valley v. Sound Transit*  
*Tyler v. Cuomo (successor to Tyler v. Cisneros)*  
*Winchester Coalition for Responsible Development v. U.S. Department of Housing & Urban Development*

National Historic Preservation Act

*Tyler v. Cuomo (successor to Tyler v. Cisneros)*

Quality Housing and Work Responsibility Act

*Langlois v. Abington Housing Authority*

Robinson-Patman Antidiscrimination Act

*Fallon Paiute-Shoshone Tribe v. City of Fallon*

42 U.S.C. §1981

*James v. City of Dallas, Texas*  
*Oti Kaga, Inc. v. South Dakota Housing Development Authority*  
*Pisello v. Town of Brookhaven*  
*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*  
*Woodwind Estates, Ltd. v. Gretkowski*

42 U.S.C. §1982

*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*Franks v. Ross*  
*Oti Kaga, Inc. v. South Dakota Housing Development Authority*  
*Powers v. CSX Transportation, Inc.*  
*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*

42 U.S.C. §1983

*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*Darst-Webbe Tenant Ass'n Board v. St. Louis Housing Authority*  
*Fallon Paiute-Shoshone Tribe v. City of Fallon*  
*Langlois v. Abington Housing Authority*  
*Lucero v. Detroit Public Schools*  
*Oti Kaga, Inc. v. South Dakota Housing Development Authority*  
*Pisello v. Town of Brookhaven*  
*Save Our Valley v. Sound Transit*  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*  
*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*

Equal Protection

*Eberhart v. Gettys*

*James v. City of Dallas, Texas*  
*Macone v. Town of Westfield*  
*Powers v. CSX Transportation, Inc.*

Substantive Due Process

*Macone v. Town of Westfield*  
*Powers v. CSX Transportation, Inc.*

42 U.S.C. §1985

*Pisello v. Town of Brookhaven*  
*Powers v. CSX Transportation, Inc.*  
*Woodwind Estates, Ltd. v. Gretkowski*

Fourth Amendment

*James v. City of Dallas, Texas*

Fifth Amendment

*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*James v. City of Dallas, Texas*  
*Lucero v. Detroit Public Schools*

Due Process Clause

*Ball v. Union Carbide Corp.*  
*Fallon Paiute Shoshone Tribe v. City of Fallon*  
*Lucero v. Detroit Public Schools*

Takings Clause

*Fallon Paiute-Shoshone Tribe v. City of Fallon*

Thirteenth Amendment

*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*Powers v. CSX Transportation, Inc.*  
*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*

Fourteenth Amendment

*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*City of Cuyahoga Falls v. Buckeye Community Hope Foundation*  
*James v. City of Dallas, Texas*

Due Process Clause

*City of Cuyahoga Falls v. Buckeye Community Hope Foundation*  
*Fallon Paiute-Shoshone Tribe v. City of Fallon*  
*Langlois v. Abington Housing Authority*  
*Lucero v. Detroit Public Schools*

Equal Protection

*Ball v. Union Carbide Corp.*  
*City of Cuyahoga Falls v. Buckeye Community Hope Foundation*  
*Fair Housing in Huntington Committee v. Town of Huntington, New York*  
*Fallon Paiute-Shoshone Tribe v. City of Fallon*

*Franks v. Ross*  
*Langlois v. Abington Housing Authority*  
*Pisello v. Town of Brookhaven*  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*  
*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*

#### Civil Rights Act of 1964

*Fair Housing in Huntington Committee v. Town of Huntington, New York*

#### Title VI of Civil Rights Act of 1964

*Achee v. Port Drum Co.*  
*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*Franks v. Ross*  
*Langlois v. Abington Housing Authority*  
*Lucero v. Detroit Public Schools*  
*Oti Kaga, Inc. v. South Dakota Housing Development Authority*  
*Powers v. CSX Transportation, Inc.*  
*Save Our Valley v. Sound Transit*  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*

#### Title VIII of Fair Housing Act of 1968

*Achee v. Port Drum Co.*  
*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*  
*City of Cuyahoga Falls v. Buckeye Community Hope Foundation*  
*Darst-Webbe Tenant Ass'n Board v. St. Louis Housing Authority*  
*Fair Housing in Huntington Committee v. Town of Huntington, New York*  
*Franks v. Ross*  
*Langlois v. Abington Housing Authority*  
*Macone v. Town of Wakefield*  
*Oti Kaga, Inc. v. South Dakota Housing Development Authority*  
*Save Our Valley v. Sound Transit*  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*

#### State Claims

*Achee v. Port Drum Co.* (negligence, negligence per se, negligent misrepresentation, res ipsa loquitur, intentional infliction of emotional distress, nuisance, trespass, fraud, assault and battery, gross negligence)  
*Communities for a Better Environment v. Cenco Refining Co.* (air quality standards)  
*Fallon Paiute-Shoshone Tribe v. City of Fallon* (breach of contract and breach of covenants running with the land)  
*Franks v. Ross* (public policy)  
*Langlois v. Abington Housing Authority*  
*North Baton Rouge Environmental Ass'n v. Louisiana Department of Environmental Quality* (administrative review)

*Pisello v. Town of Brookhaven* (defamation)  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection* (public and private nuisance)  
*Woodwind Estates, Ltd. v. Gretkowski*

### III. Cases

*Achee v. Port Drum Co.*, 197 F. Supp. 2d 723 (E.D. Tex. 2002)  
*Ball v. Union Carbide Corp.*, 376 F.3d 554 (6th Cir. 2004)  
*Broward Garden Tenants Ass'n v. U.S. Environmental Protection Agency*, 157 F. Supp. 2d 1329 (S.D. Fla. 2001)  
*City of Cuyahoga Falls v. Buckeye Community Hope Foundation*, 538 U.S. 188 (2003)<sup>43</sup>  
*Darst-Webbe Tenant Ass'n Board v. St. Louis Housing Authority*, 339 F.3d 702 (8th Cir. 2003)  
*Eberhart v. Gettys*, 215 F. Supp. 2d 666 (N.D.N.C. 2002)  
*Fair Housing in Huntington Committee v. Town of Huntington, New York*, 316 F.3d 357 (2d Cir. 2003)<sup>44</sup>  
*Fallon Paiute-Shoshone Tribe v. City of Fallon*, 174 F. Supp. 2d 1088 (D. Nev. 2001)  
*Franks v. Ross*, 313 F.3d 184, 33 ELR 20120 (4th Cir. 2002)  
*Hispanics United of DuPage County v. Village of Addison, Illinois*, 157 F. Supp. 2d 962 (N.D. Ill. 2001)<sup>45</sup>  
*James v. City of Dallas, Texas*, 254 F.3d 531 (5th Cir. 2001)  
*Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970)  
*Langlois v. Abington Housing Authority*, 234 F. Supp. 2d 33 (D. Mass. 2002)  
*Langlois v. Abington Housing Authority*, No. 98-12336, 1998 WL 1029207 (D. Mass. 1998), *aff'd*, 207 F.3d 43 (1st Cir. 2000)  
*Lucero v. Detroit Public Schools*, 160 F. Supp. 2d 767 (E.D. Mich. 2001)  
*Macone v. Town of Wakefield*, 277 F.3d 1 (1st Cir. 2002)  
*North Baton Rouge Environmental Ass'n v. Louisiana Department of Environmental Quality*, 805 So. 2d 255 (La. Ct. App. 2001)  
*Oti Kaga, Inc. v. South Dakota Housing Development Authority*, 342 F.3d 871 (8th Cir. 2003)  
*Pisello v. Town of Brookhaven*, 933 F. Supp. 202 (E.D.N.Y. 1996)<sup>46</sup>  
*Powers v. CSX Transportation, Inc.*, 105 F. Supp. 2d 1295 (S.D. Ala. 2000)  
*Save Our Aquifer v. City of San Antonio*, 237 F. Supp. 2d 721 (W.D. Tex. 2002)  
*Save Our Valley v. Sound Transit*, 335 F.3d 932 (9th Cir. 2003)  
*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*, 274 F.3d 771, 32 ELR 20425 (3d Cir. 2001), *cert. denied*, 536 U.S. 939 (2002),

43. Follow-up to *Buckeye Community Hope Found. v. City of Cuyahoga Falls*, 263 F.3d 627 (6th Cir. 2000); 209 F. Supp. 2d 719 (D. Ohio 1996); 970 F. Supp. 1289 (N.D. Ohio 1997); 697 N.E.2d 181 (Ohio 1988), 692 N.E.2d 997 (Ohio 1998).

44. Follow-up to *Huntington Branch, National Ass'n for the Advancement of Colored People v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988).

45. Follow-up to *Hispanics United of DuPage County v. Village of Addison, Ill.*, 988 F. Supp. 1130 (N.D. Ill. 1999).

46. Should have been in earlier index.

145 F. Supp. 2d 505, 31 ELR 20675 (D.N.J. 2001), 254 F. Supp. 2d 486 (D.N.J. 2003)  
*Sur Contra la Contaminación v. U.S. Environmental Protection Agency*, 202 F.3d 443, 30 ELR 20358 (1st Cir. 2000)  
*Tyler v. Cuomo*, 236 F.2d 1124 (9th Cir. 2000)<sup>47</sup>

*Washington Park Lead Committee, Inc. v. U.S. Environmental Protection Agency*, No. 2:98CV421, 1998 WL 1053712, 29 ELR 20540 (E.D. Va. 1998)  
*Winchester Coalition for Responsible Development v. U.S. Department of Housing & Urban Development*, 999 F. Supp. 1058 (S.D. Ohio 1998)  
*Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118 (3d Cir. 2000)

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47. Successor to *Tyler v. Cisneros*, 136 F.3d 603, 28 ELR 20540 (9th Cir. 1998).