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6/1985

Brief in support of motion for leave to
appear as Amici Curiae of movants,
NJ Senate + General Assembly Minorities

p 24

ML000484B

THE HILLS DEVELOPMENT COMPANY,
Plaintiff-Respondent,

vs.

THE TOWNSHIP OF BERNARDS, in the
COUNTY OF SOMERSET, et al.,
Defendants-Appellants.

HELEN MOTZENBECKER,
Plaintiff-Respondent,

vs.

MAYOR AND COUNCIL OF THE BOROUGH OF
BERNARDSVILLE AND THE BOROUGH OF
BERNARDSVILLE
Defendants-Appellants.

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,
Plaintiffs-Respondents,

vs.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.,
Defendants-Appellants.

(Captions continue on following pages)

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE
OF MOVANTS, THE NEW JERSEY SENATE AND GENERAL ASSEMBLY MINORITIES

IN THE
SUPREME COURT OF NEW JERSEY

Civil Actions
Mt. Laurel Litigation

ON APPEAL FROM INTERLOCUTORY
ORDERS OF SUPERIOR COURTS
OF NEW JERSEY, LAW DIVISION

Sat Below:
Eugene D. Serpentelli, A.J.S.C.
Stephen Skillman, J.S.C.

DOCKET NO. 24,780
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-030039-84 P.W.

DOCKET NO. 24,781
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET/OCEAN COUNTIES
DOCKET NO. L-37125-83

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-4122-73

Steven L. Sacks-Wilner, Esq.,
Chief Counsel to Senate Minority
Attorney for Movants,
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General Assembly Minorities
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LAWRENCE ZIRINSKY,
Plaintiff-Respondent,

vs.

THE TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF CRANBURY, A MUNICIPAL CORPORATION
and THE PLANNING BOARD OF THE TOWNSHIP
OF CRANBURY,

Defendants-Appellants.

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-079309-83 P.W.

JOSEPH MORRIS and ROBERT MORRIS,
Plaintiffs-Respondents,

vs.

TOWNSHIP OF CRANBURY IN THE COUNTY
OF MIDDLESEX, a municipal corporation
of the State of New Jersey,

Defendant-Appellant.

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-054117-83

CRANBURY LAND COMPANY, A New Jersey
Limited Partnership,
Plaintiff-Respondent,

vs.

CRANBURY TOWNSHIP, a municipal
corporation of the State of New
Jersey located in Middlesex County,
New Jersey,

Defendant-Appellant.

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-070841-83 P.W.

GARFIELD & COMPANY,
Plaintiff-Respondent,

vs.

MAYOR AND THE TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF CRANBURY, a
municipal corporation and the
members thereof; PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY, and
the members thereof.

Defendants-Appellants.

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-055956-83 P.W.

CRANBURY DEVELOPMENT CORPORATION
a corporation of the State of
New Jersey,
Plaintiff-Respondent,

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-59643-83

vs.

CRANBURY TOWNSHIP PLANNING BOARD
and the TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,
Defendants-Appellants.

BROWNING-FERRIS INDUSTRIES OF
SOUTH JERSEY, INC., A corporation
of the State of New Jersey,
RICHCRETE CONCRETE COMPANY, a
corporation of the State of New
Jersey and MID-STATE FILIGREE
SYSTEMS, INC., a Corporation of
the State of New Jersey,
Plaintiffs-Respondents,

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-058046-83

vs.

CRANBURY TOWNSHIP PLANNING BOARD
and THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,
Defendants-Appellants.

TOLL BROTHERS INC.,
Plaintiff-Respondent,

DOCKET NO. 24,782
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-005652-84

vs.

TOWNSHIP OF CRANBURY IN THE COUNTY
OF MIDDLESEX, A municipal corporation
of the State of New Jersey, THE
TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF JCRANBURY and THE PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY.
Defendants-Appellants.

MORRIS COUNTY FAIR HOUSING COUNCIL,
et al.,

Plaintiffs,

vs.

BOONTON TOWNSHIP, et al.,
Defendant.

DOCKET NO. 24,783
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

AFFORDABLE LIVING CORPORATION, INC.,
a New Jersey Corporation,
Plaintiff-Respondent,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP OF
DENVERVILLE,
Defendant-Appellant.

DOCKET NO. 24,783
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-42898-84 P.W.

ANGELO CALI,
Plaintiff-Respondent,

vs.

THE TOWNSHIP OF DENVERVILLE, etc.,
et al.,
Defendants-Appellants.

DOCKET NO. 24,783
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-55343-85 P.W.

SIEGLER ASSOCIATES, etc.,
Plaintiff-Respondent,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP OF
DENVERVILLE,
Defendant-Appellant.

DOCKET NO. 24,783
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-29176-84 P.W.

MAURICE SOUSSA AND ESTER H. SOUSSA,
Plaintiffs-Respondents,

vs.

THE TOWNSHIP OF DENVERVILLE, et al.,
Defendants-Appellants.

DOCKET NO. 24,783
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-38694-84 P.W.

STONEHENGE ASSOCIATES,
Plaintiff-Respondent,

vs.

THE TOWNSHIP OF DENVILLE, etc., et al.,
Defendants-Appellants.

DOCKET NO. 24,783
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-86053-84 P.W.

REAL ESTATE EQUITIES, INC.,
Plaintiff-Respondent,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP
OF HOLMDEL, et al.,
Defendants-Appellants.

DOCKET NO. 24,784
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY
DOCKET NO. L-15209-84 P.W.

NEW BRUNSWICK HAMPTON, INC.,
Plaintiff-Respondent,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP OF
HOLMDEL, et al.,
Defendants-Appellants.

DOCKET NO. 24,784
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY
DOCKET NO. L-33910-84 P.W.

GIDEON ADLER, etc., et al.,
Plaintiffs-Respondents,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP OF
HOLMDEL, et al.,
Defendants-Appellants.

DOCKET NO. 24,784
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY
DOCKET NO. L-54998-84 P.W.

TOWNSHIP OF HAZLET,
Plaintiff-Respondent,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP OF
HOLMDEL,
Defendant-Appellant.

DOCKET NO. 24,784
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY
DOCKET NO. L-67502-84 P.W.

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al.,
Plaintiffs-Respondents

vs.

THE MAYOR AND COUNCIL OF THE BOROUGH
OF CARTERET, et al.,
Defendant.

DOCKET NO. 24,785
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-4122-73

MONROE DEVELOPMENT ASSOCIATES,
Plaintiff-Respondent,

vs.

MONROE TOWNSHIP,
Defendant-Appellant.

DOCKET NO. 24,785
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-076030-83 P.W.

LORI ASSOCIATES, A Nex* Jersey
Partnership, et al.,
Plaintiffs-Respondents,

vs.

MONROE TOWNSHIP, etc.,
Defendant-Appellant.

DOCKET NO. 24,785
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-28288-84

GREAT MEADOWS COMPANY, etc., et al.,
Plaintiffs-Respondents,

vs.

MONROE TOWNSHIP, etc.,
Defendant-Appellant.

DOCKET NO. 24,785
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-32638-84 P.W.

MORRIS COUNTY FAIR HOUSING COUNCIL
et al.,
Plaintiffs,

vs.

BOONTON TOWNSHIP, et al.,
Defendants.

DOCKET NO. 24,786
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

**RANDOUT MOUNTAIN INDUSTRIAL COMPLEX
a New Jersey Partnership,**

Plaintiff-Respondent,

vs.

THE BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF RANDOLPH and THE
TOWNSHIP OF RANDOLPH, a municipal
corporation of the County of Morris,
State of New Jersey,

Defendants-Appellants.

DOCKET NO. 24,786
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY
DOCKET NO. L-59128-85 P.W.

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al.,

Plaintiffs-Respondents,

vs.

THE MAYOR AND COUNCIL OF THE BOROUGH
OF CARTERET, et al.,

Defendants.

and

THE TOWNSHIP OF PISCATAWAY, etc.,
Defendant-Appellant.

DOCKET NO. 24,787
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,
Plaintiffs-Respondents,

vs.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.,

Defendants.

BOROUGH OF SOUTH PLAINFIELD BY ITS
MAYOR AND COUNCIL, et al.,
Defendants-Appellants.

DOCKET NO. 24,788
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. C-4122-73
DOCKET NO. L-56349-81

AMG REALTY COMPANY and SKYTOP LAND
CORPORATION.

Plaintiffs-Respondents,

vs.

JOHN H. FACEY, et al.,

Intervenors,

vs.

THE TOWNSHIP OF WARREN,
Defendant-Appellant.

Consolidated with

TIMBER PROPERTIES

Plaintiff-Respondent,

vs.

THE TOWNSHIP OF WARREN, et als.,
Defendant-Appellant.

ROBERT E. RIVELL,

Plaintiff-Appellant,

vs.

TOWNSHIP OF TEWKSBURY, a municipal
corporation located in Hunterdon
County, New Jersey,
Defendant-Respondent.

J.W. FIELD COMPANY, INC., and JACK
W. FIELD,

Plaintiffs-Respondents

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,789
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

SOMMERSET COUNTY

DOCKET NO. L-23277-80 P.W.

L-67820-80 P.W.

DOCKET NO. 24,790

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, HUNTERDON COUNTY

DOCKET NO. L-40993-84 P.W.

DOCKET NO. 24,799

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY

DOCKET NO. L-6583-84 P.W.

JZR ASSOCIATES, INC.,
Plaintiff-Respondent

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-7917-84 P.W.

FLAMA CONSTRUCTION CORPORATION,
Plaintiff-Respondent

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-14096-84 P.W.

WOODBROOK DEVELOPMENT CORPORATION,
Plaintiff-Respondent

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-19811-84 P.W.

WHITESTONE CONSTRUCTION, INC.
Plaintiff-Respondent,

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-21370-84

BRENER ASSOCIATES,
Plaintiff-Respondent

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-22951-84 P.W.

RAKECO DEVELOPERS, INC.,
Plaintiff-Respondent,

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-25303-84 P.W.

JOHN H. VAN CLEEF, SR., et al.,
Plaintiffs-Respondents,

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-26294-84 P.W.

LEO MINDEL,
Plaintiff-Respondent,

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-33174-84 P.W.

R.A.S. LAND DEVELOPMENT COMPANY, INC.,
Plaintiff-Respondent,

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-49096-84 P.W.

JOPS COMPANY,
Plaintiff-Respondent,

vs.

TOWNSHIP OF FRANKLIN, et al.,
Defendants-Appellants.

DOCKET NO. 24,799
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NO. L-51892-84 P.W.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Movants will rely on the briefs of the parties in each case for a fuller explication of the procedural history and posture of each of them.

LEGAL ARGUMENT

I. THE NEW JERSEY SENATE AND GENERAL ASSEMBLY MINORITIES SHOULD BE MADE AMICI CURIAE PURSUANT TO RULE 1:13-9,

I A 1. Identity of Applicants

The Applicants in this matter are the Republican Legislators in the New Jersey Senate and in the New Jersey General Assembly. The identity of the membership of these two groups is set forth with specificity in the Certification of Steven L. Sacks-Wilner submitted herewith at K 3.

Although at the time of this application, the Republicans are a numerical minority in the State Senate and the General Assembly, beginning January 14, 1985 they will be a 50-30 majority in the General Assembly. Notwithstanding their present numerical minority in their respective houses, the New Jersey General Assembly Minority represented 33 of the 44 vote majority, 75% of the vote, enacting Senate Committee Substitute for S-2046/2344. The New Jersey Senate Minority constituted 15 of the 21 vote majority, 71.3% of the vote, enacting the same bill. Certification of Steven L. Sacks-Wilner at lff 5&6.

Moreover, due in no small part to the fact that they represent many of the municipalities involved in Mt. Laurel Litigation, the members of the Republican Delegations in the State Senate and Assembly played an integral and important part in negotiating the bill in question which was finally enacted with their support. See, Certification of Steven L. Sacks-Wilner at lff 3, 5 & 6.

I A 2. Nature of Proceedings

The proceedings below were brought to enforce the Mt. Laurel doctrine. These cases were first brought by "public interest" groups under a theory similar to that which led to Southern Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel, 67 R*Jt. 151 cert* deo. and app. dlsmd., 423 U.S. 808, 46 L. Ed. 2d 28, 96 S. Ct. 11 (1975). (Mt. Laurel I)

Subsequently, the case of Southern Burlington Co. v. H.A.A.C.P. v. Mt. Laurel Township, 92 B.J. 158 (1973) (Mt. Laurel II) was decided. Thereafter various builders and developers initiated actions brought against the municipalities which were typically consolidated with the original action. These cases are in various stages of resellition or irresolution.

It is not inconsistent with the past histories of these cases to assume that if any determination of these cases is made by the courts below based on the judicial remedies fashioned prior to the effective date of the Fair Housing Act, P.L. 1985, ch. 222 (the "Act") these determinations will be appealed. The appeals would probably inter alia, seek a remand for a redetermination of fair sharer numbers and compliance under the superceding legislative remedy under the theory of the "time of decision" rule. State, D.E.P. v. Ventron, 94 R*Jt. 473* 498 (1980). State v. Cedar Grove, 82 R*Jt. 435 (1980), as well as an equal protection theory seeking uniform results and standards statewide similar to that of Erie R. Co. v. Tompkins, 304 U.S. 64, 82 L.Ed. 1188 1191 (1938).

I A 3. Orders, Decisions, Opinion Appealed From.

In all of the cases in which this brief is being submitted, a municipality made a motion to the trial court for transfer of the case to the Council on Affordable Housing (the "Council") which was created by the Fair Housing Act, P.L. 1985, ch. 222. The resolution of various motions for transfer brought under section 16a* or section 16b of the Act are summarized in the Certification of Steven L. Sacks-Wilner at K 7.

In each of the cases, save that of Tewksbury, the motions were denied. Various cases before the Honorable Eugene Serpentelli, A.J.S.C. which are summarized in the certification were denied by orders dated from October 11, 1985 through the present. The decisions in these cases were read from the bench, and effectuated by subsequent Orders which are being supplied by the direct parties to those cases. The Honorable Stephen Skillman, J.S.C. heard similar motions on September 23 and issued Orders and a formal opinion on October 28, 1985.

It is the contention of the New Jersey Senate and General Assembly Minorities that these orders, decisions, and opinion were contrary to the expressed intent of the Legislature and decided based upon a mistaken definition of the term "manifest injustice" contained in section 16a of the Act.

I A 4. Issues Intended to be Addressed

If the applicants' motion is granted, the issues contained in the Court's letter of November 15, 1985 will be addressed.

*The Act contains no §16a, only §16 and §16b. For purposes of discussion, the aforementioned §16 will be referred to as §16a to distinguish it from §16b.

I A 5. Nature of the Public Interest in this Case.

The public interest in this case is so obvious as to barely warrant elucidation. Mt. Laurel I held that municipal land use regulations that do not provide for a realistic opportunity for a municipality's fair share of a region's needs for low and moderate income housing conflict with the general welfare and violate the state constitutional requirement of substantive due process and equal protection. Mt. Laurel I, 67 N.J. at 174 and 181; Mt. Laurel II, 92 N.J. at 208 and 209. These decisions and cases brought thereunder importantly affect the general welfare of all of the citizens of this State.

Moreover, there is an important public interest in having laws which have been, passed by the elected representatives of the people and signed by their elected chief executive be interpreted so as to effectuate the people's intent expressed by their elected representatives.

Finally, the public has a keen interest in seeing that justice is done in these cases and that similar motions brought by similar municipalities within this state be decided on similar bases so that there is a uniformity of result and justice throughout this State.

I A 6. Nature Of Applicants' Special Interest, Involvement or Expertise.

As will be more fully explained below, the applicants herein have a special interest, involvement and expertise in these matters. It seems particularly appropriate that the drafters and negotiators of legislation should arise to defend their own legislative intent in passing a statute. By virtue of their involvement in the drafting and negotiation of the statute as finally passed, the applicants herein also possess a particular expertise, experience and involvement in the nature and development of this law.

I B. THE PARTICIPATION OF THE NEW JERSEY SENATE AND GENERAL ASSEMBLY MINORITIES WILL ASSIST IN RESOLUTION OF AN ISSUE OF PUBLIC IMPORTANCE.

I S 1. The participation of the New Jersey Senate and General Assembly Minorities will assist in resolution of these issues.

Various members of the New Jersey Senate and Assembly Minorities were present at each of the vital steps which the law before us took on its way to enactment. Moreover, the members of these delegations were actively involved in the negotiation of the provisions of these bills, and are keenly aware of the purpose, meaning and intent of the various provisions of the law. At this point in time, it is clear that no one else in this State possesses a greater experience with this law.

Having been the overwhelming majority of the votes cast which resulted in passage of this bill in both houses of the Legislature, it is particularly appropriate that these members of the Legislature be guardians in these cases of the legislative prerogative contained in our constitution and implicit in the separation of powers doctrine. Compare N.J.Const. Art. III, 1(1 with Art. IV, §6, 112 and with Art. VI, §5, 114.

Moreover, each individual legislator is not only a representative of the people of his district, but a public official with a public responsibility to all of the citizens of this state. Each of these legislators is also bound by his oath to defend the constitution of this state.

Finally, the Mt. Laurel I Doctrine is founded under the general welfare doctrine, and it is particularly suitable for representatives of the public to defend the legislative remedy for the Mt. Laurel right.

Accordingly, it is clear that the members of the legislature who passed this bill are uniquely suited to defend the intent of the legislature and assist this court in resolution of these important and substantial issues.

I C. THE ISSUES OF THIS CASE ARE OF GREAT PUBLIC IMPORTANCE..

I C 1. The administration of the 'Mt. Laurel" Doctrine¹ is "complex, highly controversial, and obviously of great importance."

Mt. Laurel II, 92 N[^]J. at 199, n.1 (1983).

I C 2. The Failure of the courts below to follow the Legislative intent of the statute is an issue of great importance as it goes to the heart of Separation of Powers Doctrine.

There is a repeated and insistent recognition on the part of the Mt. Laurel II Court* that the delicate constitutional balance between the judiciary and the legislature is of great public importance. The Court reiterated this belief throughout the Mt. Laurel II opinion, specifically referring to it in its basic explanation of its decisions.

The Mount Laurel II Court stated "a brief reminder of the judicial role in this sensitive area is appropriate, since powerful reasons suggest, and we agree, that the matters are better left for the Legislature." Mt. Laurel II, 92 ^J. at 212.

Acknowledging the enormous difficulty of reaching political consensus in this controversial area, the court stated that such a consensus could "lead to significant legislation enforcing the constitutional mandate better than we can, legislation that might completely remove this court from those controversies....so while we have always preferred

* • Indeed, these cases bear a marked resemblance to Robinson v. Cahill, 118 N.J. Super. 223, (Law Div. 1972); Robinson v. Cahill, 62 N.J. 473, (1973) (Robinson I); Robinson v. Cahill, 63 N.J. 196 (1973), cert. denied sub. nom. Dickey v. Robinson, 414 U.S. 976 (1973) (Robinson II); Robinson v. Cahill, 67 N.J. 35 (1975) (Robinson III); Robinson v. Cahill, 69 N.J. 133 (1975) (Robinson IV); Robinson v. Cahill, 69 N.J. 449 (1976) (Robinson V) (subsequent history omitted). This Court demonstrated its respect for the separation of powers issues pervading these cases therein. It would be fitting if the issues regarding the administrative remedies available in these cases were similarly resolved. See, Abbott v. Burke, 100 N.J. 269 (1985).

legislative to judicial action in this field, we shall continue—until the Legislature acts—to do our best to uphold the constitutional obligation that underlies the Mt. Laurel doctrine." Id. at 212-13.

The Court went on, asking for legislation in this field stating, "we note that there has been some legislative initiative in this field. We look forward to more....our deference to these legislative and executive initiatives can be regarded as a clear signal of our readiness to defer further to more substantial actions." Id. at 213. However, the Court stated "[i]n the absence of adequate legislative and executive help, we must give meaning to the constitutional doctrine in the cases before us through our own devices, even if they are relatively less suitable." Id. at 213-214.

It is clear from the portions quoted and from judicial pronouncements throughout the Mt. Laurel II decision that the Court was extremely sensitive to the separation of powers issues in promulgating a judicial remedy to a constitutional right. Not only did the Court recognize that it was treading on constitutional prerogatives more appropriately addressed by other branches of government, it entreated the legislative and executive branches of government to enact a remedial statute to provide for the Mt. Laurel remedy. The Court amply demonstrated its desire and willingness to defer to such a legislative initiative.

The Fair Housing Act is precisely such a subsequent legislative remedy, superseding the judicial remedy which the Court reluctantly enunciated in Mt. Laurel II. It is the position of the Senate and General Assembly Minorities that the courts below have not only failed to follow the intent of the legislature; they have also failed to respond to the clear directives of the Supreme Court in Mt. Laurel II.

I C. 3. This Matter Raises Extremely Serious Constitutional Issues.

Resolution of the issues of this case will necessitate examination of the respective roles of co-equal branches of government, not only under Article III, Paragraph 1 of the New Jersey Constitution, the separation of the powers paragraph, but also under Article IV, Section 6, Paragraph 2, the zoning paragraph and Article VI, Section 5, Paragraph 4, the prerogative writs paragraph.

Very briefly, the applicants intend to demonstrate that the Legislature intended to impose a very strict standard which a party opposing transfer of a case to the Fair Housing Council must overcome. Gibbons v. Gibbons, 86 N.J. 515, 523-24 (1981).

The applicants intend to demonstrate that the standard for "manifest injustice" used by Judge Serpentelli, that of pure discretion, was wrong as a matter of law. Moreover, applicants intend to demonstrate that Judge Skillman's application of the standard of Rule 4:69-5 was wrong as a matter of law in light of the clear public policy of the state defined by the Legislature and expressed in the Act, as well as the standards for application of the rule. Abbott v. Burke, 100 N.J. 269, 297-301 (1985).

The constitutional doctrine of the separation of powers implies not only independence but also interdependence among branches of government which exist in symbiotic relationship so that the governmental organism will not only survive but flourish. Knight v. Margate, 86 N[^]J. 374, 388 (1981).

Applicants intend to demonstrate that the legislative and judicial standards contained in Gibbons, supra, and Rule 4:69-5 coalesce when properly interpreted.

A brief consideration of the other issues identified by the Court in its letter of November 15, 1985, seriata, follows.

The applicants further intend to demonstrate that the moratorium on the "builder's remedy" does apply to all cases pending in the State of New Jersey; of course it does not apply to any cases in which a final judgment, as defined in Rule 2:2-1, has been rendered and all right to appeal is exhausted. This interpretation is demonstrably constitutional.

The applicants intend to demonstrate further that in cases brought under §16a of the Act, those commenced 60 days or more before the adoption of the Act, the overwhelming majority should be transferred under the manifest injustice test. Transfer applications are mandatory for new cases, cases filed within 60 days of the Act. Accordingly, so long as the section 16a case was not so extraordinary as to preclude transfer of the matter to the Council, both cases should be transferred to the Council and consolidated therein.

Applicants intend to demonstrate that the entire statute is facially valid. See, opinion of Judge Skillman in Morris County Fair Housing Council, et al. v. Boonton Twp., et al., No. L-6001-78 P.W., No. L-42898-84 P.W., No. L-55343-85 P.W., No. L-29176-84 P.W., No. L-38694-84 P.W. and No. L-86053-84 P.W. (N.J. Super., October 28, 1985) (the "Skillman Opinion").

Moreover, applicants intend to demonstrate that the moratorium on builder's remedies is constitutional; that no section 16b case and therefore the issue of mandatory transfer in light of Rule 4:69-5 is not before this Court; that the definition of "region" and "credit against fair share" are both constitutional. See, e.g., Brief of the Attorney General of New Jersey before Judge Skillman.

Movants intend to demonstrate that any alleged delay in enforcement of constitutional obligation is speculative at best, likely to be similar no matter what forum one is in, and does not render an otherwise constitutional statute unconstitutional.

Moreover, applicants intend to demonstrate that the requirement when determining prospective need that development application approvals, real property transfers and State Planning Commission economic projections be considered is itself constitutional.

Applicants intend further to demonstrate that the settlement provision set forth in section 22 of the act should be certainly be available in settlements which have been submitted for court approval pursuant to the procedures outlined in Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984). Moreover, any settlement which satisfies the constitutional mandate, even if it was not submitted to the court for formal approval, should be eligible for the statutory six year period of repose upon a determination that the municipality, had satisfied its fair share requirement pursuant to the terms of the Act.

Finally, respecting severability, every statute in the State of New Jersey, pursuant to N.J.S.A. 1:1-10 as a matter of law is construed to contain a severability clause. However, in the event that anyone should have any doubt respecting the Legislative intent when enacting the law, the Fair Housing Act specifically contains its own severability clause in section 32.

I D. NO PARTIES TO THIS LITIGATION WILL BE UNDULY PREJUDICED
BY THE PARTICIPATION IN THE LITIGATION BY THE NEW JERSEY
SENATE AND ASSEMBLY MINORITIES.

It is difficult to conceive of any circumstance under which any party to this litigation could be prejudice by the members of a co-equal branch of government arising to defend the public interest as expressed in the public policy of the State through this legislation. Similarly, the attempt by these parties to help the Court in its search for the truth cannot and will not result in prejudice to any party.

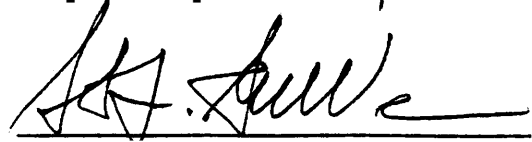
II. Conclusion.

In sum, the parties responsible for passage of this law respectfully request, in the interest of comity, that this Court allow them to participate in resolution of these matters of overwhelming public importance. In these cases, the Court is called upon to construe the Fair Housing Act which was fashioned in response to the request of this Court. The Senate and General Assembly Republicans believe that through their participation they can promote cooperation between the branches of government so that our government can succeed in its mission.

Finally, movants will demonstrate that the Fair Housing Act not only is constitutional but offers the best hope for satisfaction of the constitutional right which was defined by this Court and has come to be know as the Mt. Laurel Doctrine.

For all of the foregoing reasons, the New Jersey Senate and General Assembly Minorities respectfully urge this Court to grant their motion for Leave to Appear as Amici Curiae in these matters.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "S.L. Sacks-Wilner", written over a horizontal line.

Steven L. Sacks-Wilner, Esq.
Attorney for Movants,
New Jersey Senate and
General Assembly Minorities