

Supplement to Plaintiff's Memorandum  
in support of Application for  
attorneys' fees  
④ Exhibits

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On Behalf of the ACLU of NJ

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER ]  
NEW BRUNSWICK, et al., ]  
 ]  
 Plaintiffs, ]  
 ]  
 vs. ]  
 ]  
 THE MAYOR AND COUNCIL OF ]  
 THE BOROUGH OF CARTERET, ]  
 et al., ]  
 ]  
 Defendants. ]

Civil No. C 4122-73  
(Mount Laurel)

SUPPLEMENT TO PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES

As set forth in their main brief, the Urban League plaintiffs are entitled to attorneys fees and costs under the federal Fair Housing Act, 42 U.S.C. §3601 et seq., because their §3601 claims arise from the same nucleus of operative facts as the state constitutional claims upon which they prevailed in this action.

In their main brief, plaintiffs showed that the Urban League satisfied the tests established by the United States Supreme Court in Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977 ) cert. denied, 434 U.S.1025 (1978). The second test, or factor, considered by the Arlington

Heights Court was the "[strength of] plaintiffs showing of discriminatory effect" Id. at 1290. The Court proceeded to distinguish between two kinds of racially discriminatory effect:

The first occurs when [a facially neutral decision about housing] has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups. (Emphasis added.) Id. at 1290.

The census data appearing at Exhibit A of plaintiffs' brief demonstrated that the exclusionary zoning of defendant municipalities had an adverse impact on a greater percentage of nonwhites than whites. A copy of that exhibit is again attached as Exhibit A. The respective percentages of black and white residents in each municipality as well as the pertinent data for the eleven county region adopted by the Court in AMG v. Township of Warren and utilized throughout this litigation have been added by way of further clarification.<sup>1</sup> The very small percentages of blacks in defendant municipalities, compared to the percentage of blacks in the relevant population strikingly demonstrates the adverse impact of defendants' exclusionary zoning.

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<sup>1</sup> In addition, the data for Piscataway and Monroe have been adjusted to take into account Camp Kilmer, the U.S. Military Reservation, and the N.J. State Home for Boys, respectively.

The census data annexed as Exhibits B through J demonstrates the second kind of discriminatory effect; that is, the effect which the exclusionary zoning has had on the community. Here, that effect has been the perpetuation of segregation in the defendant municipalities. This data consists of 1980 census tract maps of each of the defendant municipalities, census tables setting forth the salient characteristics by block number, ("Block Statistics"), and a summary of the racial composition of each tract ("Tract Statistics").<sup>2</sup> As the Court will note, the annexed Block Statistics do not include statistics for whites. For purposes of the within block analyses, the numbers of whites have been estimated by subtracting black and Asian/Pacific Islander populations from the total.

A comprehensive analysis of this data is beyond the scope of this memorandum. The most cursory review, however, reveals distinct, isolated areas where the black population is concentrated. (These areas have been indicated by shading on the census tract maps.) It is respectfully submitted that this data establishes a prima facie case of racial discrimination. As the Eighth Circuit held in United States v. City of Black Jack, Missouri, 508 F.2d 1179 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975):

The burden of proof in Title VIII cases

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<sup>2</sup> Larger and clearer copies of the census tract maps are available for inspection at the offices of the Rutgers Constitutional Litigation Clinic.

is governed by the concept of the prima facie case.' To establish a prima facie case of racial discrimination, the plaintiff need prove no more than that the conduct of the defendant actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect. The plaintiff need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated. Effect, and not motivation, is the touchstone, in part because clever men may easily conceal their motivations, but more importantly, because

\* \* \* whatever our law was once,  
\* \* \* we now firmly recognize that  
the arbitrary quality of thoughtlessness  
can be as disastrous and unfair to  
private rights and the public interest  
as the perversity of a willful scheme.

Hobson v. Hansen, 269 F. Supp. 401, 497 (D.D.C. 1967),  
aff'd sub nom. Smuck v. Hobson, 132 U.S. App. D.C. 372,  
408 F.2d 175 (1969) (en banc). (Citations omitted.)  
Id. at 1184-85.

The accompanying data is incontrovertible. Considered in conjunction with the other factors set forth in Arlington Heights, it is respectfully submitted that there can be no doubt that the facts here, which have already been held sufficient to support plaintiffs' state constitutional claim, similarly mandate a finding in favor of plaintiffs with respect to their \$3601 claims.

Cranbury

(Census data annexed as Exhibit B)

The census tract data shows that a disproportionate number of the black citizens of Cranbury reside in the Maplewood Avenue area between Cranbury Half-Acre Road and North Main Street. As shown by the table below, 28% of Cranbury's black population resides in Blocks 301, 305, and 309.

Block	Population	Blacks	Whites
301	189	9	180
305	119	23	96
309	57	15	42
	<u>365</u>	<u>47</u> (12.9%)	<u>318</u> (87.1%)

East Brunswick

(Census data annexed as Exhibit C)

Blacks are less than 1% of the population in six of the township's eight census tracts. In a 7th tract (66.02) blacks make up only 1.2% of the population which is over 95% white. The remaining tract (64.01) has the greatest number of black residents; they account for 2.7% of the tract's population. However, 72% of this black group live in a triangular area bounded by the N.J. Turnpike, State Highway 18, and Tice's Corner Road. This same area accounts for only 32% of the white residents in census tract 64.01.

Monroe

(Census data annexed as Exhibit D)

Only 2.5% of the population of Monroe is black, not including the residents of the N.J. State Home for Boys. 136, or 35% of the 389 black residents live in the Spotswood-Gravel Hill area, from Pergola Avenue to Jamesburg Englishtown Road, blocks number 901-905, 989 in tract 82.01. Blacks in this area comprise 21.6% of the population.

North Brunswick

(Census data annexed as Exhibit E)

Only 1.7% of North Brunswick's whites live in the Marigold Street Area between UN Street and How Lane (tract 61.04, block numbers 119, 112) while 27% of North Brunswick's blacks live there. This area is 64% black in a town that is only 4% black. 33% of North Brunswick's blacks and only 16% of the town's whites live in tract 61.04. Similarly, 119 blacks, or 12% of the black population, live in the Hidden Lake Valley area (tract 62.01, block 311) where only 4% (916 whites) of the white population lives.

Old Bridge

(Census data annexed as Exhibit F)

The small number of black citizens in Old Bridge for the most part reside in a few, largely black areas. In Lawrence Harbor, tract 80, for example, 63.7% of the black population resides in

block 508, which is 91.1% black. In tract 79.02 (CDP), 97, or 80% of the blacks, and only 110, or 5.7% of the whites live in block 399. In tract 79.02, 54% of the black population live in block 202, while only 16.4% of the white population lives there. In tract 79.04, 65.2% of the black population, and only 19.2% of the white population, lives in block 502.

Piscataway

(Census data annexed as Exhibit G)

(a) 94% of the residents of the Park Avenue area, from River Road to Hoes Lane in tract 7 are black.

Block Nos.	Population	Black	White
425-434	259	242	17
504-510	308	291	17
	<u>567</u>	<u>533</u>	<u>34</u>
		(94%)	(6%)

(b) The School Street area, from Sutton Lane to Stelton Road in Tract 6.01 is 52% black.

Block Nos.	Population	Black	White
818	534	236	204
807	139	112	27
	<u>673</u>	<u>348</u>	<u>231</u>
		(52%)	(34%)

(c) Tract 5.01. 581 blacks and 116 whites reside in the West 3rd Street area, consisting of blocks number 207-212, 214-216 in Tract 5.01. This area is 83% black and less than 17% white. 528 blacks and 398 whites reside in blocks 101-103 and 105-117 in the northeast section of Tract 5.01. 76% of the residents in this area are black.

38% of the residents of this tract are black. 1857, or 34.2%, of the 5425 blacks in Piscataway (not including the personnel at Camp Kilmer) live in this tract.

2439, or 45%, of the 5425 blacks in Piscataway (not including personnel at Camp Kilmer) are concentrated in these 3 areas.

### Plainsboro

(Census data annexed as Exhibit H)

Plainsboro Township is a sparsely populated area, a large portion of which contains Princeton University's Forrestall Research Center and campus. Since the Township contains only one census tract (#86) and most of the blocks define large geographic areas, the extent of segregation within Plainsboro cannot be ascertained from this data.

Only 5.9% of Plainsboro's population is black, however, while blacks comprise 13.2% of the relevant eleven county AMG region. This indisputably demonstrates that Plainsboro's "... [decisions about housing have] a greater adverse impact on one racial group than another", the other prong of the Arlington Heights discriminatory effect test. As the Supreme Court made clear, either kind of discriminatory effect contravenes the Fair Housing Act.

South Brunswick

(Census data annexed as Exhibit I)

In the tract 84.02 Kendall Park (CDP) area, black residents are concentrated in blocks 215 and 216, where 18.8% of the population is black in a town where blacks comprise only 4% of the population. 11% of South Brunswick's total black population, and only 1.8% of South Brunswick's whites, live there.

South Plainfield

(Census data annexed as Exhibit J)

85% of South Plainfield's black population is concentrated in discrete areas of five of the township's census tracts. All of the blacks in Tract No. 9.01, for example, reside in a 4 block area. In tract No. 8.01, 87% of the black population is concentrated in the northwest. In tract No. 8.02, 92% of the black population is concentrated in the southernmost portion. In tract No. 9.02, 92% of the black population is concentrated in a 5 block area and in tract No. 10.2, 76% of the black population resides in the northwest corner.

CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in plaintiffs' main brief, the Urban League plaintiffs respectfully submit that they should be granted attorneys' fees and costs in an amount to be determined following the submission of supplemental affidavits.

Dated:

*Sept 12, 1986*



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The assistance of Georgette Siegel, a student at the Rutgers School of Law, Newark, in the preparation of this brief is gratefully acknowledged.

TABLE OF EXHIBITS

	Exhibit
1980 Census Data Demonstrating Adverse Impact of Exclusionary Zoning in Defendant Municipalities	A
Cranbury	B
East Brunswick	C
Monroe	D
North Brunswick	E
Old Bridge	F
Piscataway	G
Plainsboro	H
South Brunswick	I
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EXHIBIT A

1980 CENSUS DATA DEMONSTRATING ADVERSE IMPACT  
OF EXCLUSIONARY ZONING IN DEFENDANT MUNICIPALITIES

<u>TOWN</u>	<u>POPULATION</u>	<u>BLACK</u>	<u>WHITE</u>
Cranbury	1927	168 (8.7%)	1743 (90.5%)
East Brunswick	37711	437 (1.2%)	35865 (95.1%)
Monroe	15858	592 (3.7%)	14930 (94.1%)
w/o N.J. State Home	15471	389 (2.5%)	14747 (95.3%)
North Brunswick	22220	1003 (4.5%)	20533 (92.4%)
Old Bridge	51515	1086 (2.1%)	48807 (94.7%)
Piscataway	42223	6162 (14.6%)	33135 (78.5%)
w/o Kilmer Reserv	40134	5425 (13.5%)	31817 (79.3%)
Plainsboro	5605	330 (5.9%)	5095 (90.9%)
South Brunswick	17127	680 (4%)	15398 (89.9%)
South Plainfield	20521	979 (4.8%)	19167 (93.4%)
11-Cty AMG Region	4,699,713	618,555 (13.2%)	3,844,951 (81.8%)
NEW JERSEY	7,364,823	925,066 (12.6%)	6,127,467 (83.2%)

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Source: Population statistics from New Jersey 1980 Census of Population and Housing, Municipal Profiles, Volume II: Characteristics of Households and Families, New Jersey State Department of Labor, January 1982.