

## CONTROL OF PANIC SELLING BY REGULATION OF "FOR SALE" SIGNS

In *Barrick Realty, Inc. v. City of Gary*<sup>1</sup> plaintiffs sought to have the Seventh Circuit invalidate a municipal ordinance<sup>2</sup> designed to prevent panic selling. The Gary, Indiana, ordinance prohibited the display by any person of "For Sale," "Sold," "Open House," and all similar signs in residential areas.<sup>3</sup> The court rejected appellants'

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1. 491 F.2d 161 (7th Cir. 1974), *aff'g* 354 F. Supp. 126 (N.D. Ind. 1973). Plaintiffs were a Gary, Indiana, realty company, its president, and a homeowner who had listed his home for sale by the other plaintiffs. The Seventh Circuit adopted the lower court's opinion as its own. 491 F.2d at 162. Therefore, much of this comment refers to the district court's opinion.

2. Gary, Ind., Ordinance No. 4685, July 25, 1972, *cited in* 491 F.2d at 162-63.

3. *Id.* The relevant portions of the ordinance provide as follows:

*Section 2.* It shall be unlawful for any person to construct, place, maintain, install, or permit or cause to be constructed, placed, maintained, or installed any sign of any shape, size or form on any premises located in any Residential District Zoned R1 through R7 under Title 6, Chapter 6 of the Municipal Code of the City of Gary, Indiana.

For purposes of this section the "signs" above mentioned are hereby defined to mean any structure, and all parts composing the same, together with the frame, background, or supports therefore which are used for advertising or display purposes, or any statuary, sculpture, molding, or casting used for advertising or display purposes, or any flags, bunting or material used for display or advertising purposes, including, but not limited to, placards, cards, structures or areas carrying the following or similar words: "For Sale," "Sold," "Open House," "New House," "Home Inspection," "Visitors Invited," "Installed By," or "Built By."

*Section 3.* Any person violating any of the provisions of this Ordinance shall upon conviction, be fined not less than Ten (\$10.00) Dollars nor more than Five Hundred (\$500.00) Dollars to which may be added imprisonment for a period not to exceed 180 days.

*Id.* It is unclear from paragraph 2 of Section 2 whether the ordinance operates as a nonrestrictive ban on all commercial signs. But both parties argued as though the ordinance bans *only* "For Sale" and similar signs. Appellants state in their brief that "[t]he ordinance is not directed at banning commercial advertising within commercial districts and does not ban all signs on the basis of aesthetics [sic]." Brief for Appellants at 11, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974). The district court and the Seventh Circuit both assumed that the ordinance forbade only certain real estate signs. The ordinance's legislative history clearly shows the purpose of the ordinance is to exclude "For Sale" signs. Brief for Appellees at 5-21, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974). The city's brief even refers to the "For Sale Sign Ban Ordinance." *Id.* at 8-9.

constitutional arguments and affirmed the decision of the district court upholding the ordinance.<sup>4</sup>

The Gary ordinance represents a major extension of the philosophy underlying conventional anti-blockbusting legislation. Its significance becomes apparent when the distinction between blockbusting and panic selling is considered. Blockbusting, also known as panic peddling, has been called "the practice of some unscrupulous real estate agents to scare property owners in a neighborhood into selling their property below its value by telling them that members of a minority—for example, Negroes—are moving in."<sup>5</sup> Panic selling, on the other hand, need not result from the direct inducements or persuasion of a blockbuster. It "occurs when a resident who is otherwise disposed to remain in a neighborhood succumbs to any one or more of a number of pressures to move out when it appears that a minority racial group is beginning to enter."<sup>6</sup> It is apparent that the inducement of panic selling is a necessary element of blockbusting and that panic selling, since it can occur without the intervention of blockbusters, is a much broader problem than blockbusting.<sup>7</sup>

Conventional legislative attempts to halt blockbusting have not dealt directly with the problem of panic selling but have focused

4. 491 F.2d at 165.

5. 112 CONG. REC. 18,177 (1966) (remarks of Representative Bingham). The district court in *Barrick* defined blockbusting as "the practice of directly inducing or persuading an individual to sell his home by representations as to the entry into his neighborhood of blacks or other minority groups." 354 F. Supp. at 134-35. It has also been defined as the process through which individuals engaged in the real estate business stimulate and prey "on racial bigotry and fear by initiating and encouraging rumors that negroes [are] about to move into a given area, that all non-negroes [will] leave, and that the market values of properties [will] descend to 'panic prices' with residence in the area becoming undesirable and unsafe for non-negroes." *Contract Buyers League v. F & F Inv.*, 300 F. Supp. 210, 214 (N.D. Ill. 1969). See generally Note, *Blockbusting: A Novel Statutory Approach to an Increasingly Serious Problem*, 7 COLUM. J.L. & SOC. PROB. 538 (1971); Comment, *Blockbusting: Judicial & Legislative Response to Real Estate Dealers' Excesses*, 22 DE PAUL L. REV. 818 (1973) [hereinafter cited as Comment, *Blockbusting: Judicial & Legislative Response*]; Note, *Blockbusting*, 59 GEO. L.J. 170 (1970) [hereinafter cited as Note, *Blockbusting*]; Note, *Legal Control of Blockbusting*, 1972 URBAN L. ANN. 145 [hereinafter cited as Note, *Legal Control of Blockbusting*].

6. 354 F. Supp. at 135.

7. Some reasons why Negro migration into white neighborhoods "so often degenerates into Negro replacement of residents of other ethnic groups" are suggested in E.P. CONSER, *HUMAN RIGHTS AND THE REALTOR*, NATIONAL ASSOCIATION OF REAL ESTATE BOARDS 9 (1963), quoted in Rice, *Bias in Housing: Toward a New Approach*, 6 SANTA CLARA LAW. 162, 162-63 (1966).

instead upon regulation of the individual blockbuster.<sup>8</sup> The empha-

8. Of the three major substantive categories of formal anti-blockbusting measures (control of representations, control of solicitations, and control of conduct), the proscription of certain representatives is the most commonly utilized and is probably the most effective against overt blockbusting practices. Note, *Legal Control of Blockbusting*, *supra* note 5, at 164, 169. The federal anti-blockbusting provision, 42 U.S.C. § 3604(e) (1970), adopts this approach by making it unlawful "[f]or profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin." The courts have interpreted this provision quite liberally. See, e.g., *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5th Cir. 1973) (indirect references to minorities actionable); *United States v. Mintzes*, 304 F. Supp. 1305 (D. Md. 1969) (false representations actionable); *Brown v. State Realty Co.*, 304 F. Supp. 1236 (N.D. Ga. 1969) (unsuccessful inducements actionable). Even with the broad construction given it by the courts, the scope of the anti-representation statute is necessarily limited. For example, it applies only to individuals making certain representations with an expectation of financial gain. Further, the federal statute requires some showing that the representations were such as to constitute a pattern or practice of resistance to the full enjoyment of rights granted by the statute before the Attorney General will act. 42 U.S.C. § 3613 (1970). Private individuals, however, can file suit without showing a pattern or practice of resistance. *Id.* §§ 3610, 3612. A more extensive statute may sweep too broadly into areas protected by the first amendment. In *DeKalb Real Estate Bd. v. Chairman & Bd. of Comm'rs of Rds. & Revenues*, 372 F. Supp. 748 (N.D. Ga. 1973), a county anti-blockbusting ordinance making it unlawful, *inter alia*, "for any real estate broker ' . . . to make any representation in connection with the purchase, sale, or rental of any residential property, that there is or may be physical deterioration of dwellings in any block, neighborhood or area' " was held unconstitutionally vague and overbroad. *Id.* at 755.

It should be noted that the blockbuster can evade the statute by using subtler techniques, including long-term placement of "For Sale" or "Sold" signs in racially transitional neighborhoods to raise white homeowners' fears and induce panic selling. See *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1238 (N.D. Ga. 1969). The primary deficiency of the federal law, however, may not be so much the wording as the lack of sufficient personnel to enforce it. Note, *Blockbusting*, *supra* note 5, at 182. Although the blockbuster may be able to evade the federal statute, it is still possible that he will be caught by more stringent local laws. A provision of the Federal Civil Rights Act specifically states that the Fair Housing Act shall not be construed as preempting state or local regulations in the anti-blockbusting field, as long as they do not infringe the rights protected by the Civil Rights Act. 42 U.S.C. § 3615 (1970).

The majority of states and municipalities legislating with respect to blockbusting also have laws proscribing representations made to cause neighborhood change. See Note, *Legal Control of Blockbusting*, *supra* note 5, at 159. An example of one of the broader statutes of this type is the Gary Civil Rights Ordinance which provides:

It is an unlawful discriminatory practice for [any person, for profit]

(1) to represent that a change has occurred or will or may occur in the composition with respect to race, color, religion or national origin of the owners or occupants in the block, neighborhood, or area in which the real property is located; or

sis upon restricting the would-be blockbuster's representations, solici-

(2) to represent that this change will or may result in the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

Gary, Ind., Civil Rights Ordinance 4458, *cited in* Brief for Appellants at 11-12, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974), *aff'g* 354 F. Supp. 126 (N.D. Ind. 1973). This ordinance goes further than the federal anti-blockbusting law by proscribing the making of such representations by all persons and not just by real estate brokers. Also, it does not require a "pattern or practice of resistance." Certain state statutes have even eliminated the requirement of acting for financial gain. *See, e.g.*, MD. ANN. CODE art. 56, § 230A (1972). A potential problem with these laws is that the "commercial speech" exception may not be activated without the "for profit" requirement, and thus they may be subject to attack under the first amendment. *See* *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942).

In addition to proscribing certain kinds of representations, state and municipal laws also deal with blockbusting by regulation of real estate licenses. Some of these statutes have led to litigation. *See, e.g.*, *Summer v. Township of Teaneck*, 53 N.J. 548, 251 A.2d 761 (1969); *Abel v. Lomenzo*, 25 App. Div. 2d 104, 267 N.Y.S.2d 265, *aff'd*, 18 N.Y.2d 619, 219 N.E.2d 287, 272 N.Y.S.2d 771 (1966). The effectiveness of these regulations is questionable, however, when the blockbusters are speculators acting for themselves and are therefore not in need of licensing, and when real estate commissions are composed principally of members of the real estate industry who may be reluctant to act against blockbusting colleagues. Note, *Blockbusting*, *supra* note 5, at 173; Note, *Legal Control of Blockbusting*, *supra* note 5, at 162. Since public access to such commissions is usually limited, the commissions have even less incentive to act. *Id.*

Another blockbusting control is the restraint of uninvited solicitations. Anti-solicitation ordinances cannot be genuinely effective unless they ban all types of solicitation. Ideally then the ban should encompass use of the mails and telephone, real estate signs, and other forms of commercial advertisement, since mass solicitation of sellers by these methods is an important weapon in the blockbuster's assault upon homeowners. *See* Note, *Blockbusting*, *supra* note 5, at 171; Note, *An Anti-Blockbusting Ordinance*, 7 HARV. J. LEGIS. 402, 404 (1970); Note, *Legal Control of Blockbusting*, *supra* note 5, at 164. An anti-solicitation ordinance of such wide sweep, however, would penalize honest real estate brokers and prohibit even harmless solicitation and thus may be construed to restrain entirely the conduct of a lawful business. The Seventh Circuit in *Barrick* emphasized the availability of alternate means of advertisement. 491 F.2d at 164. Legislation on a more modest scale prohibiting solicitation by telephone, mail, canvassing, loudspeakers, handbills and advertising signs has already been enacted. *See, e.g.*, MICH. STAT. ANN. § 26.1300(203)(b) (1970).

The third category of blockbusting legislation is the control of conduct. Although crude forms of harassment—intimidation, hiring young blacks to turn over garbage cans and throw bricks through windows, hiring black welfare mothers to stage parades down the streets of racially transitional neighborhoods—may still be used by some blockbusters, the typical blockbuster has become more sophisticated. Accordingly, legislation designed to curb such flagrant conduct is a less important means of control. Note, *Blockbusting: A Novel Statutory Approach*, *supra* note 5, at 541-42; Comment, *Blockbusting: Judicial & Legislative Responses*, *supra* note 5, at 822.

tations and conduct reveals the basic flaw in conventional anti-blockbusting legislation, which rests on the philosophically naive premise that blockbusting can be halted by stopping blockbusters. The premise dictates regulation of the blockbuster as the means of controlling, albeit indirectly, neighborhood destabilization and panic selling and is partly responsible for the limitation of statutory prohibitions to only the most overt blockbusting violations.<sup>9</sup>

Conventional anti-blockbusting measures have limited application. Since they apply only to those engaged in blockbusting for profit and proscribe only the most flagrant practices, they are of little avail to neighborhoods that are extremely sensitive to current or imminent changes in home ownership, where no intentional blockbusting act is necessary to cause panic selling. Even traditional innocent methods of solicitation may be harmful.<sup>10</sup>

Close examination of the Gary ordinance reveals that it is more than a different approach to the control of panic selling<sup>11</sup> because it implicitly recognizes that the broader problems of panic selling and neighborhood destabilization can be controlled only by decreasing the fears of white residents. The ordinance deals directly with these

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9. See Note, *An Anti-Blockbusting Ordinance*, *supra* note 8, at 404. Another major deficiency in the conventional approach is the inapplicability of many of these regulations to speculators and non-licensed dealers who buy and sell property for their own accounts. See, e.g., CHICAGO, ILL., ORDINANCE ch. 198.7-B, § 9 (Sept. 11, 1963), cited in 8 RACE REL. L. REP. 1208, 1209 (1963). A further shortcoming is the lack of appropriate sanctions for violators. See, e.g., Shaker Heights, Ohio, Ordinance 61-97, August 29, 1961, cited in 8 RACE REL. L. REP. 262 (1963), which provides a \$50.00 fine for the first offense. The relatively small fine can hardly be considered a deterrent to blockbusting activities when the potential profits involved are so great.

10. Note, *An Anti-Blockbusting Ordinance*, *supra* note 8, at 405. For instance, it has been shown that the mere presence of "For Sale" signs can catalyze panic selling. See, e.g., *Brown v. State Realty Co.*, 304 F. Supp. 1236 (N.D. Ga. 1969); *Summer v. Township of Teaneck*, 53 N.J. 548, 251 A.2d 761 (1969). As the district court in *Barrick* pointed out:

A proliferation of "for sale" signs not only intensifies [the fear of substantial pecuniary loss from declining property values], but also tends to transform it into reality by further depressing prices. Many white residents desire to remain in changing neighborhoods provided they can be maintained on a stable, integrated basis. The evils they fear most—crime, overcrowding, depressed property values, and being left behind—need not come to pass if stability can be achieved. A steadily increasing number of "for sale" signs tends, no less than overt blockbusting practices, to undermine any hope of such stability.

354 F. Supp. at 135.

11. The district court in *Barrick* thought otherwise: "The only difference between [conventional anti-blockbusting] laws and the [Gary ordinance] lies in the means employed to attack the problem of panic selling." 354 F. Supp. at 135.

critical problems by removing a significant source of residential insecurity—the proliferation of “For Sale” signs.<sup>12</sup> Since a neighborhood can be intentionally “busted” only by inducing panic selling,<sup>13</sup> the Gary ordinance’s premise—alleviating white homeowners’ fears will curb panic selling—should apply a fortiori to blockbusting.<sup>14</sup>

Despite their usefulness in combatting panic selling in racially transitional areas, sign regulation ordinances<sup>15</sup> have met forceful resistance.<sup>16</sup> The affirming decision in *Barrick*, and the upholding of a similar ordinance by the Missouri supreme court,<sup>17</sup> may encourage other municipalities to enact comparable legislation. There are a number of arguments, however, that can be raised challenging the validity of a Gary-type ordinance.

The threshold questions are, first, whether the locality has the power to enact the ordinance, and, second, whether the ordinance is contrary to the anti-blockbusting provision of the Federal Fair Housing Act of 1968.<sup>18</sup> The district court found the Gary ordinance plainly authorized by Indiana’s broad grant of powers to municipal corporations.<sup>19</sup> Absent state preemption<sup>20</sup> or denial, the powers of the city are limited only by the federal and state constitutions.<sup>21</sup>

12. Brief for Appellees at 10, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974).

13. This is true by definition. See text accompanying note 7 *supra*.

14. Three other elements of the Gary ordinance could be profitably incorporated into anti-blockbusting laws: applicability to all persons (although first amendment problems should be recognized), abolition of mens rea, and provision for criminal sanctions against violators. See note 3 *supra*.

15. A number of municipalities have passed sign regulation ordinances similar to the Gary ordinance. See, e.g., ST. LOUIS, MO., REV. MUNICIPAL CODE §§ 740.010 to .040 (1960); UNIVERSITY CITY, MO., MUNICIPAL CODE §§ 34-44, reproduced in Comment, *The Constitutionality of a Municipal Ordinance Prohibiting “For Sale,” “Sold,” or “Open” Signs to Prevent Blockbusting*, 14 ST. LOUIS U.L.J. 686, 687-89 nn.12, 14 & 15 (1970).

16. See Note, *Legal Control of Blockbusting*, *supra* note 5, at 168.

17. *Jerome L. Howe Realty Co. v. City of St. Louis*, No. 56852 (Mo., Dec. 10, 1973) (unreported case upholding St. Louis, Mo., REV. MUNICIPAL CODE §§ 740.010 to .040 (1960)).

18. 42 U.S.C. § 3604(e) (1970).

19. 354 F. Supp. at 131. The statute grants cities the power to regulate or prohibit any act that endangers the public health, safety or welfare, or causes injury to property, and grants similar powers regarding the custody, possession or ownership of real property that endangers the public welfare or causes injury to property. IND. ANN. STAT. CODE §§ 18-1-1.5-6 (Burns 1974).

20. Plaintiffs alleged state preemption but pointed to no particular provision to support their claim. 354 F. Supp. at 131.

21. *Id.* See, e.g., *General Outdoor Advertising Co. v. City of Indianapolis*, 202 Ind. 85, 172 N.E. 309 (1930) (reasonable regulations on commercial advertising

Regarding the second question, the district court noted that the federal anti-blockbusting provision<sup>22</sup> does not conflict with the Gary ordinance and that there is no conflict in policy, since the federal law is designed to accomplish the same end to which the ordinance is directed.<sup>23</sup> Both measures are aimed at providing fair housing opportunities for minorities by eliminating panic selling pressures on white residents.

Having resolved the conflict of policy matter in favor of the city, the district court turned to the constitutional issues. Plaintiffs claimed that the ordinance violated a number of constitutional rights,<sup>24</sup> contending that the ordinance intruded upon the first amendment right of free speech and denied them due process and equal protection of the law as guaranteed by the fourteenth amendment.<sup>25</sup>

Since the Gary ordinance proscribes only certain commercial signs that may induce panic selling,<sup>26</sup> plaintiffs' first amendment argument is not persuasive.<sup>27</sup> A recent Supreme Court decision<sup>28</sup> reaffirming the

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are valid exercise of police power to protect the safety, health, morals and general welfare). See also 7 E. McQUILLIN, MUNICIPAL CORPORATIONS § 24.380 (3d ed. 1968).

22. 42 U.S.C. § 3604(e) (1970). See note 8 *supra* for text of statute.

23. 354 F. Supp. at 131. See also 42 U.S.C. § 3615 (1970) ("no federal preemption" proviso). Plaintiffs also made the interesting but unsuccessful argument in the district court that the ordinance violated a federal statute (*id.* § 3604(d)) that makes it unlawful to represent to any person because of race, religion or national origin that any dwelling is not available when it is in fact available. The court reasoned that even if the prohibition of "For Sale" signs on a lot did amount to a "representation" that the house is unavailable, plaintiffs' argument would still fail because the "representation" is not directed at anyone because of his race, religion or national origin. 354 F. Supp. at 132.

24. 354 F. Supp. at 132.

25. *Id.* at 134, 136.

26. "For Rent" signs do not carry the same message (abandonment of the community) to wary white homeowners that "For Sale" and similar signs do, and thus need not be included in the anti-panic selling ordinance. *Id.* at 137. But the ordinance must ban all "For Sale" and similar signs. In *DeKalb Real Estate Bd., Inc. v. Chairman & Bd. of Comm'rs of Rds. & Revenues*, 372 F. Supp. 748 (N.D. Ga. 1973), an ordinance that prohibited brokers but not homeowners from posting such signs was held to violate the equal protection clause of the fourteenth amendment. *Id.* at 754-55. See note 33 and accompanying text *infra*.

27. There exists sufficient empirical evidence for the legislative judgment that "For Sale" signs promote panic selling. See, e.g., 354 F. Supp. at 135; *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1237-38 (N.D. Ga. 1969). See also Brief for Appellees at 5-18, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974).

28. *Pittsburgh Press v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376 (1973). The Court, citing *Valentine v. Chrestensen*, 316 U.S. 52 (1942), held

distinction between commercial and regular speech, has further diminished the chances of successfully urging a first amendment challenge to a Gary-type ordinance. The district court in *Barrick* emphasized the commercial character of the regulated signs concluding that the potential public benefit from the ordinance far outweighed the potential harm to realtors and homeowners who wished to use the signs.<sup>29</sup>

Plaintiff's contention that the ordinance denied due process<sup>30</sup> also failed. They argued that the proscription of "For Sale" and similar signs does not reasonably relate to the ordinance's objective, the reduction of panic selling.<sup>31</sup> The available evidence indicates, however, that there is sufficient basis for the city to believe otherwise.<sup>32</sup>

An equal protection argument can also be made that the Gary ordinance is unreasonably broad because it fails to differentiate between residential areas where panic selling is an immediate threat and areas where it is not. Plaintiffs did not raise this particular argument, although there is no apparent reason for restricting the placement of signs in such places as all-black neighborhoods. Indeed, the ordinance would act to impede the transfer of property in those areas while yielding no real return in terms of anti-panic selling effects.<sup>33</sup>

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that a newspaper's classification of employment ads in sex-designated columns is not protected under the first amendment because it is commercial speech. In *Chrestensen*, the progenitor of the commercial speech exception, a unanimous Court held that reasonable regulations upon "purely commercial" speech are not entitled to first amendment scrutiny. 316 U.S. at 54.

29. 354 F. Supp. at 136. The Seventh Circuit also emphasized the fact that alternate means of communication are available to plaintiffs. 491 F.2d at 164.

30. Due process, in the context of governmental regulation of private activity, requires that the law not be unreasonable or arbitrary and that the means chosen bear a real and substantial relation to the ends sought. *Nebbia v. New York*, 291 U.S. 502, 525 (1934). In *Nebbia* the Court also noted that property owners' rights may be "subordinated to the needs of other private owners whose pursuits are vital to the paramount interests of the community." *Id.*

31. Brief for Appellants at 34-41, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974); cf. *DeKalb Real Estate Bd., Inc. v. Chairman & Bd. of Comm'rs of Rds. & Revenues*, 372 F. Supp. 748, 754 (N.D. Ga. 1973).

32. See, e.g., *Brown v. State Realty Co.*, 304 F. Supp. 1236 (N.D. Ga. 1969). See also note 27 *supra*.

33. Comment, *The Constitutionality of a Municipal Ordinance Prohibiting "For Sale," "Sold," or "Open" Signs to Prevent Blockbusting*, 14 *St. Louis U.L.J.* 686, 710. Plaintiffs in *Barrick* urged that the ordinance was overbroad only as applied to new homes and empty lots. Brief for Appellants at 23-24, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974). The Seventh Circuit dismissed this particular argument as "simply an additional substantive due process argument." 491 F.2d at 164.

There are other equal protection issues that may be raised against the Gary



One solution to the above problem is suggested by a St. Louis

ordinance. Under the traditional equal protection analysis, a legislative classification must be sustained unless it is "patently arbitrary" and bears no rational relationship to a legitimate governmental interest. *See, e.g.*, United States Dep't of Agriculture v. Moreno, 413 U.S. 528 (1973); Williamson v. Lee Optical, Inc., 348 U.S. 483 (1955); Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949). In applying the equal protection clause to social and economic legislation, the Supreme Court has indicated that great latitude will be given the legislature in making classifications. *See, e.g.*, Levy v. Louisiana, 391 U.S. 68, 71 (1968). The lower courts have applied the Supreme Court's deference to legislative classifications in consistently holding that brokers can be singled out for treatment by anti-blockbusting laws. Because of the large amount of evidence showing that they play an important part in blockbusting, (*see, e.g.*, Chicago Real Estate Bd. v. City of Chicago, 36 Ill. 2d 530, 224 N.E.2d 793 (1967); 1969 DUKÉ L.J. 733, 739-40), brokers are thus left with only one significant equal protection argument: the ordinance may work to segregate blacks. According to the appellees in *Barrick*, "the evidence discloses that Gary does not have the problem of opening all-white neighborhoods to minorities. The problem is just the opposite, *i.e.* making it easier for whites to stay after minorities move into a neighborhood." Brief for Appellees at 45, *Barrick Realty, Inc. v. City of Gary*, 491 F.2d 161 (7th Cir. 1974). The district court, however, had dismissed this argument for lack of factual substantiation. 354 F. Supp. at 136.

A similar argument was raised and discussed in *DeKalb Real Estate Bd., Inc. v. Chairman & Bd. of Comm'rs of Rds. & Revenues*, 372 F. Supp. 748 (N.D. Ga. 1973) (*DeKalb* was decided after *Barrick*). Defendant county provided evidence that the cause of panic selling was the presence of "For Sale" signs displaying the names of brokers known to sell primarily to black families. *Id.* at 755. This evidence was introduced in an attempt to show a rational relationship between the existence of "For Sale" signs carrying a broker's name and the presumption that the broker had committed an act of blockbusting. The *DeKalb* ordinance banned all "For Sale" signs bearing the names of real estate brokers and made the posting of such signs *prima facie* evidence of a blockbusting violation. Ordinance to amend the code of DeKalb County, Ga. Part II, ch. 13, reproduced in *id.* at 756-59. The court noted that private homeowners were allowed to post "For Sale" signs and were not subject to the non-discrimination requirements of the Federal Fair Housing Act. 372 F. Supp. at 755. These facts viewed in light of the official purpose of the ordinance—stabilization of neighborhoods—strongly suggested that the ordinance's effect, if not real purpose, was to "freez[e] in past discrimination" and "den[y] blacks a fair opportunity to find suitable housing." *Id.* Were its purpose to prevent the influx of blacks, the ordinance would be subject to the strictest judicial scrutiny, 491 F.2d at 165, and would probably be held to violate the equal protection clause of the fourteenth amendment. *See Yick Wo v. Hopkins*, 118 U.S. 356 (1886), in which an ordinance prohibiting the operation of laundries except in brick or stone buildings without permission of city officials was found violative of the equal protection clause because it affected 150 Chinese aliens but left 80 non-Chinese operating under the same conditions unmolested. The *DeKalb* court went on to find that this ordinance violated due process. 372 F. Supp. at 754. The flaw in the *DeKalb* ordinance was its attempt to make an otherwise ambiguous act—the posting of certain "For Sale" signs—presumptively a crime requiring *mens rea*. The Gary ordinance makes no such presumptions regarding *mens rea*. Instead, it imposes strict liability for violations, thus entirely avoiding the *mens rea* problem.

ordinance<sup>34</sup> establishing a commission to grant permits to post signs upon application and payment of a \$5.00 fee, if it determines that the area is not subject to being "busted." This approach may not be appropriate, however, when substantial parts of the city are subject to blockbusting and panic selling pressures.<sup>35</sup>

Careful drafting enabled the Gary ordinance to avoid another equal protection problem. The ordinance proscribes the posting of "For Sale" and similar signs by *all* persons. The importance of the word *all* is demonstrated in *DeKalb Real Estate Board, Inc. v. Chairman and Board of Commissioners of Roads and Revenues*.<sup>36</sup> Since it has been shown that the mere presence of "For Sale" signs can cause panic selling, whether the signs are posted by realtors or homeowners should be irrelevant. Therefore, the *DeKalb* court reasoned, the broker-homeowner classification violated the equal protection clause because it bore no reasonable relationship to the purpose of the ordinance.<sup>37</sup>

Of lesser import than the first and fourteenth amendment arguments was plaintiffs' contention in *Barrick* that the Gary ordinance made it more difficult for blacks to move into previously all-white neighborhoods and thus was racially discriminatory in violation of the thirteenth amendment.<sup>38</sup> The court pointed out that even if the ordinance caused a reduction in the number of blacks moving into certain areas of the city, that effect would still be outweighed by the ordinance's promotion of stable, integrated neighborhoods.<sup>39</sup>

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34. ST. LOUIS, MO., REV. MUNICIPAL CODE §§ 740.010 to .040 (1960).

35. Apparently this is the situation in Gary. See 354 F. Supp. at 134. By way of contrast, it has been estimated that vast migrations from the central city since 1960 have resulted in the vacating of 20% of the total housing stock in St. Louis and the emptying of people from whole areas of the city. D. MANDELKER & R. MONTGOMERY, *HOUSING IN AMERICA: PROBLEMS & PERSPECTIVES* 177 (1973).

36. 372 F. Supp. 748 (N.D. Ga. 1973); see note 33 *supra*.

37. 372 F. Supp. at 755; see note 33 *supra*.

38. 491 F.2d at 164.

39. *Id.* at 164-65. Other constitutional arguments made by plaintiffs were that the Gary ordinance infringed the right to travel and freedom of contract. The right to travel was urged on behalf of sellers, who, it was argued, would have this right curtailed by the inability or difficulty in selling their homes without the use of "For Sale" signs. *Shapiro v. Thompson*, 394 U.S. 618 (1969), the case relied upon by appellants, is easily distinguished. The statute in question in *Shapiro* had as a specific objective the exclusion from the state of poor persons who needed or may need state welfare aid. The Gary ordinance at most makes it more difficult to sell and move—it restricts no one from moving at any time. *Shapiro* also involved the denial of basic necessities of life to needy persons during the requisite residency period. The Gary ordinance does not create the substantial hardship to

The *Barrick* decision shows that a carefully drafted sign regulation ordinance designed to stop panic selling can pass constitutional muster.<sup>40</sup> Panic selling, however, can be caused by a multitude of factors not generally susceptible to control by conventional anti-block-busting legislation. The Gary ordinance deals with only one of these factors. The significance of the case therefore lies not so much in its identification of a possible model law as in its suggestion that comprehensive legislation addressing these other factors can be sustained by the courts.

*Herbert Jung*

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sellers encountered by the welfare applicants in *Shapiro*. 354 F. Supp. at 133.

The freedom of contract argument has run an inconsistent course since *Lochner v. New York*, 198 U.S. 45 (1905), and has been moribund since *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937). For several decades the Supreme Court has not invalidated any state economic regulation on freedom of contract grounds. In *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), the Court said: "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."

40. Municipalities wishing to enact Gary-type ordinances should keep in mind the overbreadth issue in considering whether provision for a St. Louis-type commission would be appropriate for their communities. See notes 36-38 and accompanying text *supra*.

