CONSTITUTIONAL LAW—ZONING—ZONING ACCORDING TO BIOLOGICAL OR LEGAL RELATIONSHIPS IS VIOLATIVE OF THE NEW JERSEY CONSTITUTION—*State v. Baker*, 81 N.J. 99, 405 A.2d 368 (1979).

Cohabitation between unrelated individuals has become a socially acceptable living arrangement in today's society. This development has given rise to many problems in the area of zoning restrictions, particularly since the United States Supreme Court in *Village of Belle Terre v. Boraas*[1] upheld the constitutionality of a village ordinance which placed "zoning" limitations on the number of unrelated individuals who may share a single-family residence.[2] In the aftermath of the *Belle Terre* decision, many commentators criticized the Court's holding as sanctioning the violation of individual privacy rights.[3] The Supreme Court of New Jersey, in *State v. Baker*,[4] acknowledged the constitutional dangers posed by such restrictions and struck down a similar ordinance as violative of the New Jersey State Constitution.[5]

Dennis Baker was the owner and co-resident of a single-family dwelling unit located in Plainfield, New Jersey.[6] Residing with Baker were his wife, three daughters, and a Mrs. Conata and her three children.[7] The defendant termed the living arrangement an

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[1] 416 U.S. 1 (1974).

[2] *Id.* at 7-10. The word "family" was defined in the challenged ordinance as follows:

> [O]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit . . . . A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

Id. at 2 (quoting The Building Zone Ordinance of the Village of Belle Terre, Art. 1, § 1.35a (June 8, 1970)).

[3] Note, *Village of Belle Terre v. Boraas: "A Sanctuary for People,"* 9 U.S.F.L. REV. 391 (1974); Note, *Village of Belle Terre v. Boraas: Belle Terre is a Nice Place to Visit—But Only "Families" May Live There*, 8 URB. L. ANN. 193 (1974).

[4] 81 N.J. 99, 405 A.2d 368 (1979).

[5] *Id.* at 112, 405 A.2d at 374. The court in *Baker* stated that:

> state courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State Constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the [United States] Supreme Court's interpretation of federal law. Constitutional decisions by federal courts . . . should only be considered as 'guideposts' in interpreting state constitutional provisions. . . .

Id. at 112 n.8, 405 A.2d at 374 n.8 (quoting Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977)).

[6] 81 N.J. at 103, 405 A.2d at 370. Baker's home was in an area zoned for single family use. *Id.*

[7] *Id.* at 104, 405 A.2d at 370.

"extended family"[8] arising out of the group's common religious beliefs.[9] The "family" ate together, shared common areas, and held communal prayer sessions.[10] In 1976, on three separate occasions, Baker was charged with violations of a Plainfield zoning ordinance "which [sought] to preserve the 'family' character of the municipality's neighborhoods by prohibiting more than four unrelated individuals from sharing a single housing unit."[11]

Baker was convicted in the Plainfield Municipal Court.[12] He was again found in violation of the ordinance after a trial *de novo* by the Union County Court.[13] The Appellate Division reversed the decision of the county court[14] and subsequently, in *State v. Baker*, the Supreme Court of New Jersey affirmed.[15] Basing its decision on the right of privacy and the due process provisions of the New Jersey State Constitution, the court held that "municipalities may not condition residence upon the number of unrelated persons present within the household."[16]

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[8] An "extended" family encompasses all members of a family who are blood related. It may include aunts, uncles, cousins, grandparents, etc. There is no limit on the distance of blood relation. Note, *"Burning the House to Roast the Pig": Unrelated Individuals and Single Family Zoning's Blood Relation Criterion*, 58 CORNELL L. Q. 138, 157 n.103 (1972).

[9] 81 N.J. at 104, 405 A.2d at 370. Baker, an ordained minister, maintained that the individuals' religious beliefs and consequent desire to go through life as "brothers and sisters" necessitated this living arrangement. *Id.*

[10] *Id.* Each occupant contributed a fixed amount per week for household expenses. Several other persons also resided within the household for indeterminate periods of time. *Id.*

[11] *Id.* at 103, 405 A.2d at 370. Plainfield's zoning ordinance defined family as:

> One (1) or more persons occupying a dwelling unit as a single non-profit housekeeping unit. More than four (4) persons . . . not related by blood, marriage, or adoption shall not be considered to constitute a family.

Id. at 104, 405 A.2d at 370 (quoting City of Plainfield Zoning Ordinance § 17:3-1(a)(17)).

[12] 81 N.J. at 104, 405 A.2d at 370.

[13] *Id.* at 104, 405 A.2d at 370. Although the judge determined that Baker's household fell within the meaning of a single non-profit housekeeping unit, he nevertheless concluded that Baker was in violation of the numerical restrictions imposed by Plainfield's ordinance. *Id.*

[14] State v. Baker, 158 N.J. Super. 536, 386 A.2d 890 (App. Div. 1978).

[15] 81 N.J. at 105, 405 A.2d at 370.

[16] *Id.* at 114, 405 A.2d at 375. The court interpreted in combination two provisions of the New Jersey Constitution: article I, paragraph 1, and article IV, § 6, paragraph 2. Article I, paragraph 1 "ensures the natural and unalienable right of individuals to pursue and obtain safety and happiness." 81 N.J. at 114 n.10, 405 A.2d at 375 n.10. This provision is interpreted as encompassing the requirement of due process and the right of privacy. *Id.* at 114 n.10, 405 A.2d at 375 n.10. N.J. CONST. art. IV, § 6, para. 2 places the power to zone within the police power of the state. Reading these provisions together, the court concluded that:

> zoning restrictions be accomplished in the manner which least impacts upon the right of individuals to order their lives as they see fit. . . . [T]he Plainfield regulation fails this test. Thus, it violates the right of privacy and due process.

Id. at 114 n.10, 405 A.2d at 375 n.10.

Municipal zoning and urban planning emerged in response to the tremendous growth in population and expansion in urban centers during the 1920s,[17] their main purpose being to regulate the physical uses of land to promote the public welfare. In 1926, the United States Supreme Court in *Village of Euclid v. Ambler Realty Co.*[18] recognized zoning as a permissible exercise of the states' police power.[19] Subjecting this power to constitutional limitations, the Court ruled that any zoning ordinance found to be arbitrary, unreasonable, and unrelated to public health, safety, morals, or general welfare would be found unconstitutional.[20] Two years later, in *Nectow v. City of Cambridge*,[21] the Supreme Court noted that there were reasonable limits on the extent of the power of a municipality to regulate the use of land.[22] Thereafter,[23] and until its 1974 decision in *Village of Belle Terre v. Boraas*,[24] the Supreme Court virtually left the responsibility for defining the legitimate goals of zoning to a case-by-case interpretation by the state courts.[25]

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[17] *See Developments in the Law—Zoning*, 91 HARV. L. REV. 1427, 1433-1442 (1978).

[18] 272 U.S. 365 (1926).

[19] *Id.* at 386-97.

[20] *Id.* at 395. To guarantee homogeneity of uses, the concept of Euclidean Zoning arose. This concept divides areas of land into zones, in which building height, use, and area are regulated. *See* 4 N. WILLIAMS, JR., AMERICAN LAND PLANNING LAW, § 83.01-83.05 (1975).

[21] 277 U.S. 183 (1928).

[22] *Id.* The Court in *Nectow* held that an otherwise valid zoning ordinance may be unconstitutional as applied to a particular piece of property. *Id.* at 188-89. The ordinance was unconstitutional as the restriction was harmful to the owner's interests and not necessary to protect the health, safety, or general welfare of the city's inhabitants. *Id.* at 187-88. *See* 4 N. WILLIAMS, JR., *supra* note 20, at § 83.06-83.10.

[23] The Supreme Court did not speak again on the subject of zoning until *Berman v. Parker*, 348 U.S. 26 (1954), in which it broadened its interpretation of zoning to embrace a wide range of governmental purposes—"values [which] are spiritual as well as physical, aesthetic as well as monetary." *Id.* at 33. Technically, *Berman* is not a zoning case as it involved issues of eminent domain.

[24] 416 U.S. 1 (1974). The ordinance in *Belle Terre* limited the number of unrelated individuals who could share a single-family residence. *Id.* at 2. *See* note 2 *supra*. The owners of a house in the village and the three unrelated college students who had leased the home, challenged the ordinance as violative of equal protection and the rights of association, travel, and privacy. *Id.* at 7. Concluding that these rights were not violated, the Court upheld the constitutionality of the ordinance. *Id.* at 7-8.

Prior to *Belle Terre*, only one federal court had considered the constitutional implications of a restrictive zoning definition of "family." In Palo Alto Tenants Union v. Morgan, 321 F. Supp. 908 (N.D. Cal. 1970), *aff'd*, 487 F.2d 883 (9th Cir. 1973), *cert. denied*, 417 U.S. 910 (1974), the court sustained the validity of such an ordinance against a constitutional challenge by members of a commune claiming denial of freedom of association. 321 F. Supp. at 913. The court acknowledged that while the right to form such groups receives constitutional recognition, "the right to insist that these groups live under the same roof, in any part of the city they choose, [does] not." *Id.* at 911-12.

[25] *E.g.*, Brady v. Superior Court, 200 Cal. App.2d 69, 19 Cal. Rptr. 242 (Dist. Ct. App. 1962 (judicial interpretation of ordinance leaving the term family undefined); Carroll v. City of

In the period following the Supreme Court's acknowledgement of the power of the states to zone for the public welfare, the Supreme Court of New Jersey rendered several leading zoning decisions.[26] The most notable was *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mt. Laurel)*,[27] in which the court held that a developing municipality may not zone to exclude low and moderate income housing.[28] However, even prior to *Mt. Laurel* the New Jersey courts had recognized the need to counteract the discriminatory impact that some zoning regulations engendered, particularly when residence in a single family dwelling was predicated upon a biological or legal relationship.[29] For instance, in *Kirsch Holding Company v. Borough of Manasquan*,[30] the court invalidated an ordinance which restricted the number of unrelated individuals who could reside together.[31] Although the holding in *Kirsch* dealt with seasonal group rental situations, the decision acknowledged a

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Miami Beach, 198 So.2d 643 (Fla. Dist. Ct. App. 1967) (legislative intent important in statutory construction of family); Vickers v. Township Comm., 37 N.J. 232, 181 A.2d 129 (1962) (upheld ordinance prohibiting trailer camps); Lionshead Lake v. Wayne Township, 10 N.J. 165, 89 A.2d 693 (1952) (minimum floor area zoning standards may be justified as necessary to protect the character of a community); Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970) (zoning ordinance with primary purpose of preventing newcomers is invalid). *See* 1 N. WILLIAMS, JR., AMERICAN LAND PLANNING LAW § 3.01 (1974).

[26] 1 N. WILLIAMS, JR., AMERICAN LAND PLANNING LAW § 6.04 (1974). *See generally*, Home Builders League v. Township of Berlin, 81 N.J. 127, 408 A.2d 381 (1979) (minimum floor area requirements were unrelated to legitimate zoning purposes and were invalid exercise of municipal police power); Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A.2d 1192 (1977) (developing community was subject to the non-exclusionary zoning requirements of the Mount Laurel decision); Berger v. State, 71 N.J. 206, 364 A.2d 993 (1976) (court upheld municipal immunity against enforcement of zoning ordinance which defined family as two or more persons related by blood or adoption); Taxpayer's Ass'n v. Weymouth Tp., 80 N.J. 6, 364 A.2d 1016 (1976), *appeal dismissed*, 430 U.S. 977 (1977) (zoning ordinance which limited use of mobile homes within trailer park to elderly families was within zoning power delegated to township).

[27] 67 N.J. 151, 336 A.2d 713, *appeal dismissed and cert. denied*, 423 U.S. 808 (1975).

[28] *Id.* at 174, 336 A.2d at 724. For a discussion of exclusionary zoning, see generally Mytelka & Mytelka, *Exclusionary Zoning: A Consideration of Remedies*, 7 Seton Hall L. Rev. 1 (1975).

[29] *E.g.*, Gabe Collins Realty, Inc. v. City of Margate, 112 N.J. Super. 341, 271 A.2d 430 (App. Div. 1970) (seasonal group rental situation in which ordinance defined family along biological or legal criteria or limited to not more than two unrelated persons invalid); Holy Name Hospital v. Montroy, 153 N.J. Super. 181, 379 A.2d 299 (Law Div. 1977) (ordinance depriving group of nuns from residing together unconstitutionally restrictive in defining family to mean no more than three unrelated individuals); Marino v. Mayor and Council, 77 N.J. Super. 587, 187 A.2d 217 (Law Div. 1963) (ordinance which disallowed any unrelated individuals to reside together as single housekeeping unit invalid).

[30] 59 N.J. 241, 281 A.2d 513 (1971).

[31] *Id.* at 251-52, 281 A.2d at 518.

right of unrelated individuals to cohabit.[32] The court found the ordinance to be "sweepingly excessive" in that it unduly restricted many harmless uses in an attempt to exclude "unruly unrelated" groups;[33] it was held invalid as an overly proscriptive violation of due process.[34]

It was not until the decision rendered in *State v. Baker* that the Supreme Court of New Jersey struck down a zoning ordinance which conditioned residence upon a biological or legal relationship as violative of an individual's state constitutional rights of privacy and due process.[35] The Town of Plainfield asserted that the purpose of the ordinance was to prevent overcrowding and congestion and to further a recognized and legitimate goal of zoning—the preservation of a traditional style of living and of family values.[36] Plainfield further maintained that its ordinance fell well within the guidelines set down by the Supreme Court of New Jersey in *Berger v. State*,[37] which adopted as acceptable the concept of restricting single-family homes to a "reasonable number of persons who constitute a bona fide single housekeeping unit."[38] The supreme court rejected Plainfield's arguments as insufficient to overcome the ordinance's infringement on the rights of due process and privacy guaranteed by the New Jersey State Constitution.[39]

While the court recognized that Plainfield's goals were legitimate, it cautioned that the power to attain these goals is "not without limits."[40] In order for a zoning ordinance to be valid, it must both bear a real and substantial relation to the end sought to be achieved and be a reasonable use of the state's police power.[41] The ordinance's numerical restrictions did not meet this test.[42] Additionally, classifications based on biological or legal relationships arbitrarily and needlessly prohibit numerous uses which posit no danger to the effectuation of the desired goals.[43] Recognizing that regulations based on

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] 81 N.J. at 113-14, 114 n.10, 405 A.2d at 375, 375 n.10. *See* note 16 *supra* and accompanying text.

[36] 81 N.J. at 109, 405 A.2d at 372.

[37] 71 N.J. 206, 364 A.2d 993 (1976).

[38] *Id.* at 225, 364 A.2d at 1003.

[39] 81 N.J. at 111-15, 405 A.2d at 373-75. *See* note 13 *supra* and accompanying text.

[40] 81 N.J. at 106, 405 A.2d at 370.

[41] *Id.* at 105, 405 A.2d at 370-71.

[42] *Id.* at 106, 405 A.2d at 371. *See* note 11 *supra* and accompanying text.

[43] *Id.* at 107, 405 A.2d at 371. The court speculated that Plainfield's ordinance would allow a group of ten distant cousins to reside in a single unit within the municipality but would

such relationships may house inaccurate assumptions about the stability and social desirability of unrelated individuals residing together, the court suggested that the goal of preserving a "family" style of living might be more sensibly attained by a "single-housekeeping unit" requirement.[44] That is, "[a]s long as a group bears the 'generic character of a family unit as a relatively permanent household,' it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors."[45] Such a requirement would eliminate the unnecessary infringement upon the privacy and freedom of unrelated persons.[46]

Plainfield's contention that its ordinance was necessary to prevent overcrowding and congestion was similarly rejected by the court as being "too tenuously related to these goals to justify its impingement upon the internal makeup of the housekeeping entity."[47] In the court's opinion, the appropriate resolution of the problems of overcrowding and congestion had already been suggested in *Kirsch Holding Company*.[48] *Kirsch* observed that such problems could be relieved through the implementation of area or facility-related ordi-

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prohibit five unrelated judges from exercising the same right. The court held such arbitrary line-drawing intolerable, where less restrictive alternatives exist and more precise means are available to achieve a legitimate goal. *Id. See, e.g.*, Pascack Ass'n v. Mayor & Council, 74 N.J. 470, 483, 379 A.2d 6, 12 (1977); Berger v. State, 71 N.J. at 223-24, 364 A.2d at 1002 (1976); Kirsch Holding Co. v. Borough of Manasquan, 59 N.J. at 251, 281 A.2d at 518 (1971).

[44] 81 N.J. at 107-08, 405 A.2d at 371-72. In support of its observation, the court referred to City of Des Plaines v. Trottner, 34 Ill. 2d 432, 216 N.E.2d 116 (1966), in which Justice Schaefer wrote:

> [A] group of persons bound together only by their common desire to operate a single housekeeping unit, might be thought to have a transient quality that would effect adversely the stability of the neighborhood. . . . [Such] . . . unrelated persons would be more likely to generate traffic and parking problems than would an equal number of related persons.
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> *But none of these observations reflects a universal truth.* Family groups are mobile today, and not all family units are internally stable and well-disciplined. Family groups with two or more cars are not unfamiliar.

Id. at 108, 405 A.2d at 372 (court's emphasis) (quoting City of Des Plaines v. Trottner, 34 Ill. 2d 432, 437-38, 216 N.E. 2d 116, 119 (1966)).

[45] 81 N.J. at 108-09, 405 A.2d at 372 (quoting City of White Plains v. Ferraioli, 34 N.Y. 2d 300, 305, 313 N.E. 2d 756, 758, 357 N.Y.S. 2d 449, 452 (Ct. App. 1974)). The test for a single housekeeping unit appears to be whether the individuals residing within the household share common areas such as kitchen and eating facilities. II N. WILLIAMS, JR., AMERICAN LAND PLANNING LAW § 52.02 (1974).

[46] 81 N.J. at 109, 405 A.2d at 372.

[47] *Id.* at 110, 405 A.2d at 373. The court also found the ordinance to be "overinclusive because it prohibit[ed] single housekeeping units which may not, in fact, be overcrowded or cause congestion" and "underinclusive because it fail[ed] to prohibit certain housekeeping units—composed of related individuals—which do present such problems." *Id.*

[48] *Id.*

nances.[49] These ordinances could either "limi[t] the number of occupants in reasonable relation to available sleeping and bathroom facilities or requir[e] a minimum amount of habitable floor area per occupant."[50] Ordinances of this nature would provide a more legitimate means to achieve the goal of eliminating overcrowding than would restrictions based on biological or legal relationships.[51] Thus, the public health, as well as the integrity of the internal composition of the household, would be protected.[52]

Plainfield's reliance on *Belle Terre* for further justification of its ordinance was summarily, but emphatically, rejected by the New Jersey court.[53] While recognizing that *Belle Terre* would be dispositive of any federal constitutional questions that might be involved, the court stressed its prerogative to interpret New Jersey's constitution more stringently.[54] Judging the reasoning of *Belle Terre* to be "both unpersuasive and inconsistent" with former decisions adjudicated by the New Jersey supreme court, the court chose not to follow it.[55]

In a lengthy critique, Justice Mountain dissented from the court's "unfortunate resort to the New Jersey Constitution as a basis of decision" as well as the impact the majority's decision would have on zoning.[56] He exalted the status of the biologically or legally related family over the single non-profit housekeeping unit.[57] Justice Mountain asserted that "[t]he family should be entitled . . . to stand . . . in a distinctly *preferred* position. There is no support in our *mores* as there should be none in our law, to justify the elevation of any group of unrelated persons to . . . parity with a family."[58] Ac-

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[49] 59 N.J. at 254, 281 A.2d at 520.

[50] *Id.*

[51] 81 N.J. at 110, 405 A.2d at 373.

[52] *Id.* This solution to density-related problems and the appropriateness of imposing such restrictions was affirmed in Home Builders League v. Township of Berlin, 81 N.J. 127, 405 A.2d 381 (1979).

[53] 81 N.J. at 111-12, 405 A.2d at 373-74.

[54] *Id. See* note 5 *supra* and accompanying text.

[55] 81 N.J. at 111-12, 405 A.2d at 373-74. The majority expressly rejected the dissent's contention that their holding in *Kirsch* had been undermined by the Supreme Court's subsequent holding in *Belle Terre*. The majority explained that while the federal aspect of the *Kirsch* holding was affected by *Belle Terre*, the state constitutional aspect remained unimpaired. The majority buttressed its reasoning by noting that *Berger v. State*, which was decided by the New Jersey supreme court after *Belle Terre*, specifically endorsed the *Kirsch* holding. *Id.* at 112-13, 405 A.2d at 374.

[56] *Id.* at 115, 405 A.2d at 375 (Mountain, J., dissenting).

[57] *Id.* at 124, 405 A.2d at 380 (Mountain, J., dissenting). Justice Mountain asserted that the majority had "denigrated one of the greatest and finest of our institutions—the family." *Id.* (Mountain, J., dissenting).

[58] *Id.* (Mountain, J., dissenting) (emphasis in original).

cordingly, the dissent would have upheld the Plainfield ordinance rather than deprive homeowners residing in an area zoned for single-family dwellings the protections previously enjoyed.[59]

Justice Mountain further criticized the majority for its failure to enunciate why the reasoning of *Belle Terre* was unpersuasive.[60] He emphasized the similarity between the ordinances in *Belle Terre* and *Baker*, pointing out that both are essentially identical except that Plainfield's is more permissive in that it allows four, rather than two, unrelated individuals to occupy a home.[61] The Justice cited other state court decisions which have confronted this problem subsequent to the decision in *Belle Terre* and noted that all have chosen to adopt the United States Supreme Court's position.[62] Justice Mountain suggested that the majority could have more appropriately achieved its result by basing the holding on the statutory interpretation of the Zoning Enabling Act.[63] This could have been accomplished by finding that the municipality exceeded its delegated authority in defining family.[64] However, because the court based its decision on constitutional rather than statutory grounds, Justice Mountain observed that the people of the state have been deprived of an opportunity to enact corrective legislation.[65]

The decision in *State v. Baker* may be viewed as consonant with societal changes occurring within family relationships and the further development of the concept of a single non-profit housekeeping unit.[66] According to the present law in New Jersey, to permit unrelated individuals to live together in single-family non-profit housekeeping units does not encroach upon the right to have or live as a family; whereas to disallow unrelated individuals to live together would impinge upon their state constitutional rights of privacy and due process.

While the United States Supreme Court sought to maintain long-standing mores and values by emphasizing the importance of the

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[59] 81 N.J. at 115, 405 A.2d at 375 (Mountain, J., dissenting).

[60] *Id.* at 121-22, 405 A.2d at 379 (Mountain, J., dissenting).

[61] *Id.* (Mountain, J., dissenting). *See* notes 2 and 11 *supra* and accompanying text.

[62] 81 N.J. at 122, 405 A.2d at 379 (Mountain, J., dissenting). Subsequent to *Baker*, however, the Supreme Court of California chose not to adopt the position of the United States Supreme Court in *Belle Terre*. In City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 126-27, 610 P.2d 436, 439-40, 164 Cal. Rptr. 539, 542-43 (1980) (in bank), the court held as violative of the state constitutional right of privacy an ordinance which distinguished "between (1) an individual or two or more persons related by blood, marriage, or adoption, and (2) groups of more than five other persons." *Id.* at 545.

[63] 81 N.J. at 118, 405 A.2d at 377 (Mountain, J., dissenting).

[64] *Id.* (Mountain, J., dissenting).

[65] *Id.* at 120, 405 A.2d at 378 (Mountain, J., dissenting).

[66] *See generally* Note, *supra* note 8.

family in *Belle Terre*,[67] the Supreme Court of New Jersey has recognized that social values are changing, and has now ruled that fundamental, individual rights may not be sacrificed in order to protect these traditional values.[68] Justification for the decision in *Baker* may lie in the realization that the New Jersey supreme court is simply recognizing that the issue presented by *Baker* is not one of zoning, but rather a constitutional question of freedom of association. Consequently, New Jersey is construing its state constitution more narrowly than the federal constitution and, therefore, affording its citizens greater protection than that guaranteed under the United States Constitution.[69] The broad constitutional basis of the court's decision effectively prohibits municipalities from passing future zoning ordinances using biological or legal relationships to limit the size of households. Such ordinances would be a *per se* infringement on an individual's right to privacy.[70]

Although the *Baker* court did not expressly so provide, one can infer that the decision is an attempt by the court to alert the municipalities to the basic recognition that zoning should be limited to restrictions on the physical uses of land for the public welfare and should not be utilized for the implementation of social policies. Viewed from that perspective, the decision rendered in *Baker* seems correct. The court did not take a legislative cure away from municipalities in the field of zoning, nor did it debase the sanctity of the traditional family. Rather, the opinion is a reflection of the court's desire to ensure and protect its citizens' constitutional freedoms and reestablish the basic premise upon which zoning first developed.

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[67] 416 U.S. at 9. The Supreme Court in *Belle Terre* recognized that the role of the family transcends zoning. Zoning should be left in the hands of the municipalities and reasonable restrictions should not be looked upon as deprivations of constitutional rights. *See id.* at 8.

[68] 81 N.J. at 114 n.10, 405 A.2d at 375 n.10. Avoiding the implications of the United States Supreme Court majority opinion, *i.e.*, that *Belle Terre* involved no " 'fundamental' " right, 416 U.S. at 7, the New Jersey supreme court implicitly adopted Justice Marshall's dissenting opinion in *Belle Terre*. *Compare* 81 N.J. at 114 n.10, 405 A.2d at 375 n.10 *with* 416 U.S. at 12 (Marshall, J., dissenting). Justice Marshall contended that the Court should have decided the controversy on the basis of the conflict between certain basic rights of the tenants. He would have found that the ordinance violated the tenants' fundamental rights of association and privacy guaranteed by the first and fourteenth amendments. 416 U.S. at 13 (Marshall, J., dissenting).

[69] *See generally* Note, *Village of Belle Terre v. Boraas: "A Sanctuary for People,"* 9 U.S.F.L. REV. 391 (1974); Note, *Village of Belle Terre is a Nice Place to Visit—But Only Families May live There*, 8 URB. L. ANN. 193 (1974). *See also* Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

[70] 81 N.J. at 113-15, 405 A.2d at 375. The court stated that "zoning regulations which attempt to limit residency based upon the number of unrelated individuals present in a single non-profit housekeeping unit cannot pass constitutional muster." *Id.* at 113, 405 A.2d at 375.