

Linmark Assocs. Inc. v. Township of Willingboro
431 U.S. 85 (1977)

Willingboro was founded as a “Levittown” in southern New Jersey. In the early 1970s, the percentage of homes in the town occupied by nonwhite persons was rising rapidly. In an effort to curb “panic selling” and “white flight,” the town adopted an ordinance forbidding the posting of “For sale” or “Sold” signs on residential property. In a unanimous opinion written by Justice Marshall, the Court invalidated the ordinance.

The Court noted that it had recently struck down, as violative of the First Amendment’s protection of freedom of speech, two bans on specific types of advertisement: a newspaper ad that contained information concerning the availability of abortions; and ads by pharmacies listing the prices of prescription drugs. The Court ruled that the Willingboro ordinance suffered from the same infirmity.

Respondents ... seek to distinguish *Bigelow* and *Virginia Pharmacy Bd.* by relying on the vital goal this ordinance serves: namely, promoting stable, racially integrated housing. There can be no question about the importance of achieving this goal. This Court has expressly recognized that substantial benefits flow to both whites and blacks from interracial association and that Congress has made a strong national commitment to promote integrated housing....

The record here demonstrates that respondents failed to establish that this ordinance is needed to assure that Willingboro remains an integrated community. As the District Court concluded, the evidence does not support the Council's apparent fears that Willingboro was experiencing a substantial incidence of panic selling by white homeowners. *A fortiori*, the evidence does not establish that "For Sale" signs in front of 2% of Willingboro homes were a major cause of panic selling. And the record does not confirm the township's assumption that proscribing such signs will reduce public awareness of realty sales, and thereby decrease public concern over selling.

The constitutional defect in this ordinance, however, is far more basic. The Township Council here, like the Virginia Assembly in *Virginia Pharmacy Bd.*, acted to prevent its residents from obtaining certain information. That information, which pertains to sales activity in Willingboro, is of vital interest to Willingboro residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families. The

Council has sought to restrict the free flow of these data because it fears that, otherwise, homeowners will make decisions inimical to what the Council views as the homeowners' self-interest and the corporate interest of the township: they will choose to leave town. The Council's concern, then, was not with any commercial aspect of "For Sale" signs -- with offerors communicating offers to offerees - - but with the substance of the information communicated to Willingboro citizens. If dissemination of this information can be restricted, then every locality in the country can suppress any facts that reflect poorly on the locality, so long as a plausible claim can be made that disclosure would cause the recipients of the information to act "irrationally." *Virginia Pharmacy Bd.* denies government such sweeping powers. As we said there in rejecting Virginia's claim that the only way it could enable its citizens to find their self-interest was to deny them information that is nether false nor misleading:

"There is . . . an alternative to this highly paternalistic approach. That alternative is to assume that this information is not, in itself, harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication, rather than to close them. . . . But the choice among these alternative approaches is not ours to make or the Virginia General Assembly's. It is precisely this kind of choice, between the dangers of suppressing information and the dangers of its misuse if it is freely available, that the First Amendment makes for us."

Or, as Mr. Justice Brandeis put it: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression." *Whitney v. California*, 274 U. S. 357, 274 U. S. 377 (1927) (concurring opinion).