IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY LARAMORE, et al.,	)	
	)	
Plaintiffs,	)	Case No. 89 C 1067
	)	
v.	)	
	)	Wayne R. Andersen
THE ILLINOIS SPORTS FACILITIES AUTHORITY, THE CITY OF CHICAGO, and THE CHICAGO WHITE SOX,	)	District Judge
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This lawsuit is brought by residents of areas adjoining the site which was selected for the new Comiskey Park, a new stadium for the Chicago White Sox, Ltd. (the "White Sox") baseball team. Plaintiffs allege that the site was selected, and their neighborhood destroyed, for racially discriminatory reasons. Pending before the Court is the motion of defendants the Illinois Sports Facilities Authority (the "Authority"), the City of Chicago (the "City"), and the White Sox for summary judgment. For the reasons stated below, we grant the motion for summary judgment.

BACKGROUND

The Decision to Build a New Comiskey Park

By 1984, the White Sox decided that they would have to move out of old Comiskey Park. The White Sox had sunk millions of dollars into repairing the seventy year-old facility, and more costly repairs would be needed in the future. Moreover, for

obvious economic reasons, the White Sox wanted a stadium that met contemporary standards. The team began exploring a variety of options, including a new stadium in the City, the suburbs or in another state.

In 1985, the City began exploring the possibility of a new multi-purpose, domed stadium that would be used by both the White Sox and the Chicago Bears at an old railroad site on Roosevelt Road. The White Sox were interested, but the Bears did not want to share a stadium. Attempts were made in the legislative session that ended in the summer of 1986 to garner some legislative support for a domed stadium, but the idea never got past the talking stage.

Some time during 1986, the White Sox suggested that the City consider the possibility of building a new stadium near the existing facility. Unlike the Roosevelt Road site, the area around Comiskey Park had all of the necessary infrastructure already in place, which meant a savings of at least $50-60 million. Apparently in response to this suggestion, Rob Mier, the City Commissioner for Economic Development, directed Rodrigo del Canto of the City's Planning Department to examine the possibility of putting a stadium near the existing facility.

Rodrigo del Canto and his assistants assumed that the White Sox would continue to play in the old stadium during the two years it would take to build a new one. Thus, the site where the existing stadium stood could not be used for any portion of the new stadium. They also assumed that the new Comiskey would be the same size as the old Comiskey Park. Based on those assumptions, del Canto and his assistants identified three possible sites--one over the Dan Ryan expressway, one north of old Comiskey Park, and one south of old Comiskey Park. The area north of Comiskey Park is the Armour Square

Park neighborhood, which consists of Armour Square Park, a park slightly smaller than Comiskey Park which was surrounded by housing occupied by all white residents. The area south of Comiskey Park is South Armour Square, an all African-American neighborhood. To the west is East Bridgeport, which contains a shopping area in all-white neighborhood. These three areas are all included in the City's 11th Ward.

Building over the Dan Ryan expressway was extremely costly and, therefore, was the least favored alternative. Building on the northern site would have required using Armour Square Park, which was owned by the Chicago Park District. The southern site required the removal of a number of houses and businesses in South Armour Square. In light of its assumption that the new Comiskey Park would be the same size as the existing facility, del Canto and his assistants concluded that the northern and the southern sites were about equally desirable from a physical and economic point of view. However, the southern site was thought to be more politically feasible. A memorandum drafted to discuss the pros and cons of each site warned that if the northern site was chosen "[n]eighborhood, community and preservation groups will strongly disagree to relocation of public park site." On the other hand, the memo stated that there was no evidence of strong community organizations in South Armour Square and that the residents of that neighborhood had little political support.

The assumption made by the Planning Department that the new stadium would be the same size as the old one turned out to be wrong. In fact, the White Sox wanted a contemporary, first-class stadium that was considerably bigger than old Comiskey Park. A bigger stadium made the northern site much more problematical since the footprint of such a stadium was larger than Armour Square Park. That meant either that: (a) the White

Sox would have to play somewhere else for two years so that a portion of the site where the old stadium stood could be used for the new one; or (b) a substantial number of houses north of the Park would have to be eliminated to enable the stadium to be built from Armour Square Park northward. Neither alternative was attractive. The only other place to play during construction--Wrigley Field--could not be used for a variety of reasons. The area north of Armour Square Park was more densely populated than the residential area south of Comiskey Park and had houses with greater market value. The area north of the stadium also was zoned residential, while the area to the south was already zoned for manufacturing uses. Moreover, going north meant taking Armour Square Park, which is Chicago Park District property. In addition, the White Sox and the City already owned land to the south, and they did not own any land to the north. In light of the many difficulties associated with the northern site, the White Sox and Al Johnson, Mayor Harold Washington's adviser on stadium issues, assumed in their discussions that if the new stadium was built in the vicinity of old Comiskey Park, it would be constructed to the south of the existing stadium.

Passage of the Illinois Sports Facilities Act

After the 1986 legislative session ended without any progress being made on a stadium bill, the White Sox announced that they would pursue a site in suburban Addison, Illinois. However, political leaders in DuPage County lost interest in pursuing the Addison deal when voters narrowly rejected the proposed White Sox stadium in a non-binding referendum in November, 1986. Shortly thereafter, White Sox representatives met with Mier and Johnson at City Hall to give the City one last chance to see if something could be done to build a stadium in Illinois before they would be forced

to relocate the team--something the White Sox did not want to do. The White Sox proposed a publicly-owned facility financed by rent payments and a new hotel tax, to be located at either Roosevelt Road or 35th and Shields, near old Comiskey. They made it clear, however, that the necessary legislative action had to be taken by the end of the legislative veto session in December or the White Sox would be forced to leave Illinois.

On Thanksgiving or the day after, Mayor Washington met with Johnson and Mier. The Mayor told them that he wanted to keep the White Sox in Chicago, but that he did not want to put local tax money into the project. The Mayor also wanted to keep residential relocation to a minimum. Following the meeting with the Mayor, there was a marathon 12-hour meeting in which representatives of the White Sox and the City negotiated a Memorandum of Understanding ("MOU"), which the Mayor and Jerry Reinsdorf, Chairman of the White Sox, signed on December 1, 1986. The MOU provided that the White Sox and the City administration would approach the Illinois General Assembly and seek authorization and funding for a new stadium to be located in the immediate vicinity of 35th and Shields. It also provided that Chicago Housing Authority ("CHA") housing, schools and church property would not be condemned in order to construct the new stadium.

There was little discussion before the MOU was signed about the exact stadium site. Early in the meeting, White Sox representatives conceded that the Roosevelt Road site would cost too much to be funded with the proposed hotel tax package. There was no discussion before the MOU was signed as to exactly where the new stadium would be located in the area around 35th and Shields. However, Al Johnson testified in his deposition that he believed everyone at the meeting assumed that the stadium would be

located south of old Comiskey. White Sox representatives who gave deposition testimony agreed that they had shared the same assumption. The MOU itself contains some evidence that the City and the White Sox contemplated that the new facility was to be constructed south of the existing stadium inasmuch as all of the kinds of property specifically exempted from condemnation--CHA housing, a school and church property--were located south of the stadium.

In a newspaper article published in the Chicago Tribune on December 7, 1986, Eddie Einhorn, Vice Chairman of the White Sox, was quoted as stating that the new stadium would, in all likelihood, be built just south of the present facility. In the same article, Mayor Washington was quoted as stating that "a couple hundred residents will have to lose their homes under the plan." He was further quoted as stating that "[a]ny displacement is unfortunate, but one must resort to it. A fair offer will be made for their property."

There were three days remaining on the General Assembly's schedule when the MOU was signed. Representatives of the City and the White Sox went to Springfield to persuade the General Assembly to pass the necessary legislation. With the support of Governor Thompson, Mayor Washington and the Democratic leadership of the House and Senate, the Illinois Sports Facilities Act ("the Act") passed at the close of the legislative session and was approved by the Governor on January 20, 1987. 70 Ill. Comp. Stat. 3205/1 (1987).

The Act created a new unit of local government, the Authority, to issue bonds and to build and operate the new stadium. Section 8(6) of the Act, directs the Authority to determine the location of the new sports facility. The Act sets forth the boundaries of an

area within which the Authority would have the power of eminent domain. The Authority's jurisdiction did not extend to the north of 33rd street, which is the immediate northern edge of Armour Square Park. Moreover, the Act specifically prohibited the Authority from using the eminent domain power to condemn property owned, leased or used by the City, the CHA, the Chicago Board of Education or any church. The Act added Chicago Park District land to the list of property exempt from condemnation, thereby precluding the Authority from condemning Armour Square Park. By so limiting the Authority's condemnation powers, the Act effectively required the Authority to build the new Comiskey Park south of the existing facility.

Preserving Armour Square Park was necessary in order to secure the support of Senator Timothy Degnan, in whose district Comiskey Park was located. In conversations with Tim Wright, one of Mayor Washington's staff members, Degnan and 11th Ward Alderman Huels both emphasized the importance of Armour Square Park to their constituents. Wright did not recall that anyone objected to adding the Park to the list of property that could not be condemned.

The White Sox Raise the Possibility of Moving to Florida

Nothing happened for almost a year after the Act was passed, while the Governor and the Mayor wrangled over appointments to the Authority Board. In October 1987, Jerry Reinsdorf met with the Mayor and Rob Mier to express concern about the continuing delay in starting up the Authority. Reinsdorf told the Mayor that he was pursuing discussions with St. Petersburg, Florida as a back-up option.

Shortly thereafter, the dispute over appointments to the Authority Board was settled. The Governor appointed Tom Reynolds as Chairman of the Authority. Mayor

Washington appointed Al Johnson to the Authority Board and also chose Peter Bynoe, an African-American real estate developer, to serve as the Authority's first executive director.

By early 1988, the White Sox had an offer from St. Petersburg to play in its new stadium. That offer put significant pressure on the Authority to move the project ahead. As a result, the Authority proceeded on two fronts, planning for the new stadium, while at the same time hiring an engineering firm (as it was required to do by the 1986 Act) to see if the old stadium could be rehabilitated. Al Johnson believed that it was important to have an engineering study done in order to quiet the objections of citizen groups and others who wanted to save the old ballpark. However, neither he nor Bynoe believed that the White Sox would agree to stay in Illinois to play in a renovated old Comiskey Park which did not meet contemporary stadium design standards. Indeed, the White Sox had always said that they were not interested in a renovated old Comiskey because such a facility would be economically obsolete.

On May 6, 1988, the Authority approved schematic drawings prepared by an architectural firm experienced in ballpark design.

The Passage of the Amended Act

The legislation enacted at the end of 1986 authorized the Authority to issue up to $120 million worth of bonds in order to finance the clearance of the site and construction of the new stadium. By the spring of 1988, it became apparent that $120 million would not be enough. At the end of the legislative session, representatives of the Authority, the City and the White Sox returned to Springfield to seek legislation that, among other things, would increase the amount of bonds the Authority was authorized to sell to $150

million.

While the issue was being considered in the Illinois General Assembly, the White Sox continued to negotiate with St. Petersburg, Florida as well. In June, the Florida legislature passed a $30 million appropriation to speed up redesign of the St. Petersburg Suncoast Dome to the White Sox' specifications. The White Sox publicly stated that if the proposed stadium legislation was not enacted by the end of the Illinois legislative session, the White Sox would move to Florida.

Once again, the Mayor[FN1], Governor Thompson, and the Democratic leadership in the House and Senate supported the legislation. Nevertheless, there was substantial opposition to public funding of the project, and the bill barely passed at literally the last possible second. Afterwards House Speaker Madigan was quoted in the press as stating that "the governor and I and all the members took risks and passed this bill to keep the White Sox in Chicago."

In addition to authorizing the Authority to sell additional bonds, the amended Act set forth in exact detail the land that the Authority could condemn. Like the earlier version of the Act, the amended Act put CHA property, a school, church and Armour Square Park beyond the reach of the Authority's power of eminent domain. The amended Act also established a 25% minority set-aside program for the contract to build the new stadium and required the Authority to establish an affirmative action program "designed to promote equal employment opportunity which specifies the goals and methods for increasing participation by minorities and women in a representative mix of job classifications required to perform the respective contracts." Finally, the amended Act contained a new provision granting the Authority the power to provide "relocation

assistance and compensation for landowners and tenants displaced by any land acquisition of the Authority, including the acquisition of land and construction of replacement housing as the Authority shall determine."

The amended Act set a deadline of September 15, 1988 for the signing of a Management Agreement between the Authority and the White Sox, in which the White Sox would commit to remaining in the new facility for the expected term of the bonds. If no agreement was reached by that point, the Authority's power to levy taxes would be revoked.

The Authority signed a Management Agreement with the White Sox on June 29, 1988. The Management Agreement required the Authority to take title to 80% of the residential property in the area to be condemned and all of certain commercial property by October 15, 1988. If the Authority did not meet that deadline, the Agreement gave the White Sox the option to terminate the Agreement.

The Bess Proposal

In December 1987, an architect named Phillip Bess sent a letter to members of the newly constituted Authority Board suggesting that a ballpark could be designed specifically to be built on Armour Square Park. At that time, the Authority Board did not pursue Bess' suggestion. In August 1988, Bess resurfaced, this time with a scale model of his proposed new stadium. Bess' model was of a small ballpark, without the contemporary features the White Sox considered important to a stadium design. Bess had designed the stadium to fit within Armour Square Park and proposed four multi-level parking facilities.

The Bess proposal was unsatisfactory to the White Sox who, for economic

reasons, did not want the kind of ballpark that Bess had designed. Moreover, pursuing the Bess proposal would have put the Authority in a position where it would almost surely lose the White Sox. If the Authority did not have title to most of the property on the southern site by October 15, 1988, the White Sox would have the right to terminate the Management Agreement. If the Management Agreement was terminated, the Authority's ability to impose the necessary taxes would automatically terminate. Under those circumstances, the Authority would literally be required to go back to the drawing board, returning to Springfield, where the General Assembly had previously approved the legislation by the slimmest of margins, for authorization to proceed with an entirely new project. That project would have been dead on arrival because it would have faced the opposition of Senator Degnan and other representatives of the area, who had already made their opposition to the use of Armour Square Park clear.

Bess' plan would also have been vehemently opposed by Walter Netsch, the Chairman of the Chicago Park District Board, and, coincidentally, the husband of State Senator, Dawn Clark Netsch. Armour Square Park is a historically important park designed by Frederick Olmstead and noted Chicago architect Daniel Burnham. Netsch greatly regretted the destruction of other parks designed by Burnham when the Dan Ryan expressway was constructed, and he was adamant that Armour Square Park would not be destroyed as well. When Mier asked Netsch if he would consider giving up Armour Square Park, Netsch replied, “no never,” expressing his “undying opposition” to such a proposal. The Park District and Netsch had a general policy against giving up or trading Park District land for any purpose.

The Relocation of South Armour Square Residents

The Authority met its October 15, 1988 deadline. By September 15, 1988, the Authority had negotiated settlements with all of the homeowners and tenants who lived in the 175 dwellings that were to be razed to make room for the new stadium, without using the "quick take" authority given to it by Act. The Authority agreed to build new homes for homeowners or pay them fair market value plus a $25,000 bonus. The Authority also agreed to pay relocation costs for tenants and to give a cash settlement to long-term tenants. The Authority spent $10.3 million relocating homeowners and tenants. None of the homeowners or tenants who were relocated by the Authority ever joined in this lawsuit or brought any other action against the Authority, the City, or the White Sox claiming that their rights were in any way abridged. The relocations resulted in approximately 475 African-American residents leaving South Armour Square.

Amending the Zoning Ordinance

On October 14, 1988, the Authority filed an application with the City for an amendment to the City's zoning ordinance. The application sought a waiver of certain restrictions, including those concerning light, heat, noise, smoke, toxic discharge, noxious odors, fire, and explosive materials. In early November, 1988, the Chicago Plan Commission held a public hearing. At plaintiffs' insistence, a further hearing was held on November 30, 1988. During a final hearing on December 8, 1988, the Plan Commission voted to recommend approval of the application by the City Council, with the suggestion that the City Council require the Authority to address concerns before the issuance of a building permit. On December 21, 1988, the Chicago City Council unanimously passed a zoning ordinance reclassifying the area where the new stadium was to be built from restricted manufacturing to a "Stadium Planned Development." This amendatory zoning

ordinance required the Authority to mitigate the effects of the construction on the adjoining properties.

Construction began on the new stadium in May 1989. The first game was played in the new stadium in April 1991.

The Lawsuit

Plaintiffs filed this suit against the Authority, the White Sox, and the City of Chicago. Count I alleges that defendants' conduct violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 (1979). Plaintiffs allege that the defendants engaged in racial discrimination in connection with the decision making process which led to the destruction of their neighborhood of South Armour Square in order to build the new Comiskey Park. Count IV alleges that the amendatory zoning ordinance is arbitrary and capricious in violation of the Chicago Zoning Ordinance and Article I, Section 2 of the Illinois Constitution. As relief, plaintiffs seek a declaration that the amendatory zoning ordinance is null and void, certain equitable relief, and compensatory and punitive damages.

The plaintiffs are: 1) individual African-American persons who live in Wentworth Gardens, a low-rise development adjacent to the stadium which has federally regulated rents and is operated by the CHA; 2) individual African-American persons who live in T.E. Brown Apartments, a federally regulated eleven-story apartment building adjacent to the stadium; 3) a class of persons who live, or have lived, in Wentworth Gardens or T.E. Brown Apartments since June 29, 1988, except for those persons who moved into Wentworth Gardens or T.E. Brown Apartments after June 30, 1988; and 4) the South Armour Square Neighborhood Coalition, a not-for-profit corporation the members of

which are residents of Wentworth Gardens and T.E. Brown Apartments, and the goals of which include the preservation of the South Armour Square neighborhood. [FN2]

This case initially was assigned to Judge Ilana Diamond Rovner. In the proceedings before Judge Rovner, defendants brought a motion to dismiss plaintiffs' complaint. In their motion, defendants argued that plaintiffs have no standing to bring the lawsuit, the action is inappropriate because federal courts should not second-guess and interfere with local land use decisions, and plaintiffs did not properly allege disparate impact and discriminatory intent in the equal protection claims. Judge Rovner rejected these arguments.[FN3]

DISCUSSION

A motion for summary judgment should be granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). All facts must be viewed in the light most favorable to the party opposing the motion. *See United States v. Diebold, Inc.,* 369 U.S. 654, 655 (1962); *Beard v. Whitley County REMC,* 840 F.2d 405, 410 (7th Cir. 1988).

When confronted with a motion for summary judgment, a party who bears the burden of proof may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact which requires trial. *See Celotex Corp. v. Catrett,* 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986) (citation omitted). When the issue is one of intent, the Seventh Circuit has warned that special caution is

needed. *Beard,* 840 F.2d at 410. "However, the basic allocation of responsibility among the parties remains the same and 'even when such issues of motive or intent are at stake, summary judgment is proper where the plaintiff presents no indication of motive or intent supportive of his position.'" *Id.* (citations omitted).

I. EQUAL PROTECTION

In order to establish a violation of the Equal Protection Clause, plaintiffs must demonstrate that they were injured by intentional racial discrimination. Plaintiffs must prove that a discriminatory purpose was "a motivating factor" in the decision to locate the new Comiskey Park to the south of the old ballpark. *See Village of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 266 (1977). Although plaintiffs need not demonstrate that race discrimination was the only reason for the decision in question, they must be able to persuade the finder of fact that it was "a motivating factor" in the decision. *Id.*

In order to meet their burden, plaintiffs cannot simply rely on the fact that the stadium project has had a disproportionate impact on African-American persons. As the Supreme Court held in *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 278-80 (1979), the fact that a particular action adversely affects one group more than another--and that the decisionmaker realizes that it will have such a disparate impact--is not enough to make out a case of intentional discrimination. Instead, the concept of discriminatory purpose implies that the decisionmaker "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Feeney,* 442 U.S. at 279. Thus, in this case, plaintiffs have the burden of coming forward with evidence to prove that the new stadium site was

chosen, at least in part, because it would inconvenience African-American residents and destroy their neighborhood and not merely in spite of the fact that it would have such an effect.

In *Arlington Heights,* the Supreme Court listed a number of factors which are relevant in deciding whether a public body acted for a discriminatory purpose. First, even if the decision is race-neutral on its face, the court should consider whether it is "an obvious pretext for racial discrimination" that is "unexplainable on grounds other than race." *See Shaw v. Reno,* 509 U.S. 630 (1993) (quoting *Arlington Heights,*429 U.S. 252). If the decision passes this first hurdle, the court must then consider whether there is circumstantial evidence that demonstrates a discriminatory purpose or intent. The Court outlined a number of factors which may be relevant in making such a decision, including: 1) whether there is a history of intentional racial discrimination; 2) the specific sequence of events leading up to the decision; 3) whether the decision-making process was marked by departures from ordinary procedures or ordinary substantive principles; and 4) whether there were contemporary statements by members of the decision-making body that call into question the decisionmakers' intent. *Arlington Heights,* 429 U.S. at 266-68.

A. Defining the Decision Makers

In order to prove their case, plaintiffs must establish that the decision makers selected the south site at least in part because of its adverse effects upon the residents of South Armour Square. In this case, the Illinois General Assembly is the entity which made the ultimate decision to place the new ballpark south of the old stadium.

While the Act, on its face, does not identify any specific site, two provisions in the legislation make it virtually impossible to go north: the legislation exempts Chicago

Park District property (Armour Square Park) from eminent domain and the Authority's jurisdiction does not extend to the north of 33rd Street, which is the immediate northern edge of Armour Square Park. By so limiting the jurisdiction of the Authority, the Authority had no choice but to place the new stadium in South Armour Square. The Act gave defendants no discretion. While defendants may have drafted and lobbied for the legislation, they did not pass it. Therefore, the legislature is the entity which decided that the stadium should be placed to the south of the old ballpark, and we consider the legislature to be the "decision maker" in this case. State and local legislators, however, have absolute immunity to suits for money damages and equitable remedies. *Supreme Court of Virginia v. Consumers Union,* 446 U.S. 719 (1980); *Lake County Estates v. Tahoe Reg'l Planning Agency,* 440 U.S. 391 (1979).

Moreover, the White Sox surely were not the decision makers--they are simply a private party seeking a favorable deal. There is no cause of action against private persons who urge the enactment of laws, regardless of their motives. *Munoz Vargas v. Barcelo,* 532 F.2d 765, 766 (1st Cir. 1976). *See also Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.,* 365 U.S. 127, 135 (1961).

While the *Eastern Railroad* case deals with the Sherman Act, we believe its principles apply here. In that case, trucking companies brought the action against railroads, claiming that the railroads conducted a publicity campaign designed to adopt and retain certain laws which were destructive of the trucking business. *Eastern R.R.,* 365 U.S. 127. The railroads attempted to get legislation passed which was beneficial to them and harmful to the trucking companies. In rejecting the trucking companies position, the Court held:

> In a representative democracy such as this, these branches of government act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives. To hold that the government retains the power to act in this representative capacity and yet hold, at the same time, that the people cannot freely inform the government of their wishes would impute ... a purpose to regulate ... political activity....

Id. at 135.

In this case, the White Sox wanted to have a stadium built. They petitioned the legislature to enact legislation which would allow them to remain in the City. The right to petition is one of the freedoms protected by the Bill of Rights. *Id.* "The right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so. It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves." *Id.* at 139. Therefore, we find no wrongdoing on the part of the White Sox.

In sum, we find that the legislature was the "decision maker" in this case and that the White Sox are not be liable for petitioning the legislature for favorable legislation. However, because no party has presented these arguments, and because the parties have devoted substantial time and effort analyzing the equal protection claims against defendants, we will proceed to examine those claims. Therefore, in the sections to follow, we will assume that defendants were the decision makers who decided to place the stadium to the south. As we will show, however, even with this assumption, plaintiffs equal protection claims against defendants fail.

B. Pretext

The first inquiry under *Arlington Heights* is whether the decision, while race neutral on its face, is an obvious pretext for discrimination. As the Supreme Court observed in *Shaw v. Reno,* such decisions are rare. 509 U.S. 630 (1993). The inquiry is whether there is any conceivable explanation for such a decision other than a desire to discriminate on the basis of race.

In this case, the decision to place the stadium south of the old ballpark admittedly has had a disparate impact on African-Americans. We can assume that defendants and the General Assembly knew that one consequence of its actions was that a disproportionate burden would fall on the African-American residents of South Armour Square because the stadium would be built south of old Comiskey.

However, the fact that the decision makers realize that there is a disparate adverse impact on a particular group, without more, is not probative of discriminatory purpose or intent. The dispositive question is whether plaintiffs have shown that a racially-based discriminatory purpose has, at least in some part, shaped the decision. In this case, defendants offer a race-neutral explanation for the disparate impact. The desire to keep the White Sox in Illinois at the least possible cost is a race-neutral explanation for the decision to build the new Comiskey Park south of the old stadium. Because it already had the infrastructure necessary to serve a major league stadium, the site around the old Comiskey Park was obviously an attractive alternative. Moreover, given the White Sox' desire for a contemporary facility and the difficulty of acquiring Park District land, the southern site was more economically and politically feasible than the northern site.

Neither the General Assembly, nor any of the defendants, had any obligation to

ignore the economic and other non-racial concerns that led to the siting decision in order to protect the South Armour Square neighborhood from the adverse effects of a decision to build to the south. For example, when Phillip Bess belatedly proposed fitting a small stadium into Armour Square Park, the Authority was not required to pursue the idea to see whether a workable plan could be devised that would avoid residential relocations in South Armour Square. Instead, the Authority was free to reject the plan on a number of grounds, so long as race was not a factor. The plan was rejected due to the White Sox' desire for a contemporary stadium which would not fit on the site Bess had selected, the need to move quickly in order to avoid losing the Authority's taxing authority which was essential to keeping the White Sox in Illinois, and the Park District's long-standing policy of refusing to give up its land.

In short, the inquiry is not whether something else could have been done which would have had a less disparate impact on African-American residents. The only question is whether the decision to locate the new stadium south of the old one was motivated in part by racial animus against the people living in that area. In this case, there is a race-neutral explanation for the disparate impact of the decision. Therefore, a conceivable explanation exists for the decision other than a desire to discriminate, and plaintiffs have failed to show that the decision is a pretext for racial discrimination. Since the decision passes this hurdle, we proceed to consider whether there is circumstantial evidence which demonstrates a discriminatory purpose or intent.

C. Historical Pattern of Racial Discrimination

In *Arlington Heights,* the Supreme Court stated that an historical pattern of racial discrimination could be used to provide circumstantial evidence of discriminatory

purpose or intent. The Court explained that "[t]he historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes." *Arlington Heights,* 429 U.S. at 267. In this case, plaintiffs complain of racial discrimination since 1945 by the City and local governmental agencies which allegedly has resulted in the segregation and isolation of African-American persons in South Armour Square. This background allegedly includes segregation in public housing and the relocation of the Dan Ryan expressway to create a buffer area to restrain the movement of African-American persons. Plaintiffs argue that the decision to locate the new stadium south of the old one was simply a continuation of previous patterns of discrimination.

Nevertheless, despite years of discovery, plaintiffs have failed to uncover any evidence to support this theory. Whether or not the location of the Dan Ryan was intended to discriminate against African-Americans, the reality of Chicago's political leadership in the late 1980's discredits the claim of a continuing conspiracy. Throughout the period in which the siting decision was made and the legislation was enacted, Chicago had an African-American mayor, first Harold Washington and then Eugene Sawyer. Both Mayor Washington and Mayor Sawyer supported the stadium legislation, believing that the stadium would be located south of old Comiskey and that it would require relocation of a couple hundred African-American residents. Mayor Washington had a significant role in crafting the legislation, taking the steps he believed were necessary to keep the White Sox in Chicago.

Plaintiffs claim that Mayor Washington never really knew for sure where the new stadium would be built. The undisputed facts, however, show that Mayor Washington

must have known that the new stadium would be built to the south and that some African-American residents of South Armour Square would be displaced. However, regardless of Mayor Washington's knowledge, many other African-Americans knew and approved of the location of the site. Al Johnson, an African-American who was the Mayor's close aide and later served on the Authority Board, testified that he understood from the beginning that the site would be located south of the old stadium. Mayor Sawyer also supported the stadium with full knowledge of its location. Peter Bynoe, an African-American who was the Authority's first Executive Director, supervised the clearance of the site and the construction of the new stadium. Moreover, eighteen of twenty African-American state legislators voted for the legislation, and seventeen of eighteen African-American aldermen voted for the necessary zoning ordinance. Therefore, the undisputed facts show that many African-Americans played prominent roles throughout the entire process of planning and building the new stadium.

Mr. Bynoe rejected any suggestion that the site selection was racially motivated, stating that he resented any such claim and that he had never been involved "with anything that had that [racial discrimination] as an objective or an ancillary impact." Mr. Bynoe was proud of the fact that the Authority had provided a relocation effort that, in his words, no one had "come close to anywhere else in the world." Al Johnson similarly testified that he believed the Authority had been fair to the people of the South Armour Square neighborhood in selecting the southern site. It defies logic to suggest that all of these prominent African-American political and business leaders actively participated in a racially motivated plot to destroy the South Armour Square neighborhood.

Plaintiffs also argue that historical patterns of discrimination by the Chicago Park

District and private citizens in Bridgeport give rise to an inference that the City and the Authority were likely to have acted for a discriminatory purpose. Plaintiffs contend that there was a long-standing pattern of racial discrimination in providing city services, including recreational facilities, to South Armour Square residents, as compared to the white residents of Bridgeport. Plaintiffs also contend that some white residents of Bridgeport harassed African-Americans who attempted to use Armour Square Park and that the Park District tolerated such racism.

In *Arlington Heights,* the Court noted that some of the opponents of the low-income housing project at issue there "might have been motivated by opposition to minority groups." *Arlington Heights,* 429 U.S. at 269. The Court, however, concluded that proof that private opposition to the project was to some extent racially motivated did not prove that the Village Board had acted because of racial animus. Instead, what was critical was that the Board had applied to the proposed low-income housing project the same policy that it had applied to other requests that did not involve low-income housing.

In this case, the fact that Armour Square Park may have been misused by some racist individuals does not convert a desire to preserve the amenities offered by the park into an improper, racially motivated purpose. Even assuming that some citizen opposition to the destruction of the park was racially motivated, there is no evidence of any improper purpose on the part of any of the decision makers. The Park District had a well-known and consistent policy against selling or otherwise allowing park land to be used for other purposes. The Chairman of the Park District Board also had a particular interest in preserving historic parks like Armour Square Park. There is no reason to believe that Senator Degnan -- let alone the entire General Assembly -- was acting out of a desire to

discriminate against African-Americans when he sought to protect Park District property from condemnation by the Authority. Moreover, despite years of discovery, there is not a single piece of evidence that any defendant or legislator ever made any racially-tinged statements about Armour Square Park. Thus, there were a number of legitimate reasons to protect the park.

In sum, given the change in the political realities, plaintiffs simply cannot rely on a past climate of racial discrimination or discrimination by private persons as evidence that the siting decision was racially motivated as well. Indeed, the extensive participation of African-Americans in the process makes it highly likely that the decision to build the new park south of the old stadium was *not* motivated in any way by an intent to discriminate.

D. Sequence of Events and Procedural or Substantive Irregularities

The second and third prongs of the *Arlington Heights* test are sequence of events and procedural or substantive irregularities. Regarding the second factor, sequence of events, the *Arlington Heights* Court analogized a situation where a particular piece of property was zoned for multi-family uses, but the zoning was changed to single-family after the town heard that a developer was seeking to use the property for a low-income housing development that was likely to have a significant minority population. In such a case, the abrupt change in policy would provide substantial evidence that the decision had been motivated by racial bias. *Arlington Heights,* 429 U.S. at 267. In *Arlington Heights,* the Court held that there was no evidence of discriminatory purpose or intent in the Village Board's refusal to rezone property that had always been zoned for single family uses to allow a developer to put in a low income housing development. *Id.* at 269.

Regarding the third factor, the *Arlington Heights* Court stated that departures from ordinary procedural or substantive rules might also be probative of discriminatory purpose or intent. *Id.* at 267. In this case, because the parties rely on the same evidence in analyzing the second and third factors, we will proceed to examine these two prongs of the *Arlington Heights* test together.

Plaintiffs argue that the record is filled with evidence of departures from normal procedures, all of which suggest that there was a racial motivation for the site selection. Plaintiffs have not provided any evidence, however, to show what "normal" procedures are for a project like Comiskey Park. This is not a situation like *Arlington Heights* where the zoning board had routine procedures it followed in ruling on requests for zoning changes. Instead, the site selection in this case was the result of a complex political process conducted under intense time pressure. Under those circumstances, there is no "normal" procedure against which to judge the defendants' conduct.

1. Controversy Over When the Site was Selected

Plaintiffs first claim that circumstantial evidence of racial discrimination exists because defendants made plans for a southern site before an irrevocable commitment was made to proceed in that area. Plaintiffs point to confusion in the record about when the site was finally and irrevocably chosen and by whom. They point to testimony by Jerry Reinsdorf that he understood when the Memorandum of Understanding was signed in November 1986 that the Mayor wanted the stadium to be sited to the south. Plaintiffs claim that Mr. Reinsdorf's testimony is contradicted by the testimony of Rob Mier, the City Commissioner of Economic Development, who testified that in his view the site was not finally selected even after the first legislation was enacted. They also point to

testimony by the Chairman of the Authority that he understood from the time he accepted his position that the new stadium would be built south of the old facility. Plaintiffs claim that this testimony conflicts with that of the Authority's Executive Director who testified that the site was not selected until much later, in May 1988.

In fact, the testimony is not nearly as confused as plaintiffs suggest. There is uncontradicted evidence that, from the time the MOU was signed, the presumption was that the stadium would be located to the south of the old facility. The MOU itself suggests that was the plan, since it specifically provides that the City and the White Sox would not seek condemnation authority over CHA, church and school property -- protection that would have been unnecessary unless a southern site was chosen. After the first legislation was passed, it was recognized that the stadium would be built south of the old stadium given the boundaries of the Authority's condemnation power and the legislative protection granted to Armour Square Park.

Rob Mier himself testified that the stadium would have to be built to the south unless the Authority could make a deal with the Park District. Although Mr. Mier testified that he believed such a deal was possible, he recognized that the Chairman of the Park District Board, Walter Netsch, customarily took a strong stance opposing the use of park property for development purposes. Al Johnson, on the other hand, thought that Netsch's opposition made it virtually impossible to obtain Park District land for the project. Mr. Johnson had some experience with Mr. Netsch in connection with earlier discussions concerning a possible Chicago Bears stadium. Those conversations convinced Mr. Johnson that the new Comiskey Park project should “stay as far away from going north as we could possibly go.”

Thus, on inspection, the claimed discrepancies in the testimony evaporate. The working assumption was that the new stadium (if it was built at all) would be built to the south, although the exact parameters of that site were unclear until the legislation was passed and a design was formally adopted by the Authority in May 1988. Under these circumstances, there was nothing suspicious about the fact that plans were made for a southern site before an irrevocable commitment was made to proceed in that area.

Even assuming, however, that there was a genuine discrepancy in the testimony of the various participants in the decision-making process, plaintiffs have not explained how or why that discrepancy is relevant to their claim of racial discrimination. For no matter when the site was actually selected or by whom, there is no evidence that the decision was motivated by an intent to discriminate.

2. Lack of Studies and Hearings

Plaintiffs next argue that the haste with which the legislation was passed and the lack of studies and hearings concerning the relative merits of a northern versus southern site supports their claim of intentional discrimination. The speed with which the legislation was passed, however, was not the result of any desire to conceal a racially biased decision; rather, it was the result of the White Sox' need for action. In November 1986, the White Sox told the City that they would try one more time for a new stadium in Illinois, but that the legislation had to be passed in the General Assembly's three-day veto session beginning the next week or else the White Sox would be forced to relocated the team. The evidence shows that the White Sox did not impose this deadline in order to force through a discriminatory plan. Rather, they did so in order to avoid being caught in the kind of endless debate that had previously resulted in no progress at all toward a new

stadium project. Similarly, when the Authority went back to the General Assembly for additional bonding authority in June 1988, it did so under enormous time pressure. St. Petersburg had already built a new, contemporary stadium and was offering it to the White Sox. Defendants had only a short time to persuade the General Assembly to approve the new Comiskey Park or else the White Sox would leave the City. In fact, the legislation passed by the thinnest of margins at literally the last possible second.

Given the time pressure the Authority was working under, there was no time for elaborate studies or for reevaluation of the original site selected by the Authority's 1986 enabling legislation. The fact that defendants did not conduct an elaborate analysis of the economics of each conceivable site does not mean that they were motivated by a desire to discriminate. Decisions are frequently made based on long-standing experience.

In this case, the evidence shows that there are three primary reasons why the stadium was built to the south: 1) the northern site was politically impossible due to the Park District's stance; 2) the existing infrastructure favored a southern site; and 3) the White Sox wanted a contemporary stadium which would not fit on the northern site. Once these factors are understood, it becomes clear that defendants simply did not need formal studies or hearings to conclude that the stadium should be placed to the south.

Prior to the MOU, Mr. del Canto had done a quick evaluation of the potential sites and had concluded that the southern and the northern sites were equivalent. He noted, however, the political difficulties associated with taking Armour Square Park. Mr. del Canto's report does not suggest that there was any racial component to preserving the park; rather, he merely noted that "[n]eighborhood, community and preservation groups will strongly disagree to relocation of public park site." Mr. del Canto's evaluation of the

difficulties inherent in taking the park proved to be correct. It was clear from the first trip to Springfield that the northern site was politically impossible. The local representatives supported the project in general but opposed any taking of Armour Square Park. Walter Netsch's well-known opposition to the use of Park District land factored into the legislative decision to exclude Armour Square Park from the Authority's condemnation authority.

Plaintiffs' answer to this argument is that the Authority should have conducted a full study of all alternatives and then, if necessary, asked for an increase in the area subject to its condemnation authority. However, the precarious nature of the support for the new stadium, and the fact that the White Sox were fully prepared to move to Florida if the deal was not completed in a four-month period, made it impossible for the Authority to rethink the entire project. When the legislation was drafted, the northern boundary of the Authority's condemnation power was set at 33rd Street, which borders the northern edge of Armour Square Park. In his deposition, Mayor Washington's assistant, Rob Mier, testified that no consideration was given to the racial make-up of the area north of 33rd Street, which is predominantly white, in drawing the boundaries of the Authority's condemnation authority. Instead, the decision to limit those boundaries on the north was based on a desire to reduce infrastructure costs by placing the new stadium as close as possible to the old facility.

The southern site was preferable to the northern site from the standpoint of taking advantage of the old infrastructure. The two rapid transit lines which served old Comiskey Park are located at 35th Street. The exits from the expressway are also centered at 35th Street. Choosing the southern site would keep the ballpark at 35th Street,

while a northern site would have been centered around 33rd Street. Changing the infrastructure to serve the northern site would obviously have substantially increased the costs of the project. Indeed, Rob Mier testified that although no study had been performed to determine how much it would cost to have the stadium go north of 33rd Street, the City had enough experience with these matters to know that it would cost a substantial amount of money. Mr. Mier testified that he did not need a study to know that going farther away from the infrastructure around old Comiskey Park would cost a lot more money. It was because of the desire to minimize costs by making use of the old infrastructure near 35th Street, and not because of the racial makeup of the neighborhood north of 35th, that the northern boundary of the Authority's stadium district was drawn at 33rd Street. Thus, if a new stadium was to be built north of the old stadium, it would have to be built on Armour Square Park.

The southern site also was favored from a parking standpoint. The ideal parking arrangement, from both a logistical and a cost standpoint, is to have the stadium in the middle of ground level parking, which is cheaper to construct than multi-level, structured parking garages. If the new stadium had been constructed on Armour Square Park, it would have been at the far northern end of all of the available parking space. Moreover, there would have been a lot less room for parking. If, as plaintiffs have suggested, a new Armour Square Park was constructed on the site of the old Comiskey and no residential property south of 35th Street was taken, there would have been almost no room for parking at all.

Moreover, the White Sox did not want a smaller stadium that, like old Comiskey, would fit on a city block. Instead, they felt that in order to remain competitive the team

needed a larger, more contemporary stadium which offered skyboxes and other amenities to enable the stadium to generate enough revenue to make the project an economic success. Mr. Bynoe, the Authority's Executive Director, testified that a quick study showed that it was impossible to fit the kind of stadium the White Sox desired on the northern site within the limits of the Authority's condemnation authority. Even apart from the significant problems associated with trying to acquire land from the Park District, the need to go north of 33rd Street made a northern site impossible. The Authority's condemnation authority did not extend north of 33rd Street. There was no time to go back to the General Assembly to change the legislation, nor was there any reason to believe that the General Assembly, which had approved the latest amendments by a razor thin margin, would go along with such a significant last-minute deviation from the plan.

These kinds of considerations led participants on both sides of the discussions preceding the initial Authority legislation to conclude independently that the southern site was the only viable alternative. Plaintiffs suggest that the court should disregard all of these practical, common sense factors because no one conducted a formal study memorializing and quantifying the pros and cons of a northern versus southern site. The evidence, however, is clear that all of the parties involved recognized from the very beginning that there were serious, if not fatal, problems associated with a northern site. The fact that they did not conduct a formal study to verify their conclusions hardly means that they were concealing a discriminatory motive. Moreover, because the southern site was the only feasible site for the new Comiskey Park, there was no need for any public hearings to choose the site. Under these circumstances, the Authority's decision to request elimination of the requirement for public hearings imposed by the first legislation is not

probative of whether the defendants were acting in an arbitrary fashion in order to conceal a discriminatory intent.

What is critical is that plaintiffs have not pointed to any evidence to discredit the common sense view that a northern site, even if it were physically and politically feasible, would be more expensive. If plaintiffs had produced evidence that the northern site was more cost-effective than the southern site and that the property needed to complete the project on a northern site could have been obtained within the necessary time frame, that evidence might provide a basis for inferring that the decision to locate the stadium to the south was motivated by an improper purpose. Moreover, if the objective facts demonstrated that the decision to place the stadium to the south was economically questionable, then there would be some basis for inferring that the purported economic justifications were a smokescreen for discrimination. Without such proof, however, the claim that the defendants failed to do enough to assure themselves that the southern site was really the best from an economic and physical standpoint does not provide a basis for inferring a discriminatory purpose. Therefore, the speed with which the legislation was passed and the lack of studies and hearings is not probative of a discriminatory purpose or intent.

3. Questions Surrounding Renovation of Old Comiskey Park

Plaintiffs next argue that the Authority acted suspiciously when it failed to wait for an engineering report on the old stadium before going ahead with plans to build the new one. In a written report to the General Assembly, the Authority stated that before it entered into negotiations with the White Sox, it retained a structural engineering firm to determine whether the old Comiskey Park could be renovated at a reasonable cost. It then

stated that in light of the report which found that the old facility could *not* be renovated at a reasonable cost, the Authority entered into negotiations with the White Sox for the construction of the new facility. Plaintiffs argue that the Authority's statement to the General Assembly was false because the final report on old Comiskey was not delivered until after negotiations had begun and because preparations for a new stadium began before the structural engineers were even hired.

If the White Sox would have been satisfied with a rehabilitated stadium, the Authority's decision to proceed without considering that possibility might be probative of racial animus. But the discovery record makes it clear that the White Sox had made no secret of the fact that they were not interested in a renovated Comiskey and did not believe that the old stadium could be renovated into a first class contemporary facility. For purely economic reasons, the White Sox wanted a contemporary stadium and were fully prepared to leave the City if one was not built.

In light of the time constraints imposed on the Authority by the management agreement with the White Sox, it would have been absurd for the Authority to sit on its hands until a report on the old stadium was completed. If a new stadium was to be built in the timeframe that the White Sox demanded, the Authority had no choice but to run on several tracks. Moreover, the evidence is clear that nothing was signed until the Authority received a preliminary report from the structural engineers that the stadium could not be renovated at a reasonable cost. Under these circumstances, the Authority's decision to proceed with plans for construction while the engineering report was being finalized proves nothing other than that the Authority wanted to accomplish the goal of keeping the White Sox in Illinois.

4. The White Sox and the Addison Site

Plaintiffs direct an additional argument at the White Sox. Plaintiffs cite the sequence of events surrounding the White Sox' failed attempt to build a stadium in Addison, Illinois as evidence of their desire to locate in a predominantly white area. Plaintiffs suggest that the White Sox may have wanted to build the new stadium on the southern site in order to make their white suburbanite fans more comfortable by removing African-Americans from the surrounding neighborhood. Plaintiffs' theory is that the White Sox wanted to displace African-Americans because they believed their presence in the neighborhood discouraged white fans from attending ballgames.

The first problem with the plaintiffs' argument is that the construction of the new stadium did *not* result in the elimination of most of the African-American residents living in South Armour Square. By plaintiffs' own count, three-fourths of the African-American population remains. Furthermore, it is simply not true, as plaintiffs contend, that patrons no longer confront a neighborhood of African-American residents when they come to the game. Fans who park in the parking lots south of the stadium, including suite holders and partial season ticket-holders, have always been routed west along 37th Street, driving right by the T.E. Brown Apartments and the public housing complex at Wentworth Gardens.

The irony of this argument is that if the White Sox had really wanted to shield their fans from any contact with African-Americans, they would have insisted on doing precisely what plaintiffs suggest should have been done-- building on the site of Armour Square Park, with a new Park District park constructed to the south to act as a buffer between the stadium and the African-Americans in South Armour Square. In the

alternative, they would have demanded elimination of all of the housing, including the CHA housing, that remains in the area south of the stadium. In fact, however, there is no evidence that the White Sox ever suggested either alternative. On the contrary, the White Sox readily accepted the City's demand that CHA housing and church-owned property be protected from condemnation--even though it meant that 75% of the African-Americans in the neighborhood would remain there after the new stadium was built.

Moreover, statements the White Sox made in a brochure sent to Addison residents also do not support an inference of discriminatory intent. The brochure asked and answered a series of questions about the impact of an Addison stadium, including whether it would create traffic congestion, noise or crime. A draft of the brochure suggested that one question which should be asked was whether the stadium was likely to attract an "undesirable element." The suggested answer was that most White Sox fans were "the same people who comprise the majority of the citizens of DuPage County." However, in the version that was actually circulated, the question was changed so that it asked simply "Who attends White Sox games?" with the same answer being given and the reference to an "undesirable element" was deleted. Plaintiffs argue that the White Sox drafted the question and answer to implicitly assure the white residents of Addison that they would not be faced with an influx of African-Americans from the inner city.

There is no reason to believe that the brochure was intended to convey such a message. In its final form, the brochure was completely innocuous, simply describing where most White Sox fans lived. And even the draft reference to "undesirable elements" is devoid of any racial connotation. Before the current ownership took over, the evidence shows that the White Sox had difficulty attracting fans from the suburbs because of the

conduct of the fans in Comiskey Park. The new owners worked hard to remedy the situation by enforcing a code of conduct under which drunken or abusive fans were removed immediately from the park. Against this background, there is no evidence that the reference to "undesirable elements" in the draft meant undesirable because of the color of their skin.

In any event, whatever the White Sox may have done in their attempt to persuade Addison residents to support a stadium in their community does not give rise to an inference that the White Sox acted for a discriminatory purpose when the decision was later made to pursue a site near old Comiskey Park. Moreover, there is no evidence that the White Sox ever lobbied for the southern site in order to remove African-Americans from the immediate vicinity of the stadium.

For all of these reasons, examination of the sequence of events and procedural or substantive irregularities factors, does not demonstrate any racial animus. Under *Arlington Heights* the test is not whether there was a deviation from an idea of what constitutes "good government." Rather, the question is whether the decisionmakers acted differently than they would be expected to act under similar circumstances, when race was not an issue. In this case, since public funding of a new stadium was controversial and time was of the essence, the site selection process was driven by a need to keep costs down and to avoid controversy with key legislative members whose support was necessary for passage of the Act. Under these circumstances, it is apparent that none of plaintiffs' claimed deficiencies demonstrates that the decisionmakers were motivated in any respect by racial animus.

E. Contemporary Statements

The last factor we consider is whether there were "contemporary statements by members of the decision making body, minutes of its meetings, or reports" which shed light on their intent. *Arlington Heights,* 429 U.S. at 268. The *Arlington Heights* Court noted that ordinarily the decision makers cannot be called to testify because they are protected by legislative privileges. In this case, Judge Rovner held that privilege considerations precluded plaintiffs from seeking discovery regarding the subjective intent of the state legislators and Chicago aldermen.

The discovery record in this case does not contain evidence of any contemporaneous statement by any decision maker which suggests discriminatory purpose or intent. Indeed, the record demonstrates just the opposite. In the Act, the General Assembly provided a lengthy statement of its collective purpose and intent. That statement does not contain any hint of racial animus. The Act itself provides evidence of concern for minorities in general and the residents of South Armour Square in particular. The amended Act requires 25% of the construction dollars spent on the project to be set aside for minority contractors and required the Authority to pursue an affirmative action plan to boost minority hiring of those employed in the construction project. Moreover, the amended Act provides for generous relocation assistance and compensation for landowners and tenants who were to be displaced. The inclusion of these provisions in the final legislation provides powerful evidence of a lack of racial animus. It is contrary to common sense to believe that the very same people who voted to provide substantial benefits to minorities in the Act nevertheless approved that Act in part because it would

injure African-American residents of South Armour Square.

The amended Act's provisions were far from mere window dressing. Senator Richard Newhouse, an African-American, publicly stated that he would not support the amended Act if the minority set-aside and affirmative action provisions were not adopted. Senator Degnan, who represented the area where the new Comiskey Park was being built, was quoted as saying one reason he supported the bill was because it had generous provisions for relocation assistance. In fact, the Authority spent $10.3 million relocating the residents who were forced to move out of South Armour Square and to mitigate the impact of the construction project on those who remained. The fact that none of the displaced residents have joined in this lawsuit is a testament to the fairness of the General Assembly's and the defendants' actions.

Plaintiffs cite the del Canto memorandum as evidence of statements by the City which concern the issue of race. However, we find that the memorandum does not contain evidence of an intent to discriminate on the basis of race. The memorandum states that the residents of South Armour Square lack political support--something that is not necessarily synonymous with race. *See, e.g., Forty-Second St. Co. v. Koch,* 613 F. Supp. 1416, 1423 (S.D.N.Y. 1985) (class-biased plan seeking to attract affluent customers does not prove that plan sought to remove African-Americans or hispanics which comprise a disproportionate segment of the low-income population). Discrimination based on wealth or political support does not pose the same sort of constitutional problems as does discrimination based on suspect classifications such as race or alienage. A group of persons can lack political support without race even entering the picture.

Moreover, all of the other City internal documents show a substantial concern for the residents of South Armour Square and a desire to minimize any harm they might suffer as a result of the construction of the new stadium. This evidence fully supports the conclusion that defendants did not locate the new stadium in South Armour Square "because of" a desire to impose any burden on African-Americans, but rather "in spite of" the fact that the project would have such an effect.

For these reasons, we find that there are no contemporaneous statements by defendants or the General Assembly which prove that their decision to place the stadium in South Armour Square was motivated, at least in part, by race. Therefore, plaintiffs' equal protection claims fail as a matter of law.

II. ZONING CLAIMS

Count IV of the complaint is brought against the City only. In that count, plaintiffs attack the amendatory zoning ordinance passed by the City Council creating a Stadium Planned Development. Plaintiffs first claim that the City's amendatory zoning ordinance is invalid because it contradicts an earlier zoning ordinance passed by the City Council. Plaintiffs also claim that the amendatory zoning ordinance is not rationally related to any legitimate government purpose and, therefore, is arbitrary and capricious in violation of Article I, Section 2 of the Illinois Constitution. We find that summary judgment should be granted in favor of the City on both claims.

A. The Amendatory Zoning Ordinance is not Invalid for Failure to Comply with Prior Zoning Ordinance

Plaintiffs claim that in enacting the amendatory zoning ordinance, the City contradicted a prior Chicago Zoning Ordinance ("Zoning Ordinance"). Plaintiffs claim that the City failed to comply with certain guidelines set out in the Zoning Ordinance at §

11.11-2(b), (d), (e), (f), (j) and (k), which essentially require the City to give consideration to numerous factors such as existing development of adjoining property, traffic and parking, in reviewing an application for planned development.

This claim fails as a matter of law. The City Council was not legally constrained to follow its own prior ordinance because it had the power to change the ordinance. When a legislative body enacts legislation which is inconsistent with its own prior legislation, the later enactment supersedes the prior one. *Landmarks Pres. Council of Illinois v. City of Chicago,* 531 N.E.2d 9 (Ill. 1988). It is only when the constraint comes from a higher level of sovereignty that the later act can be held invalid. Thus, an amendatory zoning ordinance passed by the City cannot be challenged by showing that it conflicts with a prior Zoning Ordinance passed by the City.

In *Rodriguez v. Henderson,* the Illinois Appellate Court applied *Landmarks* to uphold dismissal of a zoning claim similar to the one in the instant case. 578 N.E.2d 57 (Ill. App. Ct. 1991). In *Rodriguez,* the plaintiffs challenged the validity of a City planned development amendatory zoning ordinance on the ground that it failed to follow the Zoning Ordinance's criteria for planned development zoning. The Illinois Appellate Court affirmed the trial court's dismissal of that claim, holding that because plaintiffs did not allege that the failure to follow the Zoning Ordinance criteria amounted to a violation of constitutional rights, they did not state a claim. *Id.* at 66.

For these reasons, plaintiffs' claim that the amendatory zoning ordinance is invalid due to its contradiction of the earlier Zoning Ordinance must fail as a matter of law.

B. The Amendatory Zoning Ordinance does not Violate the Illinois Constitution

Plaintiffs' second claim under Count IV is that the amendatory zoning ordinance is arbitrary and capricious in violation of Article I, Section 2 of the Illinois Constitution because it is not rationally related to any legitimate government purpose.

The standard under which plaintiffs' constitutional challenge to the amendatory zoning ordinance must proceed is the well-settled rationality test: "A zoning ordinance is presumed valid, and a successful challenge requires proof, by clear and convincing evidence, that its enactment was arbitrary, capricious, or unrelated to the public health, safety, and morals." *Rodriguez*, 578 N.E.2d at 60 (*citing LaSalle Nat. Bank of Chicago v. Cook County,* 145 N.E.2d 65 (Ill. 1957)). Under the clear and convincing standard, "[w]here it appears, from all the facts, that room exists for a difference of opinion concerning the reasonableness of a [zoning] classification, the legislative judgment must be conclusive." *Am. Nat. Bank and Trust Co. v. City of Chicago*, 568 N.E.2d 25, 38 (Ill. App. Ct. 1990) (*quoting LaSalle Nat. Bank v. City of Evanston,* 312 N.E.2d 625 (Ill. 1974)).

The Illinois Supreme Court has identified eight factors (the " *LaSalle* factors") which a court should consider in determining whether to disturb a zoning ordinance's presumed validity: 1) the existing uses and zoning of nearby property; 2) the extent to which property values are diminished by the particular zoning restrictions; 3) the extent to which the destruction of property values of the plaintiff promotes the health, safety, morals or general welfare of the public; 4) the relative gain to the public as compared to the hardship imposed upon the individual property owner; 5) the suitability of the subject property for the zoned purposes; 6) the length of time the property has been vacant as

zoned considered in the context of land development in the vicinity of the subject property; 7) the community need for the proposed use; and 8) the care with which the community has undertaken to plan its land use development. *Am. Nat. Bank,* 568 N.E.2d at 38 (*citing LaSalle Nat. Bank,* 145 N.E.2d at 69; *Sinclair Pipe Line Co. v. Village of Richton Park,* 167 N.E.2d 406 (Ill. 1960)).

While the *LaSalle* factors are most frequently applied in situations where a property owner challenges zoning restrictions on his own property, the factors are flexible and the validity of an ordinance is to be determined based on the facts and circumstances surrounding that ordinance. *Rodriguez,* 578 N.E.2d at 61. In *Rodriguez,* for instance, the Illinois Appellate Court used the *LaSalle* factors to gauge the rationality of a zoning ordinance involving neighboring property owners who challenged planned development rezoning of a nearby parcel. *Id.* at 60-64.

Plaintiffs have not even begun to demonstrate that they can carry their burden of showing that the Stadium Planned Development was so arbitrary and capricious that it violates the dictates of the Illinois Constitution. Although plaintiffs pay lip service to the *LaSalle* factors, their real dispute is with the wisdom of the stadium project. That is an issue that a court may not consider under the guise of a zoning challenge. However, even if we were to apply the *LaSalle* factors to this case, plaintiffs still have not met their burden of showing by clear and convincing evidence that the enactment of the amendatory zoning ordinance was arbitrary and capricious.

In this case, plaintiffs have focused upon *LaSalle* factors 1, 4, 6 and 8 in order to show a genuine issue of material fact as to whether the amendatory zoning ordinance was arbitrary and capricious. In analyzing the first factor, the Stadium Planned Development

was compatible with the existing zoning, the paramount concern of the *LaSalle* test. *See Rodriguez,* 578 N.E.2d at 61 (*citing Amalgamated Trust & Sav. Bank v. Cook County,* 402 N.E.2d 719, 728 (Ill. App. Ct. 1980)). Plaintiffs concede that the land subject to the Stadium Planned Development had long been zoned "M" for manufacturing, the classification under which stadium developments fall under the Zoning Ordinance. Moroever, the bulk of the land surrounding the Stadium Planned Development was also zoned "M." The compatibility of the surrounding area with a baseball stadium was also evident from the area's long history of co-existence with the old Comiskey Park.

Plaintiffs do not dispute this fact, but rather argue that most of the property was actually used for residential, rather than manufacturing purposes. They argue that the construction of the stadium destroyed a "viable" community and made it less suitable for residential purposes. However, if the old uses of the property gave owners and others using the property a constitutional right to insist that the use continue, zoning ordinances would not be required at all. Thus, whether or not the South Armour Square community was a "viable" residential community is not relevant to plaintiffs' zoning claim. The fact that the operation of a stadium was consistent with old zoning and with the long-standing use of the area for a stadium demonstrates that the first *LaSalle* factor is satisfied.

On the issue of balancing benefits and burdens, plaintiffs ask the Court to act as a super-legislature to weigh for itself the benefits and burdens associated with keeping the White Sox in Illinois. The issue, however, is not whether the City or the General Assembly made the right decision. Rather, it is whether "room exists for a difference of opinion concerning the reasonableness of a [zoning] classification." If there is room for debate about the benefits and burdens, the "legislative judgment must be conclusive."

Am. Nat. Bank, 568 N.E.2d at 38. In this case, the General Assembly made a series of legislative findings about the benefits of retaining the White Sox in Illinois. Whether or not plaintiffs agree with the wisdom of the decision, those findings demonstrate that there is at the very least room for a difference of opinion as to whether or not the project was worth the burdens it entailed. Under those circumstances, the legislative choice to act becomes unreviewable.

Moreover, the Stadium Planned Development allowed redevelopment of an area that had long been in non-conforming use or vacant. If land is vacant too long, that is one fact which can be taken into account in deciding whether restrictive zoning of the property is reasonable. Plaintiffs also argue that the site could not be considered vacant, but instead was a viable community. They argue that there is no case law which states that simply because an area is zoned differently from its current use that it may be considered vacant. However, Illinois courts have expressed concern over zoning decisions that restrict development to such an extent that they impair the value of the land concerned. *Krom v. City of Elmhurst,* 133 N.E.2d 1 (Ill. 1956). In this case, the existence of vacant land in the area which was unlikely to be redeveloped under the existing zoning supported the zoning change because that change allowed the vacant land to be redeveloped.

Moreover, plaintiffs' claim that there was no community need for the project is simply another rehash of plaintiffs' argument that the benefits of the stadium project were outweighed by its burdens. The City Council and the General Assembly obviously believed that there was a community need for the new stadium. Under the governing law described above, because that view was not arbitrary or capricious, there is no basis for a

zoning challenge.

Finally, Plaintiffs assert under the aegis of the eighth *LaSalle* factor that there was no planning of any sort for the new stadium and that all justification for the new stadium arrived post-hoc. However, the eighth *LaSalle* factor does not question whether the intended subject of the rezoning is a model of planning efficiency, but whether the City has generally followed careful planning principles in its zoning decisions. Under this factor, the court examines whether a comprehensive government zoning plan for land use and development exists. *See Rodriguez,* 578 N.E.2d at 63-64. The evidence shows that, in this instance, the City generally followed its planning principles and had a comprehensive zoning plan for land use and development. Therefore, plaintiff's reading of the eighth *LaSalle* factor is unpersuasive.

Plaintiffs have failed to illustrate how any of the eight *LaSalle* factors might be construed by a jury in their favor. Furthermore, they have failed to raise sufficient facts to show that there could be any chance of proving at trial, by clear and convincing evidence, that the zoning amendment ordinance is arbitrary and unreasonable and has no substantial relation to the public health, safety, or welfare. On the contrary, the facts presented strongly support the City's assertions that, in passing the amendatory zoning ordinance, the City was merely seeking to promote a project which the City Council believed beneficial to the City and State. Moreover, the City proceeded to enact the amendatory zoning ordinance by deliberate and reasonable means. Accordingly, the City's motion for summary judgment on Count IV of plaintiffs' complaint is granted.

III. ADDITIONAL CONCERNS

In addition to the issues addressed above, we have some additional concerns

about the merits of this case. These issues have been addressed and resolved by a prior Judge in this case, and we have not been asked by the parties to review that decision. However, because we believe that such issues will be relevant should this case be appealed, we briefly address these issues in dicta.

A. Federal Courts Should Not Interfere With Local Land Use Decisions

Federal courts have traditionally been reluctant to interfere with local development plans and the state's exercise of its powers of eminent domain to promote those plans. In light of the deference accorded to these types of decisions, a federal court has no authority to review the political or economic wisdom of a decision to take or use land for a particular public purpose. *See City of Memphis v. Greene,* 451 U.S. 100, 127 (1981); *Nashville I-40 Steering Comm. v. Ellington,* 387 F.2d 179, 185 (6th Cir. 1967), *cert. denied,* 390 U.S. 921 (1968). Moreover, it is well settled that the Equal Protection Clause cannot be used as a vehicle to second guess the wisdom of state and local land-use decisions. *See Greene,* 451 U.S. at 127. As the court observed in *R.I.S.E., Inc. v. Kay,* 768 F. Supp. 1144, 1150 (E.D. Va. 1991), "the Equal Protection Clause does not impose an affirmative duty to equalize the impact of official decisions on different racial groups. Rather it merely prohibits government officials from intentionally discriminating on the basis of race." Thus, the Equal Protection Clause does not require the decision makers to engage in a lengthy process designed to balance the "legitimate interests" of various racial groups. Rather, the only constitutional obligation of the decision makers is to avoid making decisions that are motivated, even in part, by a desire to injure a particular racial group.

In this case, plaintiffs' claims are based on their disagreement with the wisdom of

the stadium project, rather than on any evidence of an intent to discriminate against plaintiffs on account of their race. Allowing plaintiffs to prevail would allow federal judges to substitute our judgment whenever we disagree with a political decision which adversely impacts a particular racial group under the guise of remedying intentional discrimination. Moreover, federal courts would become hopelessly enmeshed in every state and local land-use decision which adversely impacts any identifiable group. We do not believe that this is the role of federal courts.

B. Standing

We also question whether plaintiffs have standing to bring this action. Plaintiffs argue that they have been injured by the destruction of their neighborhood on account of their race. Although the Supreme Court has made clear that "neighborhood standing" is recognized under Fair Housing Act cases, *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91, 115, n. 33 (1979); *Jackson v. Okaloosa County, Fla.,* 21 F.3d 1531, 1540, n. 14 (11th Cir. 1994), it has declined to address whether it is appropriate to expand this doctrine in equal protection and § 1983 cases. *See Jackson,* 21 F.3d at 1540, n. 14 (*citing Gladstone Realtors,* 441 U.S. 91). While the issue is apparently one of first impression, we believe that prudential considerations, which are inapplicable under the Fair Housing Act, apply in equal protection cases such as this, which limit the exercise of third party standing. *See, e.g., South Suburban Hous. Ctr. V. Greater South Suburban Bd. Of Realtors,* 935 F.2d 868, 878-80 (7th Cir. 1991), *cert. denied,* 502 U.S. 1074 (1992); Robert G. Schwemm, Housing Discrimination Law*,* 308, 313 (1981); James A. Kushner, The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing, 42 Vand. L. Rev. 1071 (1989). Therefore, we believe that the right to a neighborhood is not

a right recognized by law in an equal protection case.

Moreover, plaintiffs have no standing to seek an order compelling defendants to rebuild homes which third person non-parties voluntarily sold to the Authority. Nor can they rest their claims on the ground that the non-party homeowners' equal protection rights were violated and that plaintiffs have suffered harm as a consequence. Instead, plaintiffs only have standing to complain of alleged violations of their own rights and cannot rest their claim to relief on the legal rights or interest of third parties. *Warth v. Seldin,* 422 U.S. 490, 499 (1975).

Plaintiffs also have not established that they are entitled to damages in this case. Plaintiffs claim they have been isolated and inconvenienced by the placement of the new stadium. However, many courts have held that such harm does not constitute legally cognizable damages. *See, e.g., Greene,* 451 U.S. 100; *Terry Prop., Inc. v. Standard Oil Co.,* 799 F.2d 1523 (11th Cir. 1986); *Lake Lucern Civic Ass'n, Inc. v. Dolphin Stadium Corp.,* 801 F. Supp. 684 (S.D. Fla. 1992); *Wessels Constr. & Dev. Co., Inc. v. Kentucky,* 560 F. Supp. 25 (E.D. Ky. 1983); *Bryan v. Koch,* 492 F. Supp. 212 (S.D.N.Y. 1980), *aff'd* 627 F.2d 612 (1980).

Moreover, any harm caused by the placement of the new stadium in this case is de minimis because plaintiffs already lived in the vicinity of a ballpark. Plaintiffs have failed to establish how they were damaged by moving the stadium across the street.

CONCLUSION

Plaintiffs have not raised a triable issue of fact under the standards adopted by the Supreme Court in *Arlington Heights* and *Feeney.* There is absolutely no evidence that the southern site for the new Comiskey Park was selected for racial reasons--that is, that the

stadium was built on its present site *because* defendants wanted to displace or injure African-Americans. Indeed, the evidence is undisputed that the White Sox wanted a new, contemporary stadium for purely economic reasons having nothing to do with race and that the northern site would be politically impossible due to the fierce opposition of the Chicago Park District to the destruction of Armour Square Park.

In the end, the evidence makes it clear that neither the General Assembly, the City, the Authority, nor the White Sox selected or approved the southern site because they wanted to inflict disproportionate harm on the residents of South Armour Square. Instead, the decision was made to build on the southern site in spite of the effect that decision would have on the residents of that area. That fact is evidenced not only by the widespread support given to the project by African-American leaders, but also by the care that was taken in the authorizing legislation to protect the interests of the people who were being displaced and African-Americans in general. A trial would not provide any more illumination. Under these circumstances, plaintiffs cannot establish their equal protection or zoning claims, and judgment should be entered in favor of defendants.

This court notes that the construction of the new Comiskey Park preserved a vital institution for the citizens of Chicago's South Side. Those displaced were well compensated so that the remaining citizens of the surrounding neighborhoods could continue to benefit from the proximity of the Chicago White Sox. Had the State of Illinois acted to facilitate a White Sox move out of the team's traditional home to a suburban location, the charges of racial discrimination might have had some substance. Had the General Assembly and Governor Thompson failed to act, as requested to by Mayor Harold Washington and then by Mayor Eugene Sawyer, the conversion of the

Chicago White Sox to the St. Petersburg White Sox would have fallen most heavily upon the residents of Chicago's South Side. It would be the height of irony for this court to entertain a lawsuit which, had it succeeded in its original objective -- the prevention of the construction of the new Comiskey Park -- would have frustrated the obvious social and political objectives of so many life-long residents of Chicago's South Side.

For the foregoing reasons, we grant the motion for summary judgment of defendants Illinois Sports Authority, the City of Chicago, and the Chicago White Sox.

/s/

Wayne R. Andersen
United States District Judge