IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

No. 94-23

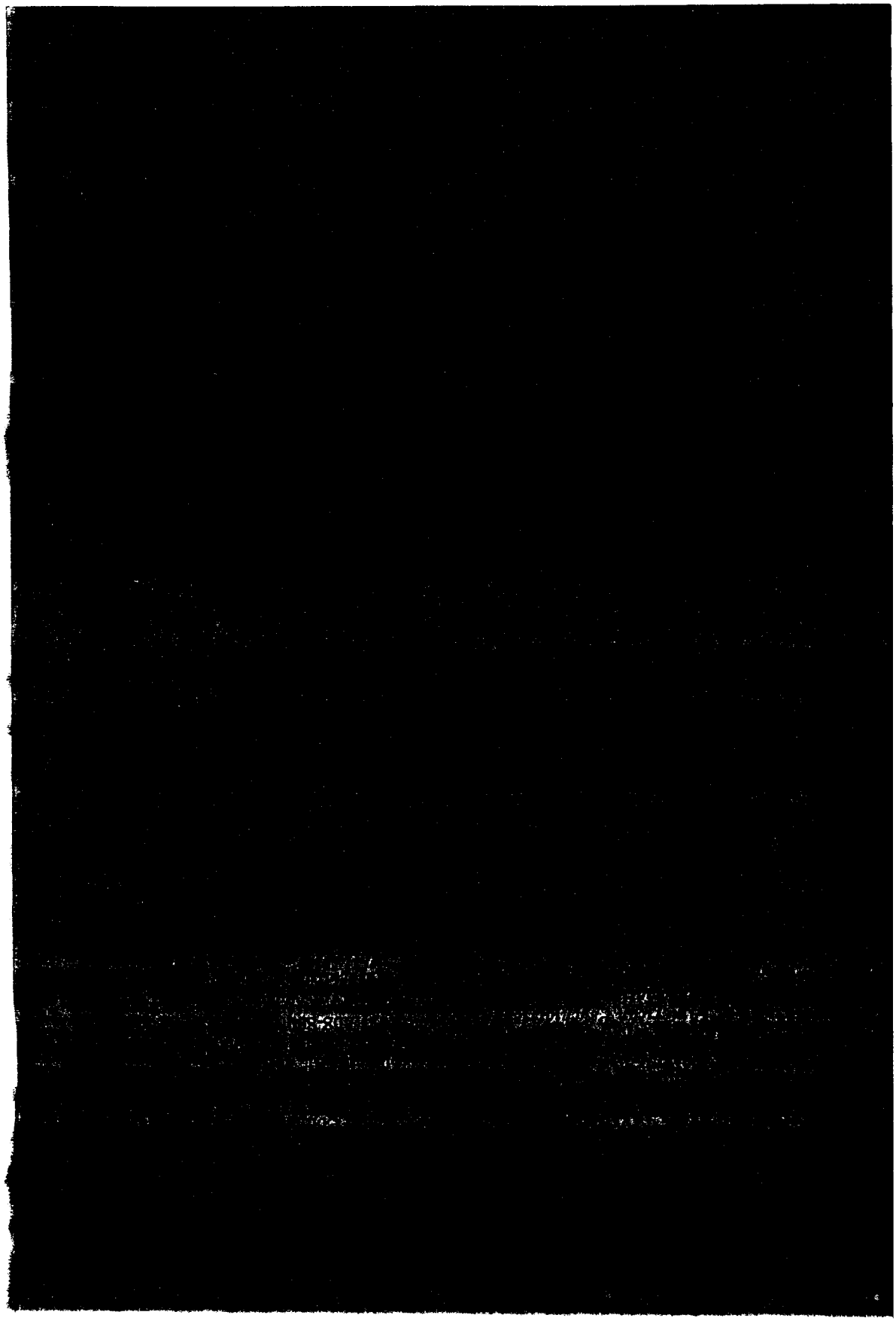
CITY OF EDMONDS,
Petitioner,
v.
WASHINGTON STATE BUILDING CODE COUNCIL, *et al.*
and UNITED STATES OF AMERICA,
Respondents.

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

BRIEF OF AMICI CURIAE AMERICAN SOCIETY OF ADDICTION MEDICINE, AMERICAN PSYCHIATRIC ASSOCIATION, NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC., AMERICAN METHADONE TREATMENT ASSOCIATION, NATIONAL ASSOCIATION OF ALCOHOLISM AND DRUG ABUSE COUNSELORS, NATIONAL ASSOCIATION OF STATE ALCOHOL AND DRUG ABUSE DIRECTORS, NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, SOCIETY FOR RECOVERY AND THERAPEUTIC COMMUNITIES OF AMERICA IN SUPPORT OF RESPONDENTS

INTEREST OF AMICI

The American Society of Addiction Medicine is a national medical society of physicians dedicated to improving the treatment of alcoholism and other chemical dependencies and addictions, educating physicians and medical students, promoting research and prevention, and



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enlightening and informing the medical community and the public about these issues.

The American Psychiatric Association ("APA"), with approximately 40,000 members, is the Nation's leading organization of physicians specializing in psychiatry. The APA has participated in numerous cases involving mental-health issues, including a case about group homes for the mentally retarded, *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). The Court's resolution of the issue in the present case will affect the range of options open to the APA's members in their treatment of patients.

The National Association of Social Workers, Inc. ("NASW"), a nonprofit professional association with over 150,000 members, is the largest association of social workers in the world. NASW is devoted to promoting the quality and effectiveness of social work practice, to advancing the knowledge base of the social work profession, and to improving the quality of life through utilization of social work knowledge and skills. NASW's policy on "Housing," adopted in 1984 and reaffirmed in 1990, states, in part, that "governmental and private sources must encourage the expansion of the housing supply through a wide range of innovative techniques . . . Housing that is planned for particular population groups such as the elderly, the handicapped, single-parent families, or Native Americans residing on reservations should be included in a spectrum of alternative residences to meet special needs."

The American Methadone Treatment Association ("AMTA") was founded in 1984 to support the development of methadone treatment services and to enhance the quality of patient care in the provision of services to opioid dependent individuals and their families. AMTA worked to develop the State Methadone Treatment Guidelines, which established sound treatment guideposts for state policymakers and treatment providers.

The National Association of Alcoholism and Drug Abuse Counselors ("NAADAC") is the largest national organization representing the interests of more than 18,000 alcoholism and drug abuse professionals across the United States who treat addicted individuals and their families. Founded in 1972, NAADAC is committed to increasing general awareness of alcoholism and drug abuse, and enhanced care of individuals through treatment, education and programs aimed at prevention. NAADAC's efforts are predicated on three basic principles: Alcoholism and other drug dependency must be addressed primarily as a public health problem; access to appropriate care, delivered by credentialed professionals, must be provided to persons dependent on alcohol and other drugs; and public and private funding must be significantly increased and policies improved to provide adequate levels of care for addicted persons.

The National Association of State Alcohol and Drug Abuse Directors represents public policy and program concerns of the State governments and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. State Directors are responsible for managing over 3.2 billion dollars of alcohol and other drug prevention and treatment services, including grant money from the Substance Abuse and Treatment Block Grant.

The National Council on Alcoholism and Drug Dependence ("NCADD") is a national nonprofit organization combating alcoholism, other drug addictions and related problems through its national office, 150 state and local affiliates and thousands of volunteers in communities throughout America. Founded in 1944, NCADD's primary mission is education, prevention, and public policy advocacy.

The Society for Recovery ("SOAR") is the voice of the nation's grassroots recovery community—those in recovery or in hope of recovery from alcoholism and drug addiction, as well as their families and other concerned

citizens. Through SOAR, that community exercises its citizenship and consumer rights, and works to educate the American public, the media, employers, insurers, health care providers, and government at all levels about the diseases of alcoholism and drug addiction and about the reality of recovery. SOAR works to protect its members' interests in such vital areas as civil rights, access to treatment, insurance and health care benefits, and employment.

Therapeutic Communities of America is the national membership organization of over 400 drug-free, self-help substance abuse treatment and rehabilitation agencies. The organization represents the interests of its member programs and their staff workers, as well as promotes its primary goal of fostering personal growth and changing a person's lifestyle through a community of concerned people working together.

Amici share a strong commitment to ensuring that persons with disabilities are given the opportunity to integrate into mainstream America and that no viable residential or treatment option for persons with disabilities, including those recovering from alcohol or other chemical dependencies, be foreclosed. To this end, *amici* recognize the vital importance of locating group homes and other congregate living arrangements in residential areas in order to provide an appropriate setting for the treatment and development of persons with disabilities. Resolution of the issue in this case will have a major impact on the future development of such residential options.[1]

STATEMENT

Amici adopt respondents' statement of the case.

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[1] Pursuant to Rule 37.3, the parties have consented to the filing of this brief. Letters memorializing their consent have been filed with the Clerk of this Court.

SUMMARY OF ARGUMENT

The language, structure and legislative history of the Fair Housing Amendments Act of 1988 ("FHAA") all indicate that Congress did not intend to immunize from scrutiny local zoning ordinances like the one at issue here. To the contrary, the FHAA plainly does apply to the single-family zoning provision in the Edmonds Community Development Code ("ECDC") and thus *may* require the City to allow more than five unrelated persons with disabilities to live together in single-family zones. Congress intended this outcome because it had come to share the view long ago adopted by the *amici* represented here that it is enormously beneficial for most persons with disabilities to live in small residential settings that are integrated with the surrounding community.

Petitioner claims that the real issue is "whether by enacting the FHAA Congress intended to overturn Euclidian zoning and thereby the definition of family approved as reasonable by the U.S. Supreme Court." Pet. Br. 11. But this is nothing more than hollow rhetoric. An affirmance in this case would not prevent localities from maintaining single-family zones. It would require, at most, some flexibility in the application of zoning rules to allow housing for groups of people with disabilities to be established in single-family zones. Nor would such a decision in any way conflict with this Court's prior constitutional rulings in this area.

1. In the FHAA, Congress sought to extend the protection of the Fair Housing Act to those with disabilities and to combat both blatant and subtle forms of discrimination that affect the ability of persons with disabilities to obtain housing of their choice. To this end, Congress broadened the definition of prohibited discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling."

42 U.S.C. § 3604(f)(3)(B). Both the language of the statute and its legislative history make clear that this definition applies to local government zoning ordinances.

The City of Edmonds can only avoid this requirement if it can show that the zoning ordinance at issue falls within the exemption that Congress created for "local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). But, as the court of appeals found, a fair reading of this exemption argues against its application here. The single-family zoning provision of the ECDC does not place a limit on the "maximum number" of individuals who may occupy any dwelling. Rather, the ordinance permits an *unlimited* number of family members to live in a dwelling, and only limits the number of unrelated people who may live together.

The legislative history confirms this interpretation. Ordinances such as the ECDC's single-family zoning provision have the direct effect of denying persons with disabilities, who often must live in a group setting, the opportunity to reside in a single-family neighborhood, like any other American. Congress made clear that the Act applies to precisely this kind of ordinance, in order to ensure that persons with disabilities are not denied the opportunity to live in communities of their choice.

2. In passing the FHAA, Congress in no way questioned the value of preserving the single-family character of neighborhoods. Rather, Congress recognized the vast body of research which has demonstrated that community-based housing for persons with disabilities, including those with alcohol or substance abuse problems, is an important component of the range of services for the successful treatment of those disabilities. Allowing persons with disabilities to interact with the community in an ordinary setting may develop confidence and coping skills that cannot be duplicated in an institutional setting. Moreover, group living for persons with disabilities can have great benefits, particularly for those recovering from alcohol and

drug dependency, because it allows individuals to share a supportive family environment where they can build abstinence skills together. Thus, denying people with disabilities the opportunity to live in group homes in residential neighborhoods would close off one of the most beneficial residential options presently known.

For these reasons, the court of appeals' decision should be affirmed.

ARGUMENT

I. THE LANGUAGE OF SECTION 3607(b)(1), WHEN READ IN LIGHT OF THE STATUTE AS A WHOLE, ITS UNDERLYING PURPOSE, AND THE LEGISLATIVE HISTORY, SUPPORTS THE COURT OF APPEALS' INTERPRETATION.

In determining the meaning of section 3607(b)(1), this Court must first consider the language of the statute, guided not by "a single sentence or member of a sentence, but look[ing] to the provisions of the whole law, and to its object and policy." *Pilot Life Insur. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987) (quoting, *inter alia*, *United States v. Heirs of Boisdore*, 8 How. 113, 122 (1849)) (internal quotations omitted). Such guidance is particularly relevant where, as here, the provision sought to be interpreted is an exemption to a general rule established by the statute. *See John Hancock Life Insur. Co. v. Harris Trust & Savings Bank*, 114 S. Ct. 517, 524-25 (1993) (quoting *Commissioner v. Clark*, 489 U.S. 726, 739 (1989)) ("when a general policy is qualified by an exception, the Court 'usually read[s] the exception narrowly in order to preserve the primary operation' " of the statute); *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) ("To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people."). This principle has even more vitality in the interpretation of remedial legislation, such as the Fair Housing Act, which must ordinarily be

broadly construed. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982) (rejecting a narrow interpretation of the FHA as "undermin[ing] the broad remedial intent of Congress embodied in the Act"); *Jefferson County Pharmaceutical Ass'n v. Abbott Laboratories*, 460 U.S. 150, 158-59 (1983); *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967); N. Singer, 3 Sutherland's Statutes and Statutory Construction § 60.01 (5th ed. 1992). The court of appeals properly applied these principles in determining that the FHAA does not exempt ordinances such as the one at issue here.

A. The paramount goal of the Fair Housing Amendments Act was "to end the unnecessary exclusion of persons with handicaps from the American mainstream." H.R. Rep. No. 711, 100th Cong., 2d Sess. 31 (1988), *reprinted in* 1988 U.S. Code Cong. & Ad. News 2173, 2179 [hereinafter "House Report"]. In the view of the 100th Congress, a crucial means to this end was the fostering of independent living by persons with disabilities in ordinary American communities. Congress thus expressly indicated its desire to protect and promote congregate living among persons with disabilities. *See id.* at 2185 (noting problem of exclusion of "congregate living arrangements among non-related persons with disabilities").

To further this goal, Congress did two things. First, it mandated that persons with disabilities should be treated under the law like other protected classes (such as those based on race, gender and national origin)—sometimes simply inserting the word "handicap" in a list of protected groups.[2] But Congress also defined prohibited dis-

[2] Courts, in recognition of this parity have applied "disparate treatment" and "disparate impact" analyses in disability cases just as in cases involving racial or sex discrimination. *See, e.g., Horizon House Dev. Servs. Inc. v. Township of Upper Southampton*, 804 F. Supp. 683 (E.D.Pa. 1992), *aff'd*, 995 F.2d 217 (3d Cir. 1993) (striking down a 1,000 foot spacing requirement by applying disparate treatment and impact analyses); *Potomac Group Home*

crimination against persons with disabilities more broadly than it defined discrimination against other covered groups. Under the FHAA, discrimination against persons with disabilities includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Thus, because of the unique needs of persons with disabilities, Congress required that exceptions be made, where reasonably possible, in the application of neutral rules and practices that deny equal access to housing for persons with disabilities—including laws "excluding, for example, congregate living arrangements for persons with handicaps." House Report at 2185.

In targeting a broad range of practices, Congress well understood that landlords were not the only sources of discrimination. Thus, Congress expressly extended the statute's prohibitions to cover local land use regulations, including zoning ordinances. See 42 U.S.C. § 3610(g)(2)(C) (directing the HUD Secretary to refer all complaints involving "the legality of any State or local zoning or other land use law or ordinance" to the Attorney General); House Report at 2184 ("These new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps."). It is with this background in mind that the Court should proceed to determine the scope of the statutory exemption on which petitioner relies.

Corp. v. Montgomery County, 823 F. Supp. 1285 (D.Md. 1993) (striking down neighbor notification requirement on a disparate treatment theory); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993) (applying disparate impact analysis to enjoin enforcement of a "single-family dwelling" zoning ordinance).

B. Section 3607(b)(1) provides that "[n]othing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." By its terms, the exemption thus applies only to restrictions placing a "maximum number" on the "occupants" that may reside in a particular dwelling. Petitioner argues that its single-family zoning ordinance is covered by Section 3607(b)(1) because it constitutes an overall limit on occupancy (five persons or less) that just happens to be combined with an exemption for single families. But, while this might be a conceivable interpretation of the statutory language when read in isolation, it has little else to recommend it.

First, this argument depends on a mischaracterization of the primary purpose of the ECDC's single-family zoning ordinance. It is evident that the primary purpose was not to limit the number of occupants in homes—to an arbitrary number that applies regardless of the size of the residence—but to create a single-family zone. Moreover, petitioner's reading of the FHAA leads to a very odd result. Under this reading, a zoning ordinance that allowed *only* families (of unspecified size) would not be exempted from the FHAA (because it would not set a "maximum number" of occupants) while the addition of a provision authorizing a maximum number of unrelated persons to share a dwelling would suddenly create an exemption. There is absolutely no evidence that Congress intended to draw such a line and, even under petitioner's view, there is no apparent reason why Congress would have wanted to do so.

Petitioner's argument also makes little sense when one considers the nature of the "discrimination" Congress was seeking to prevent. The FHAA provides that it constitutes discrimination to fail to take reasonable affirmative steps to accommodate persons with disabilities and allow their inclusion in housing occupied by others. *See* 42 U.S.C.

§ 3604(f)(3)(B). Having done so, it hardly would have made sense for Congress to exempt from coverage the very type of law—mandating single-family zoning—that by petitioner's own account dominates the American scene. After all, this would have meant that no "accommodation" of persons with disabilities—even a "reasonable" one—would be required in the neighborhoods where most non-disabled Americans choose to live if they can afford to do so.

Such a result clearly would contravene Congress's stated goal in passing the FHAA, and there is no evidence that Congress sought to limit the Act's effect so drastically. To the contrary, Congress inserted in the exemption provision a requirement that restrictions on the number of occupants be "reasonable"—thereby giving courts an added measure of authority to consider the import of each state and local law on the achievement of the federal statutory purposes.[3]

By contrast, the interpretation adopted below has much to recommend it. To begin with, the ECDC's single-family zoning ordinance does *not*, in fact, impose any limit on the "maximum number" of individuals who may live in a house. Absent any other regulation, a family of thirty could permissibly live in a small one-bedroom house in the City of Edmonds. The only reason that such a situation is not allowed is that the Uniform Housing Code, which the City of Edmonds has adopted, imposes a separate restriction on the "maximum number" of occupants that may reside in a dwelling of a given square

[3] This interpretation of § 3607(b)(1) does not collapse the "reasonableness" requirement of that section with the "reasonable accommodation" requirement in § 3604(f)(3)(B). *See* Pet. Br. at 17. The latter requirement applies only to persons with disabilities. By contrast, an assessment of the reasonableness of a local occupancy limit under § 3607(b)(1) would take into account its impact on a broad range of persons and statutory policies—including the policy barring exclusion of families with children. *See* p. 13 *infra*.

footage. This provision, which is designed to protect the health and safety of occupants in the dwelling, falls within the clear terms of the statutory exemption. The ECDC's single-family zoning provision, which is designed to preserve the character of the neighborhood and does not place a ceiling on the possible number of occupants in a given dwelling, does not.

The legislative history confirms that Congress was seeking to exempt ordinances like the square footage restrictions of the UHC, but not the ECDC's single-family zoning provision. Congress recognized that one "method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities." House Report at 2185. Because a zoning ordinance that creates exceptions for certain favored groups or types of living arrangements would operate to disfavor persons with disabilities as compared to the favored groups, Congress only exempted ordinances that apply uniformly to "*all occupants.*" *Id.* at 2192 (emphasis added). The House Judiciary Committee explained the exemption as follows:

> A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.

Id. at 2192.[4]

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[4] It is telling that the House Judiciary Committee, when given the opportunity to provide an example of a zoning ordinance that *would be exempt* under § 3607(b)(1), pointed to a restriction on the maximum number of people that could occupy a house of a given square footage.

At the same time, the legislative history reveals that Congress's actual intent in passing Section 3607(b)(1) had nothing whatsoever to do with the siting of group homes in single-family neighborhoods. As explained in the House Report:

> Section 6(d) amends Section 807 to make additional exemptions *relating to the familial status provisions.* These provisions are not intended to limit the applicability of any reasonable local, State, or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit.

House Report at 2192 (emphasis added).[5] Thus, Congress established the exemption to ensure that the extension of the FHA to prohibit discrimination against *families with children* would not preclude local governments from enforcing *bona fide* health and safety regulations limiting the number of occupants in a dwelling. There is, however, no need to establish an exemption for *single-family zoning ordinances* to protect them from the effect of the *familial status provisions* of the FHAA, because, by definition, families with children are already permitted to live in such zones. Thus, contrary to petitioner's claim, Congress could not have intended the exemption to target ordinances like the ECDC's single-family zoning ordinance.

Ordinances such as the one at issue in this case are not health and safety regulations and do not place a limit that applies to *all* occupants. Such ordinances thus operate to shut persons with disabilities out of single-

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[5] The bill's sponsor echoed this understanding: "Persons who choose to bear or care for children should not be subjected to discrimination in their search for affordable, decent housing. The bill is carefully drafted to take into account circumstances where limitations on children may be valid. For example, the bill does not prevent governments from imposing safety and health related limitations on the number of persons who may occupy a housing unit." 133 Cong. Rec. S2256 (daily ed. Feb. 19, 1987) (remarks of Senator Metzenbaum).

family neighborhoods and do not qualify for the exemption under Section 3607(b)(1).

C. In order to avoid the natural meaning of the Fair Housing Amendments Act, petitioner attempts to muddle the statutory construction issue. First, it attempts to support its interpretation by pointing to decisions of this and other federal courts using the term "occupant." Pet. Br. 12-17. But none of those cases involved issues similar to the one presented here, and this exercise is therefore entirely pointless.

Second, petitioner argues that certain assumptions which it believes underlay this Court's decisions in *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974), and *Moore v. City of East Cleveland,* 431 U.S. 494 (1977), should control the interpretation of Section 3607(b)(1). According to petitioner, because *Belle Terre* approved the powers of local governments to impose single-family zoning restrictions and *City of East Cleveland* recognized a constitutional limitation on the powers of local government's to restrict families from living together, Congress must have understood the language of Section 3607(b)(1) to exempt single-family zoning restrictions. Once again, however, there is no indication in the statute or its legislative history that Congress intended the language of the Act to be construed in light of *Belle Terre* or *City of East Cleveland.* Moreover, had Congress wished to exempt single family zoning ordinances, it could have easily done so. That Congress did not do so weighs heavily against petitioner's argument.

Petitioner also suggests that the Court must construe Section 3607(b)(1) in light of *City of East Cleveland* and *Belle Terre* because of the constitutional stature of these cases. In *Belle Terre* and *City of East Cleveland,* however, this Court considered constitutional limitations on the powers of local governments to regulate the use of property. In neither case did the Court have occasion to

consider the extent of *Congress's* power to require accommodations in local zoning ordinances; there is little doubt that Congress can require such accommodations.[6] Thus, the principle that a court should construe a statute away from any possible constitutional infirmity is simply not implicated in this case. *Belle Terre* and *City of East Cleveland* have nothing to say about Congress's intent when it passed the Fair Housing Amendments Act.

At bottom, petitioner's argument is premised on the claim that affirmance in this case will destroy single-family zoning all across the country and that Congress could not have intended this. This claim, however, is baseless. To begin with, the decision below only applies to persons with disabilities; it leaves in place the City's limit on the number of unrelated non-disabled persons who may reside together. Moreover, even as to persons with disabilities, the only "accommodations" required by the FHAA are those that are "reasonable." *Cf. Alexander v. Choate*, 469 U.S. 287, 300 (1985) (applying an analogous provision in the Rehabilitation Act) ("while a [city] need not be required to make 'fundamental' or 'substantial' modifications to accommodate the handicapped, it may be required to make 'reasonable' ones").

To the extent that petitioner is suggesting that it would destroy single-family zones to require *any* accommodation of congregate living facilities for persons with dis-

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[6] Petitioner seeks support for its argument from the concurring and dissenting opinions in *City of East Cleveland*. Although these opinions are irrelevant to an understanding of Congress's intent in passing the Fair Housing Amendments Act, they do demonstrate that there is a clear distinction between zoning ordinances that restrict the maximum number of occupants in a residence because of health and safety concerns and ordinances that restrict groups of unrelated occupants from living together in order to preserve the character of a neighborhood. *See City of East Cleveland*, 431 U.S. at 520 n.16 (Stevens, J., concurring). This is exactly the line that Congress drew with Section 3607(b)(1), which exempts the former type of ordinance, but not the latter, from the Fair Housing Act.

abilities with more than five residents, there is no reason to suppose that Congress would have shared this view.[7] After all, by allowing unlimited numbers of family members to reside in a given dwelling, whether constitutionally compelled or not, the City of Edmonds has recognized that the single-family character of a neighborhood will not be destroyed by the presence of individual houses with large numbers of occupants. There is no basis, other than the very prejudice that Congress was seeking to combat, for assuming that a "reasonable" number of relatively large homes for persons with disabilities in such a neighborhood would have a different impact.

II. CONGRESS'S GOAL TO ENSURE THAT PERSONS WITH DISABILITIES HAVE ADEQUATE OPPORTUNITIES TO LIVE IN COMMUNITY-BASED HOUSING IN RESIDENTIAL AREAS COMPORTS WITH THE SUBSTANTIAL BODY OF SCIENTIFIC EVIDENCE THAT SUCH HOUSING IS ESSENTIAL TO THE HEALTH AND WELL-BEING OF THOSE WITH DISABILITIES.

In resolving this case, *amici* believe that the Court should take into account the well-established consensus view among treatment professionals that persons with disabilities, including those who are recovering from alcoholism or substance abuse, can generally lead better lives if they reside *in* the community, rather than being excluded from, or zoned out of, residential areas. This basic understanding, shared by the diverse organizations represented here, is relevant to the present issue of statutory construction because it is clear that the same understanding led to Congress's decision to add protection for

[7] Congress also made clear that the fact that a particular rule or policy has a long tradition, such as single-family zoning, does not make such rule or policy immune from the operation of the Act. *See* House Report at 2186 ("A discriminatory rule, policy, practice or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted.").

persons with disabilities to the Fair Housing Act in 1988. Congress, having recognized the importance of integrating persons with disabilities into the American mainstream, can hardly have intended that the exemption in § 3607 (b)(1) be applied so broadly that it would excuse localities from any duty to "accommodate" persons with disabilities in single-family zones.

A. In the late 19th and early 20th centuries, it was governmental policy to "protect" society from persons with disabilities.[8] *See* Mason & Menolascino, *The Right to Treatment for Mentally Retarded Persons: An Evolving Legal and Scientific Interface*, 10 Creighton L. Rev. 124, 130 (1976); Burgdorf & Burgdorf, *The Wicked Witch is Almost Dead: Buck v. Bell and the Sterilization of Handicapped Persons*, 50 Temple L.Q. 995, 997 (1977). As Justice Marshall once noted, American society at one time viewed persons with disabilities as a "menace to society and civilization . . . responsible in a large degree for many, if not all, of our social problems" and, as a result, governments sought, at a minimum, to segregate, and, in the extreme, to "extinguish" individuals classified as "retarded." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 461-63 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part).[9]

Since World War II, however, a new understanding has emerged. Professionals and researchers now recognize that

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[8] This "Progressive Era" point of view was actually a backward development from the attitudes held during the mid-19th century when small, community-based centers were used to provide education and training for persons with disabilities. *See* Scheerenberger, *A History of Mental Retardation* (1983); Ferleger, *Anti-Institutionalization and the Supreme Court*, 14 Rutgers L.J. 595, 614-16 (1983).

[9] While this case involves persons with histories of substance abuse, petitioner's ordinance would be equally applicable to people with any form of disability who wanted or needed to live with more than four peers. We therefore discuss research involving mental retardation and other forms of disability here as well.

most persons with disabilities fare much better when permitted to live in an environment that replicates as closely as possible the regular circumstances and ways of society. *See* Wolfensberger, *The Principle of Normalization in Human Services* 27-28 (1972); Rothman & Rothman, *The Willowbrook Wars* 48-49 (1984). Numerous studies have shown that unwarranted institutionalization has an adverse effect on motor, learning and communication skills and general social competency, often preventing achievement of maximum intellectual or physical potential. *See, e.g.,* Bruininks, Thurlow, Thurman & Fiorelli, *Deinstitutionalization and Community Services,* in 11 Mental Retardation and Developmental Disabilities (J. Wortis ed. 1980); Woloshin, *et al., The Institutionalization of Mentally Retarded Men Through the Use of a Halfway House,* J. Ment. Retard. 21 (June 1966); Tizard, *Community Services for the Mentally Retarded* (1964); Phillips & Bathazar, *Some Correlates of Language Deterioration in Severely and Profoundly Retarded Long-Term Institutionalized Residents,* 83 Am. J. Mental Deficiency 402-08 (1979).

By contrast, the research shows that integration into community living can give many persons with disabilities a chance to achieve their human potential and become contributing members of society. For example, a study involving persons with mental retardation compared individuals moved from Pennsylvania's Pennhurst State School to community settings with those who remained at the school and concluded that:

> Continual behavioral growth toward independence is a central goal of services for people with mental retardation. We have found, by every scientific design and test available, that people who went to CLAs (community living arrangements) are better off in this regard. They have made more progress than similar people still at Pennhurst, and more than they themselves made while at Pennhurst. These people have become more able to do things for

> themselves rather than having things done for them. . . . We also find that the people who seem to make the greatest gains in adaptive behavior tend to be those who start out the lowest. That is, the people with the most severe impairments turn out to be among those who benefit the most from community placement. The adaptive growth behavior displayed by people who have moved to CLAs . . . is literally ten times greater than the growth displayed by matched people who are still at Pennhurst.

Conroy & Bradley, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis* 314-15 (1985). And studies focused on treatment of mental illness, as well as alcoholism and substance abuse, have confirmed the value of placement in integrated "community" settings. *See* Lehman, Slaughter & Myers, *Quality of Life in Alternative Residential Settings*, 62 Psychiatric Quarterly 35 (1991) (mental illness); Molloy, *Development and Evaluation of the New Jersey Network of Oxford Houses* 17 (1992) (two-year study finding that "[l]iving in an Oxford House results in continuous sobriety for most residents"); Maddux & Desmond, *Residence Relocation Inhibits Opioid Dependence*, 39 Archives of General Psychiatry 1313-17 (1982) (abstinence rates of opiate addicts three times higher for individuals who were relocated into residential neighborhoods).

As we have suggested, this vast body of research formed the backdrop against which Congress acted in passing the Fair Housing Amendments Act. Congress sought both to attack the still-common fallacies about persons with disabilities and to foster the ability of persons with disabilities to live in communities of their choice. In prohibiting discrimination in housing, Congress hoped to change the stereotypes and combat the "misperceptions, ignorance, and outright prejudice" that was preventing those with disabilities from participating in mainstream American life. House Report at 2179. In requiring land-

lords and local governments to make reasonable adjustments of their rules and policies and by mandating certain features that will make future dwellings more accessible, Congress sought to increase the availability of housing in the community for those with disabilities.

B. The 100th Congress also understood that, for many persons with disabilities, the most suitable housing option is a home where they can live (1) with a *group* of peers and (2) in a typical residential neighborhood. The House Report itself noted how local zoning ordinances had been used to prevent congregate living arrangements among persons with disabilities and made clear that the Act was designed to prevent such discriminatory effects. Moreover, just one month after the passage of the FHAA, the same Congress passed the Anti-Drug Abuse Act of 1988, which required States receiving certain federal block grants to make loans to establish group homes of six or more persons recovering from alcohol and drug dependency. *See* Pub. L. No. 100-690, 102 Stat. 4204 (previously codified as 42 U.S.C. § 300x-4a and currently codified in revised form at 42 U.S.C. § 300x-25).

This congressional endorsement of congregate residential options for persons with histories of substance abuse is well-founded. It is well-established that addicted individuals can help themselves by helping each other abstain from alcohol and drugs for a long enough time to learn a new value system that rejects drug and alcohol use. See Molloy, *Self-Run, Self Supported Houses for More Effective Recovery from Alcohol and Drug Addiction* (1992); Borkman, *Self-Help Groups at the Turning Point: Emerging Egalitarian Alliances with the Formal Health Care System,* 18 Am. J. Community Psychology 321, 321-22 (1990). Research has demonstrated the correlation between a stable job and a supportive family and the likelihood of alcohol and drug dependent individuals sustaining recovery; those who have such bases of support

are most likely to change their harmful behavior. Institute of Medicine, *Treating Drug Problems* 127 (1990). For the many alcohol and drug-dependent individuals who are not as fortunate, however, programs such as the Oxford Houses provide an environment in which individuals can change their drug and alcohol-using behavior and gain the skills necessary for lifelong abstinence. For this reason, residents run each house democratically and carry out all of the responsibilities of a family, including managing and financially supporting the household and lending guidance and emotional support to each other.

Although the focus on creating a supportive group environment is important to all persons recovering from alcohol and drug dependency, it is particularly important for women with children. Research has shown treatment services often must be gender-specific, to focus on the emotional and relational needs of women, and to provide comprehensive health and social services, childcare and parenting training. Wilsnack & Beckman, *Alcohol Problems in Women* (1984). Oxford Houses satisfy many of these needs. Women have a safe, drug-free environment for themselves and their children, and are surrounded by other women who possess both emotional and practical understanding of the difficulties faced. They also have the opportunity to learn practical skills and develop confidence. This process has appropriately been described as enabling individuals to "re-family." Dvorchak, Grams, Tate & Jason, *Pregnant and Postpartum Women in Recovery: Barriers to Treatment and the Role of Oxford House in the Continuation of Care* (1994) (submitted for publication).

As we have suggested, it is equally important that groups of persons with disabilities be able to live in typical residential neighborhoods that offer the same opportunities for social integration and interaction that are available for non-disabled people. *See* Butler & Bjaanes, *Activities*

and the Use of Time by Retarded Persons in Community Care Facilities, in Observing Behavior: Theory and Applications in Mental Retardation 379, 438-39 (G. Sackett ed. 1978); Gailey, *Group Homes and Single Family Zoning,* 4 Zoning and Planning Law Report 97 (Feb. 1981); Lowinson and Langrod, *Neighborhood Drug Treatment Centers,* N.Y. State Journal of Medicine 766 (1975) (rehabilitation for substance abusers is more effective in residential neighborhoods than in large institutions); Molloy, *Self-Run, Self-Supported Houses for More Effective Recovery from Alcohol and Drug Addiction* 16 & n.12 (1992) (recovering addicts and alcoholics have a particular need to live in residential communities and to avoid neighborhoods where drugs and alcohol dominate).

For example, for many drug and alcohol dependent individuals in group homes, sustaining recovery and providing the opportunity to "re-family" can best be accomplished in a setting surrounded by families. Liquor stores and open drug dealing are typically less prevalent in such neighborhoods. Residents are better able to avoid settings that might jeopardize their recovery because they are strongly associated with drug or alcohol acquisition. Institute of Medicine, *Treating Drug Problems* 73 (1990). Finally, living in single-family neighborhoods enables residents to observe and emulate the middle-class lifestyle and values that they seek to embrace through sustained recovery.

The importance of community-based settings for many persons with disabilities is clearly demonstrated by the prevalence of such facilities. In 1977, there were 11,008 state-licensed or state-operated community residences for persons with mental retardation throughout the United States. By 1993, that number had grown to 60,455. *See* Mangan, Blake, Prouty & Lakin, *Residential Services for Persons with Mental Retardation and Related Conditions: Status and Trends Through 1993,* vi-vii (1994).

Congress's enactment of the FHAA and its establishment of grants for group homes demonstrate Congress's desire to foster community-based programs for persons with disabilities. Only by breaking down the barriers that prevent persons with disabilities from living in the communities in which most Americans live and by providing the always crucial funding could Congress accomplish its objective. The requirement in the FHAA that local communities make reasonable accommodations to single-family zoning requirements for group homes and the federal grant programs thus go hand-in-hand to further the objectives of the FHAA to "end the unnecessary exclusion of persons with handicaps from the American mainstream." House Report at 2179.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals should be affirmed.

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