

1999 WL 34825871 (N.D.Tex.) (Trial Pleading)
United States District Court, N.D. Texas,
Dallas Division.

Charles MILLER, et al, plaintiffs,
v.
THE CITY OF DALLAS, defendant.

No. 3:98-CV-2955-D.
May 27, 1999.

Complaint

Respectfully Submitted, [Michael M. Daniel](#), P.C., 3301 Elm Street, Dallas, Texas 75226-1637, 214-939-9230, [Michael M. Daniel](#), State Bar No. 05360500, [Laura B. Beshara](#), State Bar No. 02261750, Attorneys for Plaintiffs.

1. The Court has jurisdiction pursuant to 18 U.S.C. §§ 1331, [1343](#), and [42 U.S.C. § 3613](#).

Introduction

2. Plaintiffs bring this case to obtain damages and equitable relief for the injuries caused by the City of Dallas continuing and ongoing racially discriminatory provision of municipal services, including the flood protection facilities, to the predominantly minority and low-income Cadillac Heights neighborhood.

Plaintiffs

3. Plaintiffs are Charles Miller, Erma Cooper, Fred Crawford, Mable Hayden, George and Dorothy Thomas, Mattie and L. T. Cooper, Louise Davis, Leesie Hollins, John Adams, and Velma Harper. Each plaintiff is an African-American who has been a single family home owner and resident in the Cadillac Heights neighborhood of the City of Dallas.

Defendant

4. The City of Dallas is a home rule municipality.

5. The City of Dallas is a program or activity which has received federal funds in the past and is a current recipient of federal funds.

The neighborhood

6. The Cadillac Heights neighborhood includes census tract 89, block groups 1 and 6. Most of the residential units are in census tract 89, block group 6. The population of this block group is 98.5% minority, 40% black and 58.5% Hispanic origin. Forty six percent of the population is below poverty. The median family income is \$14,107. Sixty one percent of the

occupied units are owner occupied. Twenty percent of the units were vacant according to the 1990 U.S. Census.

The discrimination

7. The City of Dallas' purposeful racial and ethnic discrimination in the provision of municipal services which has injured plaintiffs and their property includes;

flood protection

8. The current Trinity River levee system, owned and operated by the City of Dallas, does not protect the neighborhood from flooding by the Trinity River. The levees were constructed to provide protection for property owned by whites. The failure to extend the levee protection to the Cadillac Heights neighborhood was motivated by overt racial purpose, the intent to discriminate against African-American property owners and residents. The neighborhood *is subjected* to periodic flooding from the Trinity River as a result of the racial discrimination.

9. The Honorable Ron Kirk, Mayor of the City of Dallas, made the following public statements about the role racial discrimination played in the construction and maintenance of the Trinity River levee system:

"In the 1940s and '50s, the way this river was managed was as glaring an example of environmental racism as anything in the whole country," Dallas Observer, January 22, 1998.

"Those projects stopped where the white people stopped. Its very dramatic to take a helicopter ride now and see where the levees end and where poor black people and Hispanics are forced to live adjacent to the part of the river where there is no protection."

"The current levees happened to stop not coincidentally where mostly black and Hispanic families live... We now have a chance to confront the more ugly blatant and racial elements of our past." Dallas Morning News, April 12, 1998.

10. The only action taken by the City to protect any part of the area from flooding was to build a levee for the City's sewage treatment plant.

11. The City included flood protection for the neighborhood in the 1995 City bond issue. The City has taken no steps to provide the protection.

zoning

12. Part of the Cadillac Heights residential neighborhood is zoned for residential use in the categories of R-5 or TH. Part of the residential neighborhood is zoned for heavy industrial use in the category IR. The areas immediately adjacent to the R-5 TH zoned residential areas have been zoned for heavy industrial use by the City. As a direct result of the zoning, the neighborhood is subjected to the blighting influences and noxious effects of the adjacent industrial uses. Those uses include a meat packing plant, animal rendering plants, the City's sewage treatment plant, and outside salvage and reclamation otherwise known as a junkyard.

13. The City's industrial zoning has a disproportionate and adverse impact on African-American persons, including plaintiffs. African-Americans were 29% of the City's population according to the 1990 census. African-Americans were 45% of the population living in or within 500 feet of areas zoned for industrial use. Non-Hispanic whites and others were 50% of the total population but only 29% of the population living in or within 500 feet of areas zoned for industrial use. 12.6% of the

African-American population was living in or within 500 feet of areas zoned for industrial use. Only 4.57% of the non-Hispanic white and other persons in the City were living in or within 500 feet of areas zoned for industrial use.

14. Approximately 47% of the land used for or available for industrial uses is in census tracts such as tract 89 which are less than 10% non-Hispanic white. Less than 8% of the land in 90% or greater white tracts is used for or available for industrial uses.

protection from the harmful effects of industrial nuisances

15. There were two lead smelters in the neighborhood, Dixie Metals and National Lead. The City of Dallas refused to enforce City and state laws that would have ended the lead pollution caused by the smelters and agreed to cooperate with the owners of the smelters in order to allow the continued operation of the smelters and the continued pollution of the neighborhood. There have been two cleanups for hazardous substances in the neighborhood. Young children in the neighborhood are exposed to and suffer from the effects of the hazardous substances. The rates of children testing high for elevated blood lead are some of the highest in the City. Vacant lots in the neighborhood are still marked with signs warning that the soil on the lots is hazardous. There are no fences or other barriers to prevent access to these lots.

16. The City has licensed and permitted other industrial facilities in the neighborhood to pollute the air and the environment of the residential neighborhood. DalChrome is a hazardous waste handler and a releaser of toxic substances into the environment. The City sewage treatment plant is a hazardous waste handler. The industrial uses emit foul smells into the residential neighborhood.

17. The City of Dallas uses its zoning powers and other municipal authority to protect predominantly white neighborhoods from the harmful effects of industrial uses. The effect of the City's use of its zoning powers and other municipal authority has been to leave Cadillac Heights and other predominantly minority areas disproportionately adversely affected by the harmful effects of industrial nuisances.

landfill practices

18. There are at least two illegal landfills operating with City knowledge and permission in the neighborhood. The City promised to close and clean up the illegal landfill at 3411 E. Kiest Blvd. Instead, the City has allowed the landfill to remain in operation. The City knowingly allowed the illegal landfill operated at 1240 Sargent Road to continue as a dump for lead slag and battery chip samples [NCTCOG Data Available for Facility U1288]. The City does not knowingly allow and permit illegal landfills to operate in predominantly white areas.

streets and drainage

19. The streets and storm water drainage facilities in the neighborhood are below City standards and flood during heavy rainfalls. There are no sidewalks on many of the residential streets. The predominantly white areas of the City that have been part of the City for the same or shorter time periods have adequate street, curbs, gutters, and storm water drainage facilities.

federal funding for housing and community development

20. The Cadillac Heights neighborhood is eligible and has been eligible for federal Community Development Block Grant funds and other federal, state, and local housing and community development improvement programs. The use of the federal

funds and programs would have eliminated, prevented, or mitigated the adverse conditions affecting the neighborhood.

21. The City of Dallas has not used its federal funds to improve the conditions in the low-income minority neighborhood of Cadillac Heights. The City of Dallas has implemented its housing and community development programs targeted for low-income neighborhoods and persons such as Cadillac Heights and its residents in a racially disparate manner. The programs for minority neighborhoods are subject to delays, excessive administrative expenditures, and City failure to use the funds available. The programs targeted at predominantly or majority white populations are expeditiously implemented for the benefit of those persons.

The injuries

22. The City's discrimination in the provision of flood protection, zoning, environmental controls, infrastructure such as streets and drainage, and remedial housing and community development makes housing in Cadillac Heights unavailable by creating and maintaining conditions of urban blight and other undesirable and hazardous neighborhood characteristics. The conditions of blight and other undesirable and hazardous conditions deter potential residents from obtaining housing in the neighborhood. The conditions of blight inhibit and obstruct plaintiffs and other single family home owners from selling their homes by decreasing the neighborhood amenities available and by increasing the risks and inconveniences of owning property and residing in the neighborhood.

23. By making the neighborhood blighted, the City has removed the housing in the neighborhood from the normal housing market. The City has not used other available resources, e.g. local, state, or federal programs and funding, to substitute for the market and provide new or rehabilitated housing in the neighborhood.

24. The injuries inflicted upon plaintiffs by the City's discrimination include a decrease in property values, fear of harm from the conditions, the physical impacts of being subjected to substandard neighborhood conditions such as noxious odors and substandard flood protection and drainage facilities, and the stigma of living in neighborhood with blighted conditions.

The claims for relief

25. The City's actions violate the Fourteenth Amendment to the U.S. Constitution equal protection provision, [42 U.S.C. § 1981](#); [42 U.S.C. § 2000d](#); [42 U.S.C. § 3604\(a\)](#); [24 CFR § § 100.70\(d\)\(4\)](#) and [42 U.S.C. § 5309](#). The provisions of the Fourteenth Amendment; [42 U.S.C. § 2000d](#); [24 CFR § § 100.70\(d\)\(4\)](#) and [42 U.S.C. § 5309](#) are enforceable pursuant to [42 U.S.C. ¶ 1983](#).

Prayer for relief

Plaintiffs seek the following relief:

- a. damages including prejudgment interest and damages for emotional and mental suffering and pain,
- b. punitive damages,
- c. injunctive relief including appropriate relief for the Trinity River flooding, a complete environmental cleanup, the elimination of the landfills, infrastructure improvements, new housing units, housing rehabilitation programs, back zoning to prevent future adjoining industrial uses and the expansion of existing uses, and monitoring and strict enforcement of environmental quality and pollution requirements,

d. court costs, litigation expenses, and attorney's fees, and

e. any other appropriate relief.

Respectfully Submitted,

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