

SUPREME COURT OF NEW JERSEY

Docket No. 67,126

In the Matter of the Adoption
of N.J.A.C. 5:96 and 5:97 by
the New Jersey Council on
Affordable Housing

ON PETITION FOR CERTIFICATION
FROM THE SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION

DOCKET NO. A-5382-07T3 and A-
90/91/92/93/94

On Appeal from the Council on
Affordable Housing

Sat below:

Hon. Stephen Skilliman

Hon. Jose L. Fuentes

Hon. Maria P. Simonelli

Brief of Proposed *Amici Curiae*

New Jersey State Conference of the National Association for the
Advancement of Colored People and Latino Action Network

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
ARGUMENT	4
I. AT ITS CORE, THE MOUNT LAUREL DOCTRINE TARGETS RESIDENTIAL SEGREGATION AS A KEY FACTOR IN THE PERPETUATION OF RACIAL INEQUALITY IN NEW JERSEY.	7
A. Introduction	7
B. The Context of the Mount Laurel Litigation Suggests that the Eradication of Racial Segregation Is a Goal of the Doctrine.	14
II. MOUNT LAUREL I CORRECTLY RECOGNIZED THAT EXCLUSIONARY ZONING EXACERBATES RACIAL SEGREGATION AND THE MOUNT LAUREL DOCTRINE HAS REDUCED SEGREGATION IN THOSE AREAS WHERE IT HAS BEEN SUCCESSFULLY IMPLEMENTED.	21
A. Exclusionary Zoning and Racial Segregation in New Jersey	22
B. Mount Laurel's Mandate That All Communities Provide A Fair Share Of The State's Affordable Housing Need Has, Where Implemented, Lessened Racial Segregation And Improved Access To Communities Of Opportunity For Minority Communities.	27
1. Mount Laurel Township	29
2. West Windsor Township	32
3. Ethel Lawrence Homes	36
III. THE MOUNT LAUREL DOCTRINE CONTINUES TO BE NECESSARY TO ADDRESS ONGOING SEGREGATION IN NEW JERSEY TODAY	43
A. The Mount Laurel doctrine has not been fully or consistently implemented in New Jersey to date.	43
B. Housing segregation is a continuing and persistent concern in New Jersey.	47
IV. "GROWTH SHARE" MUST BE REJECTED BECAUSE IT VESTS UNFETTERED DISCRETION IN THE VERY SAME MUNICIPALITIES THAT HAVE PROVEN HOSTILE TO OPENING THEIR COMMUNITIES TO NEW JERSEYANS OF ALL RACES AND CLASSES.	50
CONCLUSION	56

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Buchanan v. Warley</i> , 245 U.S. 60 (1917)	21
<i>David v. Vesta</i> , 45 N.J. 301 (1965)	14, 15, 18, 22
<i>DeSimone v. Greater Englewood Housing Corp. No. 1</i> , 56 N.J. 428 (1970)	16
<i>Fair Share Housing Center, Inc. v. Township of Cherry Hill</i> , No. L-042750-85PW and No. L-04889-01 (Sup. Ct. L. Div.)	3
<i>In re N.J.A.C. 5:94 and 5:95</i> , 390 N.J. Super. at 68	51
<i>In re N.J.A.C. 5:96 and 5:97</i> , 416 N.J. Super. 462 (App. Div. 2010)	4, 50
<i>In re Petition for Substantive Certification Filed by the Township of Warren</i> , 132 N.J. 1 (1993)	16
<i>In re Six Month Extension</i> , 372 N.J. Super. 61 (App. Div. 2004)	45
<i>In re Township of Denville</i> , 247 N.J. Super. 186 (1991)	3, 46
<i>In re Township of Warren</i> , 247 N.J. Super. 146 (1991)	46
<i>Levitt & Sons v. Div. Against Discrimination in the State Dep't of Educ.</i> , 31 N.J. 514 (1960)	15, 16, 22
<i>Shelley v. Kraemer</i> , 334 U.S. 1 (1948)	8
<i>Southern Burlington County NAACP v. Township of Mount Laurel</i> , 92 N.J. 158 (1983)	passim
<i>Southern Burlington NAACP v. Township of Mount Laurel</i> , 67 N.J. 151 (1975)	passim

<i>Toll Brothers v. Township of West Windsor</i> , 173 N.J. 502 (2002)	33, 45
Williams & Norman, 22 Syr. L. Rev. at 476	22, 24, 55
Wish & Eisdorfer, 27 Seton Hall L. Rev. 1268 (1997)	38

STATUTES

N.J.S.A. 18:25-1	15
N.J.S.A. 52:27D-301 to -329	1, 44
N.J.S.A. 52:27D-304(c)-(d)	19
N.J.S.A. 52:27D-307(c)(1)	44
N.J.S.A. 52:27D-307(c)(2)	44
N.J.S.A. 52:27D-311(b)	44
N.J.S.A. 52:27D-312	46

OTHER AUTHORITIES

Andrew Jacobs, <i>Justices Pondering Old Barriers in Housing</i> , N.Y. TIMES (Nov. 28, 2001)	17
Andrew Wiese, <i>PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY</i> 227 (2004)	22
Anthony DePalma, <i>Mount Laurel: Slow, Painful Progress</i> , N.Y. TIMES (May 1, 1988)	17
Camille Zubrinsky Charles, <i>The Dynamics of Racial Residential Segregation</i> , Ann. Rev. Sociol. v. 29, 176-191 (2003)	26
Campbell Gibson and Kay Jung, United States Census Bureau, <i>Historical Census Statistics on Population Totals by Race, 1970 to 1990, and by Hispanic Origin, 1970 to 1990</i> (2002) ..	49
David L. Kirp, et al., <i>OUR TOWN: RACE, HOUSING, AND THE SOUL OF SUBURBIA</i> (1995)	14
David W. Chen, <i>Slouching Toward Mount Laurel</i> , N.Y. TIMES (March 31, 1996) ...	18
Douglas Massey and Rebecca Denton, <i>AMERICAN APARTHEID</i> 7 (1993)	8

Douglas S. Massey, <i>Segregation and Stratification: A Biosocial Perspective</i> , THE DUBOIS REVIEW 1:1-19 (2004)	8
Federal Housing Authority, <i>Underwriting Manual</i> , Part II, Sec. 9 (1938)	8
john a. powell, <i>Racial Segregation in Housing</i> , 27 Seton Hall L. Rev. 1369, 1377-78 (1997)	12
john a. powell, <i>The Fair Housing Act After 40 Years: Continuing the Mission to Eliminate Housing Discrimination and Segregation</i> , 41 Ind. L. Rev. 605 (2008).	7
John Hasse, et al., <i>Evidence of Persistent Exclusionary Effects of Land Use Policy within Historic and Projected Development Patterns in New Jersey: A Case Study of Monmouth and Somerset Counties</i> 18, 20 (June 2011)	53
Jonathan Rothwell & Douglas Massey, <i>The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas</i> , Urban Affairs Review, vol. 44 n. 6, 779-806 (2009)	25
Jonathan Rothwell, <i>Racial Enclaves and Density Zoning: The Comparative Segregation of Racial Minorities in the United States</i> , Social Science Research Network, Working Paper 1161162 (2009)	26
Jorge Duany, <i>BLURRED BORDERS: TRANSNATIONAL MIGRATION BETWEEN THE HISPANIC CARIBBEAN AND THE UNITED STATES</i> (2011)	49
Melvin L. Oliver & Thomas M. Shapiro, <i>BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY</i> 33 (1995)	8
Naomi Bailin Wish & Stephen Eisdorfer, <i>The Impact of Mount Laurel Initiatives</i> , 27 Seton Hall L. Rev. 1268, 1276 (1997)	18
New Jersey Dep't of Transportation, <i>Route 1 Regional Growth Strategy Final Report</i> 6 (Sept. 2010)	52, 53
Norman Williams, Jr. & Thomas Norman, <i>Exclusionary Land Use Controls: The Case of North-Eastern New Jersey</i> , 22 Syr. L. Rev. 475 (1970)	22
Norman Williams, Jr., <i>AMERICAN LAND PLANNING LAW</i> vol. 8, 733-36 (2004)	21

Paul A Jargowsky, Brookings Inst., <i>Stunning Progress, Hidden Problems: The Dramatic Decline of Concentrated Poverty in the 1990s</i> 3 (2003)	13
Rebecca Casciano & Douglas Massey, <i>Neighborhood Disorder and Anxiety Symptoms: New Evidence from a Quasi-Experimental Study</i> , SSRN Working Paper 1865238 (June 2011) .	37
Rebecca Casciano and Douglas Massey, <i>Neighborhood Disorder and Individual Economic Self-Sufficiency: New Evidence from a Quasi-Experimental Study</i> , SSRN Working Paper 1865235 (June 2011)	38
Rebecca Casciano and Douglas Massey, <i>School Context and Educational Outcomes: Results from a Quasi-Experimental Study</i> , SSRN Working Paper 1865232 (June 2011)	40
Rebecca Cohen, Center for Housing Policy, <i>The Impacts of Affordable Housing on Health: A Research Summary</i> (May 2011)	13
Report of the National Advisory Commission on Civil Disorders 1 (1968)	15
Rima Wilkes & John Iceland, <i>Hypersegregation in the Twenty-First Century</i> , DEMOGRAPHY 41:23-26 (2004)	8
Robert M. Fogelson, <i>BOURGEOIS NIGHTMARES: SUBURBIA 1870-1930</i> (2005)	21
Rolf Pendall, et al., The Brookings Institute, <i>From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 Largest Metropolitan Areas</i> (2006)	25
Rolf Pendall, <i>Local Land-Use Regulation and the Chain of Exclusion</i> , J. of the Am. Planning Assoc. 66:125-42 (2000) ..	25
Sheryll Cashin, <i>THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM</i> 3 (2004)	17
United Way of Morris County, <i>Introducing ALICE: Asset Limited, Income Constrained, and Employed</i> 10 (2009)	12
William Julius Wilson, <i>The Truly Disadvantaged</i> (1987)	13
<u>REGULATIONS</u>	
N.J.A.C. 5:96	1, 3

N.J.A.C. 5:97	1, 3, 27
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STATEMENT OF INTEREST

Proposed amici curiae New Jersey State Conference of the National Association for the Advancement of Colored People ("NAACP NJ") and Latino Action Network ("LAN"), on behalf of their members, submit this brief in support of the parties challenging N.J.A.C. 5:96 and 5:97. Amici NAACP NJ and LAN respectfully urge this Court to reject the regulations of Council on Affordable Housing ("COAH"), and specifically their use of a "growth share" methodology, as insufficient to ensure that the Mount Laurel doctrine and the New Jersey Fair Housing Act of 1985, N.J.S.A. 52:27D-301 to -329, will in fact open communities of opportunity in New Jersey to those, such as African Americans and Latinos, who are currently excluded from them.

NAACP NJ and LAN share a vision of New Jersey in which people of all races and ethnicities live together in integrated communities and in which rich and poor are not isolated from each other, but live as neighbors sharing schools, parks, town halls, churches, and institutions of government. Therefore, NAACP NJ and LAN have an interest in seeing that the core principles of the Mount Laurel doctrine are preserved and given full effect. That doctrine, first pronounced by this Court in *Southern Burlington NAACP v. Township of Mount Laurel*, 67 N.J.

151 (1975) ("*Mount Laurel I*"), provides that local authority to enact zoning legislation, set forth in Article I, section 6, paragraph 2 of the New Jersey Constitution, must be exercised in favor of the "general welfare" and that such general welfare is harmed by low-density, exclusionary zoning regulations that effectively prevent the construction of affordable housing. But beyond this tenet, the *Mount Laurel* doctrine stands for the proposition that the general welfare is disserved by racial segregation in our communities.

Ensuring access to affordable housing and decreasing racial segregation is an integral part of the organizational missions of both amici. The NAACP NJ furthers the work of the NAACP in New Jersey. The NAACP, founded in 1909, is the nation's oldest and largest civil rights organization. Its mission is to ensure the political, education, social and economic equality of all citizens of the United States, to remove all barriers of racial discrimination, and to inform the public of the adverse effects of racial discrimination and to seek its elimination. To that end, the Southern Burlington and Camden County branches of the NAACP have been plaintiffs in the litigation against Mt. Laurel Township which has resulted in this Court's landmark decisions in *Mount Laurel I* and *Southern Burlington County NAACP v. Township of Mount Laurel*, 92 N.J. 158 (1983) ("*Mount Laurel II*"). Likewise, the Morris County Branch of the NAACP sought

enforcement of the Mount Laurel doctrine against Denville, see *In re Township of Denville*, 247 N.J. Super. 186 (1991), and the Southern Burlington and Camden Branches are currently plaintiffs in pending litigation against Cherry Hill Township. See *Fair Share Housing Center, Inc. v. Township of Cherry Hill*, No. L-042750-85PW and No. L-04889-01 (Sup. Ct. L. Div.).

The Latino Action Network, founded in 2010, works to advance the key policy agendas affecting its members, one of which is to ensure that affordable housing is available to Latinos in communities with access to educational and economic opportunities. LAN creates one voice for all Latinos in New Jersey. It is a grassroots coalition of individuals and organizations that are committed to engaging in collective action at the local, state, and national level in order to advance the equitable inclusion of the diverse Latino communities in all aspects of society. Its members include parents, community leaders, student leaders, religious leaders, law enforcement professionals, entrepreneurs, and business professionals.

Together, NAACP NJ and LAN submit this brief in order to assist the Court in evaluating N.J.A.C. 5:96 and 5:97 in light of the objective of desegregation that is such a critical part of the Mount Laurel doctrine. The brief incorporates the work of leading demographers and statisticians, as well as social

scientists versed in the adverse impacts of racial segregation in individuals and communities. Their analyses reveal that, while *Mount Laurel* has resulted in important progress in New Jersey, as communities of opportunity have become more open and diverse, the pattern of racial segregation and the isolation of minority communities into "urban ghettos," *Mount Laurel II*, 92 N.J. at 209, nonetheless persists, perpetuated by the continuing widespread use of exclusionary zoning. Thus, continued commitment by this Court is essential if the goal of *Mount Laurel* to reduce and eliminate segregation is to be realized. For the reasons set forth below, as well as those advanced by Fair Share Housing Coalition, New Jersey Builders Association, the New Jersey Chapter of NAIOP Commercial Real Estate Development Association, and MTEA, Inc., the Court should decline to adopt the "growth share" methodology proposed by the Council on Affordable Housing ("COAH"), which will stifle further progress in ending racial segregation and isolation.

ARGUMENT

The Court should reject the "growth share" approach embodied in the COAH regulations. That approach, which ties a community's obligation to provide affordable housing to its own policies on future residential development, see *In re N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. 462, 474 (App. Div. 2010), allows

a municipality complete discretion over whether and to what extent it is obligated to produce affordable housing.

History shows that the exercise of such municipal discretion will inevitably have devastating effects on the ability of African American and Latino individuals and families to live in communities of opportunity, which are rich in educational, economic, and other resources. Such effects would be completely inconsistent with a fundamental purpose of the Mount Laurel doctrine, which is, as discussed in Part I, the reduction of racial segregation, which serves to isolate and disadvantage communities of color in New Jersey. Indeed, even today, these communities remain highly segregated and concentrated in areas with low resources and few economic opportunities. Although the overt racial discrimination that produced this pattern of residential racial segregation is no longer accepted as a matter of law, the effects of such discrimination remain. Their continuation is attributable, as explained in Part II, largely to the use of exclusionary zoning, or zoning regulations that set minimum lot or housing sizes, and limit the development of affordable housing for lower-income families and others.

The use of exclusionary zoning became widespread in New Jersey in the 1960s, and remains widely used today. Such exclusionary zoning is closely linked, as a matter of fact and

as discussed in Part II.A, to racial segregation in housing. The Mount Laurel doctrine counteracts the effects of exclusionary zoning on the availability of affordable housing, and on the degree of racial segregation in New Jersey, by requiring municipalities to refrain from such practices, "at least to the extent of the municipality's fair share" of the present and prospective need for affordable housing in the region. *Mount Laurel I*, 67 N.J. at 174. Where the Mount Laurel mandate has been implemented, it has proven to reduce racial segregation, and produce marked improvements in the lives of those, many of whom are African American and Latino, who are, as a result, afforded the opportunity to move from blighted areas to communities of opportunity, or to remain in communities where they grew up but otherwise would have had to leave. These gains are discussed in Part II.B.

Yet, as Mount Laurel has been inconsistently and only incompletely implemented over the years in New Jersey, as discussed in Part III.A, it has not been able to overcome the continuing widespread use of exclusionary zoning, and housing segregation remains a critical issue in New Jersey today. Part III.B demonstrates that, in line with research linking exclusionary zoning and racial segregation, New Jersey today is more segregated, and has desegregated less quickly, than the nation as a whole.

Despite this need for a continued commitment to the principles of Mount Laurel, the "growth share" methodology adopted by COAH threatens any continuation of gains of the type seen in municipalities from Mount Laurel to West Windsor. Part IV establishes that current exclusionary zoning regulations will slow residential growth in many areas of New Jersey, particularly in those areas that have seen the largest increase in jobs in recent decades, and where this growth is projected to continue. More to the point of this brief, under the growth share approach, existing exclusionary zoning will have predictable negative results for the racial desegregation of New Jersey, and for those most in need of access to communities of opportunity, namely African American and Latino populations, which are so dramatically overrepresented among the urban poor.

I. AT ITS CORE, THE MOUNT LAUREL DOCTRINE TARGETS RESIDENTIAL SEGREGATION AS A KEY FACTOR IN THE PERPETUATION OF RACIAL INEQUALITY IN NEW JERSEY.

A. Introduction

In the words of one prominent social scientist, "[h]ousing lies at the very heart of a system of institutional relations that reproduce inequality." John A. Powell, *The Fair Housing Act After 40 Years: Continuing the Mission to Eliminate Housing Discrimination and Segregation*, 41 Ind. L. Rev. 605 (2008). Residential segregation has been described as the "structural linchpin of American racial inequality," Melvin L. Oliver &

Thomas M. Shapiro, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 33 (1995), and "fundamental to" the "status" of African and Latino Americans and "the origins of the urban underclass," Douglas Massey and Rebecca Denton, *AMERICAN APARTHEID* 7 (1993). The days of overt legal discrimination in the housing market may be gone, see, e.g., *Shelley v. Kraemer*, 334 U.S. 1 (1948) (preventing court enforcement of racially restrictive covenants in deeds), Federal Housing Authority, *Underwriting Manual*, Part II, Sec. 9 (1938) (recommending racial restrictions in lending to prevent, in part, schools from being "attended in large numbers by inharmonious racial groups"), but residential segregation continues. Today, nearly half of all urban African Americans live under conditions of hypersegregation, and thirty percent live under conditions that can be described as "high" segregation. Douglas S. Massey, *Segregation and Stratification: A Biosocial Perspective*, *THE DUBOIS REVIEW* 1:1-19 (2004). Latinos experience hypersegregation in major metropolitan areas as well, including the New York-Northern New Jersey area. Rima Wilkes & John Iceland, *Hypersegregation in the Twenty-First Century*, *DEMOGRAPHY* 41:23-26 (2004). Furthermore, African Americans and Latinos are more likely than other groups to live in neighborhoods of concentrated poverty. Census data from 2000 shows that, nationwide, nearly three out of four people living in high poverty neighborhoods were African American or Latino.

Id. at 5 (African Americans accounted for 39 percent of the residents of high-poverty neighborhoods, and Latinos for 29 percent).

Although New Jersey has undergone demographic shifts in the past 30 years, making it a more diverse state today than it was in 1980,¹ concentration of African Americans and Latinos in densely populated areas with relatively poor economic and educational resources continues. Thus, a review of data from New Jersey reveals that African Americans and Latinos are highly concentrated, and that although this concentration has decreased gradually over time, these communities remain disproportionately located in a few, densely populated areas.² Moreover, the municipalities that have a high concentration of African

¹ According to data collected by the United States Census Bureau, the population of New Jersey grew by 19.4 percent between 1980 and 2010, from 7,364,823 to 8,791,894. See Ex. 1. The African American population grew at a greater rate (30.7 percent) than the overall population, from 907,554 in 1980 to 1,186,433 in 2010, increasing its share of the overall population of New Jersey from 12.3 percent in 1980 to 13.5 percent in 2010. The Latino population increased much more dramatically in this same time period, growing by 216.2 percent, from 491,883 in 1980 to 1,555,144 in 2010, increasing its share of the overall population of New Jersey from 6.7 percent in 1980 to 17.7 percent in 2010. In line with these trends, the white (non-Hispanic) population share of the state has decreased from 79.1 percent in 1980 to 59.3 in 2010.

² According to data collected by the United States Census Bureau, the population of New Jersey grew by 19.4 percent between 1980 and 2010, from 7,364,823 to 8,791,894. The African American population grew at a greater rate (30.7 percent) than the overall population, from 907,554 in 1980 to 1,186,433 in 2010, increasing its share of the overall population of New Jersey from 12.3 percent in 1980 to 13.5 percent in 2010. The Latino population increased much more dramatically in this same time period, growing by 216.2 percent, from 491,883 in 1980 to 1,555,144 in 2010, increasing its share of the overall population of New Jersey from 6.7 percent in 1980 to 17.7 percent in 2010. In line with these trends, the white (non-Hispanic) population share of the state has decreased from 79.1 percent in 1980 to 59.3 in 2010. See Ex. 1.

Americans or Latinos are among the lowest in the state for per-capita tax base. The 34 municipalities with the highest percentage of African American residents in 2010 that, taken together, account for 50 percent of the state's total African American population had a median per capita property tax base of \$53,795, compared with the median per capita property tax base of the rest of the state, which is over \$140,000.³ See Ex. 9. The 39 municipalities with high concentrations of Latinos accounting for fifty percent of the state's total Latino population similarly had strikingly lower median per capita tax basis than did the rest of the state.⁴ See Ex. 10 (showing median per capita property tax base of 39 municipalities as \$84,055 compared with rest of state at over \$140,000).

Moreover, African Americans and Latinos comprise a higher percentage of the population in municipalities that measure highly in indicators of socioeconomic distress, and are significantly underrepresented in areas of New Jersey characterized by economic prosperity. The New Jersey Department of Education has organized all school districts in the state into "district factor groups" based upon relative socioeconomic status as measured using six variables: percent of adults with

³ These same municipalities lost 2,435 private sector jobs between 1999 and 2007, while the rest of the state gained 133,759 jobs over the same period. See Ex. 9.

⁴ These same municipalities lost 18,911 private-sector jobs between 1999 and 2007, while the balance of the state gained 150,217 private sector jobs over the same period. See Ex. 10.

no high school diploma; percent of adults with some college education; occupational status; unemployment rate; percent of individuals in poverty; and median family income.⁵ Thus, a community with a school district categorized as district factor A, the lowest possible ranking, is among the most resource-poor in the state.

Data from the most recent census shows that the total population of all municipalities with schools rated as district factor A is 1,484,695. See Ex. 3. Of this total population, 535,537 are African American, and 282,007 are Latino. *Id.* This means that municipalities served by district factor A schools are 36 percent African American and 18.9 percent Latino. *Id.* The combined African American and Latino population of these towns is fifty five percent. *Id.* The over-representation of African Americans and Latinos in the most resource-poor of New Jersey's communities is striking: the percentage of the statewide population that is African American is just 13.5, and Latinos make up 17.7 percent of the state's population, see Ex. 1, meaning that they too are overrepresented in the most resource-poor municipalities in New Jersey. Conversely, in towns served by district factor J school districts, African Americans and Latinos are underrepresented. Data from the most

⁵ An explanation of the New Jersey Department of Education's District Factor Group methodology and categorization of districts may be found at <http://www.state.nj.us/education/finance/sf/dfg.pdf>.

recent census indicates that the total population of towns with district factor J schools is 278,483, and that just 6719 of these residents, or 2.4 percent, are African American, and 11,666 are Latino, or 4.2 percent. Ex. 4.

The isolation of minority communities in densely populated urban areas plays an "intricate role" in undermining minority communities'

access to social and economic benefits the majority of American society has been afforded. Lack of adequate education opportunities, isolation from adequate housing, inferior public services, declining housing values in isolated, low-income communities of color, and isolation from decent job markets are merely an introduction to the symptoms of this problem.

[john a. powell, *Racial Segregation in Housing*, 27 Seton Hall L. Rev. 1369, 1377-78 (1997).]⁶

Thus, there is a geography of opportunity, in which one's access to jobs and quality schooling on the one hand, and exposure to environmental risk factors, crime, and poverty are largely determined by where one lives. Patterns of residential segregation and inequality give rise to the social isolation and

⁶ A recent study of Morris County emphasizes how these disparities impact lower-income workers, who are disproportionately African American and Latino. See United Way of Morris County, *Introducing ALICE: Asset Limited, Income Constrained, and Employed* 10 (2009), available at <http://www.uwmorris.org/documents/ALICE%20REPORT%208.05.09.pdf>. The study found that Morris County has the highest cost of housing in New Jersey, forcing more lower-income individuals to pay a large portion of their income towards housing, and move farther away from their jobs, and that a highly disproportionate number of workers in this position were Latino. Id.

concentration of minority communities with reduced access to economic and educational networks and heightened exposure to social ills. See generally William Julius Wilson, *THE TRULY DISADVANTAGED* (1987). This social inequality is perpetuated as isolated communities lack inputs of social capital to either improve conditions or support relocation. *Id.* Social science literature suggests that families that can only find affordable housing in areas with very high poverty levels are prone to greater psychological distress and exposure to violent or traumatic events.⁷ See Rebecca Cohen, Center for Housing Policy, *The Impacts of Affordable Housing on Health: A Research Summary* (May 2011) (identifying studies).

Thus, for African American and Latino communities, a critical factor in bringing about improved standing and better outcomes for their members is the reduction in the clustering of Latino and African American individuals and families in communities with concentrated poverty, poor schools, and little access to economic jobs. The Mount Laurel doctrine must be viewed in this context.

⁷ A neighborhood is considered to be high poverty if more than 40 percent of the population lives in poverty as measured by the federal poverty standard. Paul A Jargowsky, Brookings Inst., *Stunning Progress, Hidden Problems: The Dramatic Decline of Concentrated Poverty in the 1990s* 3 (2003), available at http://www.brookings.edu/~media/Files/rc/reports/2003/05demographics_jargowsky/jargowskypoverty.pdf.

B. The Context of the Mount Laurel Litigation Suggests that the Eradication of Racial Segregation Is a Goal of the Doctrine.

That residential segregation promotes racial inequality and impedes the general welfare of the State has been consistently recognized from the very beginning of the Mount Laurel litigation. The lawsuit was originally brought by a group of African-American parishioners of the Jacob's Chapel A.M.E. Church in Mount Laurel Township, see David L. Kirp, et al., *OUR TOWN: RACE, HOUSING, AND THE SOUL OF SUBURBIA* (1995), and other members of the South Jersey African American and Latino communities, see *Mt. Laurel I*, 67 N.J. at 159. The plaintiffs sought to build affordable garden apartments in the community in which they worked and worshiped, but the town's single-lot zoning restrictions prevented construction of anything other than single family houses on acre lots. *Id.*

Rejecting the town's zoning ordinances, the Court observed that "a zoning enactment which is contrary to the general welfare is invalid," 67 N.J. at 175. The express language of *Mount Laurel I* identified the "dangers of economic segregation," *id.* at 177, that result from exclusionary zoning, as well as that exclusionary zoning prevented racial desegregation. Thus, in *Mount Laurel I*, the Court took judicial notice of the fact that exclusionary zoning practices of suburban municipalities increased racial segregation by limiting housing opportunities

away from the central city, where minorities were clustered. 67 N.J. at 159. Later, in upholding and strengthening the doctrine in *Mount Laurel II*, the Court specifically referenced "urban ghettos" and cited studies on the prevalence of racial segregation in New Jersey. 92 N.J. 159, 224-25 (1983). The record before the Court indicated that racial segregation and isolation in impoverished areas led to social unrest both nationally, see 92 N.J. at 210, n.5 (citing Report of the National Advisory Commission on Civil Disorders 1 (1968) for conclusion that suburban exclusion is "one of the principal causes making America 'two societies, one black, one white -- separate and unequal'"), and in New Jersey, see *id.* (citing N.J. Department of Community Affairs, State Development Guide Plan 85-85 (1980) for view that exclusionary zoning caused a "vicious cycle" of urban decay and excluded urban poor from suburbs).

Even before the *Mount Laurel* litigation, however, the Court had made clear that New Jersey's Law Against Discrimination, N.J.S.A. 18:25-1 et seq., precludes discrimination in the public, see *Levitt & Sons v. Div. Against Discrimination in the State Dep't of Educ.*, 31 N.J. 514 (1960), and private, see *David v. Vesta*, 45 N.J. 301 (1965), housing markets. In these decisions as well as others, which serve as an important backdrop to the *Mount Laurel* decisions, the Court recognized the link between racial inequality and the lack of affordable

housing, as well as the potential for zoning regulations to thwart progress towards racial desegregation.

Specifically, in *Levitt & Sons*, the Court noted that New Jersey had a "pressing need for adequate housing for minority groups," in order to "affor[d] the opportunity" for "[m]any more in these groups . . . to take an active and beneficial role in the cultural, social and economic life of the community," 31 N.J. at 534, and that the "lack of adequate housing for minority groups, an effect of discrimination in housing, causes crime- and disease-breeding slums." 31 N.J. at 531. Ten years later, and just five years prior to the *Mount Laurel I* decision, the Court approved a zoning variance necessary for the construction of affordable housing because "breaking the long-standing patterns of racial segregation . . . will promote the general welfare of the community." *DeSimone v. Greater Englewood Housing Corp. No. 1*, 56 N.J. 428, 441 (1970) (quoting local Board's reasoning).

Since the *Mount Laurel* decisions, the link to this doctrine and the need to promote racial desegregation in housing has been consistently recognized. In *In re Petition for Substantive Certification Filed by the Township of Warren*, 132 N.J. 1 (1993), the Court rejected COAH regulations that called for an occupancy preference to be given to current residents. The Public Advocate argued that such a regulation violated the anti-

segregation intent of the Mount Laurel doctrine, because given existing racial segregation, the regulation would have the effect of favoring white households for newly constructed affordable housing units. *Id.* at 19.⁸ The Court found that this regulation was "incompatibl[e]" with the legislative policies of the Fair Housing Act, and noted that it was "particularly incongruous that a regulation" implementing the Mount Laurel doctrine "would itself be challenged as violating federal and state [racial] anti-discrimination laws." *Id.* at 29.

Indeed, the Mount Laurel doctrine has been widely understood as promoting racial integration, by critics and proponents alike. Thus, residential integration of different racial communities has been described as "the last plank in the civil rights revolution," Sheryll Cashin, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 3 (2004), and the Mount Laurel decisions as "a pioneering set of rulings," Andrew Jacobs, *Justices Pondering Old Barriers in Housing*, N.Y. TIMES (Nov. 28, 2001), which "stand for the effort to desegregate New Jersey's many rings of suburban communities," Anthony DePalma, *Mount Laurel: Slow, Painful Progress*, N.Y. TIMES (May 1, 1988); see also Naomi Bailin Wish & Stephen Eisdorfer, *The*

⁸ The Public Advocate cited statistics showing that for the Borough of Bloomingdale, African Americans and Latinos represented only 1.5 percent of the town's current population, although they constituted 20.9 percent of the region's residential population, and 50.5 percent of the region's low- and moderate-income housing population. 132 N.J. at 19.

Impact of Mount Laurel Initiatives, 27 Seton Hall L. Rev. 1268, 1276 (1997) (identifying as among the "identifiable goals" of Mount Laurel the "ameliorat[ion] of racial and ethnic residential segregation by enabling blacks and Latinos to move from the heavily minority urban areas to white suburbs"). Meanwhile, those who have sought enforcement of Mount Laurel have been met with resistance similar to that experienced by other civil rights pioneers. For example, Ethel Lawrence, a plaintiff in the original Mount Laurel action, and her family, "received volumes of hate mail, had to change their phone number three times and survived gunshots through the bedroom window." David W. Chen, *Slouching Toward Mount Laurel*, N.Y. TIMES (March 31, 1996).

Further, even if one views the Mount Laurel doctrine as being primarily concerned with economic segregation, its effect is felt largely by the African American and Latino communities whose members are on average less wealthy than other groups in New Jersey. Census data for the years 2005-2009 demonstrates this point. Thus, the median household income for African Americans in New Jersey during this time period, in 2009 inflation-adjusted dollars, was \$46,139, well below the median income for all households in New Jersey, or \$68,981, and less than sixty percent of the median household income for white (non-Hispanic) households, which was \$77,475. During this same

time period, the median household income for Latinos was \$48,093, or sixty-two percent of the median white household income.⁹

African Americans and Latinos are, then, overrepresented in the income classes eligible for Mount Laurel housing, see N.J.S.A. 52:27D-304(c)-(d) (defining income requirements for low- and moderate-income housing), and among those who have the most pressing housing needs. In 2000, among New Jersey households classified as having a "very low" income -- less than 30 percent of the median family income in New Jersey -- 22.9 percent were African American and 16.6 percent were Latino, whereas African Americans comprised only 13.6, and Latinos 13.3, percent of the statewide population. In the "low" income household group, defined as earning between 30 and 50 percent of the median family income, African Americans represented 15.8 percent of all households, and Latinos 15.0 percent. And over 70 percent of all "low" and "very low" income African American households, and over 80 percent of all "low" and "very low" income Latinos were living in overcrowded or unaffordable

⁹ See United States Census Bureau, 2005-2009 American Community Survey, available at http://factfinder.census.gov/home/acs/pums_2009_5yr.html. The American Community Survey defines "African American" as those identifying as single race, and therefore excludes biracial African Americans, but does include African Americans who also identify as Hispanic or Latino, as the United States Census Bureau categorizes the former concepts as ethnic, rather than racial identities. Latinos are defined as those identifying as single-race (white) and ethnically Hispanic or Latino. Households are categorized according to the ethnicity of the "householder," or the person in whose name the house is owned or rented. See http://factfinder.census.gov/home/en/epss/glossary_h.html.

housing, or housing with insufficient plumbing or kitchen facilities.¹⁰

Finally, it is also the case that census data indicate that race and ethnicity are greater predictors of whether a person is likely to live in an area with a high number of like people than is economic status. The isolation index for New Jersey's poor in 2010 was 21.4, meaning that the average poor person in New Jersey was likely to live in a community that is 21.4 percent poor.¹¹ See Ex. 2. In contrast, in 2010 the average African American in New Jersey lived in an area that was 42.8 percent African American, and the average Latino lived in an area that was 40.2 percent Latino. *Id.* The poor are also less concentrated in New Jersey's urban areas than are African Americans and Latinos. For example, in 2010, the average African American in Camden was likely to live in an area that was 35.4 percent African American; the average Latino was likely to live in an area that was 25.4 percent Latino, and the average poor person was likely to live in an area that was 20.8 percent

¹⁰ For statewide population percentages, see Ex. 1. Data on the representation of African Americans and Latinos in low and very low income households in New Jersey, and the housing needs of these groups, is drawn from a report by the Department of Community Affairs, which incorporates a special analysis of 2000 census data performed by the United States Department of Housing and Urban Development. See New Jersey Department of Community Affairs, 2009 Consolidated Plan, available at http://www.state.nj.us/dca/divisions/dhcr/announcements/pdf/con_drafplan09.pdf

¹¹ The isolation index indicates to what degree the average person in an area lives among people of the same race, e.g. a score of 70 on the isolation index means that the average person lives in an area that is 70 percent the same along a specified variable.

poor. *Id.* The numbers for Newark are 60.5, 39.1, and 22.9 for these respective groups. *Id.* In other words, the problem of segregation, to which *Mt. Laurel* is directed, is even more pronounced along racial lines than it is among economic ones, and the resulting social disadvantages even more pressing.

II. MOUNT LAUREL I CORRECTLY RECOGNIZED THAT EXCLUSIONARY ZONING EXACERBATES RACIAL SEGREGATION AND THE MOUNT LAUREL DOCTRINE HAS REDUCED SEGREGATION IN THOSE AREAS WHERE IT HAS BEEN SUCCESSFULLY IMPLEMENTED.

Although governments have long been prevented from adopting zoning laws that expressly discriminate on the basis of race, see *Buchanan v. Warley*, 245 U.S. 60 (1917), zoning nevertheless carries the potential to be exercised in a discriminatory manner or to preserve and perpetuate existing patterns in housing, which themselves may have been influenced by discriminatory practices. See Norman Williams, Jr., *AMERICAN LAND PLANNING LAW* vol. 8, 733-36 (2004) (describing adoption of racial zoning ordinances explicitly designed to enforce racial separation following migration of rural southern African Americans to northern cities); Robert M. Fogelson, *BOURGEOIS NIGHTMARES: SUBURBIA 1870-1930* (2005) (discussing racial motivation of housing policy and restrictive covenants in twentieth century).

New Jersey's experience reflects exactly these concerns: exclusionary zoning became widespread in New Jersey just as *de jure* racial discrimination in the public and private housing

markets was declared illegal, and effectively limited the production of affordable housing and thereby continued patterns of racial segregation earlier established. Mount Laurel, where enforced, has had marked success in addressing this harm, both in reducing racial segregation in housing and in improving access to communities of opportunity for minority communities.

A. Exclusionary Zoning and Racial Segregation in New Jersey

Even as this Court declared overt racial discrimination in housing to be legally invalid, see *Levitt & Sons*, 31 N.J. 514 (1960), *David v. Vesta*, 45 N.J. 301 (1965), New Jersey municipalities reacted by increasingly instituting exclusionary zoning restrictions, which had the effect of perpetuating the very housing patterns created by *de jure* discrimination. Thus, between 1960 and 1967, more than 150 municipalities in New Jersey changed their zoning to increase minimum lot sizes. See Andrew Wiese, *PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY* 227 (2004) (discussing how these zoning rules effectively blocked suburbanization for African Americans living in New Jersey through apparently nonracial means). A 1970 study by two prominent land use scholars, see Norman Williams, Jr. & Thomas Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 *Syr. L. Rev.* 475 (1970) (hereinafter "Williams & Norman"), and cited by the Court in *Mt.*

Laurel I, 67 N.J. at 172, demonstrated the extent to which exclusionary zoning restricted the uses of land subject to development in Morris, Somerset, Middlesex, and Monmouth counties,¹² 22 *Syr. L. Rev.* at 477, 79, which had "by far the largest area of conveniently-located vacant land which is available for future growth of both residence and employment," *id.*, see also *id.* at 475 (observing that "in recent years most of the desirable new jobs have been gravitating to" outer suburban areas). Yet, in these four counties, only 3,000 acres of a total 400,000 acres were zoned to permit the construction of multiple dwellings, or the very garden apartments that Ethel Lawrence and her fellow parishioners sought to build, *id.* at 485. Zoning in Somerset County allocated no land to such development, *id.* at 486, and Middlesex allocated only just over 300 acres, *id.* at 487. This study constituted part of the record that led the Court to conclude in *Mount Laurel I* that exclusionary zoning practices "rende[r] it impossible for lower paid employees of industries [the municipalities] have eagerly sought . . . to live in the communities where they work." 67 N.J. at 172.

¹² The Williams and Norman study defined exclusionary land use controls as those "which appear to interfere seriously with the availability of low- and moderate-cost housing where it is needed." 22 *Syr. L. Rev.* at 478-79. The six types of zoning regulations considered as "exclusionary" were minimum building size requirements, single-family restrictions, restrictions on the numbers of bedrooms, prohibition of mobile homes, frontage requirements, and lot size requirements. *Id.* at 483-84.

Indeed, the impact of the widespread use of exclusionary zoning rules on the access of minority communities to affordable housing across the state was profound. See Williams & Norman, 22 *Syr. L. Rev.* at 476 (observing that due to exclusionary zoning, "the large concentration of low-income blacks is in our central cities, while the white middle class is increasingly concentrated in the suburbs"). Nor was the relationship between exclusionary zoning rules and segregation coincidental. Planning and economic literature demonstrates a strong relationship between the use of exclusionary zoning and a jurisdiction's racial segregation. This literature supports the principle that the Court intuitively recognized: exclusionary zoning is causally linked to racial and economic segregation. See *Mount Laurel I*, 67 *N.J.* at 159 (recognizing "the minority group poor (black and Hispanic)" as a "category of persons barred from so many municipalities by reason of restrictive land use regulations"); see also *Mount Laurel II*, 92 *N.J.* at 210, n.5 (citing scholarly works and governmental commission publications for the conclusion that exclusionary zoning causes concentration of poverty in urban areas).

Thus, jurisdictions with low-density zoning regulations, including those that require minimum lot sizes, set-back or frontage requirements, or forbid multiple dwellings, are less likely to have African American residents than are those without

such restrictions. Rolf Pendall, *Local Land-Use Regulation and the Chain of Exclusion*, *J. of the Am. Planning Assoc.* 66:125-42 (2000). Anti-density zoning in metropolitan areas is also associated with a higher concentration of African Americans in the central city. Rolf Pendall, et al., The Brookings Institute, *From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 Largest Metropolitan Areas* (2006).

Other studies have gone further to demonstrate not just correlation, but causation between the use of exclusionary zoning and segregation, by comparing patterns of segregation with the use of exclusionary zoning, which differs greatly by region. See Jonathan Rothwell & Douglas Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, *Urban Affairs Review*, vol. 44 n. 6, 779-806 (2009) (hereinafter "Rothwell & Massey"). Nationally, metropolitan areas that resorted less to exclusionary zoning measures experienced greater desegregation during the period 1980 to 2000. Thus, desegregation was greatest in the South and West, which have relatively fewer exclusionary zoning restrictions, and least in the Northeast and Midwest, which have relatively more restrictions. Rothwell & Massey, *supra*, at 793. Using regression analysis, Rothwell and Massey showed that at any point in time from 1990 to 2000, the variation among

metropolitan areas with respect to Black-White segregation and Black isolation was strongly predicted by their relative openness to housing construction, as embodied in maximum zoning rules -- the greater the allowable density, the lower the level of racial segregation. *Id.* at 801. A similar analysis found that exclusionary zoning has the same causal relationship to the segregation of Latinos in a given area. See Jonathan Rothwell, *Racial Enclaves and Density Zoning: The Comparative Segregation of Racial Minorities in the United States*, Social Science Research Network, Working Paper 1161162 (2009). Meanwhile, the role of exclusionary zoning in causing racial segregation has been buttressed by a body of social science research that addresses -- and rejects -- alternative theories for racial segregation, including objective differences in socioeconomic status and personal preferences. See Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, *Ann. Rev. Sociol.* v. 29, 176-191 (2003) (surveying literature testing and rejecting these hypotheses). Segregation of African-Americans and Latinos continues despite their preferences for more integrated neighborhoods.

In sum, as *Mount Laurel* recognized, requiring communities to limit the use of exclusionary zoning that stands in the way of providing affordable housing is necessary to decrease racial

segregation in New Jersey. Real life experience supports this self-evident principle.

B. Mount Laurel's Mandate That All Communities Provide A Fair Share Of The State's Affordable Housing Need Has, Where Implemented, Lessened Racial Segregation And Improved Access To Communities Of Opportunity For Minority Communities.

Indeed, where changes to zoning based on *Mount Laurel* have been implemented, measurable gains have been made in opening communities of opportunity to moderate and low-income African American and Latino households. Townships with *Mount Laurel* developments are markedly less segregated today than they otherwise would have been had *Mount Laurel* not mandated a departure from existing exclusionary zoning regulations.

The most recent data available from COAH indicate that, to date, 60,365 *Mount Laurel* affordable housing units have been constructed in New Jersey. See Ex. 6. Multiplying this number by 2.68, the average household size in New Jersey as of 2010, see N.J.A.C. 5:97 App. A, this means that approximately 161,778 individuals live in newly constructed *Mount Laurel* housing.¹³ Data from COAH also indicate that over 160 towns have

¹³ Additionally, 14,932 units have been refurbished pursuant to local plans. See Ex. 6. This is yet another important result of *Mount Laurel*, which has served to maintain significant housing stock already occupied by lower-income households. That said, for the purposes of this analysis, which looks to demographic trends and the distribution of population, as well as the certified question of whether growth share will increase the amount of affordable housing available statewide, new construction is most relevant.

constructed over 100 *Mount Laurel* units each.¹⁴ See Ex. 6. The result of this construction, while insufficient to overcome the segregation that persists, has been profound: the lives of individuals who have been able to move out of blighted areas and into more resource-rich communities with economic and educational opportunities have improved dramatically.

The experiences of two municipalities, *Mount Laurel* and *West Windsor*, are instructive. There, *Mount Laurel* construction has meaningfully affected the racial composition of the communities in which it has been undertaken, reducing the level of racial segregation that would otherwise be expected. These communities enjoy strong job growth and educational opportunities, thus making increased access for minority communities particularly important.¹⁵ Indeed, as a study of residents in the *Ethel Lawrence Homes*, built in *Mount Laurel Township* shows, such construction has improved educational achievement and economic self-sufficiency for residents.

¹⁴ This figure excludes construction pursuant to a Regional Contribution Agreement.

¹⁵ For example, *Mount Laurel* added more private sector jobs between 1980 and 2010 than it did residents, as it gained 26,829 such jobs, as compared to its population growth of 24,250. Exhibit 5. *Mount Laurel* experienced the fifth highest growth in private sector jobs of any municipality in New Jersey. *Id.* And *West Windsor* is served by a school district classified by the Department of Education as district factor group J, the highest possible classification. See New Jersey Department of Education, District Factor Groups Report, available at <http://www.state.nj.us/education/finance/sf/dfg.pdf>.

1. Mount Laurel Township

In 1980, Mount Laurel had a total population of 17,614, and was 92.8 percent white (non-Hispanic). See Ex. 1. African Americans made up 4.6 percent of its population, and Hispanics only .9 percent.¹⁶ In 1983, addressing the issue of affordable housing in Mount Laurel, the Court found that "[n]othing really has changed . . . either in Mount Laurel or in its land use regulations." *Mount Laurel II*, 92 N.J. at 296. Despite growth of the commercial sector of town, and the growth in housing for the wealthy, not one unit of lower-income housing had been constructed. *Id.* at 296-97. On September 9, 1985, the town entered into a consent decree under which it was obligated to construct 950 units of affordable housing. Docket No. L-25741-

¹⁶ Consistent with the history of racial discrimination and exclusionary zoning discussed earlier, Mount Laurel was more highly integrated, at least for the African American population, in 1930, when it was 17.6 percent African American, than in 1980. At this time, until the mid century, Mount Laurel had "rural characteristics," *Mount Laurel I* at 159. With development and exclusionary zoning, came rising costs of housing, such that at the time of *Mount Laurel I*, African Americans and Latinos were living in "substandard housing" or forced to move from town because they could not afford it. *Id.* at 159, n.3. The share of Mount Laurel's population attributed to African Americans steadily declined between 1930 and 1970, when it was at 3.27 percent, its lowest recorded level. This same pattern is consistent with overall demographic trends in New Jersey. For example, Lower Alloways Creek Township, in Salem County, was 8.8 percent African American in 1930, 10.6 percent in 1940, and 1.4 percent in 2010. Greenwich, in Cumberland County was 34 percent African American in 1930, 31 percent in 1940, and 4.5 percent in 2010. Shrewsbury Township, in Monmouth County, was 34 percent African American in 1930, 36 percent in 1940, and 14.3 percent in 2010. See U.S. Bureau of the Census, Decennial Census, available at <http://www.census.gov/prod/www/abs/decennial/> (1930-1960); <http://www.nhgis.org> (1970-1980); <http://factfinder2.census.gov> (1990-2010).

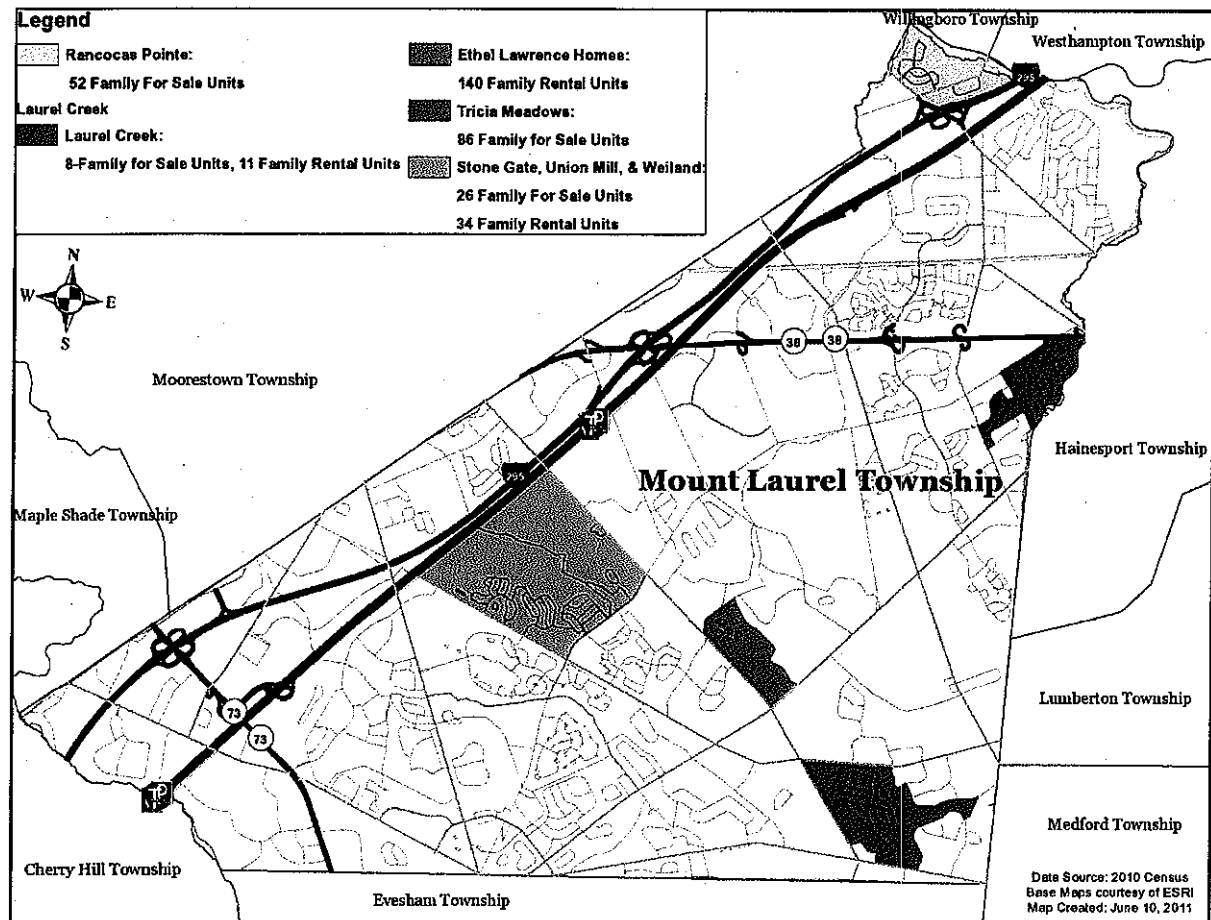
70PW. These figures were revised, again by consent decree, in 1997 and 2006.¹⁷

To date, Mount Laurel has constructed 477 new units of affordable housing. See Ex. 6. This new construction includes 357 family units, in seven developments: Rancocas Pointe, Laurel Creek, Ethel Lawrence Homes, Stone Gate, Union Mill, and Weiland developments. The result of this construction has been a marked reduction in segregation.

Figure 1 below shows the location and number of units in these family developments:

¹⁷ In 2007, after COAH revised its regulations and assigned Mount Laurel an additional 1421 units, Mount Laurel initiated litigation to dispute its newly calculated housing obligation.

Figure 1



The shaded areas in Figure 1 represent the census blocks containing *Mount Laurel* units. The shaded areas also contain market-rate homes, and the *Mount Laurel* units account for only a small percentage of all residents in the shaded blocks.¹⁸

An analysis of the racial composition of all census blocks in Mount Laurel containing *Mount Laurel* affordable developments indicates that these blocks are more racially diverse than the

¹⁸ Census data do not permit isolation within blocks of the Mount Laurel units.

rest of the town, and are populated by African Americans and Latinos at rates that more closely track the statewide population of African Americans and Latinos. In blocks with *Mount Laurel* developments, African Americans constitute 14.2 percent of all residents, and Latinos 6.4 percent. See Ex. 7. The remainder of the town is 9.6 percent African American, and 4.2 percent Latino. *Id.* Thus, blocks containing *Mount Laurel* units have resident populations that are closer to the statewide population of African Americans and Latinos -- 13.5 and 17.7 percent, respectively, see Ex. 1 -- than does the remainder of the town. Both African Americans and Latinos are present in the census blocks containing *Mount Laurel* developments in a greater proportion than in the rest of the state. These statistics make abundantly clear that *Mount Laurel* is more diverse today than it otherwise would have been had these units not been constructed, powerful testimony to the real-life impact of the Court's ruling.

2. West Windsor Township

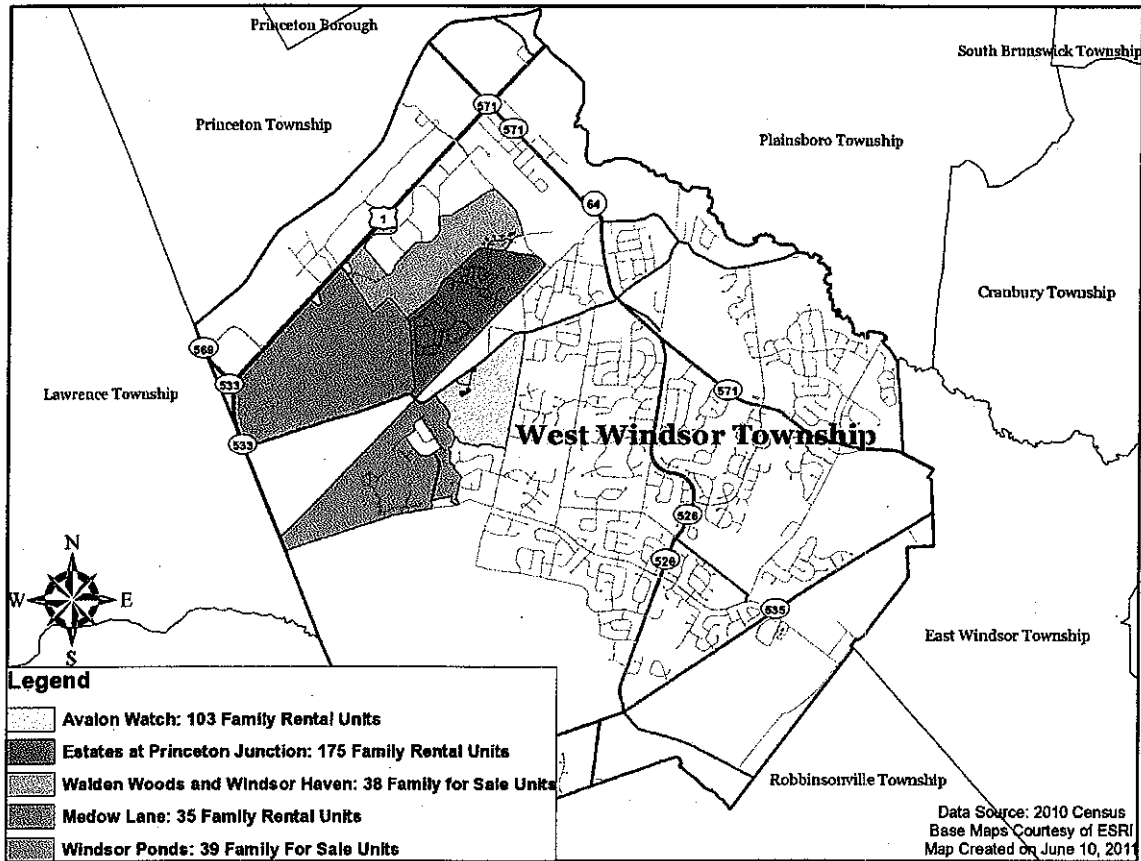
The data in West Windsor show even more significant gains for African-Americans and Latinos compared to the remainder of the municipality. In 1980, West Windsor had a total population of 8542. It was 92.2 percent white (non-Hispanic). In 2010, its population had grown to 27,165, and the town was 51.9 percent white. See Ex. 1. Thus, West Windsor grew by 218

percent between 1980 and 2010, outpacing statewide population growth, which was 19.4 percent during this same period. *Id.* During this same period, West Windsor gained 11,165 private sector jobs, ranking it seventeenth in private sector job growth in New Jersey. *Id.*

West Windsor was first sued in 1984 regarding its exclusionary zoning practices, resulting in a judgment establishing its fair share at 1,619 low and moderate income units. See *Toll Brothers v. Township of West Windsor*, 173 N.J. 502, 514-15 (2002). Its obligation was reduced by COAH in 1985 and again in 1986, bringing the obligation down to 592 units. *Id.* However, by 2002, only 37 for sale units and 102 rental units had been constructed, despite the construction of roughly 4500 high priced, single family homes during the same period. *Id.* at 526. Toll Brothers ultimately was awarded a builder's remedy by the Court, *id.* at 560-62, and went forward with a development, Princeton Junction, that included affordable units. Statistics from the Council on Affordable Housing indicate that, to date, West Windsor has constructed 594 affordable housing units pursuant to the *Mount Laurel* doctrine, see Ex. 6, 390 of which were family developments. These units are accounted for by the Avalon Watch, Estates at Princeton Junction, Walden Woods, Windsor Haven, Meadow Lane, and Windsor Ponds

developments. Figure 4 depicts the locations and describe the number and type of these *Mount Laurel* units in West Windsor:

Figure 2



The shaded areas in Figure 2 represent the census blocks containing family *Mount Laurel* units. These blocks also contain market-rate units in the same developments, and unrelated residential units. In other words, residents of *Mount Laurel* units do not account for the entire population of the shaded census blocks.

A comparison of the demographics of the *Mount Laurel* blocks in West Windsor to the rest of the town indicates that these

areas of town are more diverse and, again, closer to statewide averages for African Americans and Latinos than is the rest of the town. Although still underrepresented relative to the statewide population, African Americans constitute a significantly greater proportion of residents in census blocks with *Mount Laurel* developments -- 7.9 percent -- than in the rest of the town, which is 2.7 percent African American. See Ex. 8. In these same areas, Latinos comprise 6.3 percent of the population, whereas the rest of West Windsor is only 3.9 percent Latino. *Id.* Again, it is clear that, to the extent that West Windsor has become more racially diverse between 1980 and 2010, and that its population distribution more closely matches that of the state as a whole, *Mount Laurel* developments account for a significant portion of this change.

3. Ethel Lawrence Homes

The case studies of Mount Laurel Township and West Windsor establish that the presence of *Mount Laurel* units in a census block is correlated with population distribution that is more racially diverse than is the town as a whole, and closer to the distribution one would expect based on statewide averages. Albeit anecdotal, these case studies engender proof that *Mount Laurel* is responsible for making certain communities of opportunity -- which Mount Laurel and West Windsor, with their private sector job growth and quality schools certainly are --

open to new residents, many of whom are African American or Latino. It is also the case that Mount Laurel has allowed many families to move from neighborhoods with low social capital to communities of opportunity. A new, quasi-experimental study further demonstrates the measurable and positive impact that moving to one particular Mount Laurel development -- the Ethel Lawrence Homes ("ELH") in Mount Laurel Township -- on residents' economic self sufficiency, health, and on the educational outcomes for their children.

The study draws its data from a survey of current and former residents of the Ethel Lawrence Homes and a comparison sample of individuals who applied for but have not yet been selected to live in the development. See Rebecca Casciano & Douglas Massey, *Neighborhood Disorder and Anxiety Symptoms: New Evidence from a Quasi-Experimental Study*, SSRN Working Paper 1865238 (June 2011) (hereinafter "Anxiety Symptoms").¹⁹ These groups are alike in their desire to live in the development. Statistics indicate that residents of ELH responding to the survey were 67.2 percent African American and that 22.4 percent identified as "other," a category that likely captures primarily Latino individuals.²⁰ *Id.* After controlling for variables such

¹⁹ Available at <http://ssrn.com/abstract=1865238>.

²⁰ These figures are more encouraging regarding the question of whether affordable housing units constructed in the suburbs after Mount Laurel were occupied by minority families than those reported after analysis of New

as sex, age, race, educational attainment, family size, and unmeasured characteristics that may account for propensity to be selected for residency, *id.*, outcomes for the two groups were compared.

The first hypothesis tested is that "living in an affordable housing project in a middle class suburb improves a poor person's economic prospects" relative to what they otherwise would have experienced, and that this improvement may be explained in part by differences in exposure to disorder and stressful events. Rebecca Casciano and Douglas Massey, *Neighborhood Disorder and Individual Economic Self-Sufficiency: New Evidence from a Quasi-Experimental Study*, SSRN Working Paper 1865235 (June 2011).²¹ The study assessed four measures of economic self-sufficiency: total annual income from work, receipt of income from Temporary Assistance for Needy Families, current employment status, and percent share of income from work rather than benefits such as social security. *Id.* In every category, residents performed better on these measures of economic self-sufficiency. Thus, residents earned \$19,687 on average compared to \$12,912 for non-residents. *Id.* Five percent of residents received TANF, compared with 14 percent of non-residents. *Id.* Two thirds of ELH residents were currently

Jersey Affordable Housing Management Service data in 1996. See Wish & Eisdorfer, 27 Seton Hall L. Rev. 1268 (1997).

²¹ Available at <http://ssrn.com/abstract=1865235>.

working for pay, compared with 51 percent of non-residents. *Id.* And roughly 60 percent of residents' total annual income came from earnings, as compared to 42 percent for non-residents. *Id.*

The study also measured neighborhood disorder²² and negative life events.²³ *Id.* The mean weighted disorder score for residents of ELH was found to be nearly six times less than that of non-residents. *Id.* The number of negative life events experienced by ELH residents in the previous twelve months was also lower than for non-residents. *Id.* (comparing scores of 1.77 and 2.64, respectively). The study found that exposure to disorder is inversely related to the odds of being employed, income from earnings, and share of income from work. *Id.* In sum, ELH residents were more economically self-sufficient than non-residents who had applied to live in the development, a result that is directly related to the fact that ELH residents live in a neighborhood characterized by less disorder and resultantly are exposed to fewer negative life events than non-residents. *Id.*

The study also tested for effects of residency in ELH on mental health. *Anxiety Symptoms, supra*, and found that living in

²² Indicators of neighborhood disorder include frequency of exposure within the past twelve months to homeless people, prostitutes, gangs, drug paraphernalia, drug dealing, people using drugs, public drinking, physical violence, and gunshots. *Id.*

²³ Negative life events include serious illness, serious injury, death, unexpected pregnancy, arrest by police, sentencing to jail or prison, expulsion from school, loss of job, loss of home, robbery, and burglary. *Id.*

ELH positively affects mental health, and that this impact is attributable to the fact that living in Mount Laurel exposes residents to less neighborhood disorder than non-residents. On average, ELH residents reported experiencing fewer anxiety symptoms than non-residents.²⁴ *Id.* Moreover, each additional year of living in ELH is associated with a measurable reduction in exposure to neighborhood disorder, which in turn is associated with a reduction in anxiety symptoms. *Id.* Anxiety and stress negatively impact one's mental and physical health in a variety of ways. *Id.*

Finally, the study tested whether moving into an affordable housing project in an affluent suburb yields educational benefits compared to the educations they would have received had they not moved into the project. Rebecca Casciano and Douglas Massey, *School Context and Educational Outcomes: Results from a Quasi-Experimental Study*, SSRN Working Paper 1865232 (June 2011).²⁵ Not surprisingly, survey responses indicate that in specific measures, the schools attended by ELH residents were better than those attended by non-residents. *Id.* (comparing proficiency scores in language arts and mathematics of 89 percent and 82 percent for ELH residents with scores of 70 percent and 57 percent for non-residents). Thus, the average

²⁴ Anxiety is measured by the frequency with which respondents experienced four anxiety symptoms: trouble falling asleep, trouble relaxing, frequent crying, and fearfulness. *Id.*

²⁵ Available at <http://ssrn.com/abstract=1865232>.

SAT score of students in schools attended by ELH residents was 17 percent greater than the value in schools attended by non-resident children. *Id.*

The schools attended by ELH resident children were also characterized by less violence and disorder than were the schools attended by non-residents.²⁶ ELH resident children scored on average 1.69 on a five-point school disorder scale, compared to a score of 2.17 for nonresidents. *Id.* A one-unit increase in this scale is associated with a .45 decrease in a child's GPA. *Id.* ELH resident children also spent on average 4.74 more hours per week reading for information or pleasure than did non-resident children. *Id.* Each additional year that children live in ELH is associated with a .78 hour increase in reading per week. *Id.* And every additional hour reading per week is associated with a .04 increase in GPA. *Id.*

The study also found that parents of ELH residents were more involved in their children's education than were non-resident parents.²⁷ *Id.* Each additional year of living in ELH was associated with a small but significant increase in the

²⁶ School disorder was measured by the frequency with which children were exposed, in the previous three months, to student fights, smoking, "making out," being late for class, cutting school, shouting at or threatening a teacher or principal, pushing or hitting a teacher or principal, vandalizing school or personal property, theft of school property, consuming alcohol or drugs, carrying knives, carrying guns, and robbery of students. *Id.*

²⁷ Parental involvement was measured by the frequency with which parents engaged in activities such as checking homework, helping with homework, involvement in the PTA, talking to other parents, and talking to their children's friends over the past twelve months. *Id.*

degree of parental involvement, indicating that involvement may be a cumulative process that builds over time. *Id.*

This study demonstrates and quantifies the positive outcomes experienced by residents in one suburban *Mount Laurel* development. In so doing, it illustrates the gains that are realized when the vision of *Mount Laurel*, that communities of opportunity not be foreclosed to entire classes of people, including African Americans and Latinos, see *Mount Laurel I*, 67 N.J. at 174, is realized. That is, where implemented, *Mount Laurel* has not only resulted in an increase in racial diversity, but has also had a substantial and profound impact on the lives of those who have been able to move away from "urban ghettos," *Mount Laurel II*, 95 N.J. at 209, to communities of opportunity as a result of these developments. As Helen Hodges, a teacher's aide in Trenton who moved with her two teenage sons into a two-bedroom condo at the Lawrence Square Village development in Lawrence Township, stated, articulating the impact of *Mount Laurel* on the lives of so many families: "That first night I just kept wanting to pinch myself. I just worked up till the time it got dark and then relaxed and enjoyed myself knowing I was away from the drugs in the city." Anthony DePalma, *Mount Laurel: Slow, Painful Progress*, N.Y. Times (May 1, 1988).

III. THE MOUNT LAUREL DOCTRINE CONTINUES TO BE NECESSARY TO ADDRESS ONGOING SEGREGATION IN NEW JERSEY TODAY

Despite the marked success of the *Mount Laurel* doctrine in some regions and for a number of New Jersey families, its implementation has been gradual, in part by design and in part because of resistance and questionable methods of implementation. New Jersey in fact continues to face persistent racial segregation as a result of exclusionary zoning regulations, highlighting the need for a continued and strengthened commitment to the *Mount Laurel* doctrine.

A. The *Mount Laurel* doctrine has not been fully or consistently implemented in New Jersey to date.

Despite its successes, to date the *Mount Laurel* doctrine has not been fully or consistently implemented in New Jersey. As a result, the impact of the doctrine on housing segregation has been diluted, highlighting the need for more -- not less -- vigorous implementation.

First, as embodied by the FHA, the *Mount Laurel* doctrine is intended to be implemented over time, with gradual progress in a series of "rounds" instead of a wholesale removal of all exclusionary barriers. See *Mount Laurel I*, 67 N.J. at 191 (citing need for "proper planning" to "prevent over-intensive and too sudden development"); *Mount Laurel II*, 92 N.J. at 224-25 (emphasizing need for "sound planning" in reference to State Development Guide Plan). Thus, the FHA mandates that

prospective need be determined for a period of years, see N.J.S.A. 52:27D-307(c)(1) (requiring computation of need for 10 year period), indicating that the Legislature expects that housing needs be met over time. The FHA also allows municipalities to "phase in" the achievement of their fair share over time, according to schedule, N.J.S.A. 52:27D-311(b), or reduce its obligation upon a showing that the number of units calculated as the municipality's fair would amount to an overnight, "drastic alteration" of the town as a whole, N.J.S.A. 52:27D-307(c)(2). As a result, the full impact of Mount Laurel has only begun to be realized in New Jersey, as illustrated by the successes documented *supra* Part II.

The Mount Laurel doctrine has also faced persistent resistance from several quarters, perpetuating segregated housing patterns and demonstrating the need for a strengthened commitment to the Mount Laurel doctrine. For example, from the time of Mount Laurel I to Mount Laurel II, very little progress was made in implementation, as Mount Laurel II found "widespread non-compliance," with Mount Laurel I's constitutional mandate. 92 N.J. 158, 199 (1983). The legislature did not act until 1985, when it enacted the Fair Housing Act of 1985 ("FHA"), N.J.S.A. 52:27D-301 to -329. More recently, the Council on Affordable Housing delayed for over five years the adoption of updated rules, which were to set forth the "fair share"

obligations of municipalities going forward. See *In re Six Month Extension*, 372 N.J. Super. 61, 95-96 (App. Div. 2004) (noting "dramatic and inexplicable" delay in updating calculations of present and future need such that "the public policies underlying the FHA and the Mount Laurel cases have, quite obviously, been frustrated by inaction"). Some municipalities have also contested attempts to implement the doctrine in their locality. See, e.g., *Toll Brothers, Inc. v. Township of West Windsor*, 173 N.J. 502, 515-24 (2002) (recounting litigation history dating from 1984); see generally *Mount Laurel II*, 92 N.J. at 200 (observing that "the length and complexity of trials is so high that a real question develops whether the municipality can afford to defend or the plaintiffs can afford to sue").

Finally, some aspects of *Mount Laurel* implementation, under the FHA and COAH regulations, have arguably have been of little help, and have likely been counterproductive, at least to the desegregation aspects of the Court's mandate. Most clearly in this category is the provision for Regional Contribution Agreements ("RCAs") introduced in the FHA. These agreements were "intended to allow suburban municipalities to transfer a portion of their obligation to urban areas . . . thereby aiding in the construction of decent lower income housing in the area where most lower income households are found," *Hills Dev't Co.*,

103 N.J. at 38 (citing statement of legislative intent in § 12d of FHA) (emphasis added). Although the Court upheld the FHA generally against constitutional challenge, see *id.*, as-applied challenges were raised to the certification of the development plans of certain municipalities on the grounds that particular RCA would contribute to racial segregation. See, e.g., *In re Township of Warren*, 247 N.J. Super. 146, 156 (1991) (unsuccessful challenge to transfer of affordable housing units to New Brunswick on grounds that RCA would "perpetuate racial stratification"); *In re Township of Denville*, 247 N.J. Super. 186, 193-94 (unsuccessful challenge to town's RCA with Newark on grounds that it would result in "undue concentrations of minorities"). The Legislature eventually abandoned RCAs, see L. 2008, c. 46 (modifying N.J.S.A. 52:27D-312), yet a substantial amount of development took place under such agreements. Prior to the abolition of RCAs, the obligation to develop more than 10,000 units of affordable housing outside of distressed municipalities was transferred to distressed, segregated, and predominantly urban municipalities.²⁸ As a result, in these instances at least, the potential for Mount Laurel housing to result in actual desegregation was dramatically undermined.

²⁸ See Council on Affordable Housing, Approved RCAs, available at <http://www.state.nj.us/dca/affiliates/coah/reports/rcas.xls>.

B. Housing segregation is a continuing and persistent concern in New Jersey.

Not surprisingly given the piecemeal implementation of the *Mount Laurel* doctrine to date, New Jersey in fact continues to face persistent racial segregation as a result of exclusionary zoning regulations. This ongoing segregation, in combination with the successes that have been achieved where implementation has occurred, demonstrates the importance of a continued commitment to the *Mount Laurel* doctrine.

As discussed *infra* Part IV, New Jersey continues to rely heavily on exclusionary zoning restrictions. At the same time, and consistent with the findings of Rothwell and Massey, *supra* Part II.A, New Jersey has experienced desegregation at a slower rate than the rest of the nation. Figure 3 and Figure 4 illustrate this trend using the dissimilarity index²⁹ for African Americans and Latinos, respectively:

²⁹ The dissimilarity index measures the degree to which a group is evenly distributed across census tracts. A score of 70 or higher represents what is considered extreme segregation.

Figure 3

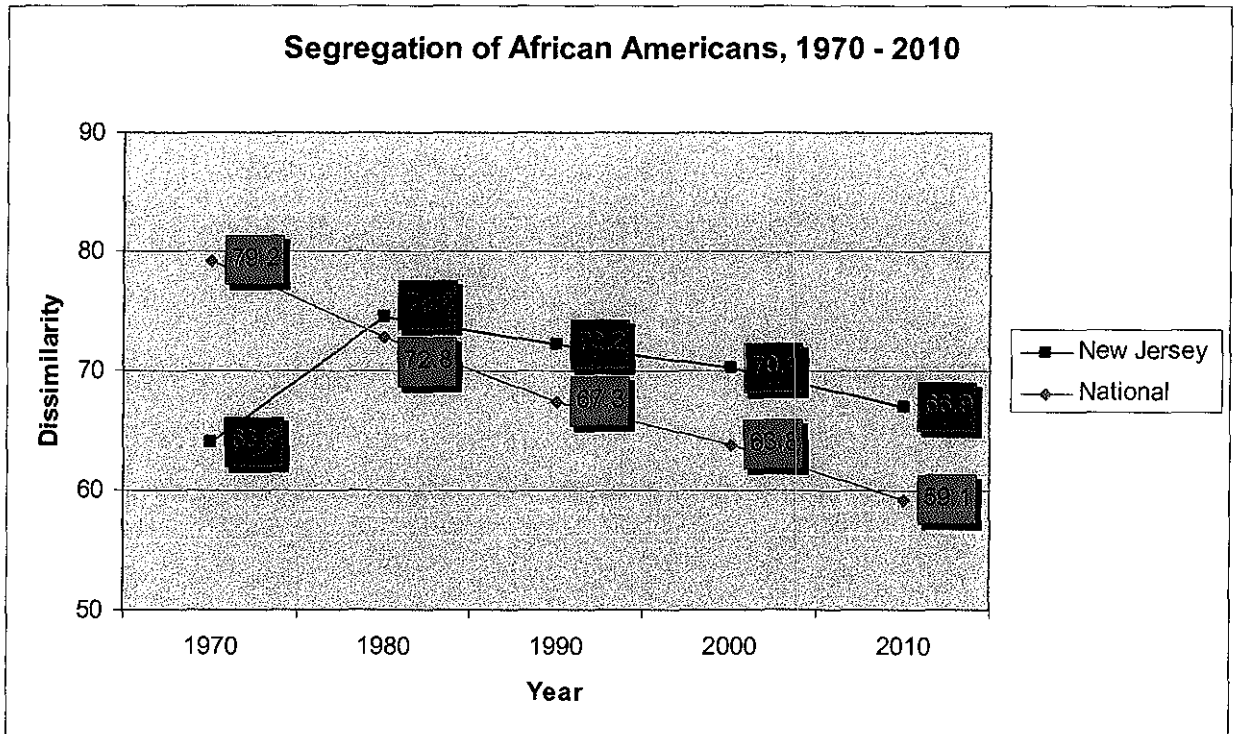
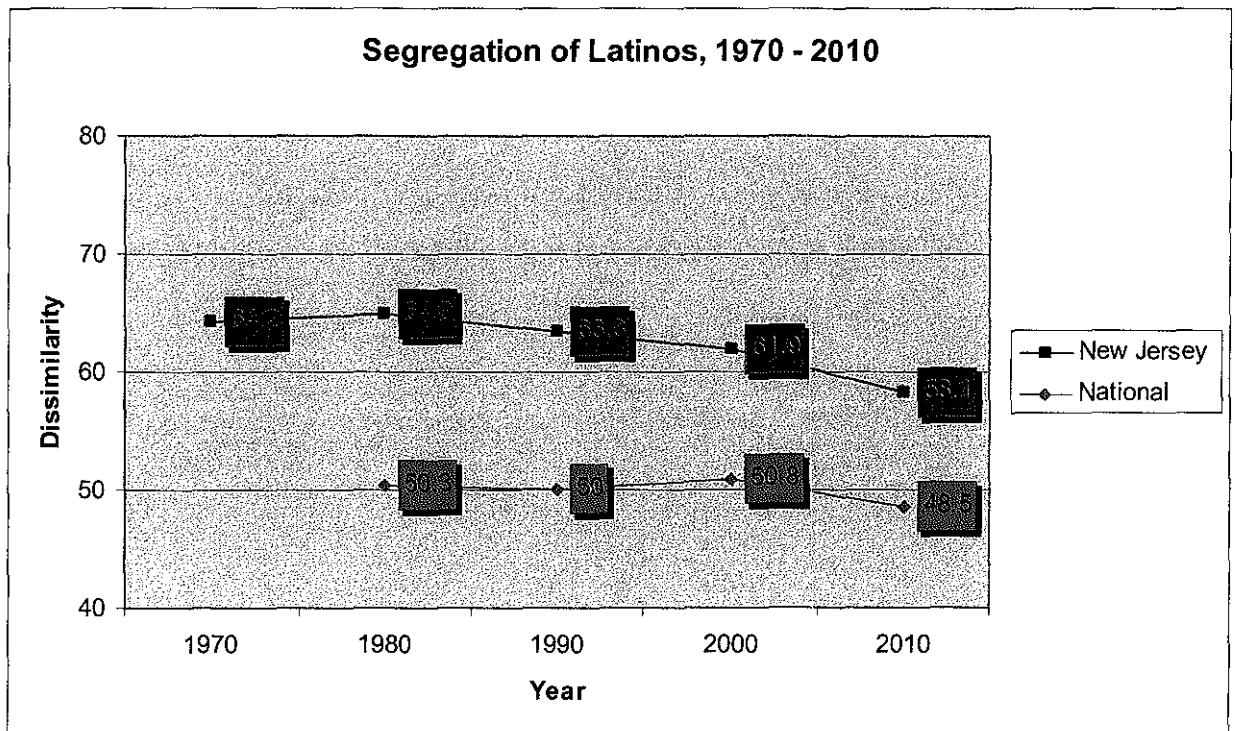


Figure 4



Thus, between 1970 and 1980, New Jersey actually grew more segregated with respect to the African American community, as the rest of the country grew less so.³⁰ Since then, statewide segregation has grown less extreme, though it still remains high, and is higher than in the nation as a whole for both African Americans and Latinos -- even though, at least for African Americans, New Jersey had historically been less segregated than most of the rest of the nation.

Furthermore, many of New Jersey's large urban areas remain more segregated than the rest of the state. For example, the African American dissimilarity index for the Newark-Union metropolitan area was 78 in 2010, compared with 66.9 statewide; for Latinos, it was 62.6, compared to 58.1 statewide. See Ex. 2. The index for the Trenton metropolitan area in 2010 was 62.8 for African Americans, and 55.6 for Latinos. *Id.* These scores, which indicate the percentage of people within a group who would have to move in order to create an even or proportional

³⁰ Data do not allow for a reliable calculation of the nationwide dissimilarity index for Latinos in the year 1970. This is true because the United States Census Bureau used different measures of capturing Latino ethnicity nationwide. The figure for New Jersey is considered reliable for this same period because Puerto Ricans, who accounted for the majority of the Latino population in the Northeast, were captured by the "Spanish Origin" question. See generally Campbell Gibson and Kay Jung, United States Census Bureau, *Historical Census Statistics on Population Totals by Race, 1970 to 1990, and by Hispanic Origin, 1970 to 1990* (2002), available at <http://www.census.gov/population/www/documentation/twps0056/twps0056.html>. Individuals from Puerto Rico, who constituted the first significant wave of Latino settlers in New Jersey, migrated in numbers between 1950 and 1970. See Jorge Duany, *BLURRED BORDERS: TRANSNATIONAL MIGRATION BETWEEN THE HISPANIC CARIBBEAN AND THE UNITED STATES* (2011).

distribution of racial groups, are in the high and near the extreme range.

Thus, while the Mount Laurel doctrine has been a marked success in those areas where it has been actually implemented, the data on racial segregation and the isolation of African American and Latino communities in New Jersey indicates that there is much more work to be done. COAH's "growth share" methodology is, however, ill-suited to address New Jersey's persistent segregation problems.

IV. "GROWTH SHARE" MUST BE REJECTED BECAUSE IT VESTS UNFETTERED DISCRETION IN THE VERY SAME MUNICIPALITIES THAT HAVE PROVEN HOSTILE TO OPENING THEIR COMMUNITIES TO NEW JERSEYANS OF ALL RACES AND CLASSES.

The continuation of gains of the type seen in municipalities such as Mount Laurel and West Windsor is threatened by the "growth share" methodology adopted by COAH and at issue in this litigation. Under this approach for determining a municipality's fair share allocation of affordable housing under the Mount Laurel doctrine, "a municipality is not required to provide a specific predetermined number of affordable housing units but only to provide additional affordable housing if job or residential growth actually occurs in the municipality." *In re N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. 462, 474 (App. Div. 2010). This calculus allows a municipality to avoid any affordable housing obligation by

adopting restrictive land use and other regulations that discourage growth.

The Appellate Division twice rejected COAH's growth share approach because, in both iterations, it provided no meaningful, minimum affordable housing obligation, see *In re N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. at 480-81 (noting that despite a nominal minimum requirement, none exists because the obligation arises "only when and to the extent that growth occurs"), *In re N.J.A.C. 5:94 and 5:95*, 390 N.J. Super. at 68 (finding no assurance that growth share would actually meet the need for affordable housing), and placed too much discretion in the hands of municipalities, see *In re N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. at 482-83 (describing ways in which municipality can avoid obligation), *In re Adoption of N.J.A.C. 5:94 and 5:95*, 390 N.J. Super. at 55-56 (rejecting growth share methodology because it fails to "place some check on municipal discretion").

Both past experience and present zoning patterns indicate that unfettered discretion will at least stall and may very well reverse the gains that have been made in the provision of affordable housing in New Jersey, to the particular detriment of African American and Latino communities, which, as discussed above, are concentrated in municipalities that are resource poor and lacking in economic and educational opportunity. See *supra* Part I.B. Specifically, past experience shows that

municipalities do not, on their own, in fact undertake to provide affordable housing. Rather, many municipalities have vigorously contested the application of the Mount Laurel doctrine to their circumstances, expressed in particular by exclusionary zoning that seeks to prevent high density development and thus, almost by definition, affordable housing. Thus, towns wishing to avoid any affordable housing obligation can simply follow present, highly exclusionary zoning regulations and accordingly slow their growth. Under these circumstances, a growth share approach would exempt them from making changes to these regulations, no matter how exclusionary, how hostile to affordable housing, or how grounded in discriminatory or even segregationist intent.

West Windsor Township illustrates this point. As a result of the construction of Mount Laurel units, West Windsor is more racially diverse today than it otherwise would have been, as discussed in detail above. West Windsor is located along the Route 1 corridor between Trenton and New Brunswick, which has been identified as a "major area of development" for the coming decade. New Jersey Dep't of Transportation, *Route 1 Regional Growth Strategy Final Report 6* (Sept. 2010) (hereinafter "Route 1 Report").³¹ Within this region, West Windsor is in a subregion with "the strongest overall private sector," by virtue of its

³¹ Available at <http://policy.rutgers.edu/vtc/rgs/>.

location near Princeton University and related research institutions. *Id.* at 9. Fifty-six percent of the land in West Windsor is undeveloped, *Route 1 Report*, Appx. J, indicating ample availability of property for residential and commercial development. However, most of the non-commercial land in West Windsor is zoned for low-density development that would exclude all or almost all Mount Laurel development: currently, 77.3 percent of available land is zoned for "low" or "very low" density development.³² *Id.* By contrast, only 2.4 percent of land in West Windsor, as currently zoned is allocated to multi-family development.³³ *Id.* Given this zoning reality, only a small amount of large lot, relatively expensive housing will be produced; and, under a growth share approach, because relatively little housing will be produced and thus little growth will take place, West Windsor will likely not be obligated to produce many -- if any -- affordable housing units. See also John Hasse, et al., *Evidence of Persistent Exclusionary Effects of Land Use Policy within Historic and Projected Development Patterns in New Jersey: A Case Study of Monmouth and Somerset Counties* 18, 20 (June 2011) (hereinafter "Evidence of Persistent Exclusionary Effects") (indicating that only 2.7 percent of land in Monmouth

³² Low density is defined as zoning that allows for between 1.1 and 2 development units per acre, and very low density is defined as zoning that allows for less than one development unit per acre of land. *Route 1 Report*, Appx. J.

³³ Multi-family developments are those with eight or more development units per acre. *Route 1 Report*, Appx. J.

County and 1 percent in Somerset County is zoned for high density development of 5 or more units per acre).³⁴ Furthermore, even the miniscule amount of existing multi-family zoning reflects yet-to-be-built Mount Laurel development, that zoning -- and with it, that development -- would be at risk, notwithstanding the notable progress that West Windsor has made as a result of its implementation of the Mount Laurel mandate.

That said, significant economic development is slated for the area. *Id.* (projecting that under build-out of existing zoning in town, 46,084 new jobs will be located in West Windsor). Comparing the number of projected jobs to the increase in population produces a ratio of 20.99 jobs per person to be accommodated by additional housing development. *Id.* Such a high ratio indicates that many people who work in West Windsor will not be able to live there. *Id.* at 13.

West Windsor is hardly unique in this regard. In Middlesex, Mercer, and Somerset Counties, which are all within the same Route 1 corridor, the percentage of land zoned for multi-family development is just 1.82 percent of all land zoned for residential use. Route 1 Report, Appx. J (414 acres out of 22,805). The ratio of projected economic growth indicates that, under current zoning in these counties, 13.19 jobs will be

³⁴ Available at http://gis.rowan.edu/projects/exclusionary/exclusionary_zoning_final_draft_20110610.pdf.

created for every person accommodated by housing growth. *Id.*; see also *Evidence of Persistent Exclusionary Effects*, *supra* at 19, 21 (projecting that development under current zoning will produce one home for every 6.74 jobs generated in Monmouth County and one home for every 16.7 jobs generated in Somerset County).

This is precisely the scenario that Mount Laurel was intended to address. Indeed, the allocation of land to low-density, exclusionary zoning is not much different today than it was when Mount Laurel I was decided. The Williams and Norman study found that in the four counties lining the western edge of the New York-New Jersey metropolitan area (Middlesex and Somerset, which are also included in the Route 1 corridor study, plus Morris and Monmouth), less than one percent was zoned for multi-family use. Williams & Norman, 22 *Syr. L. Rev.* at 485. The picture in Middlesex, Somerset, and Mercer counties is slightly better but still dismal, as under two percent of all land is zoned for multi-family development. These counties, like those studied by Williams and Norman, are expected to generate many new jobs in the coming years. But unless they are required to build affordable housing, all indications are that it will be "impossible for lower paid employees" to "live in the communities where they work." *Mount Laurel I*, 67 *N.J.* at 172.

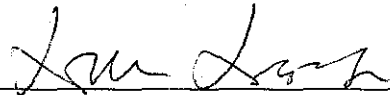
In other words, current zoning regulations will limit opportunities for the poor, among which African Americans and Latinos are overrepresented, to access to these communities of opportunity. Without the provision of affordable housing, which is unlikely to be built under current zoning regimes, there will be very little migration of families from densely populated, resource-poor communities into areas where a better quality of life may be realized and where many of them can and will find work, because they simply will not be able to afford to live there. And, without such internal migration, New Jersey will be locked into the existing, highly segregated residential patterns that so disfavor and disadvantage the African American and Latino communities.

CONCLUSION

The *Mount Laurel* doctrine seeks not only to address exclusionary zoning, but also the still pronounced problem of racial segregation in New Jersey by requiring communities across the State to provide a fair share of the affordable housing needs of the region. The doctrine thus advances racial equality by providing individuals who currently live in poor, urban areas -- who are disproportionately African American and Latino -- the ability to move to communities with far greater educational and economic opportunities than those afforded to them in their communities. Where *Mount Laurel* has been implemented, it has

increased racial diversity, decreased segregation, and improved the quality of life for individuals and families. The Appellate Division rightly rejected these regulations, and its remedy of returning to the prior regulations, which produced the measurable gains in opening communities of opportunity and reducing racial segregation in those locations. COAH's proposed regulations, which rely on a growth share methodology, threaten these gains, by vesting discretion in municipalities who historically have resisted high density development and integration, to determine whether and to what extent they will provide affordable housing, by tying their obligation to future development, without requiring any changes in existing zoning. But studies demonstrate that exclusionary zoning practices, which are widespread in New Jersey today just as they were at the time of *Mount Laurel I*, not only fail to allow the development of affordable housing, but also operate to slow growth generally. The Court should uphold the Appellate Division's rejection of this methodology or consign itself to leaving another generation of African American and Latino New Jerseyans isolated, and living in highly segregated communities because they are denied affordable housing elsewhere.

Respectfully submitted:



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