

EQUITY IN LATINO NEIGHBORHOOD PARKS QUESTIONED

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Absent evidence of an intent on the part of governmental officials to discriminate against a particular suspect class (i.e. on the basis of race, creed, color, religion, or national origin), perceived racial and ethnic disparities among neighborhood parks and playgrounds do not necessarily violate federal civil rights law and the Equal Protection Clause.

In the case of *The Committee Concerning Community Improvement v. City of Modesto* (E.D. Cal 8/20/2007), plaintiffs alleged that Latino neighborhoods in unincorporated areas of Stanislaus County received fewer and poorer public services than other neighborhoods in the incorporated City of Modesto with predominantly white populations. As a result, the Committee claimed Stanislaus County violated the Equal Protection Clause and Section 1983 of federal civil rights law (42 U.S.C. § 1983) by denying services that are available to others in the City and County in a way that intentionally discriminated against plaintiffs on the basis of race and ethnicity. Specifically, the Committee alleged that “the parks in the unincorporated Neighborhoods have not been developed and maintained on an equal basis to other County parks serving predominantly White areas.” Moreover, the Committee claimed that County residents in predominately white neighborhoods had immediate access to parks which were more developed and better maintained in the City of Modesto. The Defendant County of Stanislaus denied any intent to discriminate on the basis of race or ethnicity.

INTENTIONAL DISCRIMINATION?

As noted by the federal district court, the Committee’s Equal Protection claim under federal civil rights law Section 1983 required “proof of intentional discrimination”:

To state a viable Equal Protection claim under Section 1983, a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class. Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.

Absent evidence of racially discriminatory intent or purpose, the court found official action which “results in a racially disproportionate impact” would not necessarily violate federal civil rights law:

Disproportionate impact is not irrelevant, but it is not the sole touchstone of invidious [i.e., based on animosity] racial discrimination. Indeed, proof of discriminatory intent is required to show that state action having a disparate impact violates the Equal Protection Clause.

Direct evidence of discriminatory purpose and intent may be unavailable. In such a situation, the court must make a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. The court must therefore look to the

totality of the relevant evidence to determine whether invidious discriminatory purpose was a motivating factor for the decision.

Further, in determining whether an official action was motivated by a race based discriminatory purpose, the court stated it would consider whether the official action impacted one race more heavily than another.

The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes. The specific sequence of events leading up to the challenged decision also may shed some light on the decision maker's purposes. Departures from the normal procedural sequence and the legislative or administrative history are also relevant.

Applying these principles to the facts of the case, the federal district court found the Committee had failed to present any "direct evidence of intentional discriminatory conduct in the provision of parks." Specifically, the court found "no evidence of racial considerations in funding for parks, or racial comments, or any other direct evidence." On the contrary, the court found the Committee had relied "exclusively upon circumstantial evidence" to establish its claim that "the County's disparate funding of parks violates equal protection" in arguing as follows:

[T]he striking and unexplained disparities between the equipment and services the County provides or has attempted to provide to parks in majority-White neighborhoods and those it provides to parks in the majority-Latino neighborhoods give rise to an inference that the County has acted with an invidious and discriminatory purpose in allocating funds and services among its parks.

In so doing, the Committee claimed that the County had not funded parks in Latino neighborhoods, despite having obtained "funding through various measures, including Proposition 10, to improve parks." Specifically, the Committee contended that the County had contributed \$20,000 to Charles M. Sharp Park, "a beautifully appointed and maintained park" located in a predominately white neighborhood. In contrast, the Committee asserted that the County had removed and not replaced playground equipment in public parks located in Latino neighborhoods.

ARLINGTON FACTORS

As cited by the federal district court, in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the United States Supreme Court identified some of the circumstantial evidence that is relevant when discriminatory intent is at issue:

(1) the discriminatory effect of the official action, (2) the historical background of the decision, (3) the specific sequence of events leading up to the challenged decision, (4) departure from the normal procedural sequence, (5) departures from the normal substantive standards, and (6) legislative or administrative history of the decision.

In this particular instance, the federal district court found the Committee had not presented any evidence from which it could “argue that the Arlington factors apply to this case.” Moreover, the court found the Committee did not dispute the fact that “the maintenance of all County-funded parks has been reduced due to the state budget crisis and the demand on the County funds for health and social services.” As a result, the County only had resources to “keep the park grass mowed and watered, the grass cut, restrooms clean, and trash hauled away.”

Although some playground equipment was replaced with private donations from local community groups, the court found that the County had not spent any general fund money on replacing playground equipment. Instead, the County removed all playground equipment in parks that failed to meet state safety standards, including play structures subject to repeated vandalism in Latino neighborhoods.

While not disputing these facts, the Committee claimed “Charles M. Sharp Park, located in a predominately white neighborhood, received preferential treatment.” According to the Committee, Sharp Park was well manicured with well maintained playground equipment. In addition to “better park amenities,” the Committee claimed Sharp Park had received a \$20,000 grant for new playground equipment. According to the Committee, a City of Modesto “press release” had stated that: “The City of Modesto has received \$20,000 in funding from the Stanislaus County Children and Family Commission for the purchase of ADA accessible playground equipment at the Charles M. Sharp Park.”

In comparison to Sharp Park, the Committee described their neighborhood parks, Parklawn Park and Fairview Park, as having “dry grass, no play structures, and are poorly maintained bathrooms.” As noted by the court, the Committee had submitted “photographs of the Parklawn and Fairview Park, as well as the Charles M. Sharp Park to demonstrate the disparity between the parks' amenities.”

Despite such alleged disparities, the federal district court found no evidence that Stanislaus County owned Sharp Park or that the money for the grant came from the County. Since the City of Modesto, not the County, owned the park, the court found that the Committee had failed to establish “any discrimination by the County.”

As characterized by the court, the Committee had simply compared “their neighborhood parks with one specific park,” Charles M. Sharp Park, in an attempt to establish discriminatory intent. According to the court, “an isolated comparison of a single park is too narrow a comparison pool” to provide relevant circumstantial evidence of discriminatory intent. As a result, the federal district court found “no evidence of the ‘Arlington factors’ from which a reasonable jury could infer intentional invidious discrimination.”

In addition to the Sharp Park argument, the Committee had also contended that “the County was prepared to spend \$1.7 million to fund parks in majority-white Salida neighborhood.” In so doing, however, the Committee acknowledged that “the Salida park was not built because the Salida Community Plan was not adopted.” Since the money had not actually been spent, the Committee argued that the County could have planned to spend that money on replacing

playground equipment in Latino neighborhoods. As a result, the Committee contended that the County's initial decision to only spend the money in Salida was discriminatory.

In response, the County presented evidence that "the Salida park was intended to be a joint park between the County and the Salida School District which intended to build an elementary school and junior high on the property." According to the County, the Salida park was never funded or developed because the community development plan was never adopted to allow residential and school construction. The federal district court agreed with the County.

Once again, the federal district court found the Committee had failed to "offer any evidence of invidious discrimination associated with the decision to allocate funding to the Salida park."

No county maintained park existed in Salida and the concurrent plan of the Salida School District for a park/schools offered the County an opportunity to partner the financial burden. There is no evidence or inference of invidious discrimination. Again, plaintiffs offer a "comparison" of neighborhoods, but the evidence does not demonstrate that the neighborhoods are comparable.

As a result, the federal district court found the Committee had "failed to raise an issue of material fact on any claim for intentional discrimination." The federal district court, therefore, denied the Committee's claims of discrimination based upon the Equal Protection Clause and Section 1983 of federal civil rights law and granted summary judgment in favor of the County.

NOTE: On August 23, 2007, the *Modesto Bee* reported that the attorneys for the Latino plaintiffs in this case are planning to appeal the decision of the federal district court to the U.S. Court of Appeals for the 9th Circuit in San Francisco. <http://www.modbee.com/local/story/49846.html>