SUPREME COURT OF THE UNITED STATES

No. 94–23

CITY OF EDMONDS, PETITIONER *v.* OXFORD HOUSE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May 15, 1995]

JUSTICE THOMAS, with whom JUSTICE SCALIA and JUSTICE KENNEDY join, dissenting.

Congress has exempted from the requirements of the Fair Housing Act (FHA) "*any* reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U. S. C. §3607(b)(1) (emphasis added). In today's decision, the Court concludes that the challenged provisions of petitioner's zoning code do not qualify for this exemption, even though they establish a specific number—five—as the maximum number of unrelated persons permitted to occupy a dwelling in the single-family neighborhoods of Edmonds, Washington. Because the Court's conclusion fails to give effect to the plain language of the statute, I respectfully dissent.

Petitioner's zoning code reserves certain neighborhoods primarily for "[s]ingle-family dwelling units." Edmonds Community Development Code (ECDC) §16.20.010(A)(1) (1991), App. 225. To live together in such a dwelling, a group must constitute a "family," which may be either a traditional kind of family, comprising "two or more persons related by genetics, adoption, or marriage," or a nontraditional one, comprising "a group of five or fewer persons who are not [so] related." §21.30.010, App. 250. As respondent United States conceded at oral argument, the effect of these provisions is to establish a rule

that “no house in [a single-family] area of the city shall have more than five occupants unless it is a [traditional kind of] family.” Tr. of Oral Arg. 46. In other words, petitioner's zoning code establishes for certain dwellings “a five-occupant limit, [with] an exception for [traditional] families.” *Ibid.*

To my mind, the rule that "no house . . . shall have more than five occupants" (a "five-occupant limit") readily qualifies as a "restrictio[n] regarding the maximum number of occupants permitted to occupy a dwelling." In plain fashion, it "restrict[s]"—to five—"the maximum number of occupants permitted to occupy a dwelling." To be sure, as the majority observes, the restriction imposed by petitioner's zoning code is not an absolute one, because it does not apply to related persons. See *ante,* at 10. But §3607(b)(1) does not set forth a narrow exemption only for "absolute" or "unqualified" restrictions regarding the maximum number of occupants. Instead, it sweeps broadly to exempt *any* restrictions *regarding* such maximum number. It is difficult to imagine what broader terms Congress could have used to signify the categories or kinds of relevant governmental restrictions that are exempt from the FHA.[1]

Consider a real estate agent who is assigned responsibility for the city of Edmonds. Desiring to learn all he can about his new territory, the agent inquires: "Does the city have *any* restrictions regarding the maximum number of occupants permitted to occupy a dwelling?" The accurate

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[1]A broad construction of the word "any" is hardly novel. See, *e.g., John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Savings Bank,* 510 U. S. ___, ___ (1993) (slip op., at 9) (citing, as examples where "Congress spoke without qualification" in ERISA, an exemption for "`*any security*' issued to a plan by a registered investment company" and an exemption for "`*any assets* of . . . an insurance company or *any assets* of a plan which are held by . . . an insurance company'" (quoting 29 U. S. C. §§1101(b)(1), 1103(b)(2)) (emphasis in *John Hancock*)); *Citizens' Bank* v. *Parker,* 192 U. S. 73, 81 (1904) ("The word *any* excludes selection or distinction. It declares the exemption without limitation").

answer must surely be in the affirmative— yes, the maximum number of unrelated persons permitted to occupy a dwelling in a single-family neighborhood is five. Or consider a different example. Assume that the Federal Republic of Germany imposes no restrictions on the speed of "cars" that drive on the *Autobahn* but does cap the speed of "trucks" (which are defined as all other vehicles). If a conscientious visitor to Germany asks whether there are "*any* restrictions regarding the maximum speed of motor vehicles permitted to drive on the *Autobahn,*" the accurate answer again is surely the affirmative one—yes, there is a restriction regarding the maximum speed of trucks on the *Autobahn.*

The majority does not ask whether petitioner's zoning code imposes any restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Instead, observing that pursuant to ECDC §21.30.010, "any number of people can live in a house," so long as they are "related `by genetics, adoption, or marriage,'" the majority concludes that §21.30.010 does not qualify for §3607(b)(1)'s exemption because it "surely does not answer the question: `What is the maximum number of occupants permitted to occupy a house?'" *Ante,* at 10. The majority's question, however, does not accord with the text of the statute. To take advantage of the exemption, a local, state, or federal law need not impose a restriction *establishing* an *absolute* maximum number of occupants; under §3607(b)(1), it is necessary only that such law impose a restriction "regarding" the maximum number of occupants. Surely, a restriction can "regar[d]" —or "concern," "relate to," or "bear on"—the maximum number of occupants without establishing an absolute maximum number in all cases.[2]

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[2]It is ironic that the majority cites Uniform Housing Code §503(b) (1988), which has been incorporated into

I would apply §3607(b)(1) as it is written. Because petitioner's zoning code imposes a qualified "restrictio[n] regarding the maximum number of occupants permitted to occupy a dwelling," and because the statute exempts from the FHA "any" such restrictions, I would reverse the Ninth Circuit's holding that the exemption does not apply in this case.[3]

The majority's failure to ask the right question about petitioner's zoning code results from a more

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petitioner's zoning code, see ECDC §19.10.000, App. 248, as a "prototypical maximum occupancy restriction" that would qualify for §3607(b)(1)'s exemption. *Ante,* at 10. Because §503(b), as the majority describes it, "caps the number of occupants a dwelling may house, *based on floor area,*" *ante,* at 9 (emphasis added), it actually caps the *density* of occupants, not their *number.* By itself, therefore, §503(b) "surely does not answer the question: `What is the maximum number of occupants permitted to occupy a house?'" *Ante,* at 10. That is, even under §503(b), there is no single absolute maximum number of occupants that applies to every house in Edmonds. Thus, the answer to the majority's question is the same with respect to both §503(b) and ECDC §21.30.010: "it depends." With respect to the former, it depends on the size of the house's bedrooms, see *ibid.* (quoting §503(b)); with respect to the latter, it depends on whether the house's occupants are related.

[3]I would also remand the case to the Court of Appeals to allow it to pass on respondents' argument that petitioner's zoning code does not satisfy §3607(b)(1)'s requirement that qualifying restrictions be "reasonable." The District Court rejected this argument, concluding that petitioner's "five-unrelated-person limit is reasonable as a matter of law," App. to Pet. for Cert. B–10, but the Court of Appeals did not address the issue.

fundamental error in focusing on "maximum occupancy restrictions" and "family composition rules." See generally *ante,* at 4–8. These two terms —and the two categories of zoning rules they describe—are simply irrelevant to this case.

As an initial matter, I do not agree with the majority's interpretive premise that "this case [is] an instance in which an exception to `a general statement of policy' is sensibly read `narrowly in order to preserve the primary operation of the [policy].'" *Ante,* at 5 (quoting *Commissioner* v. *Clark,* 489 U. S. 726, 739 (1989)). Why *this* case? Surely, it is not because the FHA has a "policy"; every statute has that. Nor could the reason be that a narrow reading of §3607(b)(1) is necessary to preserve the primary operation of the FHA's stated policy "to provide . . . for fair housing throughout the United States." 42 U. S. C. §3601. Congress, the body responsible for deciding how specifically to achieve the objective of fair housing, obviously believed that §3607(b)(1)'s exemption for "any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling" is consistent with the FHA's general statement of policy. We do Congress no service—indeed, we *negate* the "primary operation" of §3607(b)(1)—by giving that congressional enactment an artificially narrow reading. See *Rodriguez* v. *United States,* 480 U. S. 522, 526 (1987) *(per curiam)* ("[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be law"); *Board of Governors, FRS* v. *Dimension Financial Corp.,* 474 U. S. 361, 374 (1986) ("Invocation of the `plain purpose' of legislation at the expense of the terms of the statute itself . . . , in the end, prevents the effectuation of congressional

intent").[4]

In any event, as applied to the present case, the majority's interpretive premise clashes with our decision in *Gregory* v. *Ashcroft,* 501 U. S. 452, 456–470 (1991), in which we held that state judges are not protected by the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. §§621–634 (1988 ed. and Supp. V). Though the ADEA generally protects the employees of States and their political subdivisions, see §630(b)(2), it exempts from protection state and local elected officials and "appointee[s] on the policymaking level," §630(f). In concluding that state judges fell within this exemption, we did not construe it "narrowly" in order to preserve the "primary operation" of the ADEA. Instead, we specifically said that we were "not looking for a plain statement that judges are excluded" from the Act's coverage.

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[4]The majority notes "precedent recognizing the FHA's `broad and inclusive' compass, and therefore according a `generous construction' to the Act's complaint-filing provision." *Ante,* at 5 (quoting *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U. S. 205, 209, 212 (1972)). What we actually said in *Trafficante* was that "[t]he language of the Act is broad and inclusive." *Id.,* at 209. This is true enough, but we did not "therefore" accord a generous construction either to the FHA's "antidiscrimination prescriptions," see *ante,* at 11, n. 11, or to its complaint-filing provision, §810(a), 42 U. S. C. §3610(a) (1970 ed.) (repealed 1988). Instead, without any reference to the language of the Act, we stated that we could "give vitality to §810(a) only by a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities within the coverage of the statute." 409 U. S., at 212. If we were to apply such logic to this case, we would presumably "give vitality" to §3607(b)(1) by giving it a generous rather than a narrow construction.

Gregory, supra, at 467. Moreover, we said this *despite* precedent recognizing that the ADEA "`broadly prohibits'" age discrimination in the workplace. *Trans World Airlines, Inc.* v. *Thurston,* 469 U. S. 111, 120 (1985) (quoting *Lorillard* v. *Pons,* 434 U. S. 575, 577 (1978)). Cf. *ante,* at 5 (noting "precedent recognizing the FHA's `broad and inclusive' compass" (quoting *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U. S. 205, 209 (1972))).

Behind our refusal in *Gregory* to give a narrow construction to the ADEA's exemption for "appointee[s] on the policymaking level" was our holding that the power of Congress to "legislate in areas traditionally regulated by the States" is "an extraordinary power in a federalist system," and "a power that we must assume Congress does not exercise lightly." 501 U. S., at 460. Thus, we require that "`Congress should make its intention "clear and manifest" if it intends to pre-empt the historic powers of the States.'" *Id.,* at 461 (quoting *Will* v. *Michigan Dept. of State Police,* 491 U. S. 58, 65 (1989)). It is obvious that land use—the subject of petitioner's zoning code—is an area traditionally regulated by the States rather than by Congress, and that land use regulation is one of the historic powers of the States. As we have stated, "zoning laws and their provisions . . . are peculiarly within the province of state and local legislative authorities." *Warth* v. *Seldin,* 422 U. S. 490, 508, n. 18 (1975). See also *Hess* v. *Port Authority Trans-Hudson Corporation,* 513 U. S. ___, ___ (1994) (slip op., at 13) ("regulation of land use [is] a function traditionally performed by local governments"); *FERC* v. *Mississippi,* 456 U. S. 742, 768, n. 30 (1982) ("regulation of land use is perhaps the quintessential state activity"); *Village of Belle Terre* v. *Boraas,* 416 U. S. 1, 13 (1974) (Marshall, J., dissenting) ("I am in full agreement with the majority that zoning . . . may indeed be the most essential function performed by local government").

Accordingly, even if it might be sensible in other contexts to construe exemptions narrowly, that principle has no application in this case.

I turn now to the substance of the majority's analysis, the focus of which is "maximum occupancy restrictions" and "family composition rules." The first of these two terms has the sole function of serving as a label for a category of zoning rules simply invented by the majority: rules that "cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms," that "ordinarily apply uniformly to *all* residents of *all* dwelling units," and that have the "purpose . . . to protect health and safety by preventing dwelling overcrowding." *Ante,* at 6–7.[5]

[5]To my knowledge, no federal or state judicial opinion—other than three §3607(b)(1) decisions dating from 1992 and 1993—employs the term "maximum occupancy restrictions." Likewise, not one of the model codes from which the majority constructs its category of zoning rules uses that term either. See *ante,* at 6–7 (citing authorities). Accordingly, it is difficult to conceive how Congress, in 1988, could have "enacted §3607(b)(1) against the backdrop of an evident distinction between municipal land use restrictions and maximum occupancy restrictions." *Ante,* at 6.

In this context, the majority seizes on a phrase that appears in a booklet published jointly by the American Public Health Association and the Centers for Disease Control—"`the maximum number of individuals permitted to reside in a dwelling unit, or rooming unit.'" *Ante,* at 7, n. 6 (quoting APHA-CDC Recommended Minimum Housing Standards §2.51, p. 12 (1986)). Even if, as the majority boldly asserts, this phrase "bears a marked resemblance to the formulation Congress used in §3607(b)(1)," *ibid.,* I fail to comprehend how that would

The majority's term does bear a familial resemblance to the statutory term "restrictions regarding the maximum number of occupants permitted to occupy a dwelling," but it should be readily apparent that the category of zoning rules the majority labels "maximum occupancy restrictions" does not exhaust the category of restrictions exempted from the FHA by §3607(b)(1). The plain words of the statute do not refer to "available floor space or the number and type of rooms"; they embrace no requirement that the exempted restrictions "apply uniformly to *all* residents of *all* dwelling units"; and they give no indication that such restrictions must have the "purpose . . . to protect health and safety by preventing dwelling overcrowding." *Ibid.*

Of course, the majority does not contend that the language of §3607(b)(1) precisely describes the category of zoning rules it has labeled "maximum occupancy restrictions." Rather, the majority makes the far more narrow claim that the statutory language "surely encompasses" that category. *Ante,* at 8. I

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add to our understanding of the statute. The majority surely cannot hope to invoke the rule that where "`Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.'" *Molzof* v. *United States,* 502 U. S. 301, 307 (1992) (quoting *Morissette* v. *United States,* 342 U. S. 246, 263 (1952)). The quoted phrase from the APHA-CDC publication can hardly be called a "ter[m] of art"—let alone a term in which is "accumulated the legal tradition and meaning of centuries of practice." See also *NLRB* v. *Amax Coal Co.,* 453 U. S. 322, 329 (1981) (applying the rule to "terms that have accumulated settled meaning under either equity or the common law").

readily concede this point.[6] But the obvious conclusion that §3607(b)(1) encompasses "maximum occupancy restrictions" tells us nothing about whether the statute *also* encompasses ECDC §21.30.010, the zoning rule at issue here. In other words, although the majority's discussion will no doubt provide guidance in future cases, it is completely irrelevant to the question presented in *this* case.

The majority fares no better in its treatment of "family composition rules," a term employed by the majority to describe yet another invented category of zoning restrictions. Although today's decision seems to hinge on the majority's judgment that ECDC §21.30.010 is a "classic exampl[e] of a . . . family composition rule," *ante,* at 9, the majority says virtually nothing about this crucial category. Thus, it briefly alludes to the derivation of "family composition rules" and provides a single example of them.[7] Apart from these two references, however, the majority's analysis consists *solely* of announcing

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[6]According to the majority, its conclusion that §3607(b)(1) encompasses all "maximum occupancy restrictions" is "reinforced by" H. R. Rep. No. 100–711, p. 31 (1988). See *ante,* at 8, n. 8. Since I agree with this narrow conclusion, I need not consider whether the cited Committee Report is either authoritative or persuasive.

[7]See *ante,* at 6 ("To limit land use to single-family residences, a municipality must define the term `family'; thus family composition rules are an essential component of single-family residential use restrictions"); *ante,* at 7 ("East Cleveland's ordinance `select[ed] certain categories of relatives who may live together and declare[d] that others may not'; in particular, East Cleveland's definition of `family' made `a crime of a grandmother's choice to live with her grandson' " (quoting *Moore* v. *City of East Cleveland,* 431 U. S. 494, 498–499 (1977) (plurality opinion))).

its conclusion that "the formulation [of §3607(b)(1)] does not fit family composition rules." *Ante,* at 8. This is not reasoning; it is *ipse dixit.* Indeed, it is not until *after* this conclusion has been announced that the majority (in the course of summing up) even defines "family composition rules" at all. See *ibid.* (referring to "rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain").

Although the majority does not say so explicitly, one might infer from its belated definition of "family composition rules" that §3607(b)(1) does not encompass zoning rules that have one particular purpose ("to preserve the family character of a neighborhood") or those that refer to the qualitative as well as the quantitative character of a dwelling (by "fastening on the composition of households rather than on the total number of occupants living quarters can contain"). *Ibid.* Yet terms like "family character," "composition of households," "total [that is, absolute] number of occupants," and "living quarters" are noticeably absent from the text of the statute. Section 3607(b)(1) limits neither the permissible purposes of a qualifying zoning restriction nor the ways in which such a restriction may accomplish its purposes. Rather, the exemption encompasses "any" zoning restriction—whatever its purpose and by whatever means it accomplishes that purpose—so long as the restriction "regard[s]" the maximum number of occupants. See generally *supra,* at 2–5. As I have explained, petitioner's zoning code does precisely that.[8]

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[8]All that remains of the majority's case is the epithet that my reasoning is "curious" because it yields an "exception-takes-the-rule reading" of §3607(b)(1). *Ante,* at 11, n. 11. It is not clear why the majority thinks my reading will eviscerate the FHA's antidiscrimination prescriptions. The

In sum, it does not matter that ECDC §21.030.010 describes "[f]amily living, not living space per occupant," *ante,* at 10, because it is immaterial under §3607(b)(1) whether §21.030.010 constitutes a "family composition rule" but not a "maximum occupancy restriction." The sole relevant question is whether petitioner's zoning code imposes "any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling." Because I believe it does, I respectfully dissent.

Act protects handicapped persons from traditionally defined (intentional) discrimination, 42 U. S. C. §3604(f)(1), (2), and three kinds of specially defined discrimination: "refusal to permit . . . reasonable modifications of existing premises"; "refusal to make reasonable accommodations in rules, policies, practices, or services"; and "failure to design and construct [multifamily] dwellings" such that they are accessible and usable, §3604(f)(3)(A), (B), (C). Yet only *one* of these four kinds of discrimination—the "reasonable accommodations" prescription of §3604(f)(3)(B)—is even arguably implicated by zoning rules like ECDC §21.30.010. In addition, because the exemption refers to "local, State, or Federal restrictions," even the broadest reading of §3607(b)(1) could not possibly insulate *private* refusals to make reasonable accommodations for handicapped persons. Finally, as I have already noted, see n. 3, *supra,* restrictions must be "reasonable" in order to be exempted by §3607(b)(1).