

CITY OF BATON ROUGE/
PARISH OF EAST BATON ROUGE

NUMBER 610,359 SEC. "D"

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STEPHEN C. MYERS

STATE OF LOUISIANA

MEMORANDUM IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

MAY IT PLEASE THE COURT:

On request from the Court and in preparation for the trial in the above captioned matter, the City/Parish submits this memorandum on the definition of family as it pertains to the issues in this case.

The defendant contends that because family structures have changed over the years, the Uniform Development Code's definition of family as it applies to A 1 single family zoning is unconstitutional.

Appendix H, Permissible Uses, of the Uniform Development Code, a copy of which is attached, provides that one of the permissible uses of property zoned A 1 single family dwelling is "Single family dwellings with a maximum density of 4.1 dwellings per acre." In other words, an A1 single family zone is composed of residences which are of a maximum density of 4.1 residences per acre and are each occupied by a single family.

Section 2.8 of the UDC defines "family" as:

an individual or two (2) or more persons who are related by blood, marriage or legal adoption living together and occupying a single housekeeping unit with single culinary facilities; or not more than two (2), or not more than four (4) persons (provided the owner lives on the premises) living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost sharing basis.

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Whether or not the definition of a family is old-fashioned and out-dated is irrelevant and not the question before this Honorable Court. Amending the definition of family would be a question for the Metro Council, as the legislative branch, and such amendment may be sought by lobbying the council. The question before this court is simply whether the definition of family

contained in the UDC violates any provision of either the federal or state constitutions.

The City/Parish maintains that the United States Supreme Court in Village of Belle Terre v. Boras, 94 S. Ct.1536 (1974) disposes of the question. There the Court ruled that an ordinance identical to that before the Court today did not violate any provision of the federal constitution. Thus, the Court has held that the ordinance is rationally related to a legitimate governmental purpose (substantive due process); is legislative, so procedural due process does not apply and does not violate rights of privacy, association, or equal protection. Belle Terre to the best of this writer's knowledge, has never been overruled.

In Moore v. City of East Cleveland, 97 S. Ct. 1932 (1977), the Court held that Belle Terre was still good law, but that an ordinance could not split a related family. In Moore, the effect of the ordinance was to prohibit a grandmother from permitting her son and two grandsons to live with her. The Court held that the related family was sacrosanct and related folks had a substantive due process right to live together. Moore did not change anything; the holding of Moore was already implicit in Belle Terre.

The sole question before the Court today is whether the single family definition of the UDC violates any provision of the state or federal constitution. City/Parish submits that it does not, and plaintiff has not offered any proof that it does.

While the Court may well agree with plaintiff that in today's "evolving" climate, a "family" may well involve any number of people, pets, friends, etc., the legislative branch is not required, in considering general health, welfare and safety, to consider the probably countless permutations of "family" floating about in the sociological sea. The legislative branch is required to see only that the legislation does not violate constitutional rights. The ordinance provides only that a "single" family, that is, one family, may occupy residences in zones set aside for such; and the ordinance defines single family in constitutionally permissible terms. If it is time to abandon the concept of single family, and it may well be, that decision is, with all respect, for the legislative branch.

The ordinance at issue does not violate Moore, and there is no constitutional requirement that a family include other than those related by marriage, adoption or blood.

City/Parish respectfully submits that whether or not the ordinance's definition of single family matches up with whatever is going on in the world today is of no consequence to the constitutional question presented.

City/Parish respectfully submits that the ordinance clear and valid and should be upheld.

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CERTIFICATE

I hereby certify that a copy of the above and foregoing has been mailed, postage prepaid, to all counsel of record, by placing same in the mail, properly addressed, this 23rd day of January, 2013.



MAIMUNA D. MAGEE