No. 98-1288

IN THE
Supreme Court of the United States

VILLAGE OF WILLOWBROOK, *et al.*,
Petitioners,
v.
GRACE OLECH,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, NATIONAL LEAGUE OF CITIES, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL GOVERNORS' ASSOCIATION, COUNCIL OF STATE GOVERNMENTS, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, AND NATIONAL CONFERENCE OF STATE LEGISLATURES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Equal Protection Clause gives rise to a cause of action on behalf of a "class of one" where the plaintiff does not allege membership in a protected class or group, but that "ill will" motivated the government to treat her differently than others similarly situated.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases — Page

TABLE OF AUTHORITIES—Continued

Page

Statutes and Rules

Miscellaneous

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] *Amici* have a compel-

[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief *amicus curiae*.

ling interest in the issue presented in this case: whether the Equal Protection Clause gives rise to a cause of action on behalf of a citizen, not a member of a protected class or group, who alleges that "ill will" motivated the government to treat her differently than others similarly situated, even when it is apparent (in this case, from the allegations of the complaint) that there is a rational basis for the challenged government action.

Although the district court dismissed respondent's complaint for failing to state a claim upon which relief can be granted, the court of appeals reversed. It ruled that perfectly rational governmental conduct can violate equal protection if it is in fact motivated by some "illegitimate animus," Pet. App. 5a, and that since such animus was alleged by respondent, this case must go forward.

Amici respectfully submit that, assuming the complaint even stated a claim upon which relief can be granted, the court of appeals committed reversible error by failing to apply rational basis review in this case. Its decision sets a dangerous precedent that, unless reversed, will stand as an invitation to the federal courts to interfere in routine decision-making by States and local governments. This Court has characterized rational basis review as "a paradigm of judicial restraint." *FCC v. Beach Communications,*

Their letters of consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party has authored this brief in whole or in part, and no person or entity, other than *amici*, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

Inc., 508 U.S. 307, 314 (1993). *Amici* believe that "[o]nly by faithful adherence to this guiding principle of judicial review" in cases such as this one "is it possible to preserve" to the political branches their "rightful independence" and their "ability to function." *Id.* at 315 (citation and quotations omitted).

Because of the importance of this question to *amici* and their members, *amici* submit this brief to assist the Court in its resolution of this case.

STATEMENT OF THE CASE [2]

1. By the late 1980s respondent Grace Olech and her husband, Thaddeus Olech, had been living for many years in, and were joint owners of, a single-family home located at 6440 Tennessee Avenue, Willowbrook, Illinois.[3] Opp. App. 4a. The Olechs' neighbors on their side of Tennessee Avenue were Howard Brinkman to the north and Rodney and Phyllis Zimmer to the south. *Id.* at 5a. The portion of Tennessee Avenue adjacent to the homes of the Olechs, Zimmers, and Mr. Brinkman was not a dedicated public street and no easements adjacent to their properties had been granted to any governmental body. *Id.* at 6a-7a.

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[2] This statement is based on Mrs. Olech's second amended complaint, which is reproduced in the appendix to her brief in opposition to the petition for certiorari ("Opp. App."), and on the opinions of the district court and court of appeals reproduced in the petition appendix ("Pet. App.").

[3] Willowbrook is approximately 20 miles from downtown Chicago. Since its incorporation in 1960, Willowbrook's population has increased from 167 to almost 10,000. *See* Village of Willowbrook Community Development Department Webpage, http://www.northstarnet.org/inshome/WILLBRK/comdev/index.html (visited Nov. 7, 1999).

On August 8, 1989, the Olechs, Zimmers, and Mr. Brinkman filed a lawsuit in state court against the Village of Willowbrook in which they sought damages from Willowbrook and others as a result of flooding of their property by stormwater. On April 1, 1991, Mr. Brinkman's claims were dismissed for non-prosecution. *Id.* at 3a.

By the spring of 1995, while the Olechs' and Zimmers' lawsuit against Willowbrook was pending, but almost two years before money judgments were entered in their favor, Willowbrook had developed a plan to require all homeowners on Tennessee Avenue not already connected to the municipal water supply to hook up to it; this plan was to be implemented by the spring of 1997. *Id.* at 5a. At this time the municipal water main extended as far south on Tennessee Avenue as the northern boundary of Mr. Brinkman's property. *Id.* The Olechs' source of water was a private well on their property. *Id.* On an unspecified date in the spring of 1995, the Olechs' well broke and could not be repaired. *Id.* The Olechs' immediate response to this problem was to connect an over-ground hose to the well of their neighbors to the south, the Zimmers. *Id.*

On May 23, 1995, the Olechs, Mr. Brinkman, and the Zimmers asked Willowbrook to hook up their homes to the municipal water supply system right away. *Id.* at 5a-6a. Philip Modaff, Willowbrook's Director of Public Services, was informed that the well on the Olechs' property was broken and that the Olechs were obtaining water from the Zimmers' well via an over-ground hose, a temporary solution that would not work in the winter. *Id.* at 6a. Willowbrook undertook to extend the water main and hook

up the homes as requested, conditioned, as required by law, on the payment by the Olechs, Zimmers, and Mr. Brinkman, respectively, of one-third of the estimated cost of the project, which was paid. *Id.*

In August 1995, Modaff informed Phyllis Zimmer that Willowbrook would not proceed with the project "unless all of the property owners involved" granted Willowbrook a 33-foot easement along Tennessee Avenue. *Id.* at 7a. This information was repeated to Mrs. Zimmer that same month by Gary Pretzer, Village President. *Id.* The complaint continues:

> That on or about September 21, 1995, Defendant PHILIP J. MODAFF sent to Plaintiff GRACE OLECH and Thaddeus Olech *and to other property owners involved* a Plat of Easement whereby they *and property owners on the other side of Tennessee Avenue* would each dedicate a 33-foot strip of their property along Tennessee Avenue for public roadway purposes and grant a 33-foot easement for the construction and maintenance of a roadway, to include pavement, sidewalks, and public utilities. . . .

Id. (emphasis added).[4]

Approximately seven weeks after furnishing Tennessee Avenue residents with a plat of easement indicating the 33-foot easement on property on each side of Tennessee Avenue that was to have been dedicated, paved, and improved with sidewalks, Village Attorney Gorski wrote a letter stating that "[a] fifteen foot (15′) easement, along with a temporary construction

[4] It is not alleged that the property owners on the other side of Tennessee Avenue, who were also subject to the 33-foot easement, were or ever had been plaintiffs in the pending state court lawsuit against the Village of Willowbrook.

easement of five feet (5′) on each side, *will be sufficient to install the water main.* This is consistent with Village policy regarding all other property in the Village." *Id.* at 7a-8a (emphasis added). This portion of Tennessee Avenue thereafter remained non-dedicated. *Id.* at 6a.

The communications concerning the easements resulted in a delay of the project of approximately three months. *Id.* at 9a. The water main connection to the Olechs' home was completed on March 19, 1996. On an unspecified date in November 1995, the overground hose connecting the Olechs to the Zimmers' well froze, depriving the Olechs of running water until the project was completed. *Id.*

On February 11, 1997, the jury in the Olechs' state court lawsuit against Willowbrook returned a verdict in Mrs. Olech's favor of $20,000. *Id.* at 3a. On the same day, the jury returned a verdict in the Zimmers' favor of $135,000. *Id.*

2. On July 11, 1997, Mrs. Olech filed a complaint in this action under 42 U.S.C. § 1983; on October 8 she filed an amended complaint.[5] Opp. 1-2. She alleged that the defendants, the Village of Willowbrook, Pretzer and Modaff, "violated her rights under the Equal Protection Clause of the Fourteenth Amendment." Pet. App. 7a (opinion of district court); *see* Opp. App. 2. Specifically, Mrs. Olech alleged that the defendants

> treated [her and her husband], Howard Brinkman, and Rodney C. Zimmer and Phyllis S. Zimmer differently from other property owners in the Village of Willowbrook by demanding the 33-foot easements and the 66-foot dedicated street as a condition of the extension of the water main because of the ill will generated by the state court lawsuit and in an attempt to control stormwater drainage in the vicinity to the detriment of [the Olechs], and other plaintiffs in the state court lawsuit, by the use of ditches and swales along Tennessee Avenue.

Opp. App. 8a. Mrs. Olech characterized this treatment as "irrational and wholly arbitrary." *Id.*

Mrs. Olech further alleged that the state court lawsuit, which had been filed in 1989 and did not go to judgment until 1997, had "generated substantial ill will on the part of" the defendants in 1995. This resulted from "the coverage of the state court lawsuit in the local press which made [the Village] and its officers and employees look bad; the erroneous belief on the part of [Willowbrook's officers and employees] that the state court lawsuit was frivolous and meritless; and the fact that, prior to the filing of the state court lawsuit" in August 1989, the Olechs and Mr. Brinkman "had refused to grant certain drainage easements for a stormwater drainage project favored by" the Village. *Id.* at 4a.

3. The district court granted defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Analyzing the complaint under the legal standards set forth in *Esmail v. Macrane*, 53 F.3d 176 (7th Cir. 1995), the district court reasoned that "[e]ven accepting Olech's allegations that her state-court action generated 'ill will' in Willowbrook against her and her neighbors," it could not "conclude that the Village

[5] At no time did Mrs. Olech seek injunctive relief under state law. *See, e.g., Arnold v. Engelbrecht*, 518 N.E.2d 237 (Ill. App. 1987).

ever 'harassed' or 'picked on' Olech and her neighbors 'out of sheer vindictiveness' as in *Esmail*." Pet. App. 13a. The court also observed that from the complaint itself, it appeared "that the reason that the Village wanted 33 feet of easement rather than 15 feet of easement was so that it would be able to install a paved public roadway along Tennessee Avenue with sidewalks and public utilities—something it apparently could not do without the additional 18 feet of space." *Id.*

4. On appeal, the court of appeals held that the Equal Protection Clause can be invoked by "a person who can prove that 'action taken by the state, whether in the form of prosecution or otherwise, was a spiteful effort to 'get' him for reasons wholly unrelated to any legitimate state objective.' " *Id.* at 1a-2a (quoting *Esmail*, 53 F.3d at 180). "[T]he 'vindictive action' class of equal protection cases requires proof that the cause of the differential treatment of which the plaintiff complains was a totally illegitimate animus toward the plaintiff by the defendant." *Id.* at 5a. Because the court concluded that the allegations of Mrs. Olech's amended complaint met this standard for purposes of a motion to dismiss, it reversed the dismissal of her action. *Id.* at 4a-5a.

As the court of appeals read the complaint, it alleged that Willowbrook told the Olechs that it would connect them to the municipal water main but required a 33-foot easement, rather than the customary 15-foot easement, in order "to widen the road on which they live[d]." *Id.* at 2a. The Village took this action, the court of appeals said, because "the Olechs earlier had sued the Village, *and obtained damages*, for flood damage caused by the Village's negligent installation and enlargement of culverts located near

the Olechs' property." *Id.* at 2a-3a (emphasis added). According to the court of appeals, the amended complaint asserted that the Village "refuse[d] to perform" its obligation to provide water to Mrs. Olech, "one of the residents, for no reason other than a baseless hatred." *Id.* at 4a.[6]

SUMMARY OF ARGUMENT

The decision below should be reversed because the court of appeals failed to apply the rational basis test to the challenged action as this Court's precedents require. It never determined whether under a set of plausible facts Willowbrook's actions furthered a legitimate governmental interest. Rather, the court ruled that otherwise perfectly rational governmental conduct that does not affect suspect classifications or fundamental rights violates the Equal Protection Clause if it is in fact motivated by some "illegitimate animus."

Under this Court's precedents, this analysis is incorrect. Under rational basis review inquiry into actual motivation is not relevant. A court need only determine that the challenged action was rationally related to a conceivable legitimate governmental interest, regardless of the government's motivation in fact. Only when reviewing government actions that impair fundamental rights or classify persons under suspect categories, like race or gender, does actual motivation become relevant.

By failing to apply the rational basis standard to the municipal actions at issue here, the decision

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[6] As is discussed *infra* at 17-18, the court of appeals appears to have based its judgment on an understanding of Mrs. Olech's allegations that is in some respects at odds with her amended complaint.

below disrupts important interests that the standard was meant to preserve. It allows plaintiffs to state an equal protection cause of action simply by alleging differential governmental treatment assertedly motivated by an illegitimate animus. The decision below thus raises the specter of burdensome, fact-driven federal litigation bogging down state and local government decision-making. Were it upheld by this Court, almost any angry citizen could proceed through discovery and present evidence to a jury simply by alleging that some illegitimate animus resulted in an uneven distribution of the benefits or burdens of civic life.

ARGUMENT

THE JUDGMENT OF THE COURT OF APPEALS SHOULD BE REVERSED BECAUSE THERE WAS A RATIONAL BASIS FOR THE VILLAGE'S ACTIONS

Amici agree with petitioners that because the Equal Protection Clause prohibits discrimination against classes or groups, Mrs. Olech's amended complaint failed to state a claim upon which relief can be granted. Even were this not the case, however, the judgment of the court of appeals should be reversed because it is apparent from the allegations of the complaint that there was a rational basis for the Village's actions. This Court has "repeatedly held that a 'classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose.' " *Central State Univ. v. American Ass'n of Univ. Professors*, 119 S. Ct. 1162, 1163 (1999) (per curiam) (quoting *Heller v. Doe*, 509 U.S. 312, 319-20 (1993)).

The court of appeals made no effort to determine whether the Village's actions could plausibly be explained as "rationally related to a legitimate state interest." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (per curiam). Rather, the court ruled that a plaintiff states a claim under the Equal Protection Clause simply by alleging personal animus —"substantial ill will"—and differential treatment, and that the outcome will turn on whether the plaintiff can prove that the animus was in fact the cause of the treatment. By failing to apply rational basis review to Mrs. Olech's claim, the court below committed a fundamental error. Unless the decision below is reversed, routine governmental decisions of every sort will become the subject of federal court litigation.

A. In The Absence Of A Suspect Classification Or Fundamental Right, Courts Evaluate Equal Protection Challenges To Government Actions Under The Rational Basis Test

The Equal Protection Clause prohibits government classifications that are based upon impermissible criteria or arbitrarily used to burden groups. The Court has recognized that distinctions and classifications in the allocation of legal burdens and benefits may result in a number of ways. A law may establish a classification on its face, and in perhaps the most common type of claim a plaintiff will allege that some explicit statutory classification violates equal protection. *See, e.g., Strauder v. West Virginia*, 100 U.S. 303 (1879) (racial qualification for right to sit as juror). An equal protection claim may also arise where application of a facially neutral statute—one that contains no explicit improper classification—falls unevenly on some group. In *Yick Wo v. Hopkins*, 118

U.S. 356 (1886), for example, the Court invalidated the action of San Francisco municipal authorities in applying an ordinance banning hand laundries in wooden buildings only against Chinese-owned businesses.

The Court has repeatedly held that unless government action "provokes 'strict judicial scrutiny' because it interferes with a 'fundamental right' or discriminates against a 'suspect class,' it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose." *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1988). Mrs. Olech does not allege that she is a member of a protected class, or that the Village took action against her in order to interfere with her exercise of a fundamental right.[7] Her equal protection claim must therefore be analyzed under rational basis review.

Under such review, the courts are to uphold government action unless "the facts preclude[] any

[7] There are several "relatively discrete categories" of rights which this Court has determined are "fundamental" for equal protection analysis. These include the right to vote, *United States v. Classic*, 313 U.S. 299, 315 (1941); the right for each vote to have relatively equal voting strength among legislative districts under a proper apportionment scheme, *Baker v. Carr*, 369 U.S. 186, 209-10 (1962); the right to travel, *Saenz v. Roe*, 119 S.Ct. 1518, 1524-27 (1999); the freedom of association, *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984); the right to privacy, *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965); the right to marriage, *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978); and the right to fairness in the criminal justice system, *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). *Cf. DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 196 (1989) ("the Due Process Clauses generally confer no affirmative right to governmental aid").

plausible inference that the reason for unequal [treatment]" is rationally connected to a proper purpose. *Nordlinger v. Hahn*, 505 U.S. 1, 16 (1992). Thus, under rational basis review, actual intent is not in issue, and government action will be upheld on the basis of conceivable facts and objectives that could plausibly exist. *See, e.g., Heller*, 509 U.S. at 320 ("classification 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification,'" (quoting *Beach Communications, Inc.*, 508 U.S. at 313)); *Dukes*, 427 U.S. at 303-06. Rational basis review is, in short, "a paradigm of judicial restraint," *Beach Communications*, 508 U.S. at 314, and governmental actions reviewed under this standard are afforded "a strong presumption of validity." *Id. See* Laurence Tribe, *American Constitutional Law* 1440 (2d ed. 1988).

The reasons for this highly deferential standard of review are compelling, and fully support the application of rational basis review to routine administrative decisions such as those of the Village of Willowbrook challenged here.[8] Rational basis review is predicated

[8] This Court's cases discussing rational basis review have generally arisen in the context of judicial review of legislative classifications. *But see Alleghany Pittsburgh Coal Co. v. County Comm'n of Webster Cty.*, 488 U.S. 336 (1980) (applying rational basis review to tax assessments). The courts of appeals have, however, routinely applied rational basis review to administrative actions of state and local governments that are challenged on equal protection grounds. *See, e.g., Bannum, Inc. v. City of Fort Lauderdale*, 157 F.3d 819, 823 (11th Cir. 1998) (city's denial of special use permit did not give rise to equal protection claim where city's actions "could have" furthered legitimate state interests); *Indiana State Teachers Ass'n v. Bd. of School Comm'rs*, 101 F.3d 1179, 1182 (7th Cir.

on this Court's appreciation of the fact that " '[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations.' " *Heller*, 509 U.S. at 321 (quoting *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69 (1913)). *See also Beach Communications*, 508 U.S. at 316 n.7 (collecting cases). "Only by faithful adherence to this guiding principle of judicial review . . . is it possible to preserve to" the political branches of government their "rightful independence" and their "ability to function." *Id.* at 315 (citation and quotations omitted). Given the complexity and boundless number of the problems with which they deal, and the fact that few solutions are perfect, the political branches must be able to address the manifold problems of governance in the ways that they think are best for the citizenry as a whole—provided, of course, that their actions do not invidiously discriminate

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1996) (Posner, J.) (referring to defendant's "burden, however easy to carry, of showing that the unequal treatment had a rational basis"); *New Burnham Prairie Homes, Inc. v. Village of Burnham*, 910 F.2d 1474, 1481 (7th Cir. 1990) (denial of building permit upheld absent evidence that " 'Village . . . acted irrationally' "); *Izquierdo Prieto v. Mercado Rosa*, 894 F.2d 467, 472 (1st Cir. 1990) ("[r]ational basis analysis is . . . required" in government employee's challenge to her transfer as violative of equal protection); *Carolan v. City of Kansas City*, 813 F.2d 178, 182 (8th Cir. 1987) (allegedly "stricter" enforcement of building code was "rational" and therefore valid); *Ciechon v. City of Chicago*, 686 F.2d 511, 524 (7th Cir. 1982) (disparate treatment of two similarly situated employees violated equal protection because "the City had not even a rational basis for its disparate treatment"); *Zeigler v. Jackson*, 638 F.2d 776, 779 (5th Cir. 1981) (state agency violated equal protection where it "failed to offer a rational justification for the different treatment accorded" terminated employee).

against fundamental rights or protected classes. *See id.*

" '[The rational basis standard] is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy.' " *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 175 (1980) (quoting *Dandridge v. Williams*, 397 U.S. 471, 485-86 (1970)). As the Court recently reiterated with reference to legislative decisions in reasoning fully applicable to administrative determinations,

> 'The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.'

Beach Communications, 508 U.S. at 316 (quoting *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 (1955)). In short, "the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. It is enough that the State's action be rationally based and free from invidious discrimination." *Dandridge*, 397 U.S. at 486-87 (citing *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911)).

B. It Is Clear From The Allegations Of The Amended Complaint That There Was A Rational Basis For The Village's Actions

The court below wholly ignored the standard articulated in these cases, under which government action is upheld if "there is any reasonably conceivable state of facts that could provide a rational basis" for it. *Heller*, 509 U.S. at 320 (quotations omitted). Rather than inquire whether rational and legitimate explanations for the conduct were plausible, the court proceeded on the premise that actual governmental motives were dispositive. It stated the rule that if "the cause of the differential treatment of which the plaintiff complains was a totally illegitimate animus," an equal protection claim is established. Pet. App. 4a-5a.

The court professed to be "troubled . . . by the prospect of turning every squabble over municipal services, of which there must be tens or even hundreds of thousands every year, into a federal constitutional case." *Id.* at 5a. But by failing to inquire whether there was a conceivable rational basis for the Village's actions (and, *amici* respectfully submit, by failing to accurately characterize Mrs. Olech's allegations, *see infra* at 17-18), the court of appeals contributed mightily to the very outcome it lamented.

In this case, no imagination was required to identify the required rational basis for the Village's alleged conduct. The amended complaint specifically asserts that the Village demanded the additional easement in order to allow it "to control stormwater drainage in the vicinity," Opp. App. 8a, and "for the construction and maintenance of a roadway, to

include pavement, sidewalks, and public utilities."[9] It was therefore entirely appropriate for the district court to dismiss the case on the basis of the amended complaint alone.[10]

While the court of appeals did not expressly state that it was applying a standard other than rational basis review, it not only failed to inquire into conceivable justifications for the Village's conduct, but it also ignored critical allegations of the complaint. According to the court of appeals, Willowbrook agreed to connect the Olechs to the municipal water main but required a 33-foot easement, rather than the

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[9] The Village might reasonably have believed that the additional improvements were necessary and desirable for any number of reasons, and that it was less disruptive to the residents of Tennessee Avenue and other users of that road, and more cost effective, to install water main connections, pave the road, and install sidewalks at one time rather than sequentially. *See* note 3, *supra*.

[10] Dismissal was proper for the additional reason that Mrs. Olech specifically alleged *not* that she was treated differently from other persons similarly situated, but that she was treated the same as others similarly situated, *i.e.*, property owners on both sides of the portion of Tennessee Avenue that the Village hoped to improve. Opp. App. 7a.

Because it was apparent from the allegations of Mrs. Olech's amended complaint that there was a rational basis for the Village's actions and that she had otherwise failed to state a claim for violation of equal protection, the district court properly dismissed the action on the basis of the complaint alone. When it is not apparent from the allegations of the complaint that there is a conceivable rational basis for the challenged governmental action, the governmental defendants can, in response to the complaint, file a dispositive motion which sets forth a conceivable rational basis for the action, accompanied if necessary by evidentiary support. *See generally Moore's Federal Practice* § 56.30[1] (1999).

customary 15-foot easement, in order "to widen the road on which they live[d]." Pet. App. 2a. This was, the court of appeals said, because "the Olechs earlier had sued the Village, *and obtained damages*, for flood damage caused by the Village's negligent installation and enlargement of culverts located near the Olechs' property." *Id.* at 2a-3a (emphasis added). "For three months the Olechs had been treated differently, to their detriment, from all other property owners in the Village only because their meritorious suit against the Village had angered Village officials." *Id.* at 3a.

The court of appeals thus understood the amended complaint to allege that "the cause" of the Village singling out the Olechs for the wider easement was "a totally illegitimate animus toward" them, *id.* at 5a, *i.e.*, for "*no reason other than a baseless hatred.*" *Id.* at 4a (emphasis added). The court of appeals erroneously believed that this ill will was the result of the entry of a large money judgment against the Village. *Id.* at 3a. That judgment, however, was not entered until long after the events concerning the easement. *Compare* Opp. App. 3a *with id.* at 7a-8a.

The court of appeals also ignored the amended complaint's specific allegation that the Village had proposed to the Olechs *and* to other property owners on both sides of Tennessee Avenue that "each dedicate . . . a 33-foot easement for the construction and maintenance of a roadway, to include pavement, sidewalks, and public utilities." Opp. App. 7a. In other words, the complaint alleged that Mrs. Olech had been treated the same as others similarly situated—the property owners on Tennessee Avenue from whom the Village sought a 33-foot easement in order to effectuate

major public works, without regard to whether they were parties to the state court suit. Such conduct, alleged by Mrs. Olech, bears no resemblance to an equal protection violation.

Amici respectfully submit that the court of appeals' decision sets a dangerous precedent that, unless reversed, will invite the federal courts to interfere in routine government decision-making in the guise of enforcing the Equal Protection Clause.[11] As this Court has repeatedly held when applying rational basis review to governmental action challenged as violative of equal protection, such deferential review—"a paradigm of judicial restraint," *Beach Communications*, 508 U.S. at 314—is necessitated by the fact that "[t]he problems of government are practical ones and

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[11] *Amici* do not dispute that cases may arise in which groups of citizens have some foundation for feeling that they have been treated by government in a manner that, as Mrs. Olech alleged in her amended complaint, is "irrational and wholly arbitrary." Opp. App. 8a. Thus, in some cases, governmental action may indeed be wholly unrelated to any legitimate government interest and violate the Equal Protection Clause. *See Allegheny*, 488 U.S. at 340.

Where, as here, that is not so, a plaintiff may have remedies under other provisions of the Constitution. *See, e.g., County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) ("[t]he touchstone of due process is protection of the individual against arbitrary action of government") (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)); *Nollan v. California Coastal Comm'n*, 482 U.S. 825, 837 (1987). In addition, remedies are undoubtedly available under state law. *Futernick v. Sumpter Township*, 78 F.3d 1051, 1059 (6th Cir. 1996) ("Regulation out of personal dislike or vendetta is repugnant to the American tradition of the rule of law. However, the states themselves are vibrant defenders of this tradition."). *See, e.g.*, Pet. Br. 29-30 (cataloguing remedies available under Illinois law).

may justify, if they do not require, rough accommodations." *Heller*, 509 U.S. at 321 (quotations omitted). "Only by faithful adherence to this guiding principle of judicial review . . . is it possible to preserve" to the political branches their "rightful independence" and their "ability to function." *Beach Communications*, 508 U.S. at 315 (citation and quotations omitted).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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