UNITED STATES v. STARRETT CITY ASSOCIATES, 840 F.2d 1096 (2d Cir. 1988)

Congress enacted the Fair Housing Act of 1968[1] to promote nondiscriminatory housing transactions[2] and to attain and preserve integrated housing.[3] These dual goals conflict, however, when low-income housing attracts large numbers of minorities. Theoretically, an influx of blacks "tips"[4] the racial balance of the area and causes whites to move

1. 42 U.S.C. §§ 3601-3631 (1982).

2. Senator Mondale, the original sponsor of the fair housing amendments, stated, "We do not see any good reason or justification, in the first place, for permitting discrimination in the sale or rental of housing." 114 CONG. REC. 5642 (1968). Mondale noted that Title VIII "removes the opportunity to insult and discriminate against a fellow American because of his color." *Id.* at 5643. *See* 42 U.S.C. §§ 3603-06 (1982) (outlawing discrimination in the sale, rental, or financing of most housing). *See generally* Note, *Discrimination in Employment and Housing: Private Enforcement Provisions of the Civil Rights Act of 1964 and 1968*, 82 HARV. L. REV. 834 (1969); Comment, *The Federal Fair Housing Requirements: Title VIII of the 1968 Civil Rights Act*, 1969 DUKE L.J. 733.

3. Senator Mondale also noted, "The rapid, block-by-block expansion of the ghetto will be slowed and replaced by truly integrated and balanced living patterns." 114 CONG. REC. 3422 (1968). In Trafficante v. Metropolitan Life Ins., 409 U.S. 205 (1972), the Supreme Court unanimously held that white tenants had standing under Title VIII to sue a landlord for discrimination against nonwhites. The court reasoned that the landlord had deprived the tenants of the benefits of a racially integrated community. *See also* Comment, *HUD Has Affirmative Duty to Consider Low Income Housing's Impact Upon Racial Concentration*, 85 HARV. L. REV. 870 (1972).

4. "The premise of tipping is that when black residency in a neighborhood reaches a certain level . . . white homeowners and renters will rapidly abandon the area because their 'tolerance for interracial living' will have been exceeded." Goering, *Neighborhood Tipping and Racial Transition: A Review of Social Evidence*, 44 AM. INST. OF PLANNERS J. 68 (1978); *see also* Ackerman, *Integration for Subsidized Housing and the Question of Racial Occupancy Controls*, 26 STAN. L. REV. 245, 251-60 (1974) (setting the tipping factor somewhere between 30% and 50%). The tipping point was a major concern in Gautreaux v. Chicago Hous. Auth., 304 F. Supp. 736, 739-40 (N.D. Ill. 1969). For a detailed discussion of the tipping point, see Navasky, *The Benevolent Housing Quota*, HOW. L.J. 30 (1960); Note, *Economic Tipping: An Approach to a Balanced Neighborhood*, 4 FORDHAM URB. L.J. 167 (1975).

out.[5] Consequently, to maintain racial integration in low-income communities, housing administrators impose race-conscious rental quotas[6] that restrict minority access to housing. Thus, by satisfying the Act's integration goals, housing administrators frustrate the Act's antidiscrimination policy. In *United States v. Starrett City Association*,[7] the United States Court of Appeals for the Second Circuit held that under the Fair Housing Act landlords may not use rigid racial quotas of an indefinite duration to maintain a fixed level of integration in low-income communities.[8]

In *Starrett City*, the owners of a housing development[9] adopted a race-conscious tenant selection procedure.[10] The United States Attor-

5. National surveys show that "white flight" occurs when whites begin to fear racial turnover. Ackerman, *supra* note 4, at 253.

6. Racial occupancy quotas stabilize racially mixed populations by persuading neighbors that the low-income housing complex will not inundate their neighborhood and its schools with minority families. Ackerman, *supra* note 4, at 246.

7. 840 F.2d 1096 (2d Cir. 1988). The defendants were Starrett City Associates, Starrett City, Inc., and Delmar Management Company. The defendants constructed, owned, and operated Starrett City, the largest housing development in the nation. *Id.* at 1097-98.

8. *Id.* at 1103. The court concluded Starrett violated various provisions of the Fair Housing Act. Starrett's denial of apartments to blacks solely because of race violated 42 U.S.C. § 3604(a) (1968). By forcing black applicants to wait significantly longer for apartments than whites solely because of race, the defendants violated 42 U.S.C. § 3604(b). A policy that preferred white applicants and limited the acceptance of minority applicants violated 42 U.S.C. § 3604(c). Finally, Starrett violated 42 U.S.C. § 3604(d) by misrepresenting in acknowledgment letters that apartments were not available for rent. *Starrett City*, 840 F.2d at 1099.

9. Starrett City consists of 46 high-rise buildings containing 5,881 apartments in Brooklyn, New York. At the time of appeal, Starrett had made capital contributions of $19,091,000 to the project, the New York State Housing Finance Agency had made $362,720,000 in mortgage loans, and the U.S. Department of Housing and Urban Development was subsidizing Starrett's monthly Mortgage payments. *Id.* at 1098.

The United States Housing Foundation had originally proposed a development of cooperative apartments at the Starrett City site. When the Housing Project abandoned its proposed development, Starrett proposed to construct the rental units on the condition that the New York City Board of Estimate approve a transfer to Starrett of the city real estate tax abatement granted to the original project. Then, when the surrounding community expressed its fear that subsidized housing would create an overwhelmingly minority community, Starrett City developers assured them that they intended to create a racially integrated community. *Id.*

10. Pursuant to Starrett's tenant selection procedure, applicants completed information cards stating, among other things, race or national origin, family composition, income, and employment. As vacancies arose, management filled the vacancies with applicants of a race or national origin similar to that of the departing tenants. *Id.* at 1098.

ney General brought suit against the owners,[11] claiming that reserving apartments for whites was a clear violation of the Fair Housing Act.[12] The owners maintained that racial quotas were necessary to prevent the loss of white tenants. The owners claimed that without quotas the complex would be occupied predominantly by minorities.[13] Furthermore, the owners maintained that the absence of quotas would have a tipping effect on the entire community, ultimately causing "white flight" and ghettoization of the integrated areas.[14] The United States District Court for the Eastern District of New York granted summary judgment for the government,[15] enjoined the owners from discriminating against applicants on the basis of race, and required the owners to adopt objective tenant selection procedures subject to the court's approval.[16] The United States Court of Appeals for the Second Circuit affirmed,[17] holding that the Fair Housing Act precludes landlords from

11. The government brought suit to resolve an issue joined, but left unresolved, in Arthur v. Starrett City Assocs., 89 F.D.R. 542 (E.D.N.Y. 1985). In *Arthur*, a group of black applicants brought a class action alleging that Starrett's tenanting procedures were racially discriminatory. In a settlement agreement Starrett made an additional 35 units available each year for a five-year period to black and minority applicants. The court entered a consent decree. *Starrett City*, 840 F.2d at 1098-99.

12. United States v. Starrett City Assocs., 605 F. Supp. 262, 262-63 (1985). The government maintained that Starrett's tenanting procedures violated 42 U.S.C. §§ 3604(a)-(d) (1982).

13. *Starrett City*, 840 F.2d at 1098. Starrett claimed that from the beginning it had difficulty attracting an integrated applicant pool despite extensive advertising and promotional efforts. *Id.* at 1098. Starrett "sought to maintain a racial distribution by apartment of 64% white, 22% black and 8% Hispanic." United States v. Starrett City Assocs., 660 F. Supp. 668, 671 (E.D.N.Y. 1987). This policy created relatively stable percentages of whites and minorities living at Starrett City between 1975 and 1988. *Id.* at 672.

14. 840 F.2d at 1098. *See supra* notes 4-6 for a discussion of white flight and tipping.

15. 660 F. Supp. at 678-79. Starrett moved to dismiss on the grounds that judicial estoppel barred the action because the government had refused to intervene in the *Arthur* suit. *See supra* note 11 for discussion of *Arthur*. Upon denial of the motion, both parties moved for summary judgment. Starrett did not dispute the alleged violations of the Fair Housing Act; instead, Starrett sought to justify the challenged actions. *Id.* Contending that its tenanting procedures were adopted only to maintain and achieve integration, Starrett sought to justify its challenged actions with the testimony of three housing experts who estimated Starrett City's particular "tipping" point. 840 F.2d at 1099.

16. *Id.* at 1100. The court retained jurisdiction over the parties for three years. *Id.*

17. *Id.* at 1099. The Second Circuit found that if landlords imposed racial quotas, apartment opportunities for blacks and Hispanics were diminished, while opportunities for whites were enhanced. *Id.*

using rigid racial quotas of indefinite duration to maintain a fixed level of integration in low-income communities.[18]

Congress enacted the Fair Housing Act of 1968 to foster integrated living patterns and to promote freedom of choice in housing.[19] However, because Congress perceived integration and antidiscrimination as complementary goals,[20] neither the language[21] nor the legislative history[22] of the Act addresses the statutory validity of race-conscious integration quotas.

Historically, courts have held that no government interest justifies racial classifications.[23] However, with the advent of affirmative action and "benign" quotas,[24] courts recognized that some race-conscious

18. *Id.* at 1103.

19. *See supra* note 3 (discussing Congress' intent to achieve integrated housing by breaking up residential concentrations of minorities); *see supra* note 2 (discussing Congress' intent to achieve freedom of choice in housing by prohibiting discriminatory housing practices).

20. Congress enacted Title VIII under the assumption that strict adherence to the antidiscrimination provisions would effectuate integration. Rubinowitz & Trossman, *Affirmative Action and the American Dream: Implementing Fair Housing Policies in Federal Homeownership Programs*, 74 NW. U.L. REV. 491, 538 n.178 (1979) ("Senator Mondale's comments indicate that integrated living patterns were the expected outcome of fair housing provisions protecting individual choice.").

21. Section 3601 of the Fair Housing Act provides: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601 (1982). Section 3604 explicitly prohibits discrimination in the sale or rental of most housing. 42 U.S.C. § 3604 (1982). Without suggesting any particular method, § 3608(d)(5) gives the Secretary of Housing and Urban Development the authority to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title." 42 U.S.C. § 3608(d)(5) (1982).

22. The Fair Housing Act was the product of a truncated legislative process. Because legislators offered it as a floor amendment in the Senate, neither the House nor the Senate issued a committee report. Thus, legislative history is scarce. *Starrett City*, 840 F.2d at 1106 n.3 (Newman, J., dissenting). Congress probably did not debate the administration of racial quotas because "most of those who passed this statute in 1968 probably could not even contemplate a private real estate owner who would deliberately set out to achieve a racially balanced tenant population." *Id.* at 1106. *See also* Ackerman, *supra* note 4, at 304.

23. Burney v. Housing Auth. of the County of Beaver, 551 F. Supp. 746, 756 (W.D. Pa. 1982). The Supreme Court did allow racial classifications in the now famous Japanese imprisonment cases during World War II. *See* Korematsu v. United States, 323 U.S. 214 (1944); Hirabayshi v. United States, 320 U.S. 81 (1943).

24. Kaplan, *Equal Justice in an Unequal World — The Problem of Special Treatment*, 61 NW. U. L. REV. 363, 389 (1966) ("In common speech the benign quota is an upper limit on something desirable — we do not speak of benign quotas of the number of Negroes in slums but rather of the number in desirable housing.").

plans are valid.[25] Thus, courts have permitted limited use of racial classifications pursuant to federal statutes enacted to prohibit segregation and discrimination in employment, education, and housing.[26] Specifically, courts have permitted race-conscious plans if they remedy a history of prior discrimination,[27] are temporary,[28] and do not totally preclude members of a protected class from obtaining the opportunity they seek.[29]

A plaintiff establishes a prima facie case under the Fair Housing Act by showing that the challenged action has a racially discriminatory effect.[30] The defendant must justify the acts that caused the discrimina-

25. *See, e.g.*, United States v. Paradise, 480 U.S. 149, 166 (1987); United Steelworkers v. Weber, 443 U.S. 193, 208 (1979).

26. Affirmative action plans have been upheld against challenges brought under Titles VI and VII of the Civil Rights Act of 1964 and under the equal protection clause of the fourteenth amendment.

27. *See, e.g.*, Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986) (school board's policy of extending preferential protection against layoffs to some employees because of their race, absent a showing of prior discrimination, violates fourteenth amendment); Sheet Metal Workers v. EEOC, 478 U.S. 421, 448 (1986).

28. *See, e.g.*, Johnson v. Transportation Agency of Santa Clara County, 480 U.S. 616 (1987) (express assurance that an employment program is temporary may be necessary if the program actually sets aside positions according to specific numbers); United States v. Paradise, 480 U.S. 149, 166 (1987) (upholding the Department of Public Safety's requirement that blacks receive 50% of promotions until black troopers compose 25% of ranks); Sheet Metal Workers v. EEOC, 478 U.S. 421 (1986) (temporary affirmative action plan upheld as an appropriate remedy to Title VII violation); Fullilove v. Klutznick, 448 U.S. 448, 489 (1980) (minority business enterprise provision of Public Works Employment Act of 1977 held valid because it limited in extent and duration the use of racial and ethnic criteria); United Steelworkers v. Weber, 443 U.S. 193, 208 (1979) (affirmative action plan reserving for blacks 50% of the openings in a crafts training program until the percentage of blacks in plant equaled the percentage of blacks in local labor force did not violate Title VII); Banks v. Perk, 341 F. Supp. 1175, 1184 (E.D. Ohio 1972) (public housing plan that dispersed housing by placing it in one low-income area until the tipping point was approached held valid).

29. *See, e.g.*, Parent Assoc. of Andrew Jackson School v. Ambach, 598 F.2d 709 (2d Cir. 1975) (fifty percent maximum quota on the number of black students attending any former white school permissible since no black person was totally denied a government benefit); Johnson v. Board of Educ. of Chicago, 457 U.S. 52 (1982) (separate quotas set for black and white enrollment at two schools permissible because all children received the benefit of a government education); *but cf.* Regents of Univ. of Calif. v. Bakke, 438 U.S. 265 (1978) (medical school's admission plan reserving 16% of openings for minorities held unconstitutional because it may have completely deprived some white students of a medical education).

30. Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 148 (3d Cir. 1977) (plaintiff need not show that the defendant acted with racially discriminatory motivation). Several circuit courts agree with the holding in *Rizzo*. *See, e.g.*, Metropolitan Hous. Dev. Corp.

tory effects.[31] The defendant must show that no alternative course of action would achieve the interest with a less discriminatory impact.[32]

Five years after Congress enacted the Fair Housing Act, the Second Circuit assessed the use of racial occupancy controls to maintain integration in low-income communities. In *Otero v. New York City Housing Authority*,[33] former site occupants filed suit against the Housing Authority under the Fair Housing Act, alleging racial discrimination.[34] The Housing Authority maintained that its selective housing practices were necessary because the racial balance of the community was approaching the tipping point.[35] The Second Circuit agreed, holding that the Housing Authority's affirmative obligation to foster racial integration under the Fair Housing Act was paramount, even though this meant the immediate denial of housing to minorities.[36] The court noted, however, that it would allow racial classifications to promote integration only if racial segregation was imminent.[37]

Similarly, in *Burney v. Housing Authority of County of Beaver*,[38] black applicants who were awaiting placement in low-income housing filed a class action challenging the validity of the Housing Authority's race-conscious tenant selection procedure. As its compelling justifica-

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v. Village of Arlington Heights, 558 F.2d 1283, 1287-90 (7th Cir. 1977); Smith v. Anchor Bldg. Corp., 536 F.2d 231, 233 (8th Cir. 1977); United States v. City of Black Jack, 508 F.2d 1179, 1183 (8th Cir. 1974), *cert. denied*, 422 U.S. 1043 (1975); Kennedy Park Homes Assoc., Inc. v. City of Lackawanna, 436 F.2d 108, 114 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971). *See also* Comment, *Applying the Title VII Prima Facie Case to Title VIII Litigation*, 11 HARV. C.R.-C.L. L. REV. 128 (1976).

31. *Rizzo*, 564 F.2d at 148.

32. *Id.* at 149.

33. 484 F.2d 1122 (2d Cir. 1973).

34. *Id.* at 1126. The Housing Authority denied the plaintiffs occupancy in public housing built on the site. By committing most apartments to white renters, the Housing Authority disregarded its own regulation and prior representations to the plaintiffs that they would have first priority for housing at the new site. *Id.*

35. *See supra* note 4 for an explanation of "tipping."

36. *Otero*, 484 F.2d at 1140. The Second Circuit reversed the district court's decision that affirmative action to achieve racially balanced communities was impermissible if it deprived minorities of scarce public housing. Otero v. New York City Hous. Auth., 354 F. Supp. 941, 943 (S.D.N.Y. 1973).

37. 484 F.2d at 1136. The court said absent convincing evidence that racial segregation would occur if racial classifications were not imposed, "the Authority's denial of housing to a family because of its race could . . . constitute a form of unlawful racial discrimination." Therefore, the Authority's burden of proving eventual "ghettoization" was a heavy one. *Id.*

38. 551 F. Supp. 746 (W.D. Pa. 1982).

tion for the selection procedures, the Housing Authority asserted that a quota restricting the percentage of black families in each project was necessary to avoid tipping and eventual resegregation.[39] The court held that the Housing Authority's plan violated the Fair Housing Act[40] because a less discriminatory tenant selection procedure could eliminate tipping.[41]

While *Starrett City* was before the Second Circuit, the Sixth Circuit approved a race-conscious tenant selection plan for a municipal housing complex. In *Jaimes v. Lucas Metropolitan Housing Authority*,[42] the court held that the Housing Authority could implement racial quotas to foster integration and remedy prior discrimination.[43] The Housing Authority must terminate the plan, however, upon a finding of nondiscriminatory integration and may not adhere so strictly to the quotas that some people are totally deprived of the desired housing.[44]

Starrett City presented the Second Circuit with an opportunity to reassess the standards it established in *Otero* for race-conscious tenant selection plans. The court first concluded that the language and legislative history of the Fair Housing Act offered no guidance for resolving the conflict.[45] The court then reviewed federal court decisions that examined the affirmative use of racial quotas.[46] The court consolidated

39. *Id.*

40. *Id.* at 770. The court held that the Housing Authority's plan violated 42 U.S.C. §§ 3604(a), (b) (1982). The *Burney* court initially concluded that the defendant's tenant selection plan violated the equal protection clause of the fourteenth amendment. The court then considered plaintiffs' Title VIII claims as an alternative and independent basis for relief. 551 F. Supp. at 768.

41. *Id.* at 765. The court suggested that the Housing Authority establish a county-wide waiting list and offer vacancies as they arise throughout the county. The court noted, "The prospect of any project having a large influx of minority applicants under such a system would be minimal." *Id.*

42. 833 F.2d 1203 (6th Cir. 1987). The plaintiffs, low-income minorities, brought a class action against the Authority under the Fair Housing Act. They claimed the Authority had intentionally placed public housing in minority areas. The district court ordered injunctive and other equitable relief. The court also ordered prompt submission of a plan to remedy internal segregation at the projects. The Housing Authority challenged the validity of the plan on appeal before the circuit court. *Id.* at 1205.

43. *Id.* at 1207. The court stated, "Here we must assume the Lucas Metropolitan Housing Authority was guilty of past discrimination and of acts perpetuating segregation within the housing units." *Id.*

44. *Id.*

45. United States v. Starrett City Assoc., 840 F.2d 1096, 1101 (2d Cir. 1988).

46. *Id. See* Johnson v. Transportation Agency of Santa Clara County, 480 U.S. 616 (1987); United States v. Paradise, 480 U.S. 149, 166 (1987); Sheet Metal Workers v.

the limitations these cases imposed upon affirmative action plans to produce a three-prong test for determining the validity of race-conscious tenant selection procedures.[47] First, the court concluded that any race-conscious plan must be temporary.[48] Second, the court held that racial quotas are valid only if they remedy prior discrimination.[49] Finally, the court prohibited strict racial quotas that completely deny minority access to low-income housing.[50]

Applying this three-prong test, the court determined that Starrett City's race-conscious tenant selection procedure violated the Fair Housing Act.[51] Starrett failed the first prong because Starrett predicted that the quotas, which had been in effect for ten years, would be necessary for at least fifteen more years. Starrett failed the second prong because its avowed purpose for quotas was to maintain its initial goal of integration, not remedy prior discrimination. Starrett failed the third prong because the quotas acted as a ceiling on minority access that precluded some minority group members from obtaining housing.[52]

In dissent, Judge Newman argued that Congress did not intend the Fair Housing Act to bar the maintenance of integration, even if the integration policy resulted in violations of the Act's antidiscrimination provisions.[53] He maintained that *Otero* established the validity of race-conscious rental policies adopted to promote integration.[54] Furthermore, the dissent claimed the court should allow the defendant an opportunity to show that the rental policy is necessary to prevent

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EEOC, 478 U.S. 421 (1986); Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986); Fullilove v. Klutznick, 448 U.S. 448, 489 (1980); United Steelworkers v. Weber, 443 U.S. 193, 208 (1979); Jaimes v. Lucas Metro. Hous. Auth., 833 F.2d 1203, 1208 (6th Cir. 1988); Burney v. Hous. Auth., 551 F. Supp. 746 (W.D. Pa. 1982). *See supra* notes 27-29 for brief descriptions of these cases.

47. *Starrett City*, 840 F.2d at 1101-02.

48. *Id.* at 1101. The court noted, "A plan employing racial distinctions must be temporary in nature with a defined goal as its termination point." *Id.*

49. *Id.* at 1102.

50. *Id.* "[M]easures designed to increase or insure minority participation . . . have generally been upheld. . . . However, programs designed to maintain integration by limiting minority participation . . . are of doubtful validity. . . ." *Id.*

51. *Id.*

52. *Id.* The court noted that *Otero*, while still valid, did not control. Unlike Starrett City's practices, the New York City Housing Authority in *Otero* implemented a one-time measure of definite duration to remedy an existing problem. *Id.*

53. *Id.* at 1103.

54. *Id.* at 1108.

segregation.[55] Faulting the majority for its affirmance of the district court's summary judgment, the dissent contended the defendants should receive a trial on the merits.[56]

Starrett City represents a new judicial approach to race-conscious tenant selection plans. While *Otero*, *Burney*, and *Jaimes* initially examined the defendant's motive for implementing a race-conscious plan, *Starrett City* merely asked whether the defendant's plan satisfied the three-part test. Furthermore, by granting summary judgment, *Starrett City* departed from the accepted procedure of allowing the defendant an opportunity to assert a compelling reason for the acts that caused the discriminatory effects.[57]

Substantively, *Starrett City*'s three-prong test is compatible with traditional judicial standards employed to evaluate the validity of race-conscious affirmative action.[58] Procedurally, by offering a formula for evaluating tenant selection plans, *Starrett City* avoids the cumbersome case-by-case analysis[59] adopted in earlier cases.[60] Furthermore, pursuant to *Starrett City*'s test, the courts can promptly intervene to block benign discrimination where necessary.[61] Because courts lack the expertise and fact-finding capabilities to determine the impact of tenant selection plans on the community, the three-prong test correctly eliminates the need for continuous judicial supervision.[62]

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55. *Id.* at 1107.

56. *Id.* at 1108.

57. *Id.* at 1101. *Starrett City* is also distinguishable because the defendants were private landlords rather than a state or municipal housing authority. Although Starrett was arguably a state actor, the court did not think Starrett's status was material: "Even if Starrett were a state actor . . . , the racial quotas and related practices employed at Starrett City to maintain integration violate the antidiscrimination provisions of the Act." *Id.*

58. *See supra* note 46 for affirmative action cases.

59. *Starrett City* eliminated the need for a case-by-case analysis. Failure to meet the three-prong test implies that a less intrusive alternative to the challenged tenant selection plan is available and that the justification for the quota is not sufficiently compelling.

60. *See* Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 149 (3d Cir. 1977). The court noted, "For the present, Title VIII criteria must emerge, then, on a case-by-case basis." *Id.* The *Rizzo* court gave the district court the discretion to determine whether the defendant had carried its burden of establishing a justification for the acts that resulted in discriminatory effects. *Id. See generally* Comment, *supra* note 30.

61. *See* Ackerman, *supra* note 4, at 309.

62. Comment, *supra* note 3, at 877-78. The comment notes that in *Gatreaux*, the "court had some difficulty in determining the 'tipping point' of mixed neighborhoods in

The Second Circuit's three-prong test[63] avoids subjective determinations as to whether the threat of racial tipping is a sufficiently compelling reason for racial quotas. Instead, the court's approach offers clear guidance to housing authorities who confront the concurrent demands of integration and antidiscrimination.

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Chicago and has been subject to some criticism for having to rely upon plaintiff's brief for an answer." *Id.* at 878 n.45.

63. *See supra* text accompanying notes 47-50 for a description of the test.