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Disparate Impact Ruling A HUD Setback

A case that set up the “disparate impact” strategy to reinforce HUD’s Fair Housing Act violation clampdown has been tossed in U.S. District Court for the Northern District of Texas, the same court that originally sent the case on a U.S. Supreme Court trajectory.

The high court ruled 5-4 in 2015 in *Inclusive Communities Project Inc. v Texas Department of Housing & Community Affairs* that housing policies do not have to be intentionally discriminatory to have a discriminatory and detrimental impact on minority communities.

ICP argued that Texas doled out low-income housing tax credits in a way that clustered minorities into poor neighborhoods, allowing pockets of racial segregation in Dallas even if the city didn’t intentionally design the strategy, while sparing white neighborhoods from low-income housing development.

But the Supreme Court set stringent standards for establishing disparate impact, that bias complaints should show “robust causality” for a case to have merit and justices sent the case back to Texas, leaving it up to the Northern District to decide whether the state is actually liable. The Texas ruling by U.S. District Judge Sidney Fitzwater says ICP failed to show that other factors, such as local zoning rules, developer choices, or community preferences, did not contribute to a statistical disparity.

The district court notes that disparate impact liability “should not be established based solely on a showing of statistical disparity.” The plaintiff “must identify a specific policy that has created barriers to fair housing,” the judge continued.

Judged by those standards, the judge concluded that ICP failed to establish a *prima facie* case of disparate impact liability and he dismissed the case.

That presents a dilemma for HUD. Disparate impact is the cornerstone HUD rule bolstering its application of the new Affirmatively Furthering Fair Housing rule. AFFH largely nullifies local planning and zoning authority if a community receives any of a number of federal subsidies, primarily through the Community Development Block Grant program and its low-income housing supply mandate and that the local government failed to adhere to the exacting CDBG housing requirements.

HUD counted on the disparate impact ruling as a solid backup to help close all AFFH enforcement loopholes, a kind of statistical analysis not requiring a showing of discriminatory intent to prove illegal discrimination.

The ruling sends HUD back to the AFFH enforcement drawing board to devise additional backup strategies to the use of disparate impact just as the department is accelerating the enforcement program.

Info: See the ruling a www.cdpublications.com/docs/8973

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