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City of Edmonds v. Oxford House: Group Homes in the Family's Backyard

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City of Edmonds v. Oxford House: Group Homes in the Family's Backyard*[1]

I. INTRODUCTION

One of the "basic building block[s]" of communities throughout the United States are districts set aside by local zoning ordinances for residential use by single families. Single-family zones[2] have been protected by the United States Supreme Court for over sixty-nine years.[3] They effectively discriminate against the handicapped by excluding group homes for the handicapped that require a large number of unrelated individuals to effectively operate.[4] In 1988, Congress amended the Fair Housing Act (FHA) making it illegal for local zoning codes to discriminate against the handicapped, while including an exemption for any ordinance regarding a maximum number of occupants. *City of Edmonds v. Oxford House*[5] discusses the issue of whether traditional single-family zones' capping of the number of unrelated individuals who may live in a house falls within the exemption from the FHA. The Supreme Court held that the FHA only exempts single-family zones from imposing a cap on *all* occupants. The consequences of this decision require that communities either litigate the question of whether single-family zones effectively excluding group homes discriminates against the handicapped, modify the single-family zone to fall within the FHA exemption, or accept group homes in single-family zones—a politically unacceptable notion.

This Note examines the holding of the Court, analyzes its reasoning and postulates the various alternatives communities are faced with as a result of the ruling. Part II describes the FHA, noting the conflict in inter-

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1. Thanks to Professor Dale A. Whitman for his helpful comments and contributions to this article.

2. Petition for Writ of Certiorari at 8, City of Edmonds v. Washington State Building Code Council, 18 F.3d 802 (9th Cir 1994) (No. 94-23). *See also* Douglas E. Miller, Note, *The Fair Housing Act, Oxford House, and the Limits of Local Control over the Regulation of Group Homes for Recovering Addicts*, 36 WM. & MARY L. REV. 1467, 1470, 1488 (1995).

3. Miller, *supra* note 2; Village of Euclid, Ohio v. Amber Realty Co., 272 U.S. 365 (1926). Petition for Writ of Cert. at 8, Washington State, (No. 94-23).

4. Group homes for the handicapped generally require a minimum of six individuals to "ensure financial self-sufficiency and to provide the mutual support necessary for recovery from alcohol and drug abuse." Brief for Respondents at 9, City of Edmonds v. Washington State Building Code Council, 18 F.3d 802 (9th Cir. 1994) (No. 94-23).

5. 115 S. Ct. 1776, 1780 (1995).

pretation of the exemption from the beginning. It also notes the conflicting interpretations of the FHA exemption by the Ninth and Eleventh Circuits. Part III summarizes the facts of the case, and the majority and dissenting opinions. Part IV analyzes the reasoning of the majority and dissenting opinions. Finally, Part V considers the alternatives available to communities and the likely consequences of each.

II. BACKGROUND

Congress, in 1988, amended the Fair Housing Act (FHA), to prohibit discrimination against the handicapped in housing.[6] The FHA as amended defined "handicap" as including any person with a physical or mental impairment which limits either the person's "major life activities" or has a record of such an impairment.[7] Because courts interpreting the FHA have held that a recovering drug addict or alcoholic qualifies as a handicapped person,[8] a community cannot discriminate against such an

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6. Pub. L. No. 100-430, 102 Stat. 1619 (1988) (codified at 42 U.S.C. § 3601-3260 (1988)). Miller, *supra* note 2, at 1472. Another legislative change in the FHA included the "expansion of prohibited bases" to familial status. William L. Browning, *A Proactive Approach May Be a Bank's Best Fair Lending Strategy*, 14 No. 3 BANKING POL'Y REP. 28, 38 (1995).

7. The FHA defines "handicap" as:

> (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
> (2) a record of having such an impairment, or
> (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802)).

42 U.S.C. § 3602(h) (1988). *See also* Cindy L. Soper, Note, *The Fair Housing Amendments of 1988: New Zoning Rules for Group Homes for the Handicapped*, 37 ST. LOUIS U. L.J. 1033, 1033-35 (1993); Miller, *supra* note 2, at 1483-84; William Graham, Note, *There Goes the Neighborhood: The Evolution of "Family" in Local Zoning Ordinances*, 9 TOURO L. REV. 699, 707-11 (1993). *But see* City of St. Joseph v. Preferred Family Healthcare, Inc., 859 S.W.2d 723, 725 (Mo. Ct. App. 1993) (holding that the plain meaning of physical or mental impairment "addresses . . . physically or mentally handicapped persons . . . but not persons suffering from alcohol or drug abuse . . . since these terms address different populations").

8. United States v. Southern Management Corp., 955 F.2d 914, 921 (4th Cir. 1992) (holding that individuals who are former drug users or addicts are handicapped if they are not currently using an illegal drug). The court also noted that the legislative history of the FHA Amendment reprinted in 1988 U.S.C.C.A.N. 2173, 2183 clearly demonstrates that Congress intended to use the word "handicap" as defined in the Rehabilitation Act which states:

> (C)(1) For purposes of subchapter V of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use. (ii) nothing in clause (I) shall be construed to include as an individual with a disability who - (I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use, (II) is participating in a supervised rehabilitation program and is no longer engaging in such use, or (III) is erroneously regarded as engaging in such use,

individual so far as housing is concerned. In amending the FHA, Congress also exempted "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."[9] Because group homes for recovering alcoholics and drug addicts often exceed the maximum number of occupants allowed under local zoning ordinances, the question as to whether such local zoning ordinances are under the exemption in the FHA regarding maximum occupancy limits has been raised.[10]

When the Eleventh Circuit and the Ninth Circuit individually analyzed this issue, their rulings conflicted. In *Elliott v. City of Athens, Ga.,*[11] the Eleventh Circuit held that traditional single family zones were exempt from the FHA in regard to maximum occupancy limit.[12] The court supported its reasoning in a similar analysis of zoning ordinances performed by the Third Circuit in *Doe v. City of Butler*, 892 F.2d 315, 320 (3d Cir. 1989).[13] Conversely, in *City of Edmonds v. Washington State Bldg. Code Council*, the Ninth Circuit expressly disagreed with the conclusion of the Eleventh Circuit, holding that "Edmonds' single-family use restriction is not exempted."[14] The United States Supreme Court accordingly granted certiorari to resolve the direct conflict between the Ninth and the Eleventh Circuit decisions concerning the scope of this exemption in *City of Edmonds v. Oxford House.*[15]

In a six-to-three decision, the Supreme Court held that only ordinances which impose "total occupancy limits" are exempt from the FHA's scope.[16] Because the limit imposed by the City of Edmonds (-Edmonds) did not equate to an absolute maximum on occupancy, the Court denied Edmonds' motion for a summary judgment and the question to be decided by the lower court became whether Edmonds' actions were in violation of the "FHA's prohibitions against discrimination set out in

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but is not engaging in such use.

29 U.S.C. § 706(8)(C)(1991). *See also* City of Edmonds v. Washington State Bldg. Code Council, 18 F.3d 802, 804 (9th Cir. 1994), *aff'd*, City of Edmonds v. Oxford House, 115 S. Ct. 1776 (holding "[p]articipation in a supervised drug rehabilitation program, coupled with non-use, meets the definition of handicapped"); Peabody Properties, Inc. v. Sherman, 638 N.E. 2d 906 (Mass. 1994) (holding the FHA protects "an addict who is participating in a supervised rehabilitation program and who is no longer using illegal drugs").

9. 42 U.S.C. § 3607(b)(1).

10. Oxford houses typically require more than eight residents to be feasible. *See* Oxford House-C v. City of St. Louis, 843 F. Supp. 1556, 1578 (E.D. Mo. 1994). *See also* Soper, *supra* note 7, at 1037; Miller, *supra* note 2, at 1512-13.

11. 960 F.2d 975 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 376 (1992).

12. *Id.* at 981.

13. *Id.* at 980.

14. *Washington State*, 18 F.3d at 807.

15. *Edmonds*, 115 S. Ct. at 1780.

16. *Id.* at 1779.

sections 3604(f)(1)(A) and (f)(3)(B)."[17] As a result of this decision, the *Edmonds* Court has effectively required that communities throughout the United States accept group homes into single-family dwelling zones—a politically unacceptable option.

III. CITY OF EDMONDS VS. OXFORD HOUSE

A. The Facts

In the summer of 1990, Oxford House leased a home in a neighborhood zoned exclusively for single-family homes. Edmonds, like thousands of communities nationwide, restricted use of houses within the single-family zone to one family, defined as "an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage."[18] Oxford House began to use the leased property as a group home, which housed "[ten] to [twelve] adults recovering from alcoholism and drug addiction."[19] Edmonds issued citations charging the Oxford House with violation of the housing code.[20] The "Oxford House asserted reliance on the [FHA] which declares it unlawful 'to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . that buyer or a renter.' "[21] Edmonds sued Oxford House in district court, seeking a declaratory judgment that Edmonds' single-family zoning ordinance was exempt from the FHA's anti-discrimination requirement, while Oxford House counterclaimed under the FHA.[22] Both parties filed for summary judgment, and the District Court granted Edmonds' motion holding the ordinance exempt from the FHA. On appeal the Ninth Circuit reversed, holding the exemption inapplicable to Edmonds' single-family zoning ordinance.[23]

B. The Majority Opinion.

First, the Court defined the sole issue before it: "whether Edmonds' family composition rule qualifies as a 'restrictio[n] regarding the maxi-

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17. *Id.* at 1783.

18. Petition for Writ of Certiorari at 8, City of Edmonds v. Washington State Building Code Council, 18 F.3d 802 (9th Cir. 1994) (No. 94-23) (quoting Edmonds Community Development Code (ECDC) § 21.30.010 (1991)).

19. *Edmonds*, 115 S. Ct. at 1779.

20. *Id.*

21. *Id.* (quoting 42 U.S.C. § 3604(f)(1)(A)).

22. *Id.* at 1779.

23. *Id.*

mum number of occupants permitted to occupy a dwelling.' "[24] If the ordinance did qualify, then the FHA exempted it and summary judgment was proper.

Next, the Court recognized that its reading of the exemption should be constrained narrowly. Noting that precedent recognized the FHA's policy as "broad and inclusive,"[25] the Court restricted its analysis of the exemption to a narrow reading in order "to preserve the primary operation of the [policy]."[26]

Once the Court determined to read the exemption narrowly, it focused on interpreting the exemption by recognizing two classes of restrictions on real property—land use restrictions and maximum occupancy restrictions.[27] By distinguishing between these two types of restrictions, the Court found it could better focus on the proper interpretation of the exemption by referring to the type of restriction referred to in the statute.

The Court noted that a land use restriction designates " 'districts in which only compatible uses are allowed and incompatible uses are excluded.' "[28] These types of restrictions "preserv[e] the character of neighborhoods"[29] by defining the term "family" and by correspondingly restricting the use of all real property within the zone to legally defined families.[30] In doing so, a neighborhood is able to create a zone "where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."[31]

While a land use restriction attempts to create a haven from outside influences, a maximum occupancy restriction seeks to "protect the health and safety by preventing dwelling overcrowding."[32] Generally, such restrictions impose a cap on the "number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms."[33]

The Court then compared the statutory exemption to the two types of restrictions recognized and found that the FHA only exempted maximum occupancy restrictions. The Court noted that " 'restrictions regarding the maximum number of occupants permitted to occupy a dwelling' surely

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24. *Id.* (quoting 42 U.S.C. § 3607(b)(1)).
25. *Id.* (quoting Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 209, 212 (1972)).
26. *Id.* (quoting Commissioner v. Clark, 489 U.S. 726, 739 (1989)).
27. *Id.* at 1780.
28. *Edmonds*, 115 S. Ct. at 1780 (quoting D. MANDELKER, LAND USE LAW § 4.16, 113-14 (3d ed. 1993)).
29. *Id.* at 1781.
30. *Id.*
31. *Id.* (quoting Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974)). *See also* Miller, *supra* note 2, at 1472.
32. *Edmonds*, 115 S. Ct. at 1781.
33. *Id.*

encompasses maximum occupancy restrictions."[34] But because land use restrictions attempt to "preserve the family character of a neighborhood,"[35] the Court was unable to reconcile such restrictions with an exemption regarding the occupancy limits. The Court buttressed its interpretation by referring to the legislative history noted in the House Committee Report which stated that "[r]easonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status."[36] Therefore, the Court held that only ordinances which "cap the total number of occupants in order to prevent overcrowding of a dwelling . . . fall within § 3607(b)(1)'s absolute exemption from the FHA's governance."[37]

Because Edmonds' ordinance is a "classic exampl[e] of a use restriction and complementing family composition rule . . . [which does] not cap the number of people who may live in a dwelling,"[38] the Court held that the ordinance was "not exempt from the FHA under section 3607(b)(1)."[39] The Court used a simple test to determine whether an ordinance was exempt from the FHA. For an ordinance to be exempt, one must be able to answer a simple question: "What is the maximum number of occupants permitted to occupy a house?"[40] The Edmonds' ordinance imposes no maximum occupancy limit on a house occupied by people related "by genetics, adoption, or marriage."[41] Such a household could comprise "[t]en siblings, their parents and grandparents."[42] Since the question cannot be answered in such a case, the ordinance does not fall within the exemption granted in section 3607(b)(1). Only *absolute* occupancy limits, not limits based on familial relationships, fall within the FHA exemption.[43]

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34. *Id.* (quoting 42 U.S.C. § 3607(b)(1)). While such a conclusion would appear to be a *quod erat demonstratum*, it is referenced to emphasize the importance of the majority's differentiation between these two classes of zoning ordinances. As shown later in the dissent's opinion, the majority's opinion necessitates this differentiation in order to exclude Edmonds' ordinance from the class of "*any* restrictio[n] *regarding* a maximum occupancy limit" which the FHA exempts. *See infra*, notes 54-59,110-125.

35. *Id.* at 1782.

36. *Id.* at 1782 n.8 (quoting H.R. REP. No. 100-711, at 31 (1988)). The *Edmonds* Court also referred to Fair Housing Amendments Act of 1988: Hearings on H.R. 1158 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 100th Cong., 1st Sess., 656 (1987) which explicitly referred to the exemption as allowing landlords to refuse to "stuff large families into small quarters." *Id.* at 1782 n.9.

37. *Edmonds*, 115 S. Ct. at 1782.

38. *Id.*

39. *Id.* at 1783.

40. *Id.* at 1782.

41. *Id.* (quoting ECDC § 21.30.010.)

42. *Edmonds*, 115 S. Ct. at 1782-83.

43. *Id.* at 1781.

Finally, the Court summarily dismissed the petitioner's claim that "subjecting single-family zoning [to the nondiscrimination requirements of the FHA] will 'overturn Euclidian zoning.' "[44] Rather than address this issue, the Court noted that its holding was of limited scope[45]—merely determining whether single-family zoning is subject to the "FHA's anti-discrimination provisions."[46] Because the FHA requires "only 'reasonable' accommodations to afford persons with handicaps 'equal opportunity to use and enjoy' housing,"[47] it would still be possible to protect the effectiveness and purpose of single-family zoning.

C. The Dissenting Opinion.

In the dissenting opinion, Justice Thomas, joined by Justices Scalia and Kennedy, pointed to two errors made by the majority: 1) failure "to give effect to the plain language of the statute"[48]; and 2) the improper focus "on 'maximum occupancy restrictions' and 'family composition rules' . . . which are "simply irrelevant to [the] case."[49]

Because the plain language of the statute gives a broad exemption to restrictions regarding a maximum number of occupants, the dissent found that the majority erred. Rather then "set forth a narrow exemption only for 'absolute' or 'unqualified' restrictions regarding the maximum number of occupants,"[50] the exemption applies to "*any* . . . restrictio[n] regarding the maximum number of occupants."[51] Because Congress employed the terms "any" and "regarding" in the exemption, the dissent argued the exemption "sweeps broadly to exempt any restrictions regarding such maximum number."[52]

Under the dissent's reasoning, any statute which imposes a restriction "regarding" the maximum number of occupants can "take advantage of the exemption."[53] ECDC section 21.30.010 restricts the maximum number of unrelated occupants to five. This establishes "a rule that 'no house in [a single family] area of the city shall have more than five occupants unless it is a [traditional kind of] family.' "[54] Justice Thomas therefore argued that "petitioner's zoning code impose[d] a qualified 'restrictio[n] regarding the maximum number of occupants permitted to occupy a

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44. *Id.* at 1783.
45. *Id.*
46. *Id.*
47. *Edmonds*, 115 S. Ct. at 1783 (quoting 42 U.S.C. §§ 3604(f)(1)(A) and (f)(3)(B)).
48. *Id.* at 1783 (dissenting opinion).
49. *Id.* at 1785.
50. *Id.* at 1784.
51. *Id.* at 1783 (quoting 42 U.S.C. § 3607(b)(1) (emphasis added in original)).
52. *Edmonds*, 115 S. Ct. at 1784.
53. *Id.*
54. *Id.* at 1783.

dwelling."[55] Since the statute exempts "any" such restriction, the exemption applies in the instant case.[56]

Justice Thomas noted that the majority failed to ask the right question due to its flawed premise that the exemption should be read narrowly. The failure leads to the invention of categories of zoning rules which improperly restrict the exemption in an analysis which is entirely irrelevant to the case. According to the dissent, the question was not "[w]hat is the maximum number of occupants permitted to occupy a house",[57] but "whether [the ordinance] imposes 'any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling.' "[58]

The dissent took issue with the majority's premise that the exemption must be read " 'narrowly in order to preserve the primary operation of the [policy]' "[59] on four grounds. First, Justice Thomas questioned the logic of requiring an exemption to any statute with a "policy" to be read narrowly, since every statute has a "policy."[60] Second, "by giving [the exemption] an artificially narrow reading . . . [the majority] . . . 'prevent[ed] the effectuation of congressional intent.' "[61] Third, Justice Thomas argued the majority's narrow reading of the exemption "clashe[d] with our decision in *Gregory v. Ashcroft*, 501 U.S. 452, 456-470 (1991)" which broadly interpreted an exemption included in the Age Discrimination in Employment Act (ADEA) of 1967[62] even though the ADEA " 'broadly prohibits' age discrimination in the workplace."[63] Finally, the dissent contended that because " 'zoning laws and their provisions . . . are peculiarly within the province of state and local legislative authorities,' "[64] Congress should not be allowed to impliedly preempt the States' historic powers.[65] For these reasons, according to the dissent, the exemption must be read broadly.

Justice Thomas further criticized the Court for creating categories of zoning rules and determining that the statutory exemption encompasses only one category—"maximum occupancy restrictions." The dissent noted that the statutory exemption "bear[s] a familial resemblance" to "maximum occupancy restrictions" as defined by the Court and "surely

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55. *Id.* at 1785.
56. *Id.*
57. *Edmonds*, 115 S. Ct. at 1782.
58. *Id.* at 1788 (dissenting opinion).
59. *Id.* at 1780 (quoting *Clark*, 489 U.S. at 726).
60. *Id.* at 1785 (dissenting opinion).
61. *Id.* (quoting Board of Governors, FRS v. Dimension Financial Corp., 474 U.S. 361, 374 (1986)).
62. 81 Stat. 602, as amended, 29 U.S.C. §§ 621-634 (1988 ed. and Supp. V).
63. *Edmonds*, 115 S. Ct. at 1786 (dissenting opinion).
64. *Id.* (quoting Warth v. Seldin, 422 U.S. 490, 508 n.18 (1975)).
65. *Id.*

encompasses" that category.[66] However, the "obvious conclusion . . . tells us nothing about whether the statute also encompasses ECDC section 21.30.010."[67] Therefore, while the majority's opinion "provides guidance for future cases, it is completely irrelevant to the question presented in [*Edmonds*]."[68]

The dissent also criticized the majority for inventing a category of zoning restrictions termed as "family composition rules"—then declaring that section 3607(b)(1) does not encompass it. Justice Thomas noted that the Court based its judgment on "family composition rules" while only "briefly alud[ing] to [its] derivation," concluded ECDC section 21.30.010 was a "classic exampl[e],"[69] and announced its conclusion that such rules do not fit within the statutory exemption,[70] and that the majority's conclusion "is not reasoning; it is *ipse dixit*."[71] Finally, the dissent noted that one using the reasoning of the majority would infer "3607(b)(1) does not encompass zoning rules that have one particular purpose . . . or . . . refer to the qualitative as well as quantitative character of a dwelling,"[72] even though such distinctions are "noticeably absent from the text of the statute."[73]

IV. ANALYSIS

The Court's reasoning can be broken into various parts. First, both the majority and the dissent agreed on the issue in the case—whether the statutory exemption includes ordinances which do not impose a maximum occupancy requirement on related as well as unrelated individuals.[74] While the dissent argued that the statute should be applied as written under the plain meaning rule, thereby exempting Edmonds' ordinance,[75] the majority immediately began to interpret the statute.[76] The majority started by limiting the application of the exemption under the established principle of reading narrowly exemptions to a statute which has a broad pol-

66. *Id.* at 1787.
67. *Id.*
68. *Edmonds*, 115 S. Ct. at 1787.
69. *Id.* (quoting *ante*, at 1782).
70. *Id.*
71. *Id.*
72. *Id.* at 1788.
73. *Edmonds*, 115 S. Ct. at 1788.
74. *Id.* at 1780; *Id.* at 1788 (dissenting opinion).
75. *Id.* at 1783.
76. *Id.* at 1780.

icy.[77] The majority then used the legislative history[78] and writings by experts in zoning law to buttress its interpretation.[79]

A. Whether Statutes Which Do Not Impose Maximum Occupancy Limits on All Inhabitants Are Exempt from the FHA

Clearly, the only issue before the Court was the applicability of the statutory exemption to ordinances which impose a restriction on the maximum number of occupants but not all occupants. The appellant attempted to frame the issue as "'overturn[ing] Euclidian zoning' and 'destroy[ing] the effectiveness and purpose of single-family zoning.'"[80] However, the dispute between the lower courts was on the breadth of the exemption, not the consequence of either action. Only the "threshold question" of whether the ordinance is exempt from the FHA lay before the Court.[81] Properly, the Court considered only the factors relevant to the issue.

B. Plain Meaning Rule Prohibits Interpretation of a Statute Which Is Not Ambiguous

The failure of the majority "to give effect to the plain language of the statute" drove the entire dissent opinion.[82] While the majority devoted a substantial part of the opinion to interpreting the statute,[83] the dissent quickly applied the statute as written and determined Edmonds' ordinance was exempt. The plain meaning rule requires that absent some ambiguity in a statute, interpretation of the statute through use of legislative history or other materials is improper.

The majority failed to declare outright that the statutory exemption contained ambiguities. While one could argue that ambiguity must be present since the circuit courts issued opposite rulings, to do so would

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77. *Edmonds*, 115 S. Ct. at 1780.

78. *Id.* at 1781-82.

79. *Id.* at 1780-81.

80. *Id.* at 1783 (quoting Brief for Petitioner 11, 25).

81. *Id.* This reasoning, however, may have carried some weight with the dissent. Justice Thomas noted that because the majority stipulates the statute is ambiguous, allowing the statute to "'pre-empt the historic powers of the States'" is entirely improper. To do so allows Congress to ambiguously intervene in traditional state and local powers of zoning contravenes the Court's holding in Gregory v. Ashcroft, 501 U.S. 452, 460-61 (1991) (requiring that Congress make its intention "clear and manifest" when intervening in historic powers of the States). *Edmonds*, 115 S. Ct. at 1786 (dissenting opinion). Applying *Gregory*, the statute must be read broadly in order to prevent an ambiguous intervention in historic state and local powers which would invalidate thousands of local zoning ordinances. *Id.*

82. *Edmonds*, 115 S. Ct. at 1783.

83. Of the approximate five page majority opinion, one and one-half pages were devoted to the facts and case history, two pages were used in interpreting the statute, with the remainder dedicated to the application of the facts to the interpreted statute.

imply ambiguity in all cases where there is judicial disagreement.[84] Such an implication of ambiguity would render the plain meaning rule ineffective.

Rather than first determine whether the statutory exemption was ambiguous, the Court immediately began to use the legislative history and writings by experts concerning zoning restrictions to create classifications of restrictions used in the interpretation of the statute. This interpretation was advanced despite any reference to such classifications of restrictions in the statute.[85] The majority then applied its interpreted version of the statute to Edmonds' ordinance and held it to be not exempt.

The legislative history can be read to reflect an intent by Congress to eliminate discrimination against group homes for the handicapped through local zoning ordinances. In the House report submitted with the legislation, the Judiciary Committee recognized the existence of "health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities . . . not imposed on families and *groups of similar size of other unrelated people* . . . which have the effect of discriminating against persons with disabilities."[86] This report asserts that Congress amended the FHA "to prohibit special restrictive covenants or other terms or conditions, or denials of service because of an individual's handicap and which have the effect of excluding, for example, congregate living arrangements for persons with handicaps."[87] Furthermore, the provisions of the FHA were intended to "apply to state or local land use and health and safety laws, regulations, practices or

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84. While ambiguity surely leads to conflicting opinions, to assert that any situation with conflicting opinions in the application of a statute necessitates that the statute is ambiguous is clearly a non sequitur. The Court has expressly held that split of authority in the Circuits does not establish the ambiguity of a statute. Reno v. Korray, 115 S. Ct. 2021, 2029 (1995); Beecham v. U.S., 114 S. Ct. 1669 (1994) (declaring a statute to be plain and unambiguous despite a disagreement between two circuits); Howe v. Smith, 452 U.S. 473 (1981) (resolving that despite a conflict in the circuits a statute was unambiguous). The plain meaning rule measures ambiguity not by a "division of judicial authority," but by statutory ambiguity inherent in the statute. Moskal v. U.S., 498 U.S. 103, 108 (1990).

85. *See Edmonds*, 115 S. Ct. at 1787.

86. H.R. REP. No.100-711, (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173 (emphasis added).

87. *Id.* It would also be plausible to read this history in a way entirely opposite to the majority's reading. Rather than prohibit discrimination against any group home for the handicapped regardless of the number of occupants, the report seems to merely prohibit discrimination which results in the exclusion of group homes for the handicapped while allowing *similar sized* group homes for the non-handicapped. In other words, if a zoning ordinance has the effect of allowing in a group home with 10 non-handicapped occupants but excludes a group home of five occupants it would be considered discriminatory and unlawful under the FHA. However, if a zoning ordinance excluded any group home with 10 occupants, it would appear to be proper since it is not discriminating against "groups of similar size[s] of other unrelated people." *Id.*

decisions."[88] Clearly Edmonds' ordinance was within the general scope of the FHA.

While Edmonds' ordinance is obviously subject to the FHA, the legislative history is less clear as to the purpose of the exemption. The Committee's report mentions that the FHA's provisions "are not intended to limit the applicability of any reasonable local, state, or federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit."[89] In passing, the report illustrates typical ordinances noting that the maximum is "based on a minimum number of square feet in the unit or the sleeping areas of the unit."[90] The only clarification the report offers regarding the exemption is that "[r]easonable limitations by governments would be allowed to continue, as long as they were applied to all occupants."[91] Still, the exemption's purpose remains unclear. Despite a clear absence of the purpose of the exemption, the majority managed to decipher a Congressional intent that "rules that cap the total number of occupants in order to prevent overcrowding" are exempt while rules that aim to "preserve the family character of a neighborhood" are not exempt.[92] Thus, the majority found Congress intended to provide fair housing by eliminating discrimination against the handicapped while excluding rules with a purpose to prevent overcrowding.

The majority has shown its preference for implementing the legislative intent even when it conflicts with the effect that the plain meaning rule would give. While the Court does not disclose the reason it ignored

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88. *Id.*, *see* Soper, *supra* note 7, at 1046.

89. H.R. REP. No.100-711, (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173 (emphasis added).

90. *Id.*

91. *Id.*, *see also* Jordan Herman, Note, *Yes in Your Backyard! Occupancy Restrictions, Use Controls, and the Fair Housing Amendments Act*, 22 SPG HUM. RTS. 14, 16 (1995).

92. *Edmonds*, 115 S. Ct. at 1782. Curiously, this appears at odds with Congress' intent to mainstream the handicapped into traditional family neighborhoods. *See* H.R. REP. No.100-711, *supra* note 86 at 18, 1988 U.S.C.C.A.N. at 2179 which states:

> [The FHAA] is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

See also Herman, *supra* note 91, at 16; Arlene S. Kanter, *A Home of One's Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People with Mental Disabilities*, 43 AM. U. L. REV. 925, 945 (1994); Richard B. Simring, *The Impact of Federal Anti-discrimination Laws on Housing for People with Mental Disabilities*, 59 GEO. WASH. L. REV. 413, 420 (1991); Patrick F. Summers, Comment, *Civil Rights: Persons infected with HIV:* Steward B. McKinney Foundation v. Town Plan & Zoning Commission: *Forcing the Aids Community to Live a Prophylactic Existence*, 46 OKLA. L. REV. 531, 538 (1993). Similarly, Oxford House has continuously argued that such environments are critically essential to the success of the program. *Infra* note 132. It would seem to follow that "preserv[ing] the family character of a neighborhood" is critical in the placement of group homes. *See infra* notes 130, 132.

the plain meaning rule, it appears to be because the logical result of a literal reading of the would actually nullify the legislative purpose of the statute—the prohibiting of discriminatory housing practices against persons with handicaps.[93] Because a city "can insulate its single-family zone entirely from FHA coverage" by including a specific number requirement for unrelated individuals, the FHA's policy would be circumvented.[94] Therefore, the Court reasoned that Congress would probably not create an exemption which abrogates the very purpose for which the statute was created. Unfortunately, the majority did not discuss their failure to follow the plain meaning rule, nor the circumstances when it would be proper to ignore the actual statutory construction in favor of a perceived statutory intent.

C. A Narrow Reading of the Exemption

The FHA's "broad and inclusive" policy prohibiting discrimination in housing against persons with handicaps[95] requires a narrow reading of any exceptions.[96] On this reasoning, the majority pinned its decision to construe the exception in such a manner to reasonably restrict its use. Furthermore, the lack of substantial discussion in the opinion on such a reading[97] enforces the majority's view that it is well settled doctrine.

On its face, it appears reasonable to construe exceptions narrowly where a statute has a broad policy. Where Congress implements a statute in order to effectuate an objective which must be pervasive throughout society in order to have a meaningful effect, it would be proper to treat any exemptions from the policy tightly. Clearly, anti-discrimination laws must be enforced broadly in order to effect a general change in discrimination by society.[98] In fact, because the FHA as originally enacted in 1968 failed to prohibit discrimination to the extent intended by Congress, Congress amended the FHA at the time this exemption was created. For

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93. *Edmonds*, 115 S. Ct. at 1778.

94. *Id.* at 1783 n.11.

95. *Id.* at 1778. *See also*, Soper, *supra* note 7, at 1038-39; Herman, *supra* note 91, at 15.

96. *Edmonds* at 1779. *See, e.g.*, United States v. Columbus Country Club, 915 F.2d 877, 882-83 (3d. Cir. 1990), *cert. denied*, 111 S. Ct. 2797 (1991); Bangerter v. Orem City Corp., 46 F.3d 1491, 1503 (10th Cir. 1995).

97. One paragraph was dedicated to this proposition.

98. The Supreme Court has long held that "remedial legislation should be construed broadly to effectuate its purposes." Tcherepnin v. Knight, 389 U.S. 332, 336 (1967). A broad interpretation is appropriate in order to rectify "deep-seated social ills." Robert Brookins, *Mixed-Motives, Title VII, and Removing Sexism from Employment: The Reality and the Rhetoric*, 59 ALB. L. REV. 1, 72 (1995); *see also* Stuard W. Tisdale, Jr., Comment, *Reasonable Accommodation and Non-Invidious Discrimination Under the Maine Human Rights Act*, 40 ME. L. REV. 475, 496 (1988).

these reasons, it would appear logical to construe the exemption narrowly.

However, where an exemption on its face clearly is written in a manner which allows great latitude in its applicability, it would seem that such a doctrine would be inapplicable.[99] The statute employs two words which demonstrate a broad reading: "any" and "regarding."

The exemption exempts "any" restriction, which clearly creates a broad exemption. In the English language, "any" means "one indifferently out of more than two," "one or some indiscriminately of whatever kind," "one or more; all," and "one or some however imperfect."[100] The dissent noted that "[a] broad construction of the word 'any' is hardly novel."[101] Rather, a recent Supreme Court decision noted "'Congress spoke without qualification' in ERISA [for] an exemption for 'any security.'"[102] In 1904, the Supreme Court declared that when "any" is used in an exemption, "[i]t declares the exemption without limitation."[103] Similarly, when the Ninth Circuit interpreted statutory language in the FHA employing the word "any," it found Congress intended a broad definition.[104] Clearly, employment of such a word in an exemption when referring to a restriction would engender a broad meaning.

However, the statute does not allow just "any" restriction, but only those "*regarding* the maximum number of occupants" in a dwelling.[105] Regarding means "with respect to" or "concerning."[106] Therefore, the statute could be rewritten as exempting any restriction concerning the maximum number of occupants. Again, this does not appear to create the narrow exception applied by the majority. Rather, it appears that Congress intended a broad construction. Logically, if a restriction imposes a maximum on the number of unrelated occupants in a building, it would "regard" or "concern" the maximum number of occupants. Merely be-

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99. While the dissent argues that the doctrine requiring an exemption to a statute with a broad policy is illogical, it does so by arguing every statute has a policy and that therefore every exemption to a statute should be read narrowly. Clearly this would be absurd. However, the dissent does not recognize that not every statute has a broad policy such as opposition to discrimination and that therefore it would be sensible to read an exemption narrowly. Shortly after the dissent's dismissal of the majority's logic, it properly notes that it would be improper to "artificially narrow" the reading of an exemption where Congress legislated a broad exemption. *Edmonds*, 115 S. Ct. at 1785 (dissenting opinion).

100. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (16th ed. 1971).

101. *Edmonds*, 115 S. Ct. at 1784 n.1 (dissenting opinion).

102. *Id.*

103. *Id.*

104. United States v. Gilbert, 813 F.2d 1523, 1527 (9th Cir. 1987) (finding that "any dwelling" broadly defines a "dwelling" under the FHA) (emphasis added); *see also* NLRB v. Health Care and Retirement Corporation of America, 114 S. Ct. 1778, 1784 (1994) (holding "*any* individual" connotes a broad definition) (emphasis added). Ironically, this same court ignored its broad definition of "any" when construing the exemption narrowly.

105. 42 U.S.C. § 3607(b)(1) (emphasis added).

106. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, *supra* note 100.

cause it does not impose a requirement on the *total* number of occupants in a building does not make it fall within the FHA's authority. One would think that if Congress intended only *total* maximum occupancy limits to be exempt, they would have had the reasoning and intelligence to have included the word "total." Instead, it appears by using the majority's logic that Congress did not understand the import of the words "any" and "regarding", yet had the clear understanding of "land use restrictions" and "maximum occupancy restrictions."[107] On this basis, it would appear clear that the plain meaning of the statute requires a broad exemption to any restriction regarding the maximum number of occupants.[108]

D. Categorization of Zoning Laws

In the majority's attempt to interpret the statutory exemption, the majority fashioned two categories of restrictions: "maximum occupancy restrictions" and "land use restrictions."[109] The defining characteristic of each category of restriction lies in its purpose.[110] Next, the Court excluded "land use restrictions," and its complement of "family composition rules," from the statutory exemption.[111] Because the statute does not include "family composition rules" which Edmonds' ordinance resembled, the majority came to the conclusion that the FHA does not exempt Edmonds' ordinance.[112]

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107. *Edmonds*, 115 S. Ct. at 1780. While the majority stipulates that Congress "enacted [the exemption] against the backdrop of an evident distinction between [the two categories]", *id.*, the dissent noted that the term "maximum occupancy limit" is conspicuously absent from both federal and state judicial decisions—disregarding three decisions relating to this exemption—and all "model codes from which the majority construct[ed] its category of zoning rules." *Id.* at 1786, n.5 (dissenting opinion). Rather than use a definition created and used by Congress in the statute, the Court appears to have instructed Congress what it meant. *See id.* at 1780-81. *But see id.* at 1781, n.7 (disputing the dissents suggestion by referencing "terminology in the APHA-CDC Standards").

108. *But see*, Miller, *supra* note 2, at 1499.

109. *Edmonds*, 115 S. Ct. at 1781. *See* Oxford House, Inc. v. City of Virginia Beach, Va., 825 F. Supp. 1251, 1258 (E.D. Va. 1993) (recognizing that the FHA's coverage "does not encompass all land use regulations" including those "regarding the maximum number of occupants permitted to occupy a dwelling;" impliedly requiring that the majority's "maximum occupancy requirements" be considered a land use regulation). *See also* Taylor Investment, Ltd. v. Upper Darby Township, 983 F.2d 1285, 1292 (3d Cir. 1993) (noting maximum occupancy requirements are merely an aspect of "land-use regulation"); Midnight Sessions, Ltd. v. City of Philadelphia, 945 F.2d 667, 677 (3d Cir. 1991) (noting "general land use regulations" impose maximum occupancy requirements).

110. It appears that the majority may have confused "categories of zoning restrictions" for different purposes for zoning. *See* NORMAN WILLIAMS JR., AMERICAN LAND PLANNING LAW § 51.01 (1987) noting "policy reasons raised by local governing bodies that seek to exclude multifamily dwellings through the implementation of land use regulations generally can be separated into two groups . . . [d]ensity-related factors and [f]actors not related to density." *But see*, Herman, *supra* note 91, at 16 (suggesting a difference between occupancy restrictions and use controls with the exception referring only to the former).

111. *Edmonds*, 115 S. Ct. at 1781-82.

112. *Id.* at 1783. The dissent argues that such logic "is not reasoning; it is ipse dixit." *Id.*

The majority defined "maximum occupancy restrictions" as restrictions which "purpose is to protect health and safety by preventing dwelling overcrowding."[113] Such restrictions have some common characteristics—they: 1) "cap the number of occupants per dwelling, typically in relation to available floor space or number and type of rooms"[114]; and 2) "ordinarily apply uniformly to all residents of all dwelling units."[115]

Having defined and classified "maximum occupancy restrictions," the majority then held that the statutory exemption includes *only* such restrictions.[116] Such a holding necessarily would follow because clearly such classified restrictions regard the maximum number of occupants in a house. However, whether the created classification is included is not at issue in the case. The issue remains whether Edmonds' ordinance *regards* a maximum number of occupants.[117]

In analyzing Edmonds' ordinance with "maximum occupancy restrictions," the majority found it incompatible. The reasoning is not so much because the ordinance contains a requirement regarding the maximum number of occupants, but because its primary purpose is to define "[f]amily living, not living space per occupant."[118] Therefore, it would appear that if the primary purpose of an ordinance is not to define "living space per occupant," it is not a "maximum occupancy restriction" and remains subject to the FHA. The purpose of the ordinance appears to be the overriding factor. Since the majority noted "maximum occupancy restrictions" "*typically* [apply caps] in relation to floor space or number and type of rooms" which "*ordinarily* apply uniformly to all residents of dwelling units,"[119] it would follow that a "nontypical" or "unordinary" restriction may not apply caps in such a fashion. Yet, the Court failed to explain why "nontypical" or "unordinary" restrictions would not be considered as "any" restriction "regarding" maximum occupancy limits.

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at 1787 (dissenting opinion).

113. *Id.* at 1781. *See* Miller, *supra* note 2, at 1495-99.

114. *Edmonds*, 115 S. Ct at 1781 (referring to UNIFORM HOUSING CODE § 503(b); BOCA NATIONAL PROPERTY MAINTENANCE CODE §§ PM-405.3, PM-405.5 (1993); STANDARD HOUSING CODE §§ 306.1, 306.2 (1991); APHA-CDC RECOMMENDED MINIMUM HOUSING STANDARDS § 9.02 at 37 (1986)).

115. *Id.* (referring to BOCA NATIONAL PROPERTY MAINTENANCE CODE §§ PM-101.3, PM-405.3, PM-405.5 and commentary; Samuel B. Abbott, *Housing Policy, Housing Codes and Tenant Remedies*, 56 B.U. L. Rev. 1, 41-45 (1976)). *See* Oxford House, Inc. v. City of Virginia Beach, Va, 825 F. Supp. 1251, 1258 (E.D. Va. 1993) (defining maximum occupancy limit as only applying to all occupants—related or not).

116. *Edmonds*, 115 S. Ct. at 1783.

117. The dissent "readily concedes" that zoning rules labeled by the majority as "maximum occupancy restrictions" are encompassed by the statutory language. That the statutory language encompasses such restrictions "is completely irrelevant to the question presented in this case," merely "provid[ing] guidance in future cases." *Edmonds*, 115 S. Ct. at 1787 (dissenting opinion).

118. *Edmonds*, 115 S. Ct. at 1783.

119. *Id.* at 1781.

The majority defined "land use restrictions" as ordinances which "aim to prevent problems caused by the 'pig in the parlor instead of the barnyard.' "[120] Ironically, after the majority dedicated its effort to defining "land use restrictions," it did not discuss whether such restrictions are encompassed by the statute. Rather, the majority devised another classification of zoning rules "tied to land use restrictions"—namely "family composition rules."[121] Then in one sentence, the majority defined the category as "rules designed to preserve the family character of a neighborhood" and summarily concluded such rules are not exempt "from the FHA's governance."[122] It would appear that as an afterthought, the majority constructed "family composition rules" to lend support to the its desire for a proper outcome conforming with the broad policy of the FHA, so as not to remain constricted to the plain language written into the exemption.[123]

The Court looked to the purpose of Edmonds' ordinance and concluded that it is a "family composition rule" and therefore not exempt from the FHA. Because Edmonds' ordinance provides that occupancy is limited to a family of any number of related individuals accompanied by a limit on the number of unrelated individuals to five, the majority saw the ordinance as a failed attempt to "conver[t] a family values preserver into a maximum occupancy restriction."[124] When an ordinance has mixed purposes, the Court seems to presume the primary purpose (or categorization) to be that which would not qualify the ordinance for an exemption from the FHA.

V. THE MARRIAGE OF GROUP HOMES WITH SINGLE-FAMILY ZONES

While the Court properly refused to consider the consequences of its interpretation of the FHA, the Court's apparent misinterpretation of the plain meaning of the statute will subject single-family zoning laws to FHA scrutiny and result in the abolishment of any sanctuary such zones now enjoy from group homes. Courts which followed the Supreme Court's reasoning in denying the applicability of the exemption to similar ordinances have found that limits on unrelated occupants have a discriminatory impact on the handicapped.[125] As a result, courts have required

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120. *Id.* (quoting *Euclid*, 272 U.S. at 388).

121. *Id.* at 1782.

122. *Id.*

123. The dissent notes that the majority's "decision hinge[s] on the majority's judgment that ECDC § 21.30.010 is a 'classic exampl[e] of a . . . family composition rule.' " Yet, the "majority says virtually nothing about this crucial category." *Edmonds*, 115 S. Ct. at 1787 (dissenting opinion) (quoting majority at 1782).

124. *Id.* at 1783.

125. Oxford House, Inc. v. City of Albany, 819 F. Supp. 1168, 1176 (N.D.N.Y. 1993)

that reasonable accommodations be made for group homes. Courts generally interpret reasonable accommodation as requiring zoning variances to allow group homes to coexist with single-family dwellings.

As a result of the Court's holding, communities desiring to exclude group homes have few options available.[126] First, communities can accommodate group homes in single-family zones by creating exceptions to their exclusionary ordinances. Second, the single-family ordinances could be modified to conform with the Court's interpretation of the exemption. Third, restrictive ordinances which attempt to maintain a "normal" residential environment for the handicapped through dispersal requirements or to protect the handicap through licensing may be employed. Finally, communities could seek a change in the statute by lobbying Congress for a change in either the exemption to clearly exempt any ordinance whose purpose is to preserve the traditional single-family zone or in the definition of handicapped to mitigate group homes seen as incompatible with residential neighborhoods.

By modifying single-family ordinances to include exemptions for group homes, or accommodating group homes on a case-by-case basis, communities could maintain a limited single-family zone.[127] While exempting group homes from restrictions on the number of unrelated occupants would allow communities to escape litigation in the court room, it would most probably be very unpopular with residents in such zones.[128]

(limiting the number of unrelated people to three); Oxford House-C v. City of St. Louis, 843 F. Supp. 1556 (E.D. Mo. 1994) (holding three-person limit has disparate impact on the handicapped even with group home exception allowing up to eight individuals).

126. An alternative option which does not violate the law but is not discussed here due to its inherent limitation is the neighbors' purchase of the home sought by the group. *See* Michigan Protection and Advocacy Service, Inc. v. Babin, No. 92-2073, 1994 U.S. App. LEXIS 3533, 1994 FED App. 75 March 2, 1994. *See also* Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277 (3d Cir. 1993).

127. *See* Miller, *supra* note 2, at 1510 (detailing components of a model regulating act for group homes by the ABA Land Use Regulation Committee).

128. Generally, neighbors to group homes express fears regarding an increase in crime from the occupants of group homes for alcoholics and former drug users. *See* Oxford House-C, 843 F. Supp at 1565 n.10 (E.D. Mo. 1994) (noting that "this is because many, if not most, recovering addicts or alcoholics have criminal records resulting from their behavior while using alcohol and drugs"). However, it appears that the animosity the public shares towards group homes in single family zones may be ill-founded. Over "50 studies show that community residences generate no adverse impacts on single-family districts if they are licensed and not clustered on a block." Daniel Lauber, *Group Think: a recent Supreme Court ruling should make local governments reconsider their community residence regulations; includes definition and resource information*, PLANNING, Oct. 1995 at 17. These results may be due to the fact that group homes for recovering alcoholics and drug addicts often require that the occupants "refrain completely from alcohol and drugs, both in and out of the house." Brief for Respondents Oxford House, Inc. 819 F. Supp 1160 (N.D.N.Y. 1993). Furthermore, a single lapse brings immediate expulsion." *Id.* The U.S. News and World Report noted that while many residents initially oppose group homes, after a short period of time the neighbors "appreciate" the homes. *An ever escalating evidence standard; Group homes find a friend in court*, U.S. NEWS & WORLD REPORT May 29, 1995 at 11. (noting neighbors of

Unless public opinion changes to accept group homes, this is not a very viable option.

If communities modified single-family ordinances to conform with the Court's interpretation of the exemption, group homes may possibly be excluded. Any such modification would require that either the purpose would be to safeguard the health and safety of homes within the zone, or impose an absolute maximum on all occupants of dwellings.[129] Limits based on the size of the house, such as occupants per square foot or per room, would only limit densely compacted group homes. Hence, in a large house, a group home with ten to twelve occupants might still be allowed. The only way to effectively exclude group homes housing a large number of occupants appears to be by limiting the total occupancy of all homes in the zone. However, such restrictions may be viewed as unreasonable to the very residents communities are trying to protect, by not allowing uses of residential property for large traditional families.

Ordinances restricting group homes in order to maintain a "normal" environment for the handicapped or requiring licensing of such homes to protect the occupants have had mixed success. Dispersal restrictions which require a minimum distance between group homes to maintain a "normal" environment have been held valid due to the "government's interest in de-institutionalization."[130] The crucial factor appears to be an

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group homes in Boston and Long Island originally fought the opening of the homes but three years later "appreciated" or dropped their objections to the homes). As recently as 1994, a court had noted "all scientific studies involving group homes of nine or more demonstrate that such congregate living arrangements have no discernible effect on property values, safety, crime rates, or any other measurable value." *Oxford House-C*, 843 F.Supp. at 1580. As the studies have concluded, it appears that residents' fears materialize only when a neighborhood becomes heavily saturated. *Group homes clustered in county*, TRIBUNE REV., Feb. 5, 1995 at A1 (noting "some authors warn that a concentration of too many facilities could decrease property values, increase crime and destroy the overall quality of life"). It would appear that a community's zoning laws should be aimed not at preventing the introduction of group homes into single family zones but at regulating the density of such homes in the community. *See also*, Soper, *supra* note 7, at 1037; Herman, *supra* note 91, at 14; Miller, *supra* note 2, at 1500-07. *But see* Village of Belle Terre, 416 U.S. at 9 (noting homes with numerous adults have the potential to increase noise and traffic).

129. Such a maximum could also be found unconstitutional under *Moore v. City of East Cleveland* 431 U.S. 494 (1977) which held that "slic[e] deeply into the family itself" by regulating related individuals violate the Due Process Clause of the 14th Amendment). *See* Graham, *supra* note 7, at 702.

130. Familystyle of St. Paul, Inc. v. City of St. Paul, 923 F.2d 91, 94 (8th Cir. 1991) (finding requirement of one quarter mile between "residential treatment facilities" valid under the FHA). *See also*, United States v. City of Taylor, Mich., 872 F. Supp. 423, 442 (E.D. Mich. 1995) (requiring amendment of City's zoning code which seeks to restrict group homes due to "unsupported, speculative, and irrational fears" of being "flooded" by group homes); Soper, *supra* note 7, at 1041-42, 1044-45. *But see* Larkin v. State of Michigan, 883 F. Supp. 172 (E.D. Mich. 1994) (holding requirement of 1,500 feet between "residential facilit[ies]" to violate the FHA due to disparate impact.); Horizon House Developmental Services, Inc. v. Township of Upper Southampton, 804 F. Supp. 683 (E.D. Pa. 1992) (stipulating a "1,000 foot rule [between group homes] unlawful under the [FHA], because it creates an explicit classification based on handicap"

intent not to discriminate but to maintain the family environment so essential to the rehabilitation goals of a group home.[131] This would also help alleviate concerns of neighbors who fear an increase in crime or decrease in property values will accompany a group home. As noted earlier, such fears only materialize when there is a gettoization of group homes,[132] which dispersal requirements would prevent. Similarly, it would appear to follow that limitations on the number of vehicles, adults, or other attributes which validly concern the community for the health and safety of such areas would be possible.[133] Finally, courts have allowed licensing requirements for group homes as long as restrictions are narrowly tailored to the needs of the handicapped.[134] How-ever, any of these approaches carry two risks. First, as mentioned previously, large families may find themselves inconvenienced. This would lead to political pressure on communities. Second, any modified statute would be heavily litigated. The expense of the litigation would be difficult to justify when balanced against the uncertainty of the outcome.

If communities view group homes as truly incompatible with single-family zones, the most effective method to exclude group homes would

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with only rational basis integration which is "not adequate justification under the FHAA").

131. The respondent's brief notes that "it is essential to the residents' sustained recovery that they live in an environment far removed from opportunities for drug and alcohol abuse." Brief for Respondents Oxford House, Inc., Oxford House-Edmonds, and Herb Hamilton at 10, *Edmonds* 117 S. Ct 1776 (1995). Logically, it would follow that group homes would eschew neighborhoods with a high concentration of group homes since the essential character so conducive to a group homes success would be heavily diluted. *See also*, Herbert A. Eastman, Oxford Houses v. NIMBY—*Zoning Conflicts Between Cities and Group Homes for Recovering Alcoholics and Drug Addicts*, PROBATE & PROPERTY, Sept.-Oct. 1994, at 56; Miller, *supra* note 2, at 1475-76, 1501-02.

132. *See supra* note 129.

133. Courts have noted that restrictions seeking to preserve the residential character of a community may be enforceable. Such restrictions include population density requirements "by reference to floor space and facilities," enforcement of "noise and morality" through "police power ordinances and criminal statutes," and "[t]raffic and parking . . . by limitations on the number of cars . . . and by off-street parking requirements." City of Santa Barbara v. Adamson, 610 P.2d 436 (Cal. 1980). *See* Graham, *supra* note 7, at 703.

134. *Bangerter*, 46 F.3d at 1504 (finding "restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefit to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them); Marbrunak, Inc. v. City of Stow, Ohio, 974 F.2d 43, 47 (6th Cir. 1992) (holding the FHA does not prohibit a city from "imposing any special safety standards for the protection of developmentally disabled persons ... so long as that protection is demonstrated to be warranted by the unique and specific needs and abilities of those handicapped persons"); Thornton v. City of Allegan, 863 F.Supp. 504, 508-10 (W.D. Mich. 1993) (upholding denial of special use permit where reasonable accommodation was made for an alternative site). *See also*, Miller, *supra* note 2, at 1508 (noting most courts allow some form of regulation of group homes so long as other group of unrelated individuals are also regulated). *But see*, Soper, *supra* note 7, at 1041 (noting judicial willingness to find violations of FHAA on basis of discriminatory effect alone and accommodation reasonable and mandatory where the accommodation sought "does not require a municipality to alter its zoning scheme or incur any administrative burdens"); Miller, *supra* note 2, at 1491-92 (noting a case which held code restrictions on group homes must have a legitimate safety interest).

be a statutory change in either the FHA exemption to clearly protect zones or in the definition of handicapped. On August 9, 1995, Senator Faircloth introduced a bill to amend the Fair Housing Act, co-sponsored by Senators Frist, Bennett and Shelby. The bill sponsor asserts it "would overturn the ... City of Edmonds versus Oxford House" by "clarify[ing] that localities can continue to zone certain areas as single family neighborhoods, by limiting the number of unrelated occupants living together."[135] The bill would accomplish this result by amending the exemption to permit "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling, including any restriction relating to the maximum number of unrelated persons permitted to occupy a dwelling, if the purpose of the restriction is to restrict land use to single family dwellings."[136] This bill appears adequate since it clearly stipulates that zoning law regulations which seek to preserve the traditional character of single-family zones are exempt. It could be further clarified, however, by including language which defines a set number of unrelated individuals as per se reasonable.[137] This would clearly exempt any local zoning ordinance similar to the one analyzed by the *Edmonds* Court. An alternative to this statutory change[138] would be one which stipulates that recovering alcoholics and drug users are not handicapped. By excluding classes whose handicap is directly correlated with criminal behavior[139] from protection under the FHA, this change in

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135. 141 CONG. REC. S12079-03 (statement of Senator Faircloth). While Senator Faircloth stated "[t]he Congress clearly intended an exemption . . . regarding the number of unrelated occupants living together" and "the Supreme Court ruled incorrectly in [the] case," the Senator was only recently elected (1992) and did not actually participate in the debate over the FHA Amendment of 1988. *Id.*

136. S. 1132, 104th Cong., 1st Sess. (1995). This bill has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

137. E.g., instead of exempting reasonable restrictions on the number of unrelated individuals, a stipulation that any restriction on unrelated individuals greater than five is presumed reasonable.

138. Per discussion with Senator Fairchild's office, Jim Hyland, Legislative Director, has estimated the proposed bill has a 50% chance of final passage. Mr. Hyland noted that within the Senate, there is "a growing concern that FHA is being stretched beyond its intent." This concern arises over two issues: 1) the treatment of recovering alcoholics and drug users as handicapped; and 2) the artificial narrowing of a broad exemption which effectively prohibits local zoning ordinances from regulating the number of occupants in group homes for the handicapped. *See supra* note 7 (noting one court's holding that the plain meaning of physical handicap does not include recovering alcoholics and drug users), and *supra* note 133 (analyzing the legislative history in a way which would clearly allow for local zoning ordinances to limit the number of occupants in group homes, albeit in a nondiscriminatory fashion). *See also* Miller, *supra* note 2, at 1479 (stating that group home operators have used the FHA as a "tool to combat exclusionary zoning of group homes).

139. It has been well established that a direct connection exists between drug use and criminal behavior. *See* Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547 (1995) ("The connection between the drug use and crime is underscored by a substantial statistical overlap: there is a high level of drug use

definition would largely resolve neighbors' concerns regarding increased crime with a corresponding decline in property values. For communities which desire to preserve their historic character, one of these statutory changes may be feasible given the current political environment.

VI. CONCLUSION

By subjecting traditional single-family zoning to the scrutiny of the FHA, the successful exclusion of group homes will come to an end. By ignoring the plain meaning rule, the Court has shown a willingness to look beyond unambiguous statutes in order to apply the law according to its determination of the actual legislative intent. In the interpretation of exceptions to statutes harboring a broad policy, the Court will employ a narrow reading even when a broad reading appears to be more appropriate. In order to protect the statutory policy, the Court has shown its willingness to create classifications of zoning law to support perceived legislative purposes. The holding in *Edmonds* give communities effectively two options: 1) accept group homes, with the possibility of regulating such homes though health and safety requirements and/or dispersal restrictions; or 2) seek a legislative change to the FHA.

Paul Holmes Masters

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among people who commit crimes and people who use drugs also commit a large number of crimes."); Duane C. McBride & Clyde B. McCoy, *The Drugs-Crime Relationship: An Analytical Framework*, 73 PRISON J. 257, 268 (1994) (stating "a large volume of research clearly indicates that frequency of drug use has a strong impact on the extent, direction, and duration of that (criminal) career"); Lana Harrison & Joseph Gfroerer, *The Intersection of Drug Use and Criminal Behavior: Results from the National Household Survey on Drug Abuse*, 38 CRIME & DELINQ. 422 (1992); Nancy Lewis, *Drug Use Up Among Young Suspects;Cocaine, Marijuana Make a Comeback as 26% of Arrested D.C. Juveniles Test Positive*, THE WASHINGTON POST, August 23, 1991, at D1 (finding that approximately twenty percent of juveniles arrested were using drugs). *But see* Jason Bennetto, *Juvenile crime 'not linked to drug abuse'; Delinquency: 'Risk-takers' defy get-tough Government policy*, THE INDEPENDENT, January 16, 1996, at 7 (noting a report stating there is little evidence of a direct link between drug use and crime).