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Case Note: ZONING- Population Control in Metropolitan Areas- Construction Industry Association of Sonoma County v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974)

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CASENOTE

ZONING—Population Control in Metropolitan Areas—Municipal Ordinances Limiting the Number of Building Permits for the Purpose of Restricting Population Growth Held Unconstitutional Infringement on the Right to Travel, Where There is No Shortage of Municipal Facilities to Serve the New Residents. *Construction Industry Association of Sonoma County v. City of Petaluma*, 375 F. Supp. 574 (N.D. Cal. 1974).

The city council of Petaluma, California passed a series of municipal zoning ordinances to provide the city with a phased growth plan[1] designed to limit new housing units to 500 each year,[2] approximately one-third to one-half of the demographic and market demand of the 1970-1971 period.[3] To implement its plan and limit city population the city council created an "urban extension line,"[4] establishing a municipal boundary beyond which the city would neither annex land nor extend municipal facilities.[5] The Construction Industry Association of Sonoma County assailed the Petaluma Plan alleging that it penalized the right to travel without furthering any compelling state interest. Petaluma contended that inadequate sewage and water facilities made it impossible to absorb more people.[6] The District Court for the Northern District of California found that the city was able to provide such facilities[7] and held that the

1. Construction Indus. Ass'n v. Petaluma, 375 F. Supp. 574, 576 (N.D. Cal. 1974).
2. Brief for Plaintiff at 1.
3. 375 F. Supp. at 576.
4. *Id.*
5. *Id.* at 576-78. An absolute population level was set for the city by using a variety of techniques. Once the area of the city was determined by the "urban extension line," the city council promulgated density restrictions affecting the land within the municipality. As a result, under the existing ordinances, the city could grow to a certain size and no larger. Other more indirect methods were used by Petaluma. For example, Petaluma contracted with the Sonoma County Water Agency to take 9.8 million gallons of water per day through 1990. The court found that "this flow is [only] sufficient for a population of 55,000." *Id.* at 577-78.
6. *Id.* at 581-83.
7. *Id.* at 578.

ordinances unconstitutionally restricted the right to travel of those wishing to migrate into the city.[8]

The right to travel was first explicitly recognized in this country in the privileges and immunities clause of Article IV of the Articles of Confederation,[9] but was omitted from the Constitution.[10] However, in comparing the privilges and immunities clause of the Articles of Confederation with that of the Constitution, the United States Supreme Court has said that "[t]here can be but little question that the purpose of both these [two] provisions is the same, and that the privileges and immunities intended are the same in each."[11]

The first significant case which dealt with the right to migrate and settle was *Corfield v. Coryell*.[12] Defendant's boat was confiscated when he violated a New Jersey statute which forbade nonresidents from gathering oysters in state waters.[13] The court entered judgment for the defendant and struck down the statute. The court found that the privileges and immunities clause of the Constitution embraced "[t]he right of a citizen of one state to pass through, or to reside in any other state . . . [and that the right is] clearly embraced by the general description of privileges deemed to be fundamental . . . ."[14]

In *Truax v. Raich*,[15] the United States Supreme Court indirectly

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8. *Id.* at 581.

9. Articles of Confederation art. IV, § 2 provides that "[t]he people of each State shall have free ingress and regress to and from any other [state] . . . ."

10. *See* U.S. CONST. art. IV, § 2.

11. Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 75 (1872). Therefore, it appears that quite a strong argument can be made in support of the proposition that the right to travel is included in the privileges and immunities clause of the United States Constitution. *Cf.* Shaffer v. Carter, 252 U.S. 37 (1920), where the Court found that "[o]ne of the rights intended to be secured by [article IV, section 2 of the Constitution] . . . is that a citizen of one State may remove to and carry on business in another [State] . . . ." *Id.* at 56. It does not seem unreasonable to interpret the words "remove to" to mean migrate rather than just travel.

12. 6 F. Cas. 546 (No. 3230) (C.C.E.D. Pa. 1823).

13. *Id.* at 548.

14. *Id.* at 552. This language was quoted with approval by a unanimous Court more than a century later in Hess v. Paloski, 274 U.S. 352, 355-56 (1927).

15. 239 U.S. 33 (1915).

indicated that the right to migrate and settle is a constitutionally protected right of a United States citizen. Here, an Arizona statute required all those employing more than five persons to hire a work force comprised of eighty percent native born Americans. Defendant alien was admitted to the United States pursuant to federal law. He worked for the plaintiff, an employer of over five persons. The Supreme Court found that defendant "was . . . admitted [to the United States] with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union."[16]

One can conclude that if an alien possesses the right to migrate into and reside in the state of his choice, a fortiori, a citizen must possess a right equally as broad. This idea was expressed most clearly by Mr. Justice Jackson in his concurring opinion in *Edwards v. California*.[17] Citing *Traux*, he concluded that if the alien's rights were greater than those of a citizen then "[t]he world is even more upside down than I had supposed it to be . . . ."[18] While the rhetorical question posed by Mr. Justice Jackson combined with the holding in *Traux* is persuasive, there is no clear holding that grants each citizen of the United States the constitutional right to migrate and settle in the state of his choice.

In *Edwards v. California*,[19] a California resident, contrary to California law,[20] transported his indigent brother-in-law from Texas into California. The Supreme Court struck down the statute as imposing an unconstitutional burden upon interstate commerce,[21] finding that the intent of the statute was to prevent indigent "oakies" from moving into California and overburdening California's welfare rolls.[22] The *Edwards* decision, finding its basis in the interstate commerce clause, did not clarify the nature of the right to travel.[23]

16. *Id.* at 39.
17. 314 U.S. 160, 181 (1941).
18. *Id.* at 184.
19. *Id.*
20. Law of May 25, 1937, ch. 369, § 2615, [1937] Cal. Laws 37 (repealed 1951).
21. 314 U.S. at 177.
22. "The State assert[ed] that the huge influx of migrants into California in recent years has resulted in problems of . . . finance, the proportions of which are staggering." *Id.* at 173.
23. This is so because the majority based its decision on the commerce

However, when viewed in light of the facts presented, the decision does support the proposition that the right to travel includes the right to migrate and settle since the state did not object to the right of indigents to pass through the state. Rather, it objected to their right to migrate and settle in the state because they threatened to further burden California's welfare rolls.[24]

Within the last five years, most litigation involving the right to travel has been concerned with state or local ordinances which place a residency requirement on a person's ability to enjoy either a constitutional right or a governmental service.[25]

In *Shapiro v. Thompson*,[26] the appellant moved from Massachusetts to Connecticut and applied for state welfare two months later. The relevant Connecticut statute required welfare applicants to have resided in the state for at least one year.[27] In striking down the statute the Court held that the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one year waiting period. If a law has "no other purpose . . . than to chill the assertion of constitutional rights . . . it [is] patently unconstitutional."[28]

In one respect *Shapiro* bears a great similarity to *Edwards*. The legislative enactments in both were primarily concerned with protecting the public treasury from new indigent demands.[29] Although

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clause. *But see* Edwards v. California, 314 U.S. 160, 177-86 (Douglas & Jackson, J.J., concurring).

24. However, Mr. Justice Jackson wrote a concurring opinion in *Edwards* in which he obviated the need for such a complex reading of the case by urging the Court to "hold squarely that it is a privilege of citizenship . . . to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence . . . ." *Id.* at 183 (Jackson, J., concurring).

25. *See, e.g.*, Memorial Hosp. v. Maricopa County, 415 U.S. 250 (1974) (receipt of free medical benefits conditioned on residency); Dunn v. Blumstein, 405 U.S. 330 (1972) (voting conditioned on residency); Shapiro v. Thompson, 394 U.S. 618 (1969) (receipt of welfare benefits conditioned on residency).

26. 394 U.S. 618 (1969).

27. CONN. GEN. STAT. REV. § 17-2d (Supp. 1974).

28. 394 U.S. at 631, *quoting* United States v. Jackson, 390 U.S. 570, 581 (1968).

29. *See* notes 22-24 *supra* and accompanying text. This similarity supports the proposition that the *Edwards* decision was in fact concerned with the right to travel.

the legislative methods differed,[30] both sought to restrict the influx of indigents.

Shapiro reveals two important aspects of the right to travel. First, that the Court will jealously guard an individual's right to travel in much the same way it protects one's right to free speech. Thus, it will strike down any state law which serves to "chill" a citizen's right to travel.[31] Second, where a state denies or penalizes inmigration, it "chills" a constitutional right.[32] Therefore, the conclusion is inescapable that there is a constitutional right to inmigration.

The Court recently decided the case of *Memorial Hospital v. Maricopa County*,[33] where an indigent resident of the county was admitted to a private hospital for non-emergency medical care. The hospital requested the transfer of the patient to the county hospital and the reimbursement of all costs incurred in his treatment. The county refused, relying on a state statute which conditioned the receipt of free medical care on twelve months residence in the county.[34] The Court held that the statute "impinges on the right of interstate travel by denying newcomers 'basic necessities of life.' "[35] The Court clearly recognized a constitutional right to migrate and settle, stating that "[t]he state['s] . . . durational residency requirement for free medical care penalizes indigents for exercising their right to migrate to and settle in that state."[36]

These decisions indicate that the right to migrate and settle within the United States is a constitutionally protected right. However, a question arises as to the appropriateness of applying the right to travel test in *Petaluma*. In the cases examined above, the newly-arrived non-resident was penalized, while the resident was not affected.[37] The Petaluma Plan does not discriminate between

30. In *Edwards*, any party found to have transported an indigent into California was subject to criminal sanctions, whereas in *Shapiro* the newly arrived indigent was denied welfare benefits. 394 U.S. at 622 n.2.
31. *Id.* at 631.
32. *Id.*
33. 415 U.S. 250 (1974).
34. ARIZ. REV. STAT. ANN. § 11-297(A) (Supp. 1974).
35. 415 U.S. at 269.
36. *Id.* at 261-62.
37. *See* notes 16-36 *supra* and accompanying text.

the non-resident and the resident, but applies to both. It attempts to limit population through zoning restrictions. For this reason, traditional zoning law concepts should be considered when evaluating the Petaluma Plan.

Zoning ordinances, enacted pursuant to a state's police power, have been accorded every presumption in favor of their validity.[38] This principle was set forth in *Euclid v. Ambler Realty Co.*,[39] which was the first zoning case presented to the Supreme Court.[40]

In *Euclid*, the plaintiff held a parcel of land several years for industrial uses.[41] A substantial portion of the plaintiff's land was rezoned to exclude any proposed manufacturing or industrial development.[42] The Supreme Court found that no fundamental right was involved in this type of zoning ordinance.[43] In upholding the ordinance, the Court concluded that:

> before the ordinance can be declared unconstitutional . . . such provisions [must be] clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.[44]

Thus, the Court erected a substantial barrier around zoning ordinances, effectively shielding them from constitutional attack.[45]

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38. *See* Mr. Justice Marshall's dissent in Village of Belle Terre v. Boraas, 416 U.S. 1, 12 (1974) (Marshall, J., dissenting).

39. 272 U.S. 365 (1926).

40. R. BABCOCK & F. BOSSELMAN, EXCLUSIONARY ZONING: LAND USE REGULATION AND HOUSING IN THE 1970's 25 (1973) [hereinafter cited as BABCOCK & BOSSELMAN].

41. 272 U.S. at 384.

42. "The entire area of the village is divided by the ordinance into six classes of use districts, denominated U-1 to U-6 . . . ." *Id.* at 380. "Appellee's tract of land comes under U-2, U-3 and U-6." *Id.* at 382. Only in that portion of Ambler's land zones U-6 was the development envisioned by Ambler permitted. *Id.* at 380-81.

43. It is interesting that the Court exposed itself to a panoply of factors in arriving at this decision when it expressly took note of all "the complex conditions of our day . . . ." *Id.* at 387. This was a very broad statement by the Court which indicates that it may take notice of regional factors in determining whether or not an ordinance has a substantial relation to the general welfare and still functions within the theoretical framework of *Euclid*. *Id.* at 397.

44. *Id.* at 395.

45. Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767, 783 (1969).

Recently, "phased zoning" has been utilized as a tool for population control.[46] The ordinances enacted in Ramapo, New York and in Petaluma, California provide examples of such zoning plans. The Ramapo ordinance limited the number of new housing permits to be issued each year.[47] In *Golden v. Planning Board of Ramapo*,[48] the New York Court of Appeals upheld the phased growth policies of Ramapo,[49] but made clear that the decision was to be narrowly and closely limited to the facts of the case.[50]

Ramapo successfully convinced the court that its growth policies were aimed at population assimilation and not at exclusion.[51] Thus, *Ramapo* and *Petaluma* can be distinguished, for in the latter case the court found as a fact that "[t]he city council intended in enacting the 'Petaluma Plan' to limit Petaluma's demographic and market growth rate in housing and in the immigration of new residents."[52] The *Petaluma* court concluded that, there being no shortage of municipal facilities, the growth limitation was designed solely to allow Petaluma to exclude prospective residents. The majority in *Ramapo* found that the municipality was straining at the limits of its facilities,[53] and that the effect of the ordinance,[54] as well as its purpose,[55] was to provide for orderly future growth. Therefore the court in *Ramapo* held that there was a rational basis for phased

46. Fagin, *Regulating the Timing of Urban Development*, 20 LAW & CONTEMP. PROB. 298 (1955).

47. This was accomplished by making building permits "a function of immediate availability to the proposed plat of certain municipal improvements . . . ." Golden v. Planning Bd., 30 N.Y.2d 359, 368, 285 N.E.2d 291, 295, 334 N.Y.S.2d 138, 144, *appeal dismissed for want of substantial federal question*, 409 U.S. 1003 (1972), *noted in* 1 FORDHAM URBAN L.J. 516 (1972).

48. Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138, *appeal dismissed for want of substantial federal* question, 409 U.S. 1003 (1972).

49. *Id.* at 383, 285 N.E.2d at 304, 334 N.Y.S.2d at 156.

50. *Id.*

51. *Id.* at 376, 285 N.E.2d at 300, 334 N.Y.S.2d at 150.

52. 375 F. Supp. at 576.

53. 30 N.Y.2d at 366 n.1, 285 N.E.2d at 294 n.1, 334 N.Y.S.2d at 142 n.1.

54. *Id.* at 376, 285 N.E.2d at 300, 334 N.Y.S.2d at 150.

55. *Id.* at 379, 285 N.E.2d at 302, 334 N.Y.S.2d at 152-53.

growth.[56] Significantly, these findings were lacking in *Petaluma*.[57]

The *Petaluma* court looked to Pennsylvania Supreme Court cases which dealt with zoning statutes requiring that new residences be built on lots with a large minimum lot size. Although these cases dealt with lot size[58] and not phased growth, they were viewed in *Petaluma* as highly persuasive.[59] The case representative of this line of decisions and most similar to *Petaluma* is *Appeal of Kit-Mar Builders, Inc.*[60] Appellant contracted to purchase 140 acres from a third party providing the land was rezoned to one acre single family lots. The municipality zoned the land for a minimum lot size of two to three acres. The city argued that such rezoning was necessary because a problem existed with regard to the town's sewer system and that the lower population level and density brought about by larger lots would ameliorate the problem.[61] Finding this unacceptable, the court concluded:

> We once again reaffirm our past authority and refuse to allow the township to do precisely what we have never permitted—keep out people, rather than make community improvements. . . . [C]ommunities must deal with the problems of population growth. They may not refuse to confront the future by adopting zoning regulations that effectively restrict population to near present levels.[62]

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56. *Id.* at 383, 285 N.E.2d at 304-05, 334 N.Y.S.2d at 156.

57. The *Petaluma* court found that "[t]he city [was] able . . . to return to absorption of existing market and demographic growth rates without exceeding the capacity of city facilities." 375 F. Supp. at 578. The court also found that the Petaluma plan intentionally limited the growth rate of the city so as not to provide for the absorption of expected population increases. *Id.* at 576.

58. Appeal of Kit-Mar Builders, Inc., 439 Pa. 466, 268 A.2d 765 (1970); National Land & Inv. Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1966); Bilbar Constr. Co. v. Board of Adjustment, 393 Pa. 62, 141 A.2d 851 (1958); *cf.* Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970). In *Girsh*, a local zoning plan which did not provide for apartment houses was invalidated by the court. While the doctrinal basis for this decision is not clear, the court expressed a view similar to that found in *Petaluma* when it found that "if [the locality in question] . . . is a logical place for development to take place, it should not be heard to say that it will not bear its rightful part of the burden." *Id.* at 245, 263 A.2d at 398-99.

59. 375 F. Supp. at 584.

60. 439 Pa. 466, 268 A.2d 765 (1970).

61. *Id.* at 472 & n.5, 268 A.2d at 767 & n.5.

62. *Id.* at 474, 268 A.2d at 768.

In comparison, *Petaluma* applied the fundamental constitutional right to travel and refused to allow a municipality to zone out growth.[63]

The present system of zoning law can provide the judiciary with the degree of flexibility necessary in zoning cases, and lift zoning law out of the 1920s into the latter half of the twentieth century.[64]

A basic tenet of zoning law is that the municipality is an entity unto itself,[65] largely independent of the world around it. In contemporary America, however, population growth produces problems on a multi-state or regional scale. This growth has already created a megalopolis from New Hampshire to Virginia,[66] and more megalopoli may be developing.[67] There is an intricate economic relationship between a city and its surrounding suburbs,[68] coupled with an increasingly more complex intermingling between entire metropolitan regions.[69] In short, traditional concepts of self-contained munici-

63. 375 F. Supp. at 581.

64. This modernizing role of the courts was recognized and encouraged by Babcock and Bosselman when they wrote that "[t]he most important role of the courts . . . is to act as a predicate to legislative reform. The courts can dramatize the absurdities and inequities in a fractured system of governmental regulation designed for a quieter era, and create a real pressure for reform." BABCOCK & BOSSELMAN 38.

65. Note, *Phased Zoning: Regulation of the Tempo and Sequence of Land Development*, 26 STAN. L. REV. 585, 605 (1974).

66. This term was coined by geographer Jean Gottmann. It describes the area along the northeastern seaboard of the United States extending from New Hampshire to Virginia. The need for a special term was perceived when it was seen, in examining the New Hampshire to Virginia area, that, "[i]n the geography of the distribution of habitat this was a phenomenon unique . . . in the world. It resulted obviously from the coalescence recently achieved, of a chain of metropolitan areas . . . ." Gottman, *Megalopolis, or the Urbanization of the Northeastern Seaboard*, in READINGS IN URBAN GEOGRAPHY 46 (H. Mayer & C. Kohn ed. 1959).

67. "A vast urban and suburban area is rapidly expanding around Los Angeles for instance . . . . Around Chicago, on the shore of Lake Michigan, another impressive urban community is shaping. The metropolitan areas stretching in Ohio between Cleveland and Pittsburgh are close to coalescence." *Id.*

68. *See generally* Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 535 (1957).

69. *See generally* Isard & Kavesh, *Economic Structural Interrelations*

palities are anachronistic,[70] and must be abandoned.

The need for courts to weigh regional zoning considerations was recognized by *Euclid*[71] as early as 1926. While discussing the powers of a municipality to zone, the Court cautioned:

> It is not meant by this [discussion of the municipality's power], however, to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way.[72]

The basic principles of zoning law set forth in *Euclid* tipped the scales against regional interests.[73] As a consequence, few cases utilize a regional approach when deciding whether a zoning ordinance bears a reasonable relation to the general welfare.[74]

In *Valley View Village, Inc. v. Proffett*,[75] the court used a regional approach to uphold an exclusionary ordinance. Appellee sand company was the owner of a tract of land within the appellant's borders. It wished to remove sand from the property for use in its business, but was prevented by a village ordinance which zoned the entire village for residential redevelopment. The issue was whether a municipality could validly adopt an ordinance which zones an entire

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of Metropolitan Regions, in READINGS IN URBAN GEOGRAPHY 116 (H. Mayer & C. Kohn ed. 1959).

70. *See, e.g.*, Valley View Village, Inc. v. Proffett, 221 F.2d 412, 418 (6th Cir. 1955); Golden v. Planning Bd., 30 N.Y.2d 359, 374, 285 N.E.2d 291, 299, 334 N.Y.S.2d 138, 149 (1972), *appeal dismissed for want of substantial federal question*, 409 U.S. 1003 (1972).

71. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); *see* notes 44-50 *supra* and accompanying text.

72. *Id.* at 390.

73. BABCOCK & BOSSELMAN 26-27.

74. *See, e.g.*, Walsh, *Are Local Zoning Bodies Required by the Constitution to Consider Regional Needs?*, 3 CONN. L. REV. 244, 247 nn.17-38 (1971). These cases group themselves into three categories: those cases in which the courts have used the character of the region to uphold exclusionary ordinances; those cases where the courts took cognizance of the character of land use beyond the municipal boundary so that they might justly resolve the incompatible zoning of two contiguous use districts lying along a common municipal boundary; and, instances wherein courts have placed an affirmative obligation on a municipality to zone for the good of the region in which it is located.

75. 221 F.2d 412 (6th Cir. 1955).

municipality into a single use district. In upholding the ordinance,[76] the court placed great weight on regional factors:

> Traditional concepts of zoning envision a municipality as a self-contained community with its own residential business and industrial areas. It is obvious that Valley View, Ohio, on the periphery of a large metropolitan center, is not such a self-contained community, but only an adventitious fragment of the economic and social whole.[77]

Taking into account those factors beyond the municipal boundary, the court concluded that the town could zone the entire municipality for residential use.

A year before *Valley View* was decided, the Supreme Court of Illinois had taken a regional approach to a zoning conflict in *La Salle National Bank v. City of Chicago*.[78] Plaintiff bank desired to develop certain property into a shopping center. Chicago had first zoned the property for apartment house use, and then for single family residential use. The character of the surrounding community, both inside and outside the municipal boundary, was entirely residential. The bank contended that a nearby housing project was in another municipality and that the court should not take cognizance of its existence in determining the ordinance's validity.[79] Disagreeing, the court upheld Chicago's action, and considered the character of the community beyond the municipal boundary, finding that the validity of an ordinance depends on "existing conditions and not . . . geographical and territorial limits or . . . the powers of neighboring municipalities."[80]

The same regional approach has been used in cases involving incompatibly zoned areas which have a common border. This was the problem which faced a New Jersey court in *Borough of Creskill v. Borough of Dumont*.[81] Dumont wished to zone land lying along its municipal boundary for non-residential development. The neigh-

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76. *Id.* at 418.

77. *Id. See also* Duffcon Concrete Prods. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949); Guaclides v. Borough of Englewood Cliffs, 11 N.J. Super. 405, 78 A.2d 435 (App. Div. 1951).

78. 4 Ill. 2d 253, 122 N.E.2d 519 (1954).

79. *Id.* at 257, 122 N.E.2d at 522.

80. *Id.* at 257, 122 N.E.2d at 522, *quoting* Hannifin Corp. v. Berwyn, 1 Ill. 2d 28, 36, 115 N.E.2d 315, 319 (1953).

81. 28 N.J. Super. 26, 100 A.2d 182 (Super. Ct. 1953).

boring municipality objected, as it had zoned the part of its land sharing the common boundary for residential use. Cresskill contended that its neighbor must take into account the nature of the land adjacent to its boundary when enacting zoning ordinances. The court agreed:

> The public health, morals and welfare are not limited by the boundaries of any particular zoning district, nor even by the boundaries of the municipality adopting the ordinance. [The restrictions and regulations in a zoning ordinance] . . . must be made with reasonable consideration . . . to the character of the neighborhood lying along the border of the municipality adopting the ordinance.[82]

In *Simon v. Town of Needham*,[83] the Supreme Judicial Court of Massachusetts placed an affirmative duty on a municipality to consider regional needs when zoning. Needham, a suburb of Boston, had a steadily increasing population,[84] and demand for new houses was steady.[85] In view of the growth potential of the town, petitioners contracted to purchase a parcel of land located in zoning district A. The petitioner's development plan called for the 24.5 acre site to be subdivided into fifty-eight lots. One month later, Needham amended its zoning ordinance to provide for a minimum lot size of one acre in zoning district A.[86] While the court upheld the ordinance, it clearly expressed the role which regional considerations should have in determining the validity of an ordinance. The court opined that lot size "was to be determined not only in the light of present needs of the public but also with a view to the probable requirements of the public that would arise in the immediate future . . . ."[87] This suggests that a zoning plan must insure the municipality's ability to accommodate those who will migrate to the town

82. *Id.* at 42-43, 100 A.2d at 191. *See also* Schwartz v. Congregation Powolei Zeduck, 8 Ill. App. 2d 438, 131 N.E.2d 785 (Ct. App. 1956), where the court concluded that "[t]he development of one zoning district may be in part regulated by the character of the adjacent district. In fact, it is not unreasonable to base zoning regulations for one municipality upon the conditions . . . of an adjoining municipality . . . ." *Id.* at 440-41, 131 N.E.2d at 786.

83. 311 Mass. 560, 42 N.E.2d 516 (1942).

84. *Id.* at 560-61, 42 N.E.2d at 517.

85. *Id.* at 562, 42 N.E.2d at 517.

86. *Id.* at 561, 42 N.E.2d at 517.

87. *Id.* at 563, 42 N.E.2d at 518.

in the future. Citing *Euclid*, the *Simon* court spoke of this obligation as follows:

> A zoning by-law cannot be adopted for the purpose of setting up a barrier against the influx of thrifty and respectable citizens who desire to live there . . . . The strictly local interests of the town must yield if it appears that they are plainly in conflict with the general interests of the public at large . . . .[88]

More recently, some local zoning authorities have looked upon mobile home sites with disfavor and have passed ordinances excluding such sites entirely or severely hampering their growth.[89] These mobile homes provide adequate housing quickly and economically.[90] Some courts have recognized the role of mobile homes and have invalidated local zoning ordinances which restricted them, concluding that the ordinances were not designed to promote the general welfare if they ignored regional housing needs.[91] In effect, these courts have imposed upon municipalities an affirmative duty to accept their fair share of the population growth of a region.

Courts are not alone in their concern with the need for regional planning. Several state legislatures have established regional plan-

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88. *Id.* at 565-66, 42 N.E.2d at 519. *See also* Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 353 (Super. Ct. 1971), in which a New Jersey court invalidated a zoning ordinance which attempted to phase growth, finding that "[i]n pursuing the valid zoning purpose of a balanced community, a municipality must not ignore . . . its fair proportion of the obligation to meet the housing needs of its own population and of the region. . . . The general welfare does not stop at each municipal boundary." *Id.* at 20, 283 A.2d at 358.

89. *See, e.g.*, the ordinances in Lakeland Bluffs, Inc. v. County of Will, 114 Ill. App. 2d 267, 252 N.E.2d 765 (Ct. App. 1969); Bristow v. City of Woodhaven, 35 Mich. App. 205, 192 N.W.2d 322 (Ct. App. 1971).

90. Comment, *The Presumption of Validity of Mobile Homes As a Preferred Use*, 7 URBAN L. ANNUAL 296, 300 (1974).

91. Bristow v. City of Woodhaven, 35 Mich. App. 205, 192 N.W.2d 322 (Ct. App. 1971). Here, the plaintiff owned farm land and contracted to sell it to a third party who had plans to develop a mobile home park. A zoning variance was applied for and denied. In holding that the mobile home park must be allowed, the court cited with approval the Illinois Court of Appeals to the effect that "[w]here certain land uses are concerned the term 'general welfare' must be defined to meet the exigencies caused by urbanized society." *Id.* at 217 n.6, 192 N.W.2d at 328 n.6, *citing* Lakeland Bluffs, Inc. v. County of Will, 114 Ill. App. 2d 267, 269, 252 N.E.2d 765, 770 (Ct. App. 1969).

ning commissions or agencies.[92] Hopefully, these regional commissions will find viable solutions to such demographic problems as posed in *Petaluma*.

The *Petaluma* court has authoritative support for invalidating the Petaluma Plan on the ground that it unreasonably penalized the constitutionally protected right to migrate and settle.[93] However, using the right to travel to invalidate a local zoning ordinance appears to be unwise. First, the right to travel may not apply in *Petaluma*.[94] Furthermore, the right to travel test sets too high and inflexible a standard for local zoning ordinances to meet. If this test gains widespread judicial acceptance, many zoning laws will be struck down with nothing to replace them. Finally, a test such as the one used in *Petaluma* restrains a court from considering regional factors which must be considered in today's complex and interrelated society. This result obtains because under the right to travel test the operative facts considered by a court need not include regional factors.[95] Thus it would be possible for a court to decide a case without ever addressing itself to the needs of the region of which the municipality is a part.

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92. *See, e.g.*, CAL. GOV'T CODE § 65600 (West Supp. 1974) (authorizing area planning); *id.* §§ 65650-51 (authorizing two or more municipalities to take joint action on a zoning dispute when necessary); CONN. GEN. STAT. ANN. § 8-31a (1974 Supp.); FLA. STAT. ANN. § 160.02 (1972); R.I. GEN. LAWS ANN. § 45-22. 1-1 (1971) (in recognition of the need for regional planning, this law provides for a Joint Municipal Planning Commission).

93. *See* notes 10-42 *supra* and accompanying text.

94. *See* notes 16-42 *supra* and accompanying text.

95. The reason for this is that the only question under the right to travel test is whether or not an ordinance chills a person's right to migrate into the enacting jurisdiction. The character of the surrounding area and the effect upon it by an ordinance (though relevant under a general welfare of the region test) are considerations which do not aid a court in applying a right to travel test and therefore could be excluded from a court's attention.