

A Private Sector Guide to Community Relations

By Benjamin F. Wilson and Dana P. Palmer

Two recent decisions have restricted the rights of private citizens to bring Title VI complaints in court under Section 602, which promulgates disparate impact regulations, or under Section 1983, which makes anyone who deprives a party of constitutional rights liable to that party. *Alexander v. Sandoval*, 532 U.S. 275 (2001); *South Camden Citizens in Action v. N.J. Dep't of Env'tl. Protection*, 274 F.3d 771 (2001).

In all projects potentially or actually involving possible challenges based on environmental justice issues, all interested project developers, overseers, and community representatives would do well to consider the fact pattern presented memorably by the federal district judge in *South Camden*, Judge Stephen M. Orloffsky. In finding that the

community was disparately impacted even before the proposed project, he listed the following obvious facts:

- People of color made up over 90 percent of the targeted community—within a county that was approximately 75 percent white.
- Over 50 percent of community residents survived at or below the federal poverty level—while the average income for the rest of the county was more than double that.
- The community already housed a number of industrial sites: a sewage treatment plant, a trash incinerator, a cogeneration plant, a gypsum manufacturer, a flavor producer, an oil refinery, a UPS facility, two federal Superfund sites (one radioactive), and other polluted sites under governmental investigation.
- Self-reported health data reflected almost double the rates of asthma, problems coughing or catching breath, and tightness in the chest than in other parts of the county; in fact, both city and state officials previously had identified the community as an area of concern.

By developing an early dialogue with the public and staying sensitive to the cumulative impacts of infrastructure projects, agencies and developers can more easily comply with the letter and spirit of Title VI, avoid delays and needless litiga-

tion, and create opportunities for cooperation rather than cooption. The following checklist can help gather the relevant facts:

- Exchange information with local community groups before final plans are prepared.
- Focus on those facts found to be relevant under Title VI, as in *South Camden*.
- Enlist experts to investigate environmental, economic, health, and social impacts of the proposed project, and all issues raised by community groups.
- Avoid applying cookie-cutter analysis to different projects—not all are created equal. Appreciate the differences *between* and *within* affected communities.
- Do not assume that enhancements will automatically benefit underserved communities.
- Conversely, do not fail to stress the potential benefits of the project to the community.
- Involve counsel experienced in working with diverse, underserved communities as early as possible in the long-term planning and any NEPA processes.

Benjamin F. Wilson is a director at Beveridge & Diamond, P.C., a law firm in Washington, D.C. Dana P. Palmer was a summer associate at the firm.