The Burger Court Opinion Writing Database

Arlington Heights v. Metropolitan Housing Development Corp.

429 U.S. 252 (1977)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 3, 1977

Re: 75-616 Village of Arlington Heights v. Metropolitan Housing Development Corporation

Dear Lewis:

I am generally with you on the merits here, but it seems that Byron makes a pretty good case for remand rather than final decisions here. I assume you considered his view before you wrote. At your convenience can you give me a call on this?

Regards,

WEB

Mr. Justice Powell

I talked to the C.J.
& he will join.
1/3/77

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 6, 1977

Re: 75-616 Village of Arlington Heights v. Metropolitan Housing Development Corporation

Dear Lewis:

I join even though I would be comfortable with Byron's remand.

Regards,

WEB

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 20, 1976

MEMORANDUM TO: Mr. Justice White
Mr. Justice Marshall

RE: No. 75-616 Village of Arlington Heights v. Met. Housing Development Corporation

My records show that the three of us are in dissent. Byron would you care to take this one?

W.J.B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 29, 1976

RE: No. 75-616 Village of Arlington Heights v. Metropolitan Housing Development Corporation

Dear Byron:

I too would remand for the reasons stated in the first two paragraphs of your dissent. However, I have some reservations about the third. Personally, I consider Lewis' opinion to be a useful discussion of techniques for linking discriminatory effect with discriminatory purpose, and consequently would not want to imply that I disagree with the content of his discussion. Could you omit the third paragraph? If not, I'll file a short statement indicating that I join paragraphs one and two of your opinion on the dispositional issue, while agreeing with Lewis' discussion of the "subjects of proper inquiry" that should guide the lower court on remand.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 14, 1976

75-616, Arlington Hgts v. Metro Housing

Dear Lewis,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 9, 1976

Re: No. 75-616 — Arlington Heights v. Metropolitan Housing Developments Corp.

Dear Lewis:

I shall write separately in this case. I do not agree that the Court should reconsider the applicable standard and then do the fact-finding here in the first instance. I also have doubts about the standard you have fashioned.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 12-22-76

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-616

Village of Arlington Heights et al., Petitioners, *v.* Metropolitan Housing Development Corporation et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January —, 1977]

MR. JUSTICE WHITE, dissenting.

The Court reverses the judgment of the Court of Appeals because it finds, after re-examination of the evidence supporting the concurrent findings below, that "respondents failed to carry their burden of proving that discriminatory purpose was a motivating factor in the Village's decision." *Ante,* p. 17. The Court reaches this result by interpreting our decision in *Washington* v. *Davis,* — U. S. —, and applying it to this case, notwithstanding that the Court of Appeals rendered its decision in this case before *Washington* v. *Davis* was handed down, and thus did not have the benefit of our decision when it found a Fourteenth Amendment violation.

The Court gives no reason for its failure to follow our usual practice in this situation of vacating the judgment below and remanding in order to permit the lower court to reconsider its ruling in light of our intervening decision. The Court's articulation of a legal standard nowhere mentioned in *Davis* indicates that it feels that the application of *Davis* to these facts calls for substantial analysis. If this is true, we would do better to allow the Court of Appeals to attempt that analysis in the first instance. Given that the Court deems it necessary to re-examine the evidence in the case in light of the legal standard it adopts, a remand is especially appropriate. As the cases relied upon

— 1

p. 2

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

2nd DRAFT

Circulated: _____

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SUPREME COURT OF THE UNITED STATES

No. 75–616

Village of Arlington Heights et al., Petitioners, *v.* Metropolitan Housing Development Corporation et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January —, 1977]

MR. JUSTICE WHITE, dissenting.

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The Court gives no reason for its failure to follow our usual practice in this situation of vacating the judgment below and remanding in order to permit the lower court to reconsider its ruling in light of our intervening decision. The Court's articulation of a legal standard nowhere mentioned in *Davis* indicates that it feels that the application of *Davis* to these facts calls for substantial analysis. If this is true, we would do better to allow the Court of Appeals to attempt that analysis in the first instance. Given that the Court deems it necessary to re-examine the evidence in the case in light of the legal standard it adopts, a remand is especially appropriate. As the cases relied upon

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-616

Village of Arlington Heights et al., Petitioners, *v.* Metropolitan Housing Development Corporation et al.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January —, 1977]

MR. JUSTICE MARSHALL, dissenting.

I concur in Parts I–III of the Court's opinion. However, I believe the proper result would be to remand this entire case to the Court of Appeals for further proceedings consistent with *Washington* v. *Davis*, 426 U. S. 229 (1976), and today's opinion. The Court of Appeals is better situated than this Court both to reassess the significance of the evidence developed below in light of the standards we have set forth and to determine whether the interests of justice require further District Court proceedings directed towards those standards.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 7, 1976

Re: No. 75-616 - Village of Arlington Heights v.
Metropolitan Housing Development Corp.

Dear Lewis:

I have read your proposed opinion with interest. I think I am close to joining you, but I suggest the following for your consideration:

1. I must confess that I am troubled by Ransom's standing. Perhaps what you have done is the best possible way to handle it. Ransom's situation, however, is thin. He lived in a 3-person household, with his mother and son, and their combined income was apparently too high to qualify for Lincoln Green. He also testified (page 324 of the transcript) that he never really sought housing in Arlington Heights but that he would "probably" move to Lincoln Green if it were built. I had hoped that plaintiff Maldonado would prove to be a better subject for standing, but my hopes are not fulfilled. I merely ask whether it would be better to go off on a jus tertii basis. Certainly Craig v. Boren might be supportive of this.

2. I do not know whether the first part of the first sentence of footnote 4 on page 6 is helpful. Undoubtedly, there was a good reason for the change in district judges. The first was Judge Lynch, who has since died.

3. I wonder about the accuracy of the first sentence of the second paragraph in footnote 8 on page 9. Could it be reworded to say, "State law of standing does not govern such determinations in federal courts"? I suggest this because I think federal standing determinations can be controlled by state law as, for example, when state law defines whether or not there is a legal injury.

4. I wonder if footnote 14 on page 13 might not be deleted. Some criteria may be employed on a case-by-case basis even if they would violate the Equal Protection Clause as a "flat ban." See Sugarman v. Dougall, 413 U.S. 634, 646-647 (1973).

5. I would feel a little happier if the third and fourth sentences of the second paragraph on page 16 were omitted.

Sincerely,

Harry

Mr. Justice Powell

/

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 15, 1976

Re: No. 75-616 - Village of Arlington Heights v.
Metropolitan Housing Development Corporation

Dear Lewis:

Please join me in your recirculation of December 14.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: DEC 2 1976

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-616

Village of Arlington Heights ET AL., Petitioners, *v.* Metropolitan Housing Development Corporation et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[December —, 1976]

MR. JUSTICE POWELL delivered the opinion of the Court.

In 1971 respondent Metropolitan Housing Development Corporation (MHDC) applied to petitioner, the Village of Arlington Heights, Ill., for the rezoning of a 15-acre parcel from single-family to multiple-family classification. Using federal financial assistance, MHDC planned to build 190 clustered townhouse units for low and moderate income tenants. The Village denied the rezoning request. MHDC, joined by other plaintiffs who are also respondents here, brought suit in the United States District Court for the Northern District of Illinois.[1] They alleged that the denial was racially discriminatory and that it violated, *inter alia*, the Fourteenth Amendment and the Fair Housing Act of 1968, 42 U. S. C. § 3601 *et seq.* Following a bench trial, the District Court entered judgment for the Village, 373 F. Supp. 208 (1974), and respondents appealed. The Court of Appeals for the Seventh Circuit reversed, finding that the "ultimate effect" of the denial was racially discriminatory,

[1] Respondents named as defendants both the Village and a number of its officials, sued in their official capacity. The latter were the Mayor, the Village Manager, the Director of Building and Zoning, and the entire Village Board of Trustees. For convenience, we will occasionally refer to all the petitioners collectively as "the Village."

6, 9, 12, 13, 15, 16, 17, 18

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: DEC 14 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-616

Village of Arlington Heights et al., Petitioners, *v.* Metropolitan Housing Development Corporation et al.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[December —, 1976]

MR. JUSTICE POWELL delivered the opinion of the Court.

In 1971 respondent Metropolitan Housing Development Corporation (MHDC) applied to petitioner, the Village of Arlington Heights, Ill., for the rezoning of a 15-acre parcel from single-family to multiple-family classification. Using federal financial assistance, MHDC planned to build 190 clustered townhouse units for low and moderate income tenants. The Village denied the rezoning request. MHDC, joined by other plaintiffs who are also respondents here, brought suit in the United States District Court for the Northern District of Illinois.[1] They alleged that the denial was racially discriminatory and that it violated, *inter alia*, the Fourteenth Amendment and the Fair Housing Act of 1968, 42 U. S. C. § 3601 *et seq.* Following a bench trial, the District Court entered judgment for the Village, 373 F. Supp. 208 (1974), and respondents appealed. The Court of Appeals for the Seventh Circuit reversed, finding that the "ultimate effect" of the denial was racially discriminatory,

[1] Respondents named as defendants both the Village and a number of its officials, sued in their official capacity. The latter were the Mayor, the Village Manager, the Director of Building and Zoning, and the entire Village Board of Trustees. For convenience, we will occasionally refer to all the petitioners collectively as "the Village."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 21, 1977

Case held for No. 75-616, Arlington Heights v. Metropolitan Housing Development Corp.

MEMORANDUM TO THE CONFERENCE:

No. 75-1002, Joseph Skilken & Co. v. City of Toledo

Petitioner Skilken, a developer, arranged with the local housing authority to build three federally subsidized Turnkey III public housing projects on various sites throughout Toledo, outside of the areas of high minority concentration. Before it could proceed it had to petition the city council for rezoning of one site, Heatherdown, and it had to obtain from the plan commission platting approval at the other two sites. Apparently, similar requests in the areas involved (albeit not for public housing) had generally been approved, and in fact the plan commission gave preliminary platting approval at one site. Then word got out that Skilken proposed to build public housing, and the reaction from residents of nearby areas was strong. After hearings, the relevant authorities denied rezoning and platting approval. In the process they rescinded the preliminary approval given for one of the sites.

Skilken, joined by the housing authority and two individual minority plaintiffs, sued the city and several of its officials, alleging that the city's actions were racially motivated. They charged violations of §§ 1981, 1982 and 1983, the Fair Housing Act of 1968, and the Thirteenth and Fourteenth Amendments. The DC found that the city's actions were racially motivated, but, confusingly, the DC also spoke at times as though its only important finding was a finding of racially discriminatory effect. It ordered that the city

permit construction at the three sites. It further ordered that the city file within 90 days a comprehensive plan "to eliminate discriminatory barriers in the total housing supply." This order was apparently based on a rather muted finding that the city had engaged in a consistent pattern of discrimination with respect to public housing, causing nearly all of it to be located in the areas of the city with a heavy minority concentration. It is not clear whether the DC's action is based on statutory or constitutional grounds.

CA6 (Weick, Miles (DJ); Phillips, concurring in the result), reversed in an opinion that is not easy to follow. Without explicitly stating that any of the DC's findings were clearly erroneous, it expressed strong disapproval of the order for the city to come up with a comprehensive plan. It then vacated and remanded with respect to the two denials of platting approval, because the DC "did not give adequate consideration to the nonracial reasons stated by the Plan Commission and the City Council," and did not consider "the rights of these areas' property owners who opposed the platting." CA6 reversed outright and ordered dismissal of the complaint with respect to Heatherdown's rezoning, apparently because it thought that ordering rezoning amounted to usurping the local legislative powers. Petitioners based their suit on a charge of racially discriminatory motivation, and the DC held for them, at least in part, on this basis. It is not clear to what extent the CA reversal represents a disagreement with this factual finding.

In any event, the DC's decision on remand with regard to the two sites denied platting approval should proceed in accordance with the guidelines set forth in Arlington Heights. Those guidelines call for a somewhat different inquiry from what CA6 has mandated. In addition, the order of dismissal with respect to Heatherdown was probably erroneous. It too should be reconsidered in light of Arlington Heights. I will vote to grant, vacate and remand to permit that reconsideration.

Petitioners have also pressed their claim that the DC was correct in entering its broad remedial order. The CA seems to have thought that such orders were permissible only in school desegregation cases. Hills v. Gautreaux, 44 L.W. 4480, should disabuse them of that notion. Although I have strong doubts whether such relief was appropriate on the facts of this case, the CA apparently acted on a sweeping and erroneous basis. I recommend that any remand also specify reconsideration in light of Gautreaux.

L.F.P.

L.F.P., Jr.

ss

75-616

Harry - I have adopted substantially all of your suggestions. They were constructive. Other changes suggested by Stuart & Rehnquist.

LFP

from WHR

Arlington Heights

75-616

I would suggest the following changes, none of which change the basic thrust of your opinion.

(a) I am circulating an opinion in Mt. Healthy School Dist. Bd. v. Doyle, No. 75-1278, which discusses, albeit in a slightly different context, the standards of proof required in order to establish a constitutional violation based on an impermissible purpose. Because I would not want any arguable, if unwarranted, inference of tension between that opinion and yours in this case to be drawn, I would like to see your discussion of "substantial effect" modified to explicitly note that it does not decide what further proof standards might exist had a substantial purpose been shown. The following two changes, I think, would accomplish this. First, on page 12, rewrite the last full sentence to read: OK "But racial discrimination is not just another competing consideration." Second, on page 18, after the first sentence add the following footnote (numbered 21):

21/ Since respondents have failed to demonstrate that a discriminatory purpose was a substantial factor in the zoning decision, respondents ipso facto fail the Washington v. Davis standard. We need not determine what else respondents might have been required to establish in order to make out a prima facie case of discrimination or what opportunity petitioners then should be given to rebut this prima facie case.

No ?

(b) The first full paragraph on page 15 might be taken to mean that, apart from questions of privilege, trial testimony of decisionmakers is available on the same basis as other sources of legislative evidence. Because I believe our cases establish that the placing of a decisionmaker on the stand, to probe his mental processes, is presumptively to be avoided, I would suggest the following additions. First, rewrite the second sentence to read: OK "In some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, although even then such testimony

frequently will be barred by privilege." Second, add the following to the end of the first sentence of footnote 18: ". . . other branches of government, and are 'not consonant with our scheme of government,' Tenney v. Brandhove, supra, at 377. Placing a decisionmaker on the stand is, therefore, 'usually to be avoided,' Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 420 (1971); United States v. Morgan, 313 U.S. 409, 422 (1941)."

(c) As we have already discussed, I think the concluding paragraph of the opinion might profitably be changed. I would suggest replacing the second sentence of that paragraph with the following: "They continue to urge here that a zoning decision made by a public body may, and that petitioners' action here did, violate §§ 3604 or 3617." I would then rewirte the last sentence of the paragraph so that it reads: "We remand the case for further consideration of respondents' statutory claims."

If you are able to make these changes, I would be happy to join your opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 14, 1976

Re: No. 75-616 Village of Arlington Heights v. Metropolitan Housing Development Corporation

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference