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The IRS would clearly be justified under this judicially developed principle of section 170 in disallowing deductions by the Revenue Ruling 76-442 organization's clients for their donations to the extent the value of the donations equals the cost of comparable tax planning services. This action would substantially exorcise those dimensions of commercialism and private benefit to which the IRS objected. Such an approach would have been preferable to denying 501(c)(3) status altogether, for the prior decisions and policy of section 501 would support a finding by a federal court that the organization qualifies for the exemption. Section 501 as manipulated in Revenue Ruling 76-442 is simply too blunt an instrument for use in deterring individual taxpayers from utilizing the charitable exemption as a subterfuge by which otherwise nondeductible personal legal expenses are transformed into charitable gifts. Section 170 could accomplish this result more directly and with more finesse. Such an alternative approach would permit the organization to continue to pursue its purpose of encouraging gifts to charity without imposing a tax burden of atonement on the organization itself for the possible sins of its clients.

FRANK LANE WILLIAMSON

Zoning—Arlington Heights v. Metropolitan Housing Development Corp.: An Implicit Endorsement of Exclusionary Zoning?

In recent years there has been considerable uncertainty in the federal courts about the precise nature of the equal protection standards applicable to cases of allegedly exclusionary zoning.¹ Lower federal

1. See Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767, 799-800 (1969). Compare Comment, *Challenging Exclusionary Zoning*, 10 RICH. L. REV. 646, 686 (1976) (courts will apply rational basis test, so challenge will usually fail) and Comment, *Does a Zoning Ordinance with Racially Discriminatory Effects Violate the Constitution? Metropolitan Housing Development Corporation v. The Village of Arlington Heights*, 7 LOY. CHI. L.J. 141, 157 (1976) ("steadily expanding limits of the equal protection clause of the fourteenth amendment have now infringed on the formerly solid police powers of local governments to determine land use") with Note, *Challenging Exclusionary Zoning: Contrasting Recent Federal and State Court Approaches*, 4 FORDHAM URB. L.J. 147, 157 (1975) (ordinance that perpetuates residential segregation likely to fall, as federal court will apply strict scrutiny test).

courts have upheld the claims of low and moderate income plaintiffs seeking adequately priced housing in the suburbs where the activities of the municipality were overtly discriminatory,² but courts have found it more difficult to deal with cases in which discrimination is more subtle but equally effective.³ While generally disfavoring the claims of low income plaintiffs,⁴ the United States Supreme Court had, until recently, avoided deciding exclusionary zoning cases on equal protection grounds. The recent case of *Village of Arlington Heights v. Metropolitan Housing Development Corp.*⁵ is the first instance in which the Supreme Court has directly met the substantive equal protection issue, and its decision implies that plaintiffs will have to carry a heavy burden to be successful in the federal courts.

Arlington Heights, a suburb about twenty-five miles northwest of Chicago, consists primarily of single family homes that accommodated a population that was 99.6% white in 1970.⁶ In 1970, the Clerics of St. Viator (a religious order) decided to develop fifteen acres located within Arlington Heights for low and moderate income housing. The Metropolitan Housing Development Corporation (MHDC), a nonprofit housing developer that had constructed similar projects in nearby suburbs, was given a ninety-nine year lease on the property with an option to purchase contingent upon obtaining federal financing and the

2. See *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975) (within two months of HUD approval of a housing project, all-white area incorporated itself and zoned out low and moderate income housing); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2d Cir.), *cert. denied*, 401 U.S. 1010 (1970) (city rezoned plaintiff's land for park, declared building moratorium, and mayor refused to sign form that would allow plaintiff's project to tie onto city sewer system); *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970) (city's refusal to rezone plaintiff's property contrary to recommendation of city planning director).

3. *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 517 F.2d 409 (7th Cir. 1975), *rev'd*, 97 S. Ct. 555 (1977). This case was perhaps the first in which a court of appeals found no discriminatory intent on the part of defendants, and yet found for plaintiffs. See text accompanying notes 18 to 25 *infra*. See also *Southern Alameda Spanish Speaking Org. v. Union City*, 424 F.2d 291, 294 (9th Cir. 1970).

4. See, e.g., *Warth v. Seldin*, 422 U.S. 490 (1975), in which non-resident low and moderate income blacks challenged the zoning ordinance of a municipality as unconstitutional because it reserved only two percent of the land for non-single-family residential use. The Court held for defendants on procedural grounds, but Justice Brennan, dissenting, wrote that "the opinion . . . can be explained only by an indefensible hostility to the claim on the merits." *Id.* at 520. See also *James v. Valtierra*, 402 U.S. 137 (1971) (upholding state constitutional amendment that would require that residents of a municipality approve by referendum the location, construction or purchase of low income housing in their jurisdiction).

5. 97 S. Ct. 555 (1977).

6. *Id.* at 558.

town's approval of a zoning change.⁷ The MHDC contracted with an architect to draw up plans for the proposed development. The final plans provided for 190 units of two-story townhouses, over half of which were to be particularly suited to elderly residents, and also provided that sixty percent of the land would be devoted to green space.⁸

MHDC applied to the Village of Arlington Heights for a zoning change, but this request was denied.⁹ The fifteen acre parcel had been zoned R-3 (for single family dwellings), and would have to be rezoned to R-5 (for multi-family dwellings) in order for the townhouses to be built.¹⁰ The town's zoning plan called for an R-5 zone to be designated only as a buffer between single family homes and such incompatible uses as manufacturing or commercial areas. The parcel under consideration faced single family dwellings on two sides and the open areas of the church land on the other two sides. The Village Plan Commission turned down the request to rezone after a series of public meetings¹¹ and despite MHDC's revision of the project design to meet the village's technical objections.¹²

The plaintiffs, MHDC and individuals representing those moderate income minority members who worked or desired to work and live in Arlington Heights but could not find decent and reasonably priced

7. *Id.* at 559. Initially MHDC intended to use the federally subsidized § 236 program but that program was halted in 1973 and MHDC had since indicated its willingness to participate in the federally subsidized § 8 housing program of the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f (Supp. V 1975), *as amended by* Housing Authorization Act of 1976, Pub. L. No. 94-375, § 2, 90 Stat. 1068. *Id.* at 558 n.2.

8. 97 S. Ct. at 559; *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 517 F.2d 409, 411 (7th Cir. 1975); Brief for Respondents at 7, *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 97 S. Ct. 555 (1977).

9. 97 S. Ct. at 559-60. Two members of the Arlington Heights Planning Board who dissented from the decision to deny the rezoning noted that there was no separate classification for townhouses in the Arlington Heights zoning plan and that R-5 was applied only because it was as close an approximation as was available. They further noted that professional planners tend to treat townhouses as more akin to R-3 than R-5. Comment, 7 *LOY. CHI. L.J.*, *supra* note 1, at 142 n.7.

10. 97 S. Ct. at 558-59.

11. *Id.* at 559. Plaintiff MHDC attempted to impress upon the Court the explicitly racial nature of the community response to the project that was evidenced at three public meetings, in the local press, and in letters sent to town officials. Brief for Respondent at 16-19. The Court, however, preferred to emphasize the positive concerns voiced by the town officials in reaching the decision. 97 S. Ct. at 559-60.

12. Following the zoning change request investigations were undertaken and reports issued by the local fire chief, building commissioner, director of public works and acting director of engineering. Only one problem was mentioned, that of surface water runoff, and the plans were changed to ameliorate that impact. Plaintiffs' Complaint at 13, *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 373 F. Supp. 208 (N.D. Ill. 1974); *see* 97 S. Ct. at 559.

housing,¹³ filed suit in the federal district court alleging that the village's refusal to rezone perpetuated segregation,¹⁴ denied plaintiff developer's right to use its property in a reasonable fashion under the fourteenth amendment of the United States Constitution,¹⁵ and denied individual plaintiffs' rights under the fourteenth amendment, 42 U.S.C. sections 1981, 1982 and 1983, and the Fair Housing Act.¹⁶ The district court found that the village's motivation in denying the rezoning was based on its concern for property values and the integrity of its zoning plan, and that there was no act of invidious discrimination that would require the showing of a compelling state interest.¹⁷

On appeal¹⁸ the Seventh Circuit Court of Appeals looked closely at the evidence to determine if the Village had applied its zoning laws with particular strictness in this case. It could not find clearly erroneous the trial court's determination that the village's purpose in denying the rezoning application was a legitimate concern with the integrity of the zoning plan.¹⁹ The court recognized that the town's failure to rezone had a disproportionate effect on Blacks in the Chicago area, but in light of the Supreme Court's recent decision in *James v. Valtierra*,²⁰

13. The Court ruling devotes substantial space to the matter of plaintiffs' standing. 97 S. Ct. at 561-63. In *Warth v. Seldin*, 422 U.S. 490 (1975), the Court had denied similar claims by nonresident plaintiffs seeking low income housing in the suburbs, organizations that owned land in the defendant community, and builders' organizations whose members had been economically injured. Denying standing to all plaintiffs, the Court indicated that only those who were prepared and able to build a home or who would be eligible to inhabit a particular project currently precluded and had been denied the right either by the local ordinance or its enforcement would have standing to use the courts. *Id.* at 516. Under *Warth*, MHDC could challenge an ordinance or its enforcement on due process grounds as arbitrary, capricious or unreasonable under *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), but it could not assert the rights of others with respect to an equal protection challenge. Plaintiff Ramson was empowered to assert the equal protection claim because he would qualify for and would like to reside in MHDC's project if it were built, and then if MHDC's claims were successful the court could have a practical way of granting relief to him. See 97 S. Ct. at 563.

14. Plaintiffs' Complaint at 15, 21.

15. *Id.* at 22.

16. 42 U.S.C. §§ 3601-3631 (1970 & Supp. V 1975).

17. *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 373 F. Supp. 208, 211 (N.D. Ill. 1974).

18. *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 517 F.2d 409 (7th Cir. 1975).

19. That evidence showed that the town had rezoned land from R-3 to R-5 60 times. In about two-thirds of the cases the action had complied with the zoning plan. Of the 15 stated failures, only four were clear violations, and in a number of cases where the rezoning was denied the town was applying its buffer zone policy. *Id.* at 412.

20. 402 U.S. 137 (1971). In *James*, the Court upheld a provision of the California Constitution requiring that state-developed housing for low income persons be approved only after approval by community referendum.

the Seventh Circuit could not infer racial discrimination from disproportionate impact alone.

The court did not stop its inquiry at this point, but went on to assess the town's decision in light of its historical context and ultimate effect.²¹ It noted that the Chicago metropolitan area had a long history of segregated housing patterns. Although it did not suggest that Arlington Heights was responsible for these segregated patterns,²² the court did find that Arlington Heights had exploited those extensive patterns of segregation by failing to integrate its community²³ and was in this case again attempting to avoid its responsibility by rejecting "the only present hope of . . . making even a small contribution toward eliminating the pervasive problem of segregated housing."²⁴ Unable to find a compelling state interest that would justify the rezoning denial, the court implied that Arlington Heights had a duty to alleviate the problem of segregated housing.²⁵

After the Supreme Court granted certiorari²⁶ but before the case was argued, the Court decided *Washington v. Davis*,²⁷ a case involving employment discrimination.²⁸ In *Washington* the Court cited several cases, among them the Seventh Circuit's *Arlington Heights* decision, as incorrect applications of equal protection law.²⁹ Writing for the

21. 517 F.2d at 413-14.

22. While not directly responsible for the areawide pattern, the court noted that plaintiffs' demographic expert had testified that Arlington Heights was the *most* segregated community in the Chicago metropolitan area among municipalities of greater than 50,000 residents. *Id.* at 414 n.1.

23. The court's exploitation charge was based on a Seventh Circuit case in which a builder was held liable for charging inflated prices for housing in black neighborhoods as compared with similar housing it had constructed in white neighborhoods. *Clark v. Universal Builders, Inc.*, 501 F.2d 324 (7th Cir. 1974).

24. 517 F.2d at 415. Although the court did not cite any cases, there is precedent in state courts for requiring that a town take into account the regional housing situation in enacting and enforcing its zoning plans. *See* cases cited notes 88-91 *infra*. *But see* *Construction Indus. Ass'n v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976).

25. 517 F.2d at 414. Whether the court would require that the town take affirmative steps to alleviate the problem or that it merely refrain from frustrating any attempted solution is not clear, but the latter possibility seems more probable. For a discussion of the merits of the remedy that would require affirmative action, see note 88 *infra*.

26. 423 U.S. 1030 (1975).

27. 426 U.S. 229 (1976).

28. The case involved unsuccessful black applicants for police training in Washington, D.C., who were challenging the use of a written examination testing verbal skills as a criterion for selection of candidates. The Court denied their claim that the test was a denial of equal protection because it excluded a higher proportion of blacks than whites. *Id.*

29. *Id.* at 244 n.12. Other cases cited, all of which dealt with housing and zoning

majority Justice White said, "[w]e have not held that a law, neutral on its face and serving ends otherwise within the power of the government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another."³⁰ Disproportionate impact was held to be relevant to the inquiry, but not determinative.³¹

While the Court could have simply remanded *Arlington Heights*³² for reconsideration in light of *Washington v. Davis*,³³ the Court chose to use the case to elaborate on the *Washington* ruling. Writing for the majority, Justice Powell held that proof of the racially discriminatory intent or purpose that would be necessary to invoke the Court's strict scrutiny test was to be determined by "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available."³⁴ Disproportionate impact might provide an important starting point, but would not be determinative, absent a stark pattern of discrimination.³⁵

In the usual case alleging racial discrimination, at least three factors might be considered: "a series of official actions taken for invidious purposes";³⁶ "a specific sequence of events leading up to the challenged decision";³⁷ and departures from normal substantive and

and had been finally decided, were *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971) (public housing); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971) (zoning); *Southern Alameda Spanish Speaking Org. v. Union City*, 424 F.2d 291 (9th Cir. 1970) (zoning); *Norwalk CORE v. Norwalk Redev. Agency*, 395 F.2d 920 (2d Cir. 1968) (urban renewal); *Crow v. Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd, 457 F.2d 788 (5th Cir. 1972) (public housing).

30. 426 U.S. at 242.

31. *Id.* at 242-43.

32. 97 S. Ct. 555 (1977).

33. In his dissent, Justice White indicated that he would have preferred not to decide the case at all, but would rather have followed the Court's usual practice and remanded the case to the lower court for reconsideration in light of *Washington v. Davis*. *Id.* at 567.

34. *Id.* at 564.

35. *Id.* Here the Court used as an example *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), a case in which a state legislature changed the boundaries of a town from a square to an irregular 28-sided figure, effectively eliminating 99% of the town's black voters from the voting rolls.

36. 97 S. Ct. at 564, citing the following cases: *Griffin v. County School Bd.*, 377 U.S. 218 (1964) (school desegregation); *Lane v. Wilson*, 307 U.S. 268 (1939) (voting rights case in which there had been a long history of racial discrimination and a series of contemporary activities that left little doubt of discriminatory intent); and *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala.), aff'd per curiam, 336 U.S. 933 (1949) (voting rights).

37. 97 S. Ct. at 564. Here the Court cited *Reitman v. Mulkey*, 387 U.S. 369 (1967), a case in which the Court had held invalid a recently passed California state constitutional amendment that would have prohibited the state from interfering with

procedural sequences.³⁸ In extraordinary cases, the legislative or administrative history of the particular actions or statutes may be considered.³⁹ Applying these criteria to the case before it, the Supreme Court noted the district court's finding that racial discrimination had not motivated defendant;⁴⁰ that the circuit court had determined that the zoning ordinance had not been applied more harshly in this case than it had been in most similar instances and thus there was no series of discriminatory official acts;⁴¹ and that there was no evidence of discrimination in the legislative and administrative history.⁴² Having decided the constitutional issue, the Court remanded the case to the circuit court to pass on plaintiffs' complaint under the Fair Housing Act.⁴³

private discrimination in the lease or sale of real property, and *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971), in which the court of appeals had granted plaintiffs an injunction against the town when it was shown that the town had declared a moratorium on subdivision construction and rezoned the land on which plaintiffs had planned to construct low and moderate income housing immediately after the town had become aware that the project was being planned.

38. 97 S. Ct. at 564 (citing *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), in which the defendant city refused to rezone a parcel of land for low income housing against the advice of its planning directors, and without a valid reason).

39. *Id.* at 565. The Court is clearly not suggesting use of legal and administrative history except in a very unusual case. *Tenney v. Brandhove*, 341 U.S. 367 (1951), and *United States v. Nixon*, 418 U.S. 683, 705 (1974), indicate that a high degree of privilege is accorded to legislators and lawmakers.

40. 97 S. Ct. at 565.

41. *See* note 19 *supra*.

42. The Court emphasized that the Planning Commission and Village Board were apparently concerned with the integrity of the town zoning ordinance. The Court refused to speculate on reasons why the Village Planner was never asked his opinion on the proposed project. 97 S. Ct. at 566 n.19.

43. *Id.* The district court did not consider the Fair Housing Act claim because no section was specifically pleaded and the court did not think any section was specifically applicable to the facts of the case. 373 F. Supp. at 209. Section 3601 of the Act states, "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601 (1970). Whether the Fair Housing Act will be useful in the present case is not clear from court decisions. The one exclusionary zoning case decided on the basis of the Fair Housing Act, *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975), held that the effect of defendant's actions was racial discrimination and required the defendants to demonstrate a compelling state interest. The denial of certiorari in this case may have been an early signal from the Court that it would be willing to allow the evidence of a racially discriminatory effect to affect the outcome of a civil rights case based on a statutory claim, when it would not allow effect to play any significant role in those cases based on constitutional claims. In *Washington v. Davis*, 426 U.S. 229 (1976), the Court recognized that under Title VII of the Civil Rights Act (equal employment opportunity) a prima facie showing of a racially disproportionate impact would trigger increased judicial scrutiny, but declined to extend that standard to a constitutional claim. *Id.* at 246-48. The remand of the *Arlington Heights* case may well indicate that the Court is suggesting that it is up to the Congress to prescribe or the

The holdings in *Washington v. Davis* and *Arlington Heights* make a finding of racial discrimination much less likely by prohibiting courts from inferring intent from disproportionate impact except in the most outrageous cases,⁴⁴ and by requiring a specific showing of intent to discriminate.⁴⁵ This approach is arguably not suitable for most equal protection cases, and is particularly inappropriate in the field of zoning and housing.

In restricting the inquiry to the intent or purpose rather than the impact of an official action or statute, the Court has limited the lower courts to two types of evidentiary sources, both of which contain fundamental weaknesses. A court may look to an official action or series of actions that may have led up to the challenged zoning action, or a court may scrutinize the words or writings of those responsible for the official action or statute in order to determine whether racial factors motivated their decision.

The actions of officials prior to the passage of the challenged statute or taking of the action cannot be expected to provide much assistance in the determination of discriminatory purpose or intent. From the cases cited by the Court in *Arlington Heights*,⁴⁶ it is clear that an application of the Court's level of scrutiny will curb only the most blatant and obvious examples of discrimination.⁴⁷ Few municipal or state officials would be expected to exhibit their prejudices or those of their constituency so flagrantly.

The second consideration suggested by the Court is words or writings of the officials responsible for the challenged action. To rely on the words or writings of the officials responsible presents a number of evidentiary problems in any equal protection case. First, the court

lower courts to apply similar standards for the adjudication of equal rights claims in cases involving something less than overt discrimination. See Comment, *Applying the Title VII Prima Facie Case to Title VIII Litigation*, 11 HARV. C.R.-C.L. L. REV. 128 (1976). But see *Boyd v. Lefrak Org.*, 509 F.2d 1110, 1113 (2d Cir.), cert. denied, 423 U.S. 896 (1975). See generally Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L.J. 149 (1969); Note, *Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Acts of 1964 and 1968*, 82 HARV. L. REV. 834 (1969).

44. For examples of challenges likely to be sustained even under *Arlington Heights*, see *Buchanan v. Warley*, 245 U.S. 60 (1917), and cases cited note 2 *supra*.

45. For a thorough discussion of motivation as evidence in constitutional cases, see Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205 (1970).

46. 97 S. Ct. at 564; see notes 36 & 37 *supra*.

47. See, e.g., *Progress Dev. Corp. v. Mitchell*, 286 F.2d 222 (7th Cir. 1961), in which a Park Board condemned plaintiffs' land within three months of plaintiffs' receiving city approval to build a subdivision that would be integrated. See also *Crow v. Brown*, 475 F.2d 788 (5th Cir. 1972).

is likely to find a multiplicity of constitutional and unconstitutional purposes not only within the deliberative body, but also within any of the individual members of that body. To attempt to determine the part that the discriminatory purpose played in the decision would be extremely difficult.⁴⁸ Second, even assuming that the motivation of the officials could be determined by looking at their words and writings, at least with regard to this part of the test, the same act once struck down as discriminatory could possibly be repassed following the recitation of more constitutionally permissible words or writings.⁴⁹ Third, the purpose or motive behind an official act or statute does not necessarily control the actual impact or effect of the act—good intentions might produce unconstitutional acts and unconstitutional motives might produce constitutionally acceptable acts.⁵⁰ Finally, the Supreme Court has recognized that an in-depth inquiry into purposes of legislation for the purpose of validating its constitutionality would be an unnecessary or unwise intrusion into a coordinate branch of government.⁵¹

In light of these evidentiary difficulties, it appears that any plaintiff will bear a very heavy burden of proof when he challenges an official act as discriminating under the equal protection clause. The nature of zoning law is such that the burden of proof may be insurmountable in the case of challenges to zoning decisions. First, the acts of local officials have traditionally been accorded a presumption of validity by the courts, so the burden is immediately placed on the challengers of a zoning ordinance to establish that the regulation is clearly arbitrary or unreasonable.⁵² Second, while open to the challenge that

48. The Court would appear to be aware of the difficulty of attempting to divine the true intent of the legislature. See, e.g., *McGinnis v. Royster*, 410 U.S. 263, 276-77 (1973); *Palmer v. Thompson*, 403 U.S. 217, 224-25 (1971); *United States v. O'Brien*, 391 U.S. 367, 383-84 (1968).

49. *Palmer v. Thompson*, 403 U.S. 217, 224-25 (1971). Under a *combined* actions-words test, however, a court might well find discriminatory intent sufficient to strike down the second act, although under a pure words-writings standard, plaintiffs would have no argument.

50. *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971) ("good intent or absence of discriminatory intent does not redeem . . . procedures or . . . mechanisms" that inhibit racial integration and are not related to job performance); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961) ("It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith.").

51. See *McGinnis v. Royster*, 410 U.S. 263, 276-77 (1973); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810).

52. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) ("If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."); see *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7-8 (1974); *Nectow v. City of Cambridge*, 277 U.S. 183, 187-88 (1928); 1 C. ANTIEAU, MUNICIPAL CORPORATION LAW §§ 5.18-19 (1975); 1A *id.* § 7.18 (1974).

they do not serve a permissible purpose, zoning regulations are to a great extent insulated from this type of challenge. Protection of property values has long been a constitutionally accepted objective of zoning,⁵³ and the discrimination inherent in the ordinance is primarily economic discrimination.⁵⁴ The direct effect of that economic discrimination, however, is racial discrimination, because the poor include a disproportionate number of minority individuals.⁵⁵ Because local officials have a judicially acceptable rationale for zoning out the poor,⁵⁶ and are accorded a presumption of validity in their acts, proof of a racially discriminatory *intent* or *purpose* sufficient to require the strict scrutiny of the Court will be inordinately difficult to obtain.

In many ways *Arlington Heights* represents the Court's reaffirmation of some of its long-standing principles. First, the Court has a long history of avoiding the issues involved in land use legislation.⁵⁷ After

53. See *Lionshead Lake, Inc. v. Township of Wayne*, 10 N.J. 165, 89 A.2d 693 (1952), *appeal dismissed*, 344 U.S. 919 (1953); 1 N. WILLIAMS, *AMERICAN PLANNING LAW* §§ 5.04, 15.01 (1974). Mr. Williams, who spent ten years reading over 10,000 cases involving zoning and land use, *id.* at vii, suggests that in practice, the real motive could be stated in terms of "ensuring an increase" in property values, and that the result of a court's analysis of zoning issues in terms of the protection of property values rationale is normally, though not overtly, an anti-social one, typically involving racial or economic discrimination. *Id.* § 15.04.

54. Protection of property values is achieved not only by preventing incompatible or unsightly uses near residential areas, but also by zoning out uses that would allow high-density developments and mobile homes—uses that are *thought* to put a strain on the local tax base and increase property tax rates. See L. SAGALYN & G. STERNLIEB, *ZONING AND HOUSING COSTS* 3-4 (1972). There is substantial evidence, however, that apartments and high density uses, even with regard to school costs, more than pay their way. See R. BABCOCK & F. BOSSELMAN, *EXCLUSIONARY ZONING: LAND USE REGULATIONS AND HOUSING IN THE SEVENTIES* 53 (1973) [hereinafter cited as *BABCOCK*]. In the case of MHDC there was also substantial evidence that the project would more than pay its way. Brief for Respondents at 9, *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 97 S. Ct. 555 (1977).

The discrimination is economic in a broader sense also. For any community to act for the good of the larger metropolitan area (by accepting its fair share of low and moderate income housing) would be to put itself in a less competitive situation (and thus, to lower property values) in comparison with neighboring communities that do not choose to accept their fair share. See ADVISORY COMM. TO DEP'T OF HUD, *NATIONAL ACADEMY OF SCIENCES-NATIONAL ACADEMY OF ENGINEERING, FREEDOM OF CHOICE IN HOUSING: OPPORTUNITIES AND CONSTRAINTS* 31 (1972).

55. In 1967, 41% of the total non-white population was poor while only 12% of the white population was poor. NATIONAL COMM'N ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* 45 (1968) [hereinafter cited as *BUILDING*].

56. See authorities cited notes 52 & 53 *supra*.

57. See *James v. Valtierra*, 402 U.S. 137 (1971) (the people of a community have a right to decide whether they want low and moderate income housing). See also *Hawkins v. Town of Shaw*, 461 F.2d 1171, 1173 (5th Cir. 1972), *aff'g on rehearing en banc per curiam* 437 F.2d 1286 (5th Cir. 1971) ("Federal Courts are reluctant to enter the field of local government operations.").

it validated the concept of a zoning ordinance and the deprivation of property rights which that might entail in the 1920's,⁵⁸ the Court, with only two exceptions,⁵⁹ remained silent on these issues until the 1970's.⁶⁰ The fact that neither the "Roosevelt Court" nor the "Warren Court," with their activist approaches to the role of the judiciary and respect for contemporary social issues, ever became involved in these issues has left zoning law without any precedent that would justify significant judicial intervention.⁶¹

Second, the Court was apparently unwilling to revive two equal protection issues on which it might have based a decision favorable to the plaintiffs in *Arlington Heights*—that wealth is a suspect classification or that housing is a fundamental interest. The Court appears to be holding to its decision in *San Antonio Independent School District v. Rodriguez*⁶² that wealth is a suspect classification only when an individual is denied a benefit because of his poverty and thereby suffers an "absolute deprivation of a meaningful opportunity to enjoy that benefit."⁶³ Regardless of whether housing is a benefit that might be entitled to protection, the fact that plaintiffs were not suffering an absolute deprivation appears to vitiate any claim they might have under *Rodriguez*. The right to housing of a particular quality has been specifically denied status as a fundamental interest,⁶⁴ although arguably *Arlington Heights* does not involve the right to inhabit housing of a particular quality, but rather the right to inhabit housing in a particular location.

58. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Nectow v. City of Cambridge*, 277 U.S. 183, 187 (1928).

59. *Goldblatt v. Hempstead*, 369 U.S. 590 (1962) (upheld mining restrictions on a gravel pit within the city limits that made property virtually useless); *Berman v. Parker*, 348 U.S. 26 (1954) (validated exercise of eminent domain powers in urban renewal program).

60. *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (validation of a local zoning ordinance that placed restrictions on the definition of family as it appeared in the ordinance); *James v. Valtierra*, 402 U.S. 137 (1971) (upholding provision of state constitution requiring that state-developed housing for low income persons be approved only after community approval by referendum).

61. See 1 N. WILLIAMS, *supra* note 53, § 4.03. At one point, however, Justice Douglas seems to have recognized the problem. Concurring in *Reitman v. Mulkey*, 387 U.S. 369 (1967), he wrote, "[L]eaving the zoning function to groups which practice racial discrimination and are licensed by the States constitutes state action in the narrowest sense in which *Shelley v. Kraemer* . . . can be construed." *Id.* at 384-85. See also Justice Marshall's dissent in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 14 (1974).

62. 411 U.S. 1 (1973).

63. *Id.* at 20.

64. *Lindsey v. Normet*, 405 U.S. 56 (1972).

Finally, in remanding the case for consideration of the statutory claim,⁶⁵ the Court appears to reiterate its preference for requiring the legislative branch of government to make those decisions that will have substantial economic or social impact.⁶⁶ In *Washington* the Court made it clear that where statutory and constitutional claims overlap, it prefers to require that a plaintiff carry a heavy burden of proof (absent overt discrimination) with regard to the constitutional claim, leaving it to the legislature, if it so desires, to prescribe more liberal standards in a statutory context.⁶⁷

The Court's deference to the decisions of local officials and its attempt to place the responsibility for the integration of housing upon the legislative branch is a short-sighted and dangerous avoidance of its responsibility. Numerous non-partisan groups have come to the conclusion that the present pattern of racial segregation in housing is a very unhealthy and potentially explosive feature of this society.⁶⁸ On the whole, to deny any group of persons access to reasonably priced housing in the suburbs is to deny that group access to a higher quality education,⁶⁹ to diminish its ability to compete for new jobs in expanding industries,⁷⁰ and to deny it amenities like fresh air, open space, and

65. See text accompanying note 43 *supra*.

66. *Kahn v. Shevin*, 416 U.S. 351 (1974); *Evans v. Abney*, 396 U.S. 435 (1970); *Commissioner v. Brown*, 380 U.S. 563 (1965).

67. 426 U.S. at 246-48.

68. See H. FRANKLIN, D. FALK, & A. LEVIN, IN ZONING: A GUIDE TO INCLUSIONARY ZONING 3 (1974) [hereinafter cited as IN ZONING]; NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, REPORT 1, 219 (1968) [hereinafter cited as CIVIL DISORDERS]; *Testimony of P. Davidoff*, in HOUSE COMM. ON BANKING, CURRENCY & HOUSING, HEARINGS, 94th Cong., 2d Sess. 69-70 (1976) [hereinafter cited as HOUSING COMM. REP.]; U.S. COMM'N ON CIVIL RIGHTS, EQUAL OPPORTUNITY IN SUBURBIA 64-66 (1974) [hereinafter cited as SUBURBIA]; U.S. COMM'N ON CIVIL RIGHTS, TWENTY YEARS AFTER BROWN: EQUAL OPPORTUNITY IN HOUSING 167 (1975) [hereinafter cited as BROWN].

That the segregation in housing patterns is increasing is clear. See SUBURBIA, *supra*, at 4.

69. Due to the broad disparities in fiscal resources available to school districts, the wealthier suburbs have better schools than do the central cities. A comparison of expenditures per pupil and pupil/teacher ratios between central city, and suburban schools shows that expenditures per pupil in suburbs are about 35% greater and that pupil/teacher ratios are about 35% lower. Based on these and other facts, a Senate committee on equal opportunity in education has recommended that HUD take an active role in the encouragement of low and moderate income housing opportunities outside areas of present concentration. SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY, TOWARD EQUAL EDUCATION OPPORTUNITY, 92d Cong., 2d Sess., 44-45, 51-52, 148 (1972) [hereinafter cited as EDUC. OPP. REP.]. See also IN ZONING, *supra* note 68, at 3.

70. See *Opening Remarks*, in HOUSING COMM. REP., *supra* note 68, at 6; *Testimony of P. Davidoff*, in *id.* at 69-70. It should be noted that of the blacks who lived in ghettos that were racked by the riots of the 1960's, almost half of the respondents to a survey attributed the riots, at least in part, to discrimination and unfair treatment, and

a lower crime rate.⁷¹

The movement of job opportunities to the suburban areas has been well documented.⁷² Attracted by the lower property tax rates and increased space available in suburban locations, businesses and manufacturers have located their new facilities there to the extent that from 1952 to 1972 over eighty percent of the newly created jobs in large metropolitan areas were located in suburban areas.⁷³ A large portion of these are blue collar jobs that are usually filled by individuals who would be eligible for low and moderate income housing, but who have difficulty finding adequately priced housing near those jobs.⁷⁴ As a result, some areas are now suffering substantial labor shortages.⁷⁵ Individuals who are forced to commute from the central cities, if it is possible to commute, receive much lower wages for their work when the time and expense of the daily trip to work are factored in.⁷⁶

The society as a whole also pays a high price for these segregated housing patterns. By insisting on the integration of schools but not of

nearly a quarter mentioned the unemployment situation. "Better employment" was chosen almost two-to-one over any other action which the government might take to prevent future disturbances. NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, SUPPLEMENTAL STUDIES 48 (1968). For a thorough description of the social and economic effects that unemployment and underemployment have on inner city residents, see CIVIL DISORDERS, *supra* note 68, at 121-23.

71. The number of arrests per thousand residents is about 50% greater in central cities than in suburban areas. M. HINDELANG, S. DUNN, A. AUMICK & L. SUTTON, SOURCE BOOK OF CRIMINAL JUSTICE STATISTICS—1974, at 336, 341 (1975). In a survey of black workers in Baltimore, the three community problems most cited were, in order, robbery, vandalism and violence. D. SOBIN, THE WORKING POOR 98 (1973).

72. See BUILDING, *supra* note 55, at 47-48; CIVIL DISORDERS, *supra* note 68, at 217; HOUSING COMM. REP., *supra* note 68, at 69-70; NATIONAL COMM. AGAINST DISCRIMINATION IN HOUSING, THE IMPACT OF HOUSING ON JOB OPPORTUNITIES 21 (1968); SUBURBIA, *supra* note 68, at 24.

73. EDUC. OPP. REP., *supra* note 69, at 121. Estimates vary as to the precise magnitude of the trend toward job concentration in the suburbs. Another study cites figures indicating that over 85% of the new jobs were located in the suburbs during the last half of the Sixties. SUBURBIA, *supra* note 68, at 24.

74. CIVIL DISORDERS, *supra* note 68, at 217; SUBURBIA, *supra* note 68, at 25.

75. BABCOCK, *supra* note 54, at 51, 54. For a discussion of the relation between land use controls and the proper functioning of the labor market, see Evans & Vestal, *Local Growth Management: A Demographic Perspective*, 55 N.C.L. REV. 421 (1977).

76. A study of five major metropolitan areas found that in those cities that had transit systems capable of transporting inner city residents to suburban job locations, travel time could range from an hour and a half to five hours a day and might entail three or four transfers. The cost of transit fares ranged from \$4 to \$15 per week. These figures indicate that a worker earning \$150 for a 40-hour week, or \$3.75/hour, could be effectively earning only \$2.25/hour when transit time and expense are accounted for. See BUILDING, *supra* note 55, at 48.

While a white collar suburbanite who commutes into the city may lose a significant portion of his effective wages to transit costs too, he probably had an opportunity to choose his home site.

housing,⁷⁷ the courts have put a heavy burden on already strained school budgets⁷⁸ and have diminished the concept of neighborhood schools through the forced busing of school children. The cost in terms of lost natural energy and community spirit is enormous.⁷⁹ A factor that ought not be overlooked is the loss of integrity that results from a society that claims to be a melting pot, that prides itself on social mobility and yet manages to deny to a significant portion of the population the means to effectuate these principles.⁸⁰

The segregated housing patterns that are in large part responsible for these deficiencies are not necessarily the result of overt racial discrimination. Racial motivations can easily be hidden using accepted practices to manipulate the real estate market without any diminution of the segregative effect.⁸¹ Racial motivations can likewise be easily hidden by zoning officials who offer the protection of property values as a justification for the exclusion of low and moderate income families.⁸² For the Court to appraise local zoning decisions in light of the traditional standards of review is a shallow and ineffective approach that is certain to avoid confronting the real inequities engendered by many local land use regulations.⁸³ The unwillingness of the

77. A study in 1974 concluded that school systems in many of the largest cities and metropolitan areas are becoming increasingly segregated as a result of segregated housing patterns. BROWN, *supra* note 68, at 177-78. See also CIVIL DISORDERS, *supra* note 68, at 236-37, 240-41, 245; *Testimony of P. Davidoff*, in HOUSING COMM. REP., *supra* note 68, at 69.

78. SUBURBIA, *supra* note 68, at 64.

79. For a good discussion of the difficulties encountered in school desegregation attempts, and an analysis of the community control movement, see M. FANTINI, M. GITTELL & R. MAGAT, COMMUNITY CONTROL AND THE URBAN SCHOOL 3-22, 77-100 (1970).

80. See BABCOCK, *supra* note 54, at 50; CIVIL DISORDERS, *supra* note 68, at 1-2; IN ZONING, *supra* note 68, at 3; SUBURBIA, *supra* note 68, at 14.

81. One study provides a particularly good description of how covert discrimination in the housing market can be equally effective through the steering of prospective buyers to particular neighborhoods, control of the listings of available housing, refusal of financial institutions to provide mortgages in certain areas under certain conditions, and the generally negative attitudes of the real estate brokers and organizations. SUBURBIA, *supra* note 68, at 16-23.

That this subtle discrimination is racial and not only economic is suggested by other studies showing that residential segregation based on race is greater than residential segregation based on economic class. See EDUC. OPP. REP., *supra* note 69, at 120. See also CIVIL DISORDERS, *supra* note 68, at 119.

82. See notes 53-55 and accompanying text *supra*.

83. 1 N. WILLIAMS, *supra* note 53, § 5.04. Williams refers to this stage in the development of land use controls as "Faith in Local Autonomy" and compares it to the next stage of "Sophisticated Judicial Review," which is a wiser, more sceptical, and more realistic view of local government and of the various parties in interest . . . [characterized by]

legislative branch to slow or reverse this trend⁸⁴ is evidenced by the inefficacy of the Fair Housing Act.⁸⁵ It is at just such a point⁸⁶ that the Court has previously accepted its responsibility to act to protect the basic democratic values of the society from the parochial and self-serving actions of local governments.⁸⁷

A more realistic analysis of . . . the relation between private rights and public needs

A clearer definition of basic democratic values and their implications for land use controls

. . . .

. . . [And] a more active judicial review, examining local action with care and ready to carry out its constitutional responsibility for enforcing basic values.

Id. § 5.05, at 107-08.

84. One of the major difficulties with the Court's apparent reliance on congressional activity in this field is that those persons presently trapped in inner city areas do not have the political power to force congressional action. The departure of substantial numbers of the middle classes to the suburbs has left the cities weakened politically. BUILDING, *supra* note 55, at 7; H. ROSE, *THE BLACK GHETTO* 107-09, 139-40 (1971).

85. Among the complaints are that HUD is grossly understaffed to deal with the number of complaints it receives, and that HUD has not pursued the provisions of the Act with any particular zeal. See BROWN, *supra* note 68, at 167-68, 174; SUBURBIA, *supra* note 68, at 40-42; NATIONAL COMM. AGAINST DISCRIMINATION IN HOUSING & URBAN LAND INSTITUTE, *FAIR HOUSING LEGISLATION AND EXCLUSIONARY LAND USE* 11 (1974) [hereinafter cited as FAIR HOUSING].

86. The need for the Court, in particular, to act now is acknowledged by a number of authorities:

[T]he relative weakness and lack of success of nonlitigative approaches to the problem of exclusionary land use have made the resort to litigation necessary [T]he fact that litigation has assumed central importance in the attack on exclusionary barriers is . . . a reflection of the relative failure thus far to develop other techniques

FAIR HOUSING, *supra* note 85, at 11.

After noting that the Federal government had started late and had done a lot of talking about dispersal, but had catered to the exclusionary desires of suburban whites and failed to provide effective action either legislatively or administratively, the United States Civil Rights Commission decided that "only in Federal and State adjudication of exclusionary land use issues are there signs of an understanding of the steps which must be taken if there is to be a real commitment to dispersal." BROWN, *supra* note 68, at 167-68.

87. This would not be the first instance in which the Court had enforced a right not traceable to any specific constitutional provision. In 1941 the Court was faced with a California statute that made it a crime to assist indigents entering the state. Holding the statute invalid, the Court stated that no state could wall itself off from national problems by erecting barriers to interstate migration. *Edwards v. California*, 314 U.S. 160, 162-63 (1941). The right to interstate migration is not specified in the Constitution, but the Court recognized that such a right exists under the fourteenth amendment. *Id.* at 163.

In 1953 the Court found that education of school children was so important to the individuals and the society that children could not be denied the benefits of racially desegregated school systems. *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1953). The right to an education in a desegregated school system, however, is nowhere specified in the Constitution, and the equal protection clause would seem, on its face, to justify separate but equal schools.

In 1968 the Court was confronted with a state statute that prohibited the use of

The Supreme Court could have begun to remedy some of these deficiencies without a major break with precedent. The regional perspective taken by the court of appeals could have been implemented either by imposing an affirmative duty upon communities to provide in their zoning ordinances for housing for families at all income levels, or by prohibiting a town from frustrating the actions of those who would attempt to provide housing for low and moderate income groups when alternative housing was not available in the area.

There is substantial precedent in at least three states for the first alternative.⁸⁸ Courts in Pennsylvania,⁸⁹ New Jersey⁹⁰ and New York⁹¹

contraceptives. *Griswold v. Connecticut*, 381 U.S. 479 (1965). Speaking for the Court, Justice Douglas looked to the "penumbra" of five of the Bill of Rights amendments to find a right of privacy to protect the sanctity of the marital relationship. *Id.* at 481-86. See also Williams, *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROB. 317, 318-19 (1955).

Although the Court has not recognized the quality of housing as a fundamental interest, it has often recognized the importance of equal opportunities in housing. See *Hunter v. Erickson*, 393 U.S. 385 (1969); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Block v. Hirsh*, 256 U.S. 135 (1921).

88. In addition to the precedents, however, there are numerous reasons why the first alternative is the more attractive of the two. An affirmative duty has the advantage of requiring that a community plan for the inclusion of low and moderate income housing. Low income plaintiffs, then, would not be required to go to the expense of purchasing a parcel of land and drawing up project plans in order to provide the requisite standing to bring suit, as was required in *Warth v. Seldin*, 422 U.S. 490 (1975), discussed in note 13 *supra*. The community and the court are not then restricted to the specific parcel of land selected by the plaintiffs (and probably chosen for its price and not because it was the logical location for multifamily housing) in fashioning a remedy. See generally Moskowitz, *Standing of Future Residents in Exclusionary Zoning Cases*, 6 AKRON L. REV. 189 (1973).

The affirmative duty remedy can easily be linked to a region-wide determination of housing needs and the regional needs-affirmative duty approach appears better to match the solution with the problem. Numerous studies have discussed the exclusionary effects of allowing each small incorporated community to use the police power to zone its land. See, e.g., BUILDING, *supra* note 55, at 18-20; SUBURBIA, *supra* note 68, at 29-33. See also *Reitman v. Mulkey*, 387 U.S. 369, 384-85 (1967) (Douglas, J., concurring). The self-protective act of a single community, by itself, does not really have a substantial effect on the metropolitan housing market. But when seen in concert with similar acts by like communities, each acting in its own best interest, the pattern and effects become obvious. See E. BERMAN, *ELIMINATING EXCLUSIONARY ZONING* 6 (1974).

The affirmative duty approach has the further advantage of eliminating the competitive disadvantages to which specific communities might be put under the second alternative. Where each community is required to accept a proportion of low and moderate income housing needs of the region, each suffers the same "loss," if there is one, and none is unfairly disadvantaged.

89. *In re Kit-Mar Builders, Inc.*, 439 Pa. 466, 474-76, 268 A.2d 765, 768-69 (1970) (no township has the power to decide who may or may not live there while disregarding the interests of the entire area); *In re Girsh*, 437 Pa. 237, 263 A.2d 395 (1970) (township may not exclude uses that are in demand); *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 527-28, 215 A.2d 597, 610

have accepted in varying form and degree the concept of a regional perspective in the matter of zoning for low and moderate income housing. New Jersey, for example, requires that a developing municipality make realistic, through its zoning regulations, the accommodation of its fair share of the region's low and moderate income housing needs.⁹²

In the federal courts there is some precedent for the latter alternative.⁹³ A number of lower courts⁹⁴ have based their holdings in exclusionary zoning cases on the availability of land for low and moderate income housing in the region. While those courts almost unanimously have held for the defendant municipalities,⁹⁵ their use of the regional perspective indicates that it is not unreasonable to consider the acts of a single municipality as they may affect a larger metropolitan area. Further, in *Hills v. Gautreaux*,⁹⁶ a case involving discrimination in public housing,⁹⁷ the Supreme Court held permissible an inter-jurisdictional remedy without having found an inter-jurisdictional violation, when that type of relief was the only reasonable alternative.⁹⁸

(1965) (local governments may not use zoning to deny to the growing population of an area sites for residential development).

90. *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713, *cert. denied and appeal dismissed*, 423 U.S. 808 (1975) (developing municipality must provide for its fair share of regional needs for low and moderate income housing).

91. *Golden v. Planning Bd. of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138, *appeal dismissed*, 409 U.S. 1003 (1972) (town growth management plan must provide for assimilation of regional population expansion).

92. *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 174, 336 A.2d 713, 724, *cert. denied and appeal dismissed*, 423 U.S. 808 (1975).

93. *United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974); *Crow v. Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), *aff'd*, 457 F.2d 788 (5th Cir. 1972). *See also Shannon v. HUD*, 436 F.2d 809, 821 (3d Cir. 1970).

94. *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 517 F.2d 409 (7th Cir. 1975), *rev'd*, 97 S. Ct. 555 (1977); *Ybarra v. City of Los Altos Hills*, 503 F.2d 250, 254 (9th Cir. 1974); *Acevedo v. Nassau Co.*, 369 F. Supp. 1384, 1390 (E.D.N.Y.), *aff'd*, 500 F.2d 1078 (2d Cir. 1974); *Steel Hill Dev., Inc. v. Town of Sanborn-ton*, 469 F.2d 956, 962 (1st Cir. 1972).

95. The sole exception was the Seventh Circuit's decision in *Arlington Heights*.

96. 425 U.S. 284 (1976).

97. Plaintiffs, black tenants and applicants for public housing in Chicago, brought class actions against the Chicago Housing Authority and HUD. The action against the authority alleged that it had deliberately selected public housing sites in Chicago to avoid integrating white neighborhoods in violation of 42 U.S.C. § 1983 (1970) and the fourteenth amendment. The action against HUD was based on 42 U.S.C. § 2000d (1970) and the fifth amendment. *Id.* at 286.

98. The particular facts of the case, however, may have had a lot to do with the remedy. Chicago was found to have actively discriminated on the basis of race in its site selection process, and the remedy would not require the redrawing of any jurisdictional boundaries because HUD could enforce the remedy. Note, however, that the Court held, at least in dictum, that the district court had the power to fashion a remedy for

The case of *Village of Arlington Heights v. Metropolitan Housing Development Corp.* presented the court with an opportunity to elaborate on its recent equal protection standards and to deal with the segregative effects of exclusionary zoning. The Court used *Arlington Heights* as a vehicle to demonstrate its aversion to equal protection claims based on a racially discriminatory impact. It also foreclosed, for the present, the use of the fourteenth amendment as a means to assure integrated housing and its attendant societal benefits.

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violation from among "all reasonable methods . . . available to formulate an *effective* remedy." *Id.* at 297 (quoting *North Carolina State Bd. of Educ. v. Swann*, 402 U.S. 43, 46 (1971)) (emphasis added).