

BREYER, J., concurring in result

**SUPREME COURT OF THE UNITED STATES**

No. 98–1288

VILLAGE OF WILLOWBROOK, ET AL., PETITIONERS  
v. GRACE OLECH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[February 23, 2000]

JUSTICE BREYER, concurring in the result.

The Solicitor General and the village of Willowbrook have expressed concern lest we interpret the Equal Protection Clause in this case in a way that would transform many ordinary violations of city or state law into violations of the Constitution. It might be thought that a rule that looks only to an intentional difference in treatment and a lack of a rational basis for that different treatment would work such a transformation. Zoning decisions, for example, will often, perhaps almost always, treat one landowner differently from another, and one might claim that, when a city’s zoning authority takes an action that fails to conform to a city zoning regulation, it lacks a “rational basis” for its action (at least if the regulation in question is reasonably clear).

This case, however, does not directly raise the question whether the simple and common instance of a faulty zoning decision would violate the Equal Protection Clause. That is because the Court of Appeals found that in this case respondent had alleged an extra factor as well— a factor that the Court of Appeals called “vindictive action,” “illegitimate animus,” or “ill will.” 160 F. 3d 386, 388 (CA7 1998). And, in that respect, the court said this case resembled *Esmail v. Macrane*, 53 F. 3d 176 (CA7 1995), because the *Esmail* plaintiff had alleged that the municipi-

BREYER, J., concurring in result

pality's differential treatment "was the result not of prosecutorial discretion honestly (even if ineptly— even if arbitrarily) exercised but of an illegitimate desire to 'get' him." 160 F. 3d at 388.

In my view, the presence of that added factor in this case is sufficient to minimize any concern about transforming run-of-the-mill zoning cases into cases of constitutional right. For this reason, along with the others mentioned by the Court, I concur in the result.