~~[redacted]~~ – Cranbury, East Brunswick, 28-Jan-88
AF Monroe, North Brunswick, Old Bridge, Piscataway
Plainsboro, South Brunswick, South Plainfield
(General)

Petition for Certification to the Superior Court, Appellate Division

pg. 26

AF 000101M

SUPREME COURT OF NEW JERSEY
DOCKET NO.

URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET AL.,

PLAINTIFFS-RESPONDENTS,

vs.

THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, ET AL.,

DEFENDANTS-PETITIONERS.

PETITION FOR CERTIFICATION TO THE SUPERIOR COURT, APPELLATE DIVISION

Sat Below:
Hon. James H. Coleman, Jr.
Hon. James M. Havey
Hon. Edwin H. Stern

KIRSTEN, SIMON, FRIEDMAN, ALLEN, CHERIN & LINKEN
Attorneys for Defendants-Petitioners
One Gateway Center
Newark, New Jersey 07102

On the Petition:

Lionel J. Frank
Phillip Lewis Paley

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

SUPREME COURT OF NEW JERSEY
No. ___ Term ____

	SUPREME COURT OF NEW JERSEY DOCKET NO.
URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET AL., PLAINTIFFS-RESPONDENTS, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, ET AL., DEFENDANTS-PETITIONERS.	Civil Action PETITION FOR CERTIFICATION TO THE SUPERIOR COURT, APPELLATE DIVISION Sat Below: Hon. James H. Coleman, Jr. Hon. James M. Havey Hon. Edwin H. Stern

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF NEW JERSEY:

Plaintiffs-Appellants, the Townships of Cranbury, East Brunswick, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro and South Brunswick, and the Borough of South Plainfield, respectfully show:

STATEMENT OF THE MATTERS INVOLVED

This Petition seeks certification to review an opinion of the Appellate Division rendered on December 29, 1987, which reversed a decision of the Honorable Eugene D. Serpentelli, J.S.C., effectively holding that 1) the basis of this Court's decision in So. Burl.Cty. NAACP v. Tp. of Mt. Laurel, 67 N.J. 151, cert. den. 423 U.S. 808 (1975) (Mount Laurel II), as well as the relief ordered thereunder, is substantially different from the elements required to prove a violation of the Federal Fair Housing Act, 42 U.S.C.§3601 et seq., and the relief available under that statute; and 2) there are additional questions of general public importance, including the legal standards and procedure to be employed on remand, and the appropriateness of remand generally in light of this Court's decision in Hills Development Co. v. Bernards Township, 103 N.J. 1 (1986).

QUESTIONS PRESENTED

1) There is no authority holding that a litigant is entitled to fees under the federal fair housing act, 42 U.S.C. §3612(c), based on a violation of a separate state non-fee claim; analogy to the civil rights attorneys fees awards act, 42 U.S.C. §1988, is inapplicable.

2) The procedure adopted by the Appellate Division regarding the hearing on remand is inequitable and inconsistent with the findings of the 1976 trial court and with this court's directives that affordable housing matters should be administered by non-judicial agencies.

ERRORS COMPLAINED OF

1. The Appellate Division erred in holding that a litigant is entitled to fees under the Federal Fair Housing Act, 42 U.S.C. §3601 et seq., based upon a violation of a separate State non-fee claim, by analogy to the Civil Rights Attorneys Fees Awards Act of 1976, 42 U.S.C. §1988.

2. The Appellate Division's remand of this case for a trial de novo constitutes an abuse of discretion, is based upon a seeming misunderstanding of the relevant legal standards, is procedurally impractical, and is inconsistent with this Court's decision in Hills Development Co v. Bernards Township, 103 N.J. 1 (1986).

REASONS AND BASIS UPON WHICH IT IS CONTENDED THAT CERTIFICATION SHOULD BE GRANTED.

Certification should be granted to address the Appellate Division's unprecedented equation of a right to attorneys' fees under the Federal Fair Housing Act, 42 U.S.C. §3612(c), with a right to fees under the Civil Rights Attorneys Fees Awards Act of 1976, 42 U.S.C. §1988, in respect to this Court's decision in So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983 (Mount Laurel II) an issue of significant public importance for the municipalities and residents of this State. Furthermore, this Court should exercise its responsibility of supervision of civil procedure to examine the Appellate Division's remand of this matter for review of a 12 year old trial record solely to determine an entitlement to attorneys' fees.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The defendant municipalities respectfully seek certification to review the Appellate Division decision of December 29, 1987, which reversed Judge Eugene D. Serpentelli's holding that Plaintiffs are not entitled to attorneys fees and costs pursuant to the Federal Fair Housing Act, 42 U.S.C. §3612(c) (herein the "Federal Act"), and thus under R. 4:42-9(a)(8).

This case has a remarkable history. In 1974, Plaintiffs filed suit against 23 of the 25 municipalities in Middlesex County, alleging that the defendants' zoning ordinances violated various State and Federal statutes, as well as the New Jersey and United States Constitutions.

In May, 1976, the Chancery Division ruled that the zoning ordinances of 11 of the defendant municipalities were exclusionary, based upon standards set down in So. Burl. Cty. NAACP v. Tp. of Mt. Laurel, 67 N.J. 151, cert. den. 423 U.S. 808, (1975) (Mt. Laurel I). Plaintiffs' claims under the Federal Act, 42 U.S.C. §3601 et seq., as well as under the Thirteenth and Fourteenth Amendments to the United States Constitution, were dismissed. Urban League of New Brunswick v. Mayor & Coun. Carteret, 142 N.J. 11, 18-19 (Ch. Div. 1976), the trial court finding "no credible evidence of deliberate or systematic exclusion of minorities". 142 N.J. Super. at 19.

The case was then appealed. The Appellate Division, unlike the lower court, held that the individual plaintiffs

had standing to assert federal constitutional and statutory claims, including §3601, and that the lower court erred by requiring the corporate plaintiffs to produce proof of discriminatory intent. The holding that defendants' ordinances were exclusionary was reversed. Urb. League of New Brunswick v. Mayor & Coun. Carteret, 170 N.J. Super. 461 (App. Div. 1979).

Upon appeal to the Supreme Court, the case was consolidated with five other exclusionary zoning cases. In So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (Mt. Laurel II), the Supreme Court reversed the Appellate Division's decision, finding the municipal ordinances violative of the New Jersey Constitution. As to plaintiffs' Thirteenth and Fourteenth Amendment claims, rejected by both the Chancery and Appellate Divisions, the Supreme Court stated: "it does not appear that [those claims are] being pressed before this Court." Id. at 341. Nowhere within the 261 page opinion did this Court allude to plaintiffs' §3601 claim; arguably, the Supreme Court believed that that claim, together with plaintiffs' other federal claims, was not being "pressed" before it. In fact, the §3601 claim was never raised by plaintiffs at any time from the 1979 Appellate Division decision to the 1986 application for fees, seven years later.

In any event, on July 2, 1985, the New Jersey Legislature enacted the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301

et seq, which created the Council on Affordable Housing ("Council"). The constitutionality of that legislation was sustained by this Court in Hills Development Co. v. Bernards Township, 103 N.J. 1 (1986), which ordered all pending Mount Laurel II cases transferred to the Council.

In August, 1986, for the first time, plaintiffs applied for attorneys' fees, expert fees and costs; plaintiffs had filed no application for such relief during the proceedings in the Chancery Division (between 1973 and 1976), during the appeal to the Appellate Division (between 1976 and 1979), or while this matter was before the Supreme Court (between 1980 and 1983). The August, 1986 application came thirteen years after the filing of the original complaint and was supported by no certification of services rendered nor any supporting data whatsoever as to legal fees.

On November 14, 1986, Judge Serpentelli denied Plaintiffs' application for attorneys fees and costs. The Court found that the operative facts supporting Mount Laurel II were not the same facts necessary to show discrimination under the Federal Act -- that is, discrimination based upon race, color, religion, sex, or national origin in the sale, rental, financing or brokerage of housing. See 42 U.S.C. §3601 et seq. Plaintiffs' argument that economic discrimination is tantamount to racial discrimination, absent any factual basis except for 1980 census data appended to Plaintiffs' 1986 submissions, was rejected.

In an unprecedented decision, the Appellate Division reversed and remanded for a trial de novo based on the 1976 trial record, so that the trial court could determine whether the 1976 record discloses evidence of racial discrimination sufficient to support an award of attorneys' fees under §3612(c) of the Federal Act.

In addition to addressing the Appellate Division's unprecedented equation of a right to attorneys' fees under §3612(c) with a right to fees under the Civil Rights Attorneys Fees Awards Act of 1976, 42 U.S.C. §1988 (herein "§1988"), an issue of significant public importance for the municipalities and residents of this State, this Court should exercise its responsibility of supervision of civil procedure to examine the Appellate Division's decision to remand this matter for review of a twelve year old trial record solely to determine an entitlement to attorneys' fees.

POINT I

THERE IS NO AUTHORITY HOLDING THAT A LITIGANT IS ENTITLED TO FEES UNDER THE FEDERAL FAIR HOUSING ACT, 42 U.S.C. §3612(c), BASED ON A VIOLATION OF A SEPARATE STATE NON-FEE CLAIM; ANALOGY TO THE CIVIL RIGHTS ATTORNEYS FEES AWARDS ACT, 42 U.S.C. §1988, IS INAPPLICABLE.

This appeal is based solely upon plaintiffs' quest for attorneys' fees. Not until August, 1986, twelve years after the start of this litigation, ten years after the 1976 Chancery Division decision [42 N.J. Super. 11 (Ch. Div. 1976)]; seven years after the 1979 Appellate Division review [170 N.J. Super. 461 (App. Div. 1979)]; and four years after the 1983 Mount Laurel II decision did plaintiff first file a formal application for attorneys' fees and costs.

Plaintiffs' application[1] sought fees pursuant to R. 4:42-9(a)(8), claiming a right thereto under the Federal Act [42 U.S.C. §3612(c)][2]. Because that statute focuses on

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[1] The application for attorneys' fees, costs and expert fees was filed only on behalf of the corporate plaintiff, Urban League of Greater New Brunswick, now Civic League of Greater New Brunswick.

[2] 42 U.S.C. §3612(c) provides:

> The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff. Provided, That the said plaintiff in the opinion of the court is not financially able to assume said

discrimination based specifically on race, color, religion, sex, or national origin in the sale, rental, financing or brokerage of housing (42 U.S.C.§§3604-05), and because evidence of racial discrimination was not specifically considered at the 1976 Chancery Division trial, plaintiffs' claim was largely based on an analogy to §1988.[3]

§1988 permits the discretionary award of attorneys fees to parties who have prevailed in proving specified violations of federal law.[4] Violations of §3601 et seq. are not included within the statutory provisions of §1988, and there is no case that holds that a litigant is entitled to attorneys fees under §3612(c), when that litigant has prevailed on a separate non-fee claim pendent to claims under the Federal Act.[5]

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attorneys' fees.

[3] Although §1988 was enacted by Congress two years after plaintiffs filed their complaint, they did not move to amend their complaint to seek counsel fees under §1988.

[4] Section 1988 provides:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 of this title, Title IX of Public Law 92-318, or Title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys fee as part of the costs.

[5] This is significantly different from cases decided under §1988 which permit the award of counsel fees where the non-fee claim is "substantial" and arises out of a "common nucleus of operative fact." See, Maher v. Gagne, 448 U.S. 122 (1980), and Hagans v. Lavine, 415 U.S. 528 (1974).

Judge Serpentelli (one of the three Superior Court Judges specifically assigned by this Court to hear all Mount Laurel litigation and, therefore, a Judge with substantial knowledge of Mount Laurel litigation and theory) rejected plaintiffs' argument that the "common nucleus of operative fact" basis for awarding fees under §1988 was present for purposes of a Federal Act fee application. During oral argument on plaintiffs' fee application on November 14, 1986, Judge Serpentelli stated:

> [M]ount Laurel does not ground its constitutional violation on discrimination of race, color, sex, or national origin. Its thrust is totally different, and its relief is unlike anything that the federal act [§3601] envisioned.
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> * * * *
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> The Singer test [Singer v. State, 95 N.J. 487 (1984)] does require a [factual] nexus between the cause of action and the relief obtained. A violation of the federal Fair Housing Act [§3601] ... would require a finding of discrimination based on race, color, sex, religion or creed, not low or moderate income. The Supreme Court finding was confined to the impact defendants' improper use of its power to zone was having on persons of lower and moderate income. While it may be that the impact was most greatly felt on nonwhites, minorities, no court has found low and moderate income to be equivalent to race. Boyd v. Lefrak Organization [sic., Waldie v. Schlesinger], 509 F.2d 1110 (2nd Cir. 1975); relying upon James v. Valtierra, 402 U.S. 137 (1971).
>
> * * * *

> In the instant case I cannot say that the same facts which give rise to the New Jersey violation also violate the federal Act [§3601]. [Da4-1 to 6 to Da5-13 to Da6-1 to 8 and 24-25.]

Judge Serpentelli correctly recognized that even under §1988, counsel fees may not be routinely awarded. In Smith v. Robinson, 468 U.S. 992 (1984), for example, plaintiffs asserted claims for relief based on state law, as well as the (federal) Education of the Handicapped Act ("EHA"), a non-fee claim, the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Unites States Constitution, and on 42 U.S.C. §1983. They argued that since the EHA claim (on which they prevailed) and their constitutional claims arose out of a common nucleus of operative fact, they were entitled to attorneys fees under §1988 pursuant to Maher v. Gagne, supra. In denying attorneys fees under §1988, the Supreme Court stated:

> [T]he authority to award fees in a case where the plaintiff prevails on substantial constitutional claims is not without qualification. Due regard must be paid, not only to the fact that a plaintiff "prevailed", but also to the relationship between the claims on which effort was expended and the ultimate relief obtained. Hensley v. Eckerhart, 461 U.S. 424 (1983); Blum v. Stenson, 465 U.S. 886 (1984). Thus, for example, fees are not properly awarded for work done on a claim on which a plaintiff did not prevail and which involved distinctly different facts and legal theories from the claims on the basis of which relief was

> awarded. Hensley v. Eckerhart, 461 U.S. at 434-435.
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> * * * *
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> In light of the requirement that a claim for which fees are awarded be reasonably related to the plaintiff's ultimate success, it is clear that plaintiffs may not rely simply on the fact that substantial fee-generating claims were made during the course of the litigation. Closer examination of the nature of the claims and the relationship between those claims and petitioner's ultimate success is required. 468 U.S. at 1006, 1007 (emphasis added).

In its opinion of December 29, 1987, the Appellate Division seems to have confused the standards establishing a right to fees under §3612(c), on the one hand, with those governing a right to fees under §1988, on the other:

> In Right to Choose v. Byrne, 91 N.J. 287, 316 (1982) and Singer v. State, supra, 95 N.J. at 500, our Supreme Court held that an award of counsel fees under §1988 may be allowed under R. 4:42-9 to a plaintiff who prevailed on a State claim but whose federal fee claim was not decided if the two claims were related by either a common core of facts or related legal theories. We believe the same approach should be applied to an alleged violation of §3604 and a request for fees under §3612(c).
>
> We hold plaintiffs are entitled to now have a decision on the unresolved fee claim under Title VIII based on the "common nucleus of operative facts" doctrine which in this case means a de novo trial based on the 1976 trial record. [pp. 29-30, slip op.]

This conclusion is supported by no legal authority. It creates rights to attorneys' fees under the Federal Act beyond any right established by federal statute or case law,

through an unwarranted expansion of §1988. In fact, §1988 does not specifically include violations of the Federal Act, even though §1988 was enacted eight years after the passage of that statute.[6]

The Appellate Division misunderstood the distinct and separate rights to attorneys fees established under §3612(c) and under §1988. Without any authority, it sanctioned a mechanism whereby litigants who have not established liability under the Federal Act are still entitled to counsel fees by prevailing on a non-fee claim pendent thereto, whether or not that claim has any factual nexus to alleged deprivation of rights under the Federal Act. Neither Right to Choose v. Byrne, supra, nor Singer v. State, supra, addressed such entitlement, and, Smith v. Robinson, 468 U.S. at 1006-1007, rejects attorneys' fees for work done on a claim which involves "distinctly different facts and legal theories from the claims on the basis of which relief was awarded." Smith v. Robinson is consistent with the established view that

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[6] It is clear from the legislative history of §1988 that Congress was aware of the Federal Fair Housing Act's provision for attorneys fees. See S.2278, remarks of Senator Tunney. It is also clear that the Federal Fair Housing Act was not included within the coverage of §1988 because that statute was enacted to "remedy anomalous gaps in our civil rights laws" created by the decision in Alyeska Pipeline Service Co. v. Wilderness Society, 441 U.S. 240 (1975). "Fees are allowed in a housing discrimination suit brought under Title VIII of the Civil Rights Act of 1968, but not in the same suit brought under 42 U.S.C. §1982, a Reconstruction Act protecting the same rights." S. 2278. Since the Federal Act provided for attorneys fees, there was no need to include it within the coverage of §1988.

"liability on the merits and responsibility for fees go hand in hand; where a defendant has not been prevailed against ... on the merits, §1988 does not authorize a fee award against that defendant." Kentucky v. Graham, 473 U.S. 159, (1985). Cf. Pulliam v. Allen, 466 U.S. 522 (1984). See also Bergman v. United States, 648 F.Supp. 351, 357-358 (W.D. Mich. 1986), where fees were denied based on both Smith v. Robinson and Kentucky v. Graham, supra.

Simply, the Appellate Division created, sua sponte, a right to attorneys' fees where none exists. Its decision is contrary to this Court's holding in Sunset Beach Amusement Corp. v. Belk, 33 N.J. 162, 167 (1960), that "absent ... a statutory provision, we perceive no authority to depart from the general policy that 'each litigant shall bear the expenses of prosecuting and defending his individual interest.'" Accord, Helton v. Prudential Property & Cas. Ins. Co., 205 N.J. Super. 196, 202 (App. Div. 1985). Because of the unprecedented rights created by the lower court's opinion, and the significance of those rights to the litigants herein, to future litigants and to New Jersey municipalities in general, as well as the need to review rights newly established which appear in conflict with established precedents of this Court (Sunset Beach, supra,), certification should be granted.

POINT II

THE PROCEDURE ADOPTED BY THE APPELLATE DIVISION REGARDING THE HEARING ON REMAND IS INEQUITABLE AND INCONSISTENT WITH THE FINDINGS OF THE 1976 TRIAL COURT AND WITH THIS COURT'S DIRECTIVES THAT AFFORDABLE HOUSING MATTERS SHOULD BE ADMINISTERED BY NON-JUDICIAL AGENCIES.

Beyond the substantial questions previously addressed, there are other questions of general public importance which merit the supervision and review of this Court, in accordance with the standards set forth in R. 2:12-4, particularly given the history of this case.

The Appellate Division correctly asserts that plaintiffs have waived any right to an evidentiary trial on their claim for fees (slip op. p. 13). The Court also recognized that "it would be senseless to add to the cost of the case associated with an evidentiary hearing merely to determine the counsel fee claim," concluding that a trial de novo based on the 35 day 1976 trial record should be employed, by authority of R. 3:23-8. Id. Its opinion also permitted the parties to use experts, upon conditions (slip op. p. 30).

This procedure, in fact, is the functional equivalent of a trial. It will add to the extraordinary costs already incurred by all parties.[7] Not only must each of the 35 days of trial transcripts and exhibits be reviewed and analyzed

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[7] The parties have experienced thirty five trial days in 1976 and as many as thirty additional trial days in 1984 and 1985, as well as the time needed for two trips to the Appellate Division and the Supreme Court already.

(assuming availability),[8] but experts will certainly be retained, and once retained, will need to expend substantial time analyzing testimony and exhibits 12 years old. After that arduous and costly process is completed, is it not reasonable to expect depositions of the experts? Might these costs be assessed against defendants? Will the defendants remain subject to claims for additional legal fees in the process? This procedure most certainly "adds to the cost of the case ... merely to determine the counsel fee claim [.]" (slip op. p. 13), a result contrary to that articulated by the Appellate Division.

While an internal inconsistency in an Appellate Division opinion may not itself be sufficient grounds for certification per R. 2:12-4, the unusual nature of this case, the numerous public defendants, the twelve years of continuous litigation, the legislative direction for the use of the administrative process (of which more infra), and the importance of the substantive issues to the public require that this Court provide the strictest possible supervision over each aspect of this matter, especially as to costs to be borne, ultimately, by the public at large.

Furthermore, the Appellate Division directed a remand to determine whether plaintiffs proved a Federal Act violation,

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[8] Only two of the original attorneys continue to represent Petitioners, and none of the original attorneys currently represent plaintiffs. Informal communication with the office of the Clerk of the Superior Court discloses that that office has not retained transcripts from the 1976 trial.

pursuant to the standards set forth in Metropolitan, etc. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977), cert. den. 434 U.S. 1025 (1978), and United States v. City of Black Jack, Missouri, 508 F.2d 1179 (8th Cir. 1974), cert. den. 422 U.S. 1042 (1975):

> Under federal decisional law, if a prima facie case of racial or ethnic discriminatory effect was established by the evidence presented in the 1976 trial, "the burden shifts to the governmental defendant to demonstrate [from the evidence] that its conduct [in passing or enforcing its zoning ordinance] was necessary to promote a compelling governmental interest." City of Black Jack, Missouri, supra, 508 F.2d. at 1185. Here, it may be more difficult for the defendants to now rebut a prima facie case, when and if plaintiffs establish one, because Mount Laurel II has already decided that the ordinances advance no compelling governmental interest (slip op. p. 27).

The Appellate Division's reasoning overlooks the 1976 Chancery Division finding, based on the 1976 record, that plaintiffs' presented "no credible evidence of deliberate or systematic exclusion of minorities..." 142 N.J. Super. at 19 (emphasis added), and that neither an intent to discriminate because of race nor a discriminatory effect based on race was proven.[9] Therefore, even under the federal case law relied

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[9] And, as to certain municipalities, the 1976 trial court specifically found that no allocation of housing units was needed to correct imbalances among the defendant municipalities themselves. 142 N.J. Super. at 36-37.

upon by the Appellate Division, the standard for finding a violation under §3601 was not met in 1976.[10]

This Court, however, has never decided whether the Arlington Heights, supra, standard, is appropriate when addressing claims of Federal Act violations. It makes little sense to go forward, simply to find later on appeal that the Supreme Court of New Jersey feels that City of Arlington Heights and City of Black Jack, supra, may not constitute the appropriate standard. Certification should be granted to avoid an expensive duplication of judicial and legal effort.

Finally, this Court should consider whether the decision below diverges from Mount Laurel II and Hills Development Co. v. Bernards Township, 103 N.J. 1 (1986). In Mount Laurel II this Court clearly stated that the legislative branch of state government, rather than the judicial branch, was the appropriate body to deal with our Constitution's guarantee of low and moderate income housing in developing municipalities throughout the State. In Hills Development Co., supra, this Court transferred all cases before it to the Council on Affordable Housing ("Council") to avoid inconsistent

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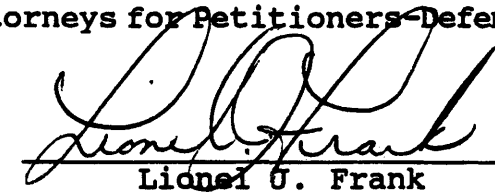
[10] It would be fundamentally unfair to preclude defendants from rebutting any evidence plaintiffs might rely upon to establish a violation in 1976 of the Federal Fair Housing Act, when this Court did not rule until 1983 that all municipal zoning ordinances before it were unconstitutionally exclusionary. Furthermore, the only evidence plaintiffs submitted in support of its fee application was 1980 census data, which both Judge Serpentelli and the Appellate Division ruled was immaterial (slip op. p. 26).

CONCLUSION

For the foregoing reasons, Petitioners, the Townships of Cranbury, East Brunswick, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro and South Brunswick, and the Borough of South Plainfield, respectfully request that this Court grant certification.

KIRSTEN, SIMON, FRIEDMAN, ALLEN,
CHERIN & LINKEN
Attorneys for Petitioners-Defendants

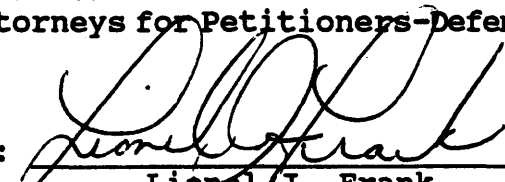
By: 
Lionel J. Frank

Dated: January 28, 1988

CERTIFICATION

I hereby certify that the foregoing petition presents a substantial question meriting certification, and that it is filed in good faith and not for purposes of delay.

KIRSTEN, SIMON, FRIEDMAN, ALLEN,
CHERIN & LINKEN
Attorneys for Petitioners-Defendants

By: 
Lionel J. Frank

Dated: January 28, 1988