

THE RIGHT TO TRAVEL AND MUNICIPAL LAND-USE PLANNING
FOR LIMITATION OF RESIDENTIAL DEVELOPMENT

Construction Industry Association v. City of Petaluma,
375 F. Supp. 574 (N.D. Cal. 1974)

The city of Petaluma, California, adopted a plan to curb demographic and market growth of population and housing.¹ The plan limited to 500 the number of new housing units that would be approved annually for construction and established an urban extension line, beyond which the city would refuse to annex territory or extend city facilities for at least twenty years.² The city sought the cooperation of the county and the Local Agency Formation Commission³ to inhibit residential development in the area outside the urban extension line.⁴ Two landowners and the Construction Industry Association of Sonoma County brought suit in federal district court to challenge the constitutionality of the plan, and the court *held*: The Petaluma Plan violates the constitutional right to travel of those persons prevented from moving into Petaluma.⁵

1. The purpose of the growth limitation plan is stated in the preamble to the Official Statement of Development Policy for the City of Petaluma: "In order to protect its small town character and surrounding open spaces, it shall be the policy of the City to control its future rate and distribution of growth." *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574, 576 (N.D. Cal. 1974).

2. *Id.*

3. The Local Agency Formation Commission is an administrative commission created under CAL. GOV'T CODE ANN. § 54780 (Deering 1974) for the purposes, among others, of discouraging urban sprawl and encouraging the orderly formation and development of local governmental agencies. *Id.* § 54774. It is authorized to review, and approve or disapprove, proposals for local government organization. *Id.* § 54790. For a discussion of administrative boundary review commissions see D. MANDELKER, *MANAGING OUR URBAN ENVIRONMENT* 380-88 (2d ed. 1971) [hereinafter cited as *MANDELKER*].

4. *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574, 576 (N.D. Cal. 1974).

5. *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574, 586 (N.D. Cal. 1974), *rev'd on other grounds*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975). Reversal was based on the court of appeals' determination that the plaintiffs did not have standing to raise the right-to-travel issue, and on holdings adverse to plaintiffs on due process and commerce clause arguments not reached by the district court. On the question of standing, the court of appeals suggested that the right-to-travel issue could be raised by the proper plaintiffs, "those . . . whose mobility is impaired." Civil No. 74-2100 (9th Cir.) at 9. But the plaintiffs in *Petaluma*, although they satisfied the standing requirement of "injury in fact," did not meet the "zone of interest" requirement:

The Supreme Court first recognized the existence of a right to travel in

The primary federal claim upon which this suit is based—the right to travel or migrate—is a claim asserted not on the appellees' own behalf, but on behalf of a group of unknown third parties allegedly excluded from living in Petaluma. Although individual builders, the Association, and the Landowners are admittedly adversely affected by the Petaluma Plan, their economic interests are undisputedly outside the zone of interest to be protected by any purported constitutional right to travel.

Id. at 8. Moreover, the plaintiffs did not come within any of the exceptions to the rule that parties to a suit may not assert the rights of third persons. *Id.* at 8-9.

For its assertion that some plaintiffs would have standing to raise the right-to-travel issue the court of appeals relied on *Warth v. Seldin*, 95 S. Ct. 2197 (1975), which "left open the federal court doors for plaintiffs who have some interest in a particular housing project and who, but for the restrictive zoning ordinances, would be able to reside in the community." Civil No. 74-2100 (9th Cir.) at 9.

In *Warth*, some of the petitioners alleged that they were members of racial and ethnic minorities who had tried unsuccessfully to find housing within the municipality whose zoning ordinance was being challenged as exclusionary. 95 S. Ct. at 2207. They were denied standing because they had failed to

allege facts from which it reasonably could be inferred that, absent the respondents' restrictive zoning practices, there is a substantial probability that they would have been able to purchase or lease in Penfield and that, if the court affords the relief requested, the asserted inability of petitioners will be removed.

Id. at 2208. The assertion that enforcement of the zoning ordinance against third parties such as builders and developers precluded the availability of housing to the low-income and minority group plaintiffs did not demonstrate that projects contemplated by those third parties "would have satisfied petitioners' needs at prices they could afford, or that, were the court to remove the obstructions attributable to respondents, such relief would benefit petitioners." *Id.* at 2209. Hence, plaintiffs must be able to allege that they have an interest in a particular housing project and that the restrictive ordinance is responsible for preventing them from moving into the municipality. Thus the Court in *Warth* distinguished cases such as *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972), that gave standing to "low-income, minority group plaintiffs" on the ground that "[i]n those cases . . . the plaintiffs challenged zoning restrictions as applied to particular projects that would supply housing within their means, and of which they were intended residents." 95 S. Ct. at 2209.

But the *Warth* opinion suffers from circularity. Where an exclusionary zoning ordinance antedates the initial site-acquisition and planning stages of development (the ordinance in *Park View Heights* did not), the *Warth* rule "tosses out of court almost every conceivable kind of plaintiff who could be injured by the activity claimed to be unconstitutional." *Id.* at 2216 (Brennan, J., dissenting). The petitioners who would have undertaken development of housing projects within the municipality had suffered no injury because the zoning ordinance had prevented the investment of money or the initiation of any current projects or proposals that would be "delayed or thwarted." *Id.* at 2213-14. Since those who would have undertaken construction projects were precluded from doing so, there were no specific projects in which the individual low-income and minority group plaintiffs could allege an interest and thus gain standing to challenge the ordinance. It would seem, in other words, that where an exclusionary zoning ordinance is in existence before any steps are taken toward development of a housing project, neither prospective developers nor prospective residents of the project will suffer the requisite injury to give them standing. As Justice Brennan stated in dissent:

In effect, the Court tells the low-income-minority and building company

Crandall v. Nevada.⁶ The State of Nevada had imposed a tax on every person leaving the State in a vehicle for hire. Invalidating the tax, the Court held that the power to impose it was inconsistent with the right of citizens to pass freely through every part of the country.⁷ The issue of state legislation inhibiting the interstate movement of persons reappeared in *Edwards v. California*,⁸ in which the Court struck down a statute making it a misdemeanor knowingly to bring an indigent into the state. Although the majority opinion relied on the commerce clause,⁹

plaintiffs they will not be permitted to prove what they have alleged—that they could and would build and live in the town if changes were made in the zoning ordinance and its application—because they have not succeeded in breaching, before the suit was filed, the very barriers which are the subject of the suit.

Id. at 2217.

The right-to-travel argument analyzed in this Comment is not precluded by the Supreme Court decision in *Warth*—it was one of the arguments raised by the plaintiffs below, *Warth v. Seldin*, 495 F.2d 1187, 1190 n.3 (2d Cir. 1974), but the Supreme Court did not reach the merits of any of the claims pressed. For the same reason, the Ninth Circuit Court of Appeals decision in *Petaluma* does not foreclose assertion of the right to travel. Nevertheless, the restrictive standing requirements imposed by the *Warth* opinion on plaintiffs seeking to challenge zoning ordinances may render the "open federal door" noted by the court of appeals in *Petaluma* more of an illusion than a reality.

6. 73 U.S. (6 Wall.) 35 (1868). Earlier cases had suggested in dissent or dicta the existence of a constitutionally protected right to travel. These courts considered the right to be one of the privileges and immunities protected under U.S. CONST. art. IV, § 2. *E.g.*, *Passenger Cases*, 48 U.S. (7 How.) 283, 492 (1849) (Taney, C.J., dissenting); *Corfield v. Coryell*, 6 F. Cas. 546 (No. 3230) (C.C.E.D. Pa. 1823). *Crandall*, however, was the first case in which the Court actually based its decision on the right to travel.

7. 73 U.S. (6 Wall.) at 49, quoting *Passenger Cases*, 48 U.S. (7 How.) 282, 492 (1849) (Taney, C.J., dissenting). The Court's opinion did not indicate a specific constitutional basis for the right to travel. Rather, it discussed the right of the federal government to call citizens to the Capital and the duty of citizens to respond. And it noted that the citizen's correlative right to go to the seat of Government "is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." *Id.* at 44. But in *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869), decided shortly after *Crandall*, the Court stated in dictum that the privileges and immunities clause "gives [citizens] the right of free ingress into other States, and egress from them . . ."

8. 314 U.S. 160 (1941).

9. The Court held that large-scale interstate migration of poor people is a national concern not admitting of state regulation. *Id.* at 175-76. In the course of its opinion however, it made the following statement:

[T]here are . . . boundaries to the permissible area of State legislative activity And none is more certain than the prohibition against attempts on the part of a single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside

four Justices based their concurrence in the decision on the constitutional right to travel.¹⁰ More recently, in *Shapiro v. Thompson*,¹¹ the Court announced that only a compelling state interest can justify a legislative classification that deters or penalizes the exercise of the right to travel.¹² At issue in *Shapiro* were state statutes requiring as a condition of eligibility for welfare payments that a person have been a resident of the state for at least a year. The Court held that the one-year residence requirement violated the equal protection clause¹³ by penalizing needy people

world. But, in the words of Mr. Justice Cardozo: "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

Id. at 173-74, quoting *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935).

10. 314 U.S. at 177-86. Mr. Justice Jackson argued in his concurring opinion:

This Court should . . . hold squarely that it is a privilege of citizenship of the United States, protected from state abridgement, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof.

Id. at 183 (emphasis added). Later in the opinion he stated:

That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our civilization.

Even as to an alien who had "been admitted to the United States under the Federal law," this Court, through Mr. Justice Hughes, declared that "He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." . . . Why we should hesitate to hold that federal citizenship implies rights to enter and abide in any state of the Union at least equal to those possessed by aliens passes my understanding. The world is even more upside down than I had supposed it to be, if California must accept aliens in deference to their federal privileges but is free to turn back citizens of the United States unless we treat them as subjects of commerce.

Id. at 183-84, quoting *Truax v. Raich*, 239 U.S. 33, 39 (1915).

11. 394 U.S. 618 (1969).

12. *Id.* at 634, 638.

13. The durational residence requirement classified needy persons according to whether they had been state residents for more or less than a year. Since it was on that basis that they were granted or denied the welfare aid necessary for subsistence, the statutory scheme created an invidious classification. *Id.* at 627. The statutory purpose to deter the migration of poor people into the state was constitutionally impermissible, as was the limitation of welfare benefits to those who, as longtime residents, were considered to have contributed taxes to the state. The classification therefore could not be justified as a method of preserving the fiscal integrity of the state welfare program, *Id.* at 627-31. Furthermore, certain administrative and related governmental objectives advanced as justifying the durational residence requirement, while legitimate, did not rise to the level of compelling state interests. Nor was the statutory classification even reasonably related to the achievement of these interests. The argument that the requirement facilitated planning of the welfare budget was unfounded, since the residence of applicants could be determined by independent means. Also, there were less drastic

who had recently exercised their fundamental right to travel.¹⁴ Finally, the Court has also noted a possible constitutional distinction between interstate and intrastate travel,¹⁵ a distinction which suggests the ques-

methods available to minimize the possibility that recipients would fraudulently receive payments simultaneously from more than one jurisdiction. Finally, the argument that the waiting period encouraged early entrance into the labor force would be equally valid with regard to long term residents. *Id.* at 633-38.

14. As pointed out in *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974), the Court has not clarified the degree of impact required to constitute a penalty on the exercise of the right to travel.

Although any durational residence requirement impinges to some extent on the right to travel, the Court in *Shapiro* did not declare such requirements to be *per se* unconstitutional. The Court's holding was conditioned . . . by the caveat that some "waiting-period or residence requirements . . . may not be penalties upon the exercise of the constitutional right of interstate travel."

Id. at 256 (emphasis original). *Kirk v. Board of Regents*, 273 Cal. App.2d 430, 78 Cal. Rptr. 260 (1969), *appeal dismissed*, 396 U.S. 554 (1970), upheld a requirement that a person have been a resident of the State of California for a year in order to be eligible to pay resident tuition at state universities. In support of its decision, the court said that education could not be put on the same level as the basic necessities of life that were denied to newcomers under the welfare statutes at issue in *Shapiro*. Therefore, the year of residency required in order to be eligible to pay the lower resident tuition rates did not impinge on the right of interstate travel, nor did it have a deterrent effect on the exercise of that right. Because the legislative classification was reasonably related to the legitimate objective of sound fiscal management of state universities, it could be upheld. *See generally* *Vlandis v. Kline*, 412 U.S. 441 (1973); *Starns v. Malkerson*, 326 F. Supp. 234 (D. Minn. 1970), *aff'd mem.*, 401 U.S. 985 (1971).

15. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974). In this case, the Court applied the *Shapiro* formula to strike down a state statute requiring one year of residence in a county as a condition to receiving nonemergency hospitalization or medical care at the county's expense. The county sought to distinguish the county residence requirement from the state residence requirements in *Shapiro* on the ground that the former penalized intrastate rather than interstate travel. The Court responded that "[e]ven were we to draw a constitutional distinction between interstate and intrastate travel, a question we do not now consider," the distinction would be irrelevant since the individual appellant had moved into Maricopa County from out of state. The Court added that "[w]hat would be unconstitutional if done directly by the State can be no more readily accomplished by a county at the State's direction." *Id.* at 255-56.

Some state and lower federal courts have decided that there is a right of intrastate travel. *E.g.*, *King v. Municipal Housing Authority*, 442 F.2d 646 (2d Cir. 1971); *Wellford v. Battaglia*, 343 F. Supp. 143 (D. Del. 1972); *Sturup v. Mahan*, — Ind. App. —, 290 N.E.2d 64 (1972), *modified*, 305 N.E.2d 877 (1974); *Donnelly v. City of Manchester*, 111 N.H. 50, 274 A.2d 789 (1971); *Josephine County School Dist. No. 7 v. Oregon School Activities Ass'n*, 15 Ore. App. 185, 515 P.2d 431 (1973); *Eggert v. City of Seattle*, 81 Wash. 2d 840, 505 P.2d 801 (1973); *cf.* *Karp v. Collins*, 310 F. Supp. 627, 634 (D.N.J. 1970); *In re Barcomb*, 132 Vt. 225, 234, 315 A.2d 476, 482 (1974). Other courts have concluded that a constitutionally protected right to travel intrastate does not exist. *E.g.*, *Ector v. City of Torrance*, 10 Cal. 3d 129, 514 P.2d 433, 109 Cal. Rptr. 849 (1973), *cert. denied*, 415 U.S. 935 (1974); *cf.* *Abrahams v. Civil Serv. Comm'n*, 65 N.J. 61, 319 A.2d 483 (1974).

tion whether the compelling interest test is applicable only at the state level, or whether a compelling *local* interest can justify local legislation that penalizes the exercise of a constitutionally protected right.¹⁶

The extent to which zoning ordinances and other land-use planning legislation may infringe the right to travel has not been finally decided.¹⁷

16. *Krzewinski v. Kugler*, 338 F. Supp. 492 (D.N.J. 1972), upheld an ordinance that required police and firemen to live in the municipality in which they worked. The court stated that there were compelling state interests justifying the ordinance. Arguably, the court meant that there were compelling local interests. Since the ordinance restricted the right of city employees to live in one area rather than another within the state, the right with which the court was concerned was necessarily a right of intrastate movement.

If a right of intrastate travel does exist, then it follows that the compelling interest test should be applicable on the local as well as the state level; presumably, local legislation like the ordinance in *Krzewinski*, which touches upon the right of intrastate movement, should be justifiable upon a showing of compelling local interest. Nevertheless, residence requirements for municipal employment like the one in *Krzewinski* have been upheld under the more lenient test of whether they bear a rational relationship to a legitimate state interest. *E.g.*, *Abrahams v. Civil Serv. Comm'n*, 65 N.J. 61, 319 A.2d 483 (1974); *Mercadante v. City of Paterson*, 111 N.J. Super. 35, 266 A.2d 611 (Ch. 1970), *aff'd*, 58 N.J. 112, 275 A.2d 440 (1971); *Kennedy v. City of Newark*, 29 N.J. 178, 148 A.2d 473 (1959); *Gould v. Bennett*, 153 Misc. 818, 276 N.Y.S. 113 (Sup. Ct. 1934); *see* 1975 WASH. U.L.Q. 250.

17. It may be argued that occasional language regarding the impermissibility of exclusionary purposes refers implicitly to the right to travel. The fact, however, that such language often appears in connection with traditional zoning-purpose language suggests that it simply reflects the proposition that exclusion is not a proper zoning purpose. *See, e.g.*, *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 533, 215 A.2d 597, 612 (1965); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 95, 141 A.2d 851, 867 (1958) (dissenting opinion); *Board of County Supervisors v. Carper*, 200 Va. 653, 661, 107 S.E.2d 390, 396 (1959); *cf.* *Bristow v. City of Woodhaven*, 35 Mich. App. 205, 217-18, 192 N.W.2d 322, 327 (1971); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, *supra* at 76, 141 A.2d at 858 (majority opinion).

A few cases concerning housing have been decided on right-to-travel grounds, but these dealt with durational residence requirements for eligibility for public housing. *Demiragh v. DeVos*, 476 F.2d 403 (2d Cir. 1973); *King v. Municipal Housing Authority*, 442 F.2d 646 (2d Cir. 1971); *Cole v. Housing Authority*, 435 F.2d 807 (1st Cir. 1970). *King* and *Cole* applied the *Shapiro* rationale to invalidate ordinances that conditioned eligibility to apply for public housing on prior residency of five and two years respectively. *Demiragh* concerned a scheme by which the city indirectly sought to alleviate a housing crisis by requiring one year of residence in order to qualify for welfare. Striking down the requirement on right-to-travel grounds, the court stated that the city may not wall out the poor in order to solve its housing problems. 476 F.2d at 405-06.

Another court, however, faced with a public housing ordinance with a one-year residence requirement for eligibility, upheld the ordinance. *Lane v. McGarry*, 320 F. Supp. 562 (N.D.N.Y. 1970). It distinguished *Shapiro* on the ground that, unlike welfare

Municipal land-use ordinances traditionally have been judged according to due process standards¹⁸ or under the provisions of state constitutions, home rule charters, or enabling legislation¹⁹ empowering the municipality to provide for the public health, safety, morals, and general welfare.²⁰ In the recent case of *Village of Belle Terre v. Boraas*,²¹ the Supreme Court upheld a municipal zoning ordinance that restricted the number of unrelated persons who could live together as a household; the Court summarily dismissed the right-to-travel issue. Responding to plaintiffs' argument that the ordinance violated the equal protection clause, the Court found that it did not create a classification that infringed their right to travel or any other fundamental right.²² Thus, the ordinance fell into the category of economic and social legislation subject to review under the more lenient test of whether it bore a rational relation to the permissible municipal objectives that it sought to achieve.

Construction Industry Association v. City of Petaluma presented "for

checks, housing had physical limitations. The court held that the classification created by the residence requirement had a reasonable basis and furthered the policy of the United States Housing Act of 1937, 42 U.S.C. §§ 1401-36 (1970, Supp. III, 1973), by vesting maximum responsibility in local housing agencies for administration of the low-rent housing program and by encouraging employment through preferential treatment to those with jobs and roots in Syracuse. The court announced its disagreement with the decision in *Cole*, which had recently been handed down. 320 F. Supp. at 564.

18. See, e.g., *Berman v. Parker*, 348 U.S. 26, 36 (1954); *Concord Township Appeal*, 439 Pa. 466, 470 n.1, 268 A.2d 765, 766 n.1 (1970); *Girsh Appeal*, 437 Pa. 237, 241 n.3, 263 A.2d 395, 397 n.3 (1970); *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 522 & n.20, 215 A.2d 597, 607 & n.20 (1966); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 72, 141 A.2d 851, 856 (1958).

19. See, e.g., *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 391 (1926); *Golden v. Planning Bd.*, 30 N.Y.2d 359, 369-70, 285 N.E.2d 291, 296-97, 334 N.Y.S.2d 138, 145 (1972). For a general discussion of sources of local governmental power see MANDELKER 95-143.

20. See, e.g., *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 391 (1926); *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 530, 215 A.2d 597, 611 (1966); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 72, 141 A.2d 851, 856 (1958); *Board of County Supervisors v. Carper*, 200 Va. 653, 660, 107 S.E.2d 390, 395 (1959). *Euclid* set the precedent for extreme judicial deference to the legislative judgment when zoning ordinances are at issue. "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." *Village of Euclid v. Ambler Realty Co.*, *supra* at 388. See also *Berman v. Parker*, 348 U.S. 26, 32 (1954); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, *supra* at 71, 141 A.2d at 856. For a discussion of the exercise of the zoning power see MANDELKER 571-687, 893-1012, 1033-149.

21. 416 U.S. 1 (1974).

22. *Id.* at 7.

the first time [the issue] whether or not a municipality may claim the specific right to keep others away."²³ In support of its conclusions that no governmental unit has that right and that the exercise of the claimed right violates the right to travel of the excluded persons, the court set out in detail its findings of fact.²⁴ It found that Petaluma experienced rapid growth during the 1960's and early 1970's, and that continuation of that growth trend would result in a population of 77,000 by 1985.²⁵ In 1971, in response to growing community sentiment favoring the limitation of future growth, the city council adopted the Petaluma Plan, including the numerical limitation on new housing units and the urban extension line.²⁶ By applying "density limitation and other techniques" to the area within the urban extension line, the city set a prospective maximum population level of 55,000 by 1985.²⁷ Further, although the city contended that the plan was to last only until 1977, official attempts had been made to extend the plan through 1990, not only by making the 500-unit limitation and the urban extension line effective for twenty years, but also by limiting available water and sewage treatment facilities.²⁸ The court found that the Petaluma Plan had prevented or would prevent construction of from one-half to two-thirds of the new housing units demanded by market and demographic forces during the period from 1973 to 1977.²⁹ Since the city had solicited the cooperation of the county and the Local Agency Formation Commission in preventing residential de-

23. *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574, 587 (N.D. Cal. 1974), *rev'd on other grounds*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975); see note 5 *supra*.

24. *Id.* at 575-81.

25. *Id.* at 575.

26. See text accompanying note 2 *supra*. The urban extension line was planned to contribute not only to the geographical containment of the city, but also to the preservation of its surrounding open spaces. To this end, it consisted in part of a 200-foot-wide "greenbelt" along the eastern edge of the city. Brief for Plaintiffs at 45, *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574 (N.D. Cal. 1974). For a criticism of the use of open space to control growth, see W. WHYTE, *THE LAST LANDSCAPE* 152 (1968). See generally MANDELKER 1124-28.

27. 375 F. Supp. at 576.

28. Specifically, the city had contracted with its major water supplier through the year 1990 for a daily water flow sufficient only to supply the needs of a population of 55,000, although the city could expand its contract by request. In addition, the sewage treatment plant was limited to handling two million gallons of sewage a day, although it was capable of being expanded to handle up to 14 million gallons a day and would at all times be adequate to the demands placed on it by population growth at market and demographic rates. *Id.* at 577-78.

29. *Id.* at 577.

velopment in the area outside the urban extension line, the plan inhibited immigration into Petaluma and the surrounding area.³⁰

The remainder of the court's findings constituted a "cumulative impact" analysis³¹ of "the probable effects of the growth limitation policy in dispute and the probable effects if such a policy were to spread to the remaining municipalities of the San Francisco metropolitan region."³² The court based its discussion on the initial finding that in a self-contained metropolitan region with a unitary housing market,³³ persons ex-

30. *Id.* at 576.

31. The cumulative impact test was developed to measure the burden placed on interstate commerce by local and state regulation. *Morgan v. Virginia*, 328 U.S. 373 (1946); *Nippert v. City of Richmond*, 327 U.S. 416 (1946); *cf. Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959); *Southern Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761 (1945).

Plaintiffs in *Petaluma* had argued that the Petaluma Plan was a burden on commerce as well as a violation of the right to travel. Brief for Plaintiffs at 40-42, *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574 (N.D. Cal. 1974). Consequently, some of the court's findings concerned the effect of the Petaluma Plan on interstate commerce, although these findings were not necessary to support the result. Thus, the court stated that "the limit on population set up by the 'urban extension line' would . . . act as a substantial deterrent to travel and commerce." 375 F. Supp. at 576. It also found that "[h]ousing in Petaluma and elsewhere in the San Francisco metropolitan region is produced substantially through goods, services and communication devices in interstate commerce." *Id.* at 577. And, "[i]f . . . growth centers curtail residential growth to less than demographic and market rates, as has been attempted in the present case, serious and damaging dislocation will occur in the housing market, the commerce it represents, and in the travel and settlement of people in need and in search of housing." *Id.* at 579.

The Court of Appeals for the Ninth Circuit, reversing the district court's decision, *see* note 5 *supra*, reached the merits of the argument and held that there was no violation of the commerce clause. The Petaluma Plan was characterized as "a reasonable and legitimate exercise of the police power" that "does not discriminate against interstate commerce or operate to disrupt its required uniformity," and therefore is not an unreasonable burden upon it. *Construction Indus. Ass'n v. City of Petaluma*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975) at 16, 17; *see* note 48 *infra*.

In their brief on appeal, plaintiffs (appellees) argue that cumulative impact is an appropriate and useful test by which to judge exclusionary zoning ordinances: "The cumulative impact test in land-use cases holds promise not only of penalizing cities attempting unreasonable controls, but also of legitimizing land-use regulations that can be shown to be of minor or negligible local and regional impact on mobility." Brief for Appellees at 98, *Construction Indus. Ass'n v. City of Petaluma*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975). This argument theoretically is not precluded by the court of appeals' decision on the commerce clause issue, since it does not rest on the commerce clause but merely borrows the cumulative impact test from the commerce clause cases as a method for approaching land-use issues.

32. 375 F. Supp. at 578.

33. "The metropolitan housing market is a unitary market in the sense that each unit tends to substitute for all others and constraints in one part of the region have im-

cluded from one suburb seek housing elsewhere in the region. Other suburbs respond to the increased population burden thrust upon them by adopting their own exclusionary measures.³⁴ Regionwide exclusionary measures that limit housing supply in the face of rising demand tend to increase sale and rental costs and prevent replacement of substandard and obsolete housing stock. The court reasoned that if people who normally would move into better housing as their incomes increase are unable to find new housing, the "filtration" of older housing down to people with lower incomes ceases. Consequently, substandard and obsolete housing that has filtered to the bottom of the market and would normally be replaced remains in the market because its occupants are unable to find other housing.³⁵

The aggregate effect of a proliferation of the "Petaluma Plan" throughout the San Francisco region would be a decline in regional housing stock quality, a loss of the mobility of current and prospective residents and a deterioration in the quality and choice of housing available to income earners with real incomes of \$14,000 per year or less.³⁶

Applying the *Shapiro* rule to the above facts, the court stated that since

"there was no meaningful distinction between a law which 'penalizes' the exercise of a right and one which denies it altogether, it [was] clear that the growth limitation under attack [could] be defended only insofar as it further[ed] a compelling state interest."³⁷

In response to the city's first argument, that protection of its allegedly inadequate water and sewage treatment facilities was a compelling interest, the court pointed to its findings that the facilities were adequate and could be expanded.³⁸ Since the city had intentionally restricted its facilities with reference to a future population projected on the basis of

pacts elsewhere in the region." Brief for Appellees at 73, *Construction Indus. Ass'n v. City of Petaluma*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975).

34. 375 F. Supp. at 578-79.

35. *Id.* at 579-81.

36. *Id.* at 581. Households with incomes of from \$8,000 to \$14,000 are those who would normally move into "threshold" housing, the least expensive housing available without government subsidy. Threshold housing would be the housing most affected by the proliferation of exclusionary land-use plans. There would be a corresponding reduction in "filtration" housing, *i.e.* housing vacated by those moving into threshold housing, available to households with incomes of \$8,000 or less, hence the finding of the impact of a proliferation of "Petaluma Plans" on households with incomes of under \$14,000. *Id.*

37. *Id.* at 582.

38. See note 28 *supra* and accompanying text.

limited growth, protection of inadequate facilities could not constitute a compelling interest justifying the city's growth limitation.³⁹

The balance of the court's opinion dealt with the city's final argument that, because it had the power to zone, it had the right to zone for growth control, and that "its citizens' desires to protect its 'small town character' [were] sufficiently compelling reasons to justify the exclusionary ordinances."⁴⁰ The court rejected that argument, relying on language in a recent series of Pennsylvania cases⁴¹ that suggests that municipalities may not barricade themselves against a numerically and geographically expanding population.⁴² The court adopted the reasoning of these cases as best expressing the underlying rationale of right-to-travel decisions.

39. 375 F. Supp. at 582-83. The court also applied the rule that when reasonable alternative means that interfere less with constitutionally protected rights are available to achieve state objectives, those alternative means must be used. *Id.*; see, e.g., *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972). Reasonable alternatives to growth limitation included expansion of the sewage treatment plant and the ability of the city to request more water from its supplier. 375 F. Supp. at 583.

40. 375 F. Supp. at 583.

41. *Concord Township Appeal*, 439 Pa. 466, 268 A.2d 765 (1970); *Girsh Appeal*, 437 Pa. 237, 263 A.2d 395 (1970); *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 215 A.2d 597 (1965); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 141 A.2d 851 (1958).

42. Faced with the absence of direct precedent on the question of the legality of an absolute numerical limitation on population, the *Petaluma* court took its cue from the general concepts expressed in the majority opinion in *Edwards v. California*, 314 U.S. 160 (1941). See note 6 *supra*.

The most important of the Pennsylvania cases for the *Petaluma* opinion was *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 215 A.2d 597 (1965), which invalidated a four-acre minimum lot size requirement on the ground that its primary purpose was to exclude newcomers. The Pennsylvania court made clear that a possible future burden on city facilities could not justify zoning ordinances that seek to avoid the responsibilities of population increase; the zoning power is to be used to plan for the future, not to deny it. *Id.* at 524-28, 215 A.2d at 608-10. The court further stated that legislation having as its purpose the preservation of the character or setting of a town served private, rather than public, interests and therefore could not be upheld as promoting the general welfare. *Id.* at 528-32, 215 A.2d at 610-12. The *Petaluma* court found the basic rationale for the *National Land* decision in the following passage:

Four acre zoning represents Easttown's position that it does not desire to accommodate those who are pressing for admittance to the township unless such admittance will not create any additional burdens upon governmental functions and services. The question posed is whether the township can stand in the way of the natural forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live. We have concluded not. A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities can not be held valid.

Id. at 532, 215 A.2d at 612, quoted in 375 F. Supp. at 585-86.

The difficulty with applying the *Shapiro* formulation to the Petaluma Plan arises from the lack of a manageable equal protection issue. The compelling state interest test was developed to judge legislative classifications that discriminate against specific groups of people.⁴³ The Supreme Court applied the test in *Shapiro* because the durational residence requirement⁴⁴ created an invidious classification that discriminated against certain poor people on the basis of their exercise of a fundamental right.⁴⁵ The Petaluma Plan creates a distinction between those persons who are residents of Petaluma and those who are not but may wish to be. The latter class, whose members are denied the opportunity to exercise their "right to migrate" into Petaluma, is theoretically limitless.⁴⁶ It is questionable whether such an undefined "class" provides any meaningful basis for an equal protection analysis. A further problem is posed by the suggestion that *Village of Belle Terre v. Boraas*⁴⁷ may indi-

43. The Supreme Court has established that suspect or invidious legislative classifications are subject to rigid judicial scrutiny, *Graham v. Richardson*, 403 U.S. 365, 372 (1971); *Loving v. Virginia*, 388 U.S. 1, 10-11 (1967); *Korematsu v. United States*, 323 U.S. 214, 216 (1944), and place upon the state a "heavy burden of justification," *Loving v. Virginia*, *supra* at 9. The compelling state interest test is an objective standard by which the court can determine in a given situation whether, upon close scrutiny of the facts of the case, the state has met its burden of justification. Unless the suspect classification can be upheld under that test, it offends the equal protection clause.

44. Most cases following *Shapiro* have presented the right-to-travel issue in the context of durational or nondurational residence requirements. See cases cited note 14 *supra*. For a discussion of the applicability of *Shapiro* to nondurational residence requirements, see 1975 WASH. U.L.Q. 250, 260.

45. The equal protection clause may be invoked to challenge not only suspect classifications based on personal characteristics such as race, alienage, national origin, and sex, *Frontiero v. Richardson*, 411 U.S. 677, 682 (1973), but also classifications that may invade or restrain certain fundamental rights, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

46. The district court itself made no mention of any classification giving rise to an equal protection problem, nor did it recognize the equal protection context in which the compelling state interest test was announced.

The Ninth Circuit Court of Appeals' holding that the plaintiffs in *Petaluma* did not have standing to raise the right-to-travel argument, *Construction Indus. Ass'n v. City of Petaluma*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975), and its reliance on *Warth v. Seldin*, 95 S. Ct. 2197 (1975), to provide the requirements for standing, severely limit the class of plaintiffs who, at least for purposes of bringing suit, are denied entry into Petaluma. See note 5 *supra*. But this disposition of the practical problem of who is a "proper plaintiff" to challenge the Petaluma Plan does not dispose of the underlying problems with the rationale inherent in the district court's reliance on *Shapiro*, since, as noted in the accompanying text, the application of the *Shapiro* analysis to the *Petaluma* situation creates virtually a limitless class of persons subjected to discrimination, however that class is cut down for purposes of standing.

47. 416 U.S. 1 (1974).

cate that in zoning cases an even more lenient rational relation test applies than in other equal protection cases.⁴⁸ In order to base its decision on the right to travel, the *Petaluma* court might simply have noted that the right to travel has been established as a fundamental right.⁴⁹ It could then have invalidated the Plan on the strength of the statement in *Shapiro* that "deterrence of indigents from migrating to the State . . . is [not] a constitutionally permissible state objective."⁵⁰ The *Petaluma* Plan admittedly deterred not only indigents but others as well, and prevented migration only into the city and surrounding area rather than into the state. Nonetheless, it would have been better to invalidate the Plan directly in this manner, rather than indirectly by means of the *Shapiro* equal protection rationale.⁵¹

48. *The Supreme Court, 1973 Term*, 88 HARV. L. REV. 43, 128 (1974). The Ninth Circuit Court of Appeals' opinion reversing the district court's decision in *Petaluma*, *Construction Indus. Ass'n v. City of Petaluma*, Civil No. 74-2100 (9th Cir., Aug. 13, 1975), discussed *Belle Terre* in its analysis of the due process issue raised by the plaintiffs but not reached by the district court. See note 5 *supra*. The court of appeals relied on *Belle Terre* in holding that *Petaluma's* "interest in preserving its small town character and in avoiding uncontrolled and rapid growth falls within the broad concept of 'public welfare,'" *id.* at 12, and was therefore a "legitimate governmental interest." *Id.* at 14. Since the exclusionary purpose and effect of the *Petaluma* Plan bore a rational relationship to that legitimate governmental interest, it was a valid exercise of the police power, was not arbitrary and unreasonable, and did not violate the due process clause. *Id.* at 11-15. Thus the court of appeals' opinion falls squarely within the tradition of judicial deference to legislative judgment in zoning matters. See note 20 *supra*. It may, however, be inconsistent with the approach taken in *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 95 S. Ct. 2656. In *Black Jack* a zoning ordinance was struck down on the ground that "it denie[d] persons housing on the basis of race, in violation of § 3604(a) [of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601-31 (1970)], and interferes with the exercise of the right to equal housing opportunity, in violation of § 3617." The Court of Appeals for the Eighth Circuit held that "[i]t having been established that the ordinance had a discriminatory effect, it follows that the United States had made out a prima facie case under [the Fair Housing Act], and the burden shifted to the City to demonstrate that a *compelling governmental interest* was furthered by that ordinance." *Id.* at 1186 (emphasis added). The statutory basis for the *Black Jack* decision may, however, lessen its significance for other kinds of zoning cases.

49. See, e.g., *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Oregon v. Mitchell*, 400 U.S. 112 (1969); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *United States v. Guest*, 383 U.S. 745 (1966); *Kent v. Dulles*, 357 U.S. 116 (1958); *Edwards v. California*, 314 U.S. 160 (1941); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1868).

50. 394 U.S. at 633.

51. It may be argued that this criticism is an irrelevant exercise in logical acrobatics since the essential factor in the case is that the *Petaluma* Plan in fact impinged on the exercise of a fundamental right. In response, however, it need only be pointed out that, in applying the *Shapiro* rationale to the facts of *Petaluma*, the court also failed to con-

Such an approach would also avoid the problems inherent in the court's reliance on the Pennsylvania cases to support its right-to-travel argument. One commentator has pointed out that the underlying rationale of those cases is unclear.⁵² There is no mention of the right to travel in the opinions; thus, they provide only minimal support for a right-to-travel decision. An opinion based on the premise that deterrence of migration is constitutionally prohibited could accommodate as an alternative ground of decision the proposition in support of which the Pennsylvania cases might be cited: that the municipal zoning power does not encompass the power to exclude, since exclusion does not promote the health, safety, morals, or general welfare.⁵³

sider the additional, and not insignificant, question whether there is a right of intrastate travel which may be infringed upon a showing of compelling local interest. See notes 15 & 16 *supra* and accompanying text. The facts in *Petaluma* clearly required a discussion of this question. The court may have seen the problem and attempted to avoid it by finding that the persons who "were and will be forced to turn [from Petaluma] to other areas within the region for accommodation. . . . consist of Californians as well as out-of-state immigrants." 375 F. Supp. at 577 (emphasis added). While the inclusion of this finding in the court's opinion may serve to support the argument that the Petaluma Plan inhibits interstate travel, the finding does not answer whether a compelling local interest can justify that infringement. Nor does it bring the case within the ambit of *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974). In *Memorial Hospital* it was a state statute that set up the county residence requirement. See note 15 *supra*.

If the *Petaluma* court was seeking to base its decision on the right to travel and thereby avoid the negative implications of *Belle Terre* for the role of equal protection in municipal zoning cases, see text accompanying note 48 *supra*, *Shapiro* was an unfortunate case upon which to rely, for it is essentially an equal protection case. In *Belle Terre*, the right to travel was one of the fundamental rights allegedly infringed by the classification effected by the challenged ordinance. See text following note 21 *supra*. *Belle Terre*, however, is factually distinguishable from *Petaluma*. The *Belle Terre* ordinance lent itself to equal protection analysis because it set up two distinct classes of village residents, households whose members were related and households whose members were not related. *Petaluma* presented a very different situation, to which an equal protection analysis is not appropriate. See note 46 *supra* and accompanying text. This is not to deny, however, that the right to travel may provide the most promising approach to the development of new constitutional standards for land-use planning. See Comment, *The Right to Travel: Another Constitutional Standard for Local Land Use Regulations?*, 39 U. CHI. L. REV. 612 (1972).

52. Walsh, *Are Local Zoning Bodies Required by the Constitution to Consider Regional Needs?*, 3 CONN. L. REV. 244 (1971).

53. See, e.g., *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 533, 215 A.2d 597, 612 (1965): "It is clear . . . that the general welfare is not fostered or promoted by a zoning ordinance designed to be exclusive and exclusionary." *Accord*, *Bristow v. City of Woodhaven*, 35 Mich. App. 205, 217-18, 192 N.W. 2d 322, 327-28 (1971); *Golden v. Planning Bd.*, 30 N.Y.2d 359, 378, 285 N.E.2d 291, 302, 334 N.Y.S.2d 138, 152 (1972); *Bilbar Constr. Co. v. Easttown Township Bd. of*

Before its reversal,⁵⁴ the *Petaluma* opinion had significant implications for future comprehensive land-use plans. The decision might have been used to deny the power, not only of municipalities, but also of regional planning agencies, to zone for a population level lower than that which "market and demographic forces" dictated for a given area within a region.⁵⁵ In addition, the opinion suggested that a city could not use the burden on its facilities as a subterfuge for limiting population growth, nor could it use the zoning power to protect its facilities unless they were in immediate and serious danger of being overburdened by the demands of an increased population.⁵⁶

Adjustment, 393 Pa. 62, 76, 95, 141 A.2d 851, 858, 867 (1958) (majority and dissenting opinions); Board of County Supervisors v. Carper, 200 Va. 653, 661, 107 S.E.2d 390, 396 (1959); see Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 20-21, 283 A.2d 353, 358 (L. Div. 1971). One writer has taken an innovative approach to exclusionary zoning and has postulated a constitutional right of outsiders to have their interests considered by local zoning bodies. Walsh, *supra* note 52.

54. See note 5 *supra*.

55. A recent article has discussed this aspect of the *Petaluma* decision with respect to city and town planning.

One conclusion to be drawn from *Petaluma* is that a town cannot "stand in the way" of population growth; that it must absorb its "share"—based upon "reasonable forecasts" of the various growth pressures in the region. This suggests that now a town *must respond* to the dictates of the market (demographic demands, etc.)—regardless of what it feels may be sound planning.

Such statements of law also inevitably raise questions as to whether the forecasts are correct, and whose forecasts should be used. (Example: what if the forecasts of the developer, the town, and/or the regional agency of the state differ significantly?) How is the necessary local pre-planning to be enforced? What if the region claims that the town is a "growth center," and the city claims the development should not take place in this direction? Who will be the arbiter of disagreements?

Scott, *The No-Growth Explosion and Petaluma: Government Must Respond to "Demographic & Market Growth Rates,"* URBAN LAND, June 1974, at 20, 23. The author suggests that regional planning may provide a solution to the problem.

One possible resolution to the above issue may be that a town or city will no longer be able to unilaterally proceed to plan in its own way—that more and more, towns' comprehensive plans will fall if challenged—unless it [*sic*] is in agreement with overall regional planning and forecasts of various regional housing needs.

Id. This suggested solution assumes that the *Petaluma* opinion poses no problem for regional planning that attempts to redirect "market and demographic forces." Arguably, a regional planning agency could prohibit development in environmentally endangered areas under the compelling interest test, but it is questionable whether it may also limit "natural" development in other areas for valid, but nonnecessary, environmental reasons. *But cf.* CEEED v. California Coastal Zone Conservation Comm'n, — Cal. App. 3d —, 118 Cal. Rptr. 315 (1974). It has been suggested that a local municipality also may plan unilaterally for environmental protection. Scott, *supra*.

56. *Accord*, Lakeland Bluff v. County of Will, 114 Ill. App. 2d 267, 278, 252 N.E.2d

It should be noted, however, that given the proper plaintiffs in a subsequent case, the district court's opinion in *Petaluma* would have some precedential significance.⁵⁷

The problems raised by exclusionary local planning strategies in the face of an expanding population suggest that the approach taken in the *Petaluma* opinion should be further explored.⁵⁸ The shortcomings of the opinion, however, and the difficulty of finding plaintiffs with standing to challenge such strategies⁵⁹ threaten the opinion's effectiveness in contributing to the development of judicial standards applicable to modern land-use planning issues.

765, 770 (1969); *Westwood Forest Estates, Inc. v. Village of S. Nyack*, 23 N.Y.2d 424, 244 N.E.2d 700, 297 N.Y.S.2d 129 (1969); *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 532, 215 A.2d 597, 612 (1965); see *Golden v. Planning Bd.*, 30 N.Y.2d 359, 383, 285 N.E.2d 291, 304-05, 334 N.Y.S.2d 138, 156 (1972); *Albrecht Realty Co. v. Town of New Castle*, 8 Misc. 2d 255, 256, 167 N.Y.S.2d 843, 845 (Sup. Ct. 1957); *Christine Bldg. Co. v. City of Troy*, 367 Mich. 508, 516-17, 116 N.W. 2d 816, 820 (1962). *Golden* may suggest a way around this problem. It upheld the Ramapo Plan which paced municipal development according to the expansion of city facilities. The Ramapo Plan has been severely criticized, however, and the dissenting judge in *Golden* disagreed with the majority's determination that the plan was not exclusionary in purpose or effect. Having noted the constitutional and policy issues raised by recent land-use cases and the critical need for an enlarged kind of land planning to meet the problems created by urban growth, 30 N.Y.2d at 383-85, 285 N.E.2d at 305-06, 334 N.Y.S.2d at 156-58, he concluded nonetheless that Ramapo's scheme went beyond what local governments may presently do.

[T]here is no doubt that the Ramapos, in isolation, cannot solve their problems alone, legally, under existing laws, or socially, politically, or economically. For the time being, the Ramapos must do what they can with district zoning and subdivision platting control. They may not declare moratoria on growth and development for as much as a generation. They may not separately or in concert impair the freedom of movement or residence of those outside their borders, even by ingenious schemes. Nor is it important whether their intention is to exclude, if that is the effect of their arrogated powers.

Id. at 391, 285 N.E.2d at 310, 334 N.Y.S.2d at 163.

It has also been suggested that the Ramapo Plan, by delaying urban development within the town, might contribute to unplanned development elsewhere and exaggerate the trend toward megalopolitan sprawl. Bosselman, *Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?*, 1 FLA. ST. U.L. REV. 234, 250 (1973).

57. See note 5 *supra*.

58. As noted above, see note 5 *supra*, the reversal of the decision does not preclude a proper party from basing a challenge to an exclusionary zoning ordinance on the right to travel.

59. See note 5 *supra*.