

FAIR HOUSING CASE LAW

The judicial system's interpretation of the rules and regulations governing fair housing establishes court precedents that serve as important guidance for municipalities and developers striving to affirmatively further fair housing. [Click here to print this section in its entirety.](#)

[Buchanan v. Warley: 1917](#)

Key Finding: The court declared racially biased zoning unconstitutional.

Background

Buchanan was a white individual who entered into a contract with Warley, a black individual, for the sale of a piece of property in Louisville, Kentucky. The contract stipulated that the sale was conditional on Warley's legal right to occupy the property as a residence. At the time, Louisville had an ordinance that prohibited blacks from residing on a block where the majority of residents were white. The property that Warley was under contract to purchase was located in a neighborhood where 8 out of the 10 houses were occupied by whites. Buchanan alleged that the Louisville Ordinance prevented the sale of the property and violated property rights of both blacks and whites under the 14th Amendment.¹

Outcome

The Supreme Court overturned the ruling of the Kentucky Court of Appeals and found that Louisville's racial zoning ordinance violated the 14th Amendment's due protection clause and marked an infringement of contractual freedom because it interfered with private property sales between whites and blacks. While the Buchanan decision marked a victory in the battle against racial segregation it only applied to legal statutes and did not address the use of private agreements designed to achieve the same result through racially-restrictive covenants.² Racially-restrictive covenants became increasingly popular following the Buchanan decision.

[Corrigan v. Buckley: 1926](#)

Key Finding: The Supreme Court declined to hear this case, stating that constitutional amendments were applicable only to state action rather than individual action, thus upholding the legality of racially restrictive covenants.

Background

Corrigan v. Buckley centers around a 21 year covenant, established in 1921, that mutually bound a group of District of Columbia property owners (and their heirs) not to sell their land to "any person of negro race or blood." Both Corrigan and Buckley were among the landowners that entered into the covenant. In 1922, Corrigan sold her lot to the Curtises, a black couple. Buckley brought a suit against Corrigan and Curtis to stop the sale of the land. Corrigan and

¹ Buchanan v. Warley, 245 U.S. 60 (1917)

² Fair Housing Center of Greater Boston, *Interactive Timeline of Housing Segregation in Eastern Massachusetts*, [website], accessed 27 of May (2013), <http://www.bostonfairhousing.org/timeline/1917-Buchanan-v.Warley.html>

Curtis claimed that the covenant violated individual rights under the 5th, 13th and 14th Amendments.

Outcome

Both the District Court and the Court of Appeals found in favor of Buckley. The case made it to the U.S. Supreme Court where it was dismissed based on the Court's ruling that the Amendments cited by the plaintiffs were not directed against individual rights and therefore had no constitutional implications to be considered by the Court.³ The dismissal of Corrigan v. Buckley by the U.S. Supreme Court validated the use of restrictive covenants.

Shelley v. Kraemer: 1948

Key Finding: The court found the state enforcement of restrictive covenants unconstitutional under the Fourteenth Amendment.

Background

In 1945 the Shelleys, a black family, purchased a home in St. Louis, Missouri without knowing that there was a racially restrictive covenant on the property. The covenant had been in place since 1911 and barred "people of the Negro or Mongolian Race" from owning the property. Residents of the neighborhood sued to prevent the Shelley family from taking possession of the property.⁴

Outcome

The Supreme Court ruled that "private agreements to exclude persons of designated race or color from the use or occupancy of real estate for residential purposes do not violate the Fourteenth Amendment; [but] it is violative of the equal protection clause of the Fourteenth Amendment for state courts to enforce them." The Shelley decision established that although racially-based restrictive covenants are not unconstitutional, and could be established and enforced among private parties, the state enforcement of these covenants would be a violation of the fourteenth Amendment.⁵ Although the Shelley ruling was considered a milestone in the battle against racially-restrictive covenants, the use of these covenants was still widely employed by white residents until the passage of the Fair Housing Act of 1968.

Mount Laurel I:1975 and Mount Laurel II:1983

Key Finding: The decisions in Mount Laurel I and Mount Laurel II represent the first time a state Supreme Court held that zoning ordinances, which make it physically and economically impossible to provide low and moderate income housing, were unconstitutional, according to the state constitution. The decisions also established requirements for the state of New Jersey and its municipalities to provide affordable housing opportunities.

Background

³ Corrigan et al. v. Buckley, 271 U.S. 323 (1926)

⁴ Fair Housing Center of Greater Boston, *Interactive Timeline of Housing Segregation in Eastern Massachusetts*, [website], accessed 27 of May (2013), <http://www.bostonfairhousing.org/timeline/1948-Shelley-v-Kramer.html>

⁵ Shelley v. Kraemer, 334 U.S. 1 (1948)

In the 1960s, the Town of Mount Laurel, New Jersey, which was comprised primarily of farmland, was in a period of heavy residential development. This development was spurred by an exodus of people from inner cities to New Jersey suburbs. The Planned Unit Developments (PUDs) being approved by the Town at the time did not contain any affordable housing. In addition, during this time, Mount Laurel was also condemning much of the substandard housing that was occupied by the town's black residents, a community which had a long lineage in Mount Laurel, dating back to the Revolutionary War. In *South Burlington County NAACP & others v. Township of Mt. Laurel (1975)* ([Mt. Laurel I](#)), the NAACP asserted that Mount Laurel's zoning ordinance was exclusionary to low and moderate income families. The Supreme Court of New Jersey found that Mount Laurel had failed to take affirmative steps within its zoning to facilitate a variety of housing choice in order to meet a "fair share of the regional housing needs." The court ordered the town to develop a plan of "affirmative public action" related to low and moderate income housing. The town was also given 90 days to amend local zoning to correct exclusionary measures.⁶

As a result of the court's ruling in *Mount Laurel I*, the town re-zoned three parcels of land for affordable housing. However, there were substantial barriers to the development of affordable housing on this land. One parcel had been purchased for a transit stop, another contained a high percentage of wetlands and the third tract had zoning that placed severe limits on the number of children that could live in any residential units that were developed on the land. The plaintiffs brought the town back to court, arguing that Mt. Laurel failed to create affordable housing opportunities that met the town's "fair share" obligation.⁷

Outcome

In addition to ruling for the plaintiffs in [Mount Laurel II](#) (*South Burlington County NAACP & others v. Township of Mt. Laurel: 1983*) the decision created what is known as the "fair share doctrine." It established specific requirements for municipalities in New Jersey to demonstrate how local zoning and other affirmative measures would lead to the construction of low and moderate income housing. The court's decision also established tools for developers to challenge local zoning under these "fair share" obligations.⁸

New Jersey's Fair Housing Act of 1985 was created as a result of the Mount Laurel doctrine. The Fair Housing Act established the Council on Affordable Housing (COAH), a state agency which facilitates the day-to-day operations of administering the Fair Housing Act. This includes providing assistance to municipalities to voluntarily devise an affordable housing plan to comply with the Mount Laurel doctrine.⁹

⁶ *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67, NJ, 151 (1975)

⁷ Fair Share Housing Center, *Mount Laurel Document*, [website], accessed 24 of May (2013), <http://fairsharehousing.org/mount-laurel-doctrine/>

⁸ *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92, NJ, 158 (1983)

⁹ *State Department of New Jersey, Department of Community Affairs, Fair Housing Act Administration*, [website], accessed 24 of May (2013) <http://www.nj.gov/dca/services/lps/hss/>

Village of Arlington Heights v. Metro Housing Development Corporation: 1977

Key Finding: The U.S. Supreme Court established a test to determine the presence of discriminatory intent under the Fourteenth Amendment's equal protection clause. On remand the Seventh Circuit Court of Appeals held that at least under certain circumstances, a discriminatory effect alone can establish a Fair Housing violation.

Background

In *Village of Arlington Heights v. Metro Housing Development Corporation (MHDC)*, Arlington Heights (Illinois) denied a request made by the MHDC to rezone a 15 acre parcel of land from single-family to multi-family. MHDC was planning to build low-and moderate-income housing on the site, which would be subsidized by the federal government. MHDC filed suit, alleging that the denial of the rezoning was racially discriminatory and that it violated both the Fourteenth Amendment and the Fair Housing Act of 1968.

Outcome

The Court of Appeals found in favor of MHDC after the United States District Court for the Northern District of Illinois found in favor of the Village. The case was then brought to the Supreme Court where the court ruled that since MHDC was unable to prove that discriminatory intent was a motivating factor in the Village's decision, there was no violation of the equal protection clause, which requires a showing of discriminatory intent. The case was remanded to the Court of Appeals for consideration of violations under the Fair Housing Act. Within its deliberations, the Supreme Court established a precedent setting, multi-factorial test for determining discriminatory intent. This test included the consideration of (1) discriminatory impact (2) the historical background of the decision (3) the specific sequence of events leading up to the challenged decision (4) departures from the normal procedural sequence and (5) legislative or administrative history of the decision.¹⁰

On remand from the Supreme Court, the Seventh Circuit noted that there are two types of discriminatory effect: a disparate impact and perpetuation of segregation. The court held that the Village had a statutory obligation under the Fair Housing Act to refrain from perpetuating segregated housing patterns. To determine whether there was an actual discriminatory effect, the Seventh Circuit further remanded the case to the District Court, where it then settled.

The principles established in the *Village of Arlington Heights* are the basis for HUD's recently released (February, 2013) [Final Rule on Implementation of the Fair Housing Act's Discriminatory Effects Standard](#).

¹⁰Village of Arlington Heights v. Metro Housing Development Corporation, 429 U.S. 252 (1977) and Metro. Housing Development Corp., 558 F. 2d 1283 (7th Cir. 1977)

Town of Huntington v. Huntington Branch: 1989

Key Finding: The court found that a municipality's restrictive zoning for multi-family housing had an unjustified disparate impact on African Americans in addition to perpetuating segregation. It was on these bases that the court determined the municipality had violated the Fair Housing Act.

Background

The case involved the Town of Huntington's (New York) rejection of a proposal by a private developer to rezone land for multi-family housing development and to amend the zoning code. Existing zoning only permitted the private construction of multi-family housing in the Town's urban renewal area, which had a concentration of minority residents. The U.S. Court of Appeals, Second Circuit held that the Town's refusal to amend the zoning code and to rezone the proposed site had an unjustified disparate impact on African-Americans as well as a segregative impact on the community.¹¹

Outcome

The Second Circuit ordered the Town of Huntington to amend town zoning to permit multi-family housing outside the urban renewal area, including the specific project site that was proposed. On limited appeal to the Supreme Court, that Court agreed with the Second Circuit that the Town's failure to amend its zoning code had a discriminatory impact and that the justification offered was inadequate.¹²

NAACP, Boston Chapter v. Secretary of Housing and Urban Development: 1989

Key Finding: These court decisions established a national standard of what it means to affirmatively further fair housing; a requirement that is applicable to HUD and HUD grantees.

Background

In *NAACP, Boston Chapter v. Secretary of Housing and Urban Development (HUD)* the U.S. First Circuit Court of Appeals upheld the District Court's findings that in the use of federal Community Development Block Grant (CDBG) and Urban Development Action Group (UDAG) funds, HUD violated the "affirmative duty" provision of the Fair Housing Act by disregarding conditions of race discrimination in housing, residential racial segregation and containment, and a shortage of low-income housing that could serve Black households in White neighborhoods.¹³

Outcome

As part of the consent decree entered by the District Court, HUD, together with the City of Boston and Massachusetts Department of Housing and Community Development (DHCD), agreed to remedial relief which would further fair housing. Among other provisions, the agreements resulted in: the creation of a metropolitan area-wide Metrolist of affordable housing opportunities administered by the Boston Fair Housing Commission (BFHC or

¹¹ Huntington Branch, *NAACP v. Town of Huntington*, 844 F.2d 926 (2nd Cir. 1988)

¹² *Town of Huntington v. Huntington Branch, NAACP*, 488 U.S. 15 (1989)

¹³ MAPC, "Fair Housing and Equity Assessment", July, 2013, p.80

Commission); enhanced fair housing enforcement powers for the Commission; and affirmative fair housing marketing requirements for all affordable housing developed in the city, also administered by BFHC.¹⁴

The First Circuit Court also established the meaning of the duty to further fair housing:

- HUD must not itself engage in acts of discrimination, including the perpetuation of residential segregation.
- HUD must not permit its grantees to engage in acts of discrimination.
- HUD and its grantees must take into account the civil rights effect of funding decisions.
- Federal housing funds must be deployed in a manner that fulfills, "as much as possible, the goal of open, integrated residential housing patterns and [prevention of] the increase of segregation, in ghettos, of racial groups whose lack of opportunities the [Fair Housing] Act was designed to combat."¹⁵

City of Edmonds v. Oxford House, Inc. : 1995

Key Finding: The U.S. Supreme Court found that the definition of family, prescribed in zoning, is subject to challenges by the Federal Fair Housing Act.

Background

In 1990 Oxford House opened a group home in Edmonds, Washington for 10 to 12 adults recovering from alcoholism and drug addiction. The City cited the group home for violating the zoning code rule that defines who may live in single family dwelling units. The occupants of these units must compose a "family," and family, under the City's zoning, "means an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage." Oxford House asserted that the residents of the home were discriminated against by the City under the Fair Housing Act by the City's refusal to make a reasonable accommodation with respect to the zoning code provision. Edmonds sued Oxford House in the United States District Court for the Western District of Washington, seeking a declaration that the FHA cannot be used to restrict the city's definition of family found in the zoning code and arguing that the provision was subject to the FHA's exemption for maximum occupancy restrictions. Oxford House counterclaimed under the FHA and the United States Department of Justice filed a separate action on the same FHA "reasonable accommodation" ground. The two cases were consolidated.

Outcome

On cross motions for summary judgment, the District Court held that Edmond's definition of a family is exempt from the FHA. The United States Court of Appeals for the Ninth Circuit reversed this ruling which was affirmed by the U.S. Supreme Court.¹⁶ The U.S. Supreme Court drew a distinction between municipal land use restrictions like zoning provisions which address

¹⁴MAPC, " Fair Housing and Equity Assessment", July, 2013, p.121

¹⁵ NAACP, Boston Chapter v. Secretary of Housing and Urban Development, 817 F.2d 149 (First Cir. 1987) and NAACP, Boston Chapter v. Kemp, 721 F. Supp. 361 (D. Mass. 1989)

¹⁶ City of Edmonds v. Oxford House, Inc. 514 U.S. 725 (1995)

family composition in a district, and the FHA's exemption for maximum occupancy limits which cap the total number of occupants per dwelling based on space considerations.

Olmstead, Commissioner, Georgia Department of Human Resources, et al. v. L.C.: 1999

*Key Finding: The court's ruling required states to eliminate unnecessary segregation of persons with disabilities and established the principle that people with disabilities should receive benefits, services, and housing in the most integrated community setting appropriate to their individual needs.*¹⁷

Background

In *Olmstead v. L.C. L. C.*, a woman with a mental disability, was voluntarily admitted to Georgia Regional Hospital at Atlanta (GRH), where she was treated in a psychiatric unit. Despite the professional recommendation that L.C. could be treated in a community-based program, she remained institutionalized at GRH. L.C. brought suit against the state to gain placement in a community treatment setting. She alleged that the state's failure to place her in a community care facility violated Title II of the ADA, which states "that no qualified individual with a disability shall, 'by reason of such disability,' be excluded from participation in, or be denied the benefits of, a public entity's services, programs, or activities."¹⁸

Outcome

The U.S. Supreme Court ruled in favor of L.C., establishing that unjustified institutionalization is considered discrimination based on disability. The *Olmstead* decision marked the beginning of the deinstitutionalization of people with disabilities and the shift towards treatment of those individuals in community based settings. Locally, in Massachusetts, the deinstitutionalization movement was fueled by lawsuits like *Brewster v. Dukakis*, which sparked the closure of the Northampton State Hospital and the consolidated cases in *Ricci v. Okin*, which led to closure of state hospitals at Belchertown, Fernald, Monson, Dever and Wrentham.¹⁹

Dews vs. Town of Sunnydale, TX: 2000

Key Finding: The court's decision reinforced the standard that municipal zoning powers can be found discriminatory under the Fair Housing Act if the jurisdiction enacts zoning measures that exclude housing for one or more protected classes.

Background

In *Dews v. Sunnydale*, Mary Dews, an employee of the Dallas Tenants' Association alleged, on behalf of the Association, that Sunnyvale's zoning prohibited the development of medium and high density housing which disproportionately affected the minority population in the Dallas Metropolitan Area. Ms. Dews passed away during the court proceedings and in 1989 Hammer-Smith Construction Co. was granted permission by the Court to intervene as a plaintiff. Hammer-Smith's multi-family housing development application to Sunnyvale, which included a request for relief from the town's one-acre zoning, was blocked by the Sunnyvale Planning and

¹⁷ MAPC, " Fair Housing and Equity Assessment", July, 2013, p. 58

¹⁸ *Olmstead v. L. C.* 527 U.S. 581 (1999)

¹⁹ MAPC, " Fair Housing and Equity Assessment", July, 2013, p. 58

Zoning Committee. The proposed housing development included subsidized, affordable single family housing and multi-family housing designed to participate in the Dallas Housing Authority's rental voucher program.²⁰

Outcome

The U.S. United States Court for the Northern District of Texas found that Sunnyvale's ban on multi-family housing disproportionately affected African-American households in two ways. First, African-American households in Dallas County disproportionately live in apartments and second, Sunnyvale's ban on multi-family housing eliminates the majority of the housing types that can be used for subsidized housing programs, programs which are participated in disproportionately by Dallas County African American households. The town's denial of Hammer-Smith's request for a zoning variance was also found to have racially discriminatory affects, since the proposed development was intended for subsidized and affordable housing. Sunnyvale was ordered to adopt inclusionary zoning measures that encouraged the development of a diversity of housing types.²¹

Tsombanidis v. West Haven Fire Department: 2003

Key Finding: The court found that a municipality intentionally discriminated against a group home where the evidence showed that the residents' disability was a motivating factor in code enforcement actions, and that the municipality failed to reasonably accommodate the residents when it denied a zoning variance.

Background

In 1997, Beverly Tsombanidis, purchased a residence in West Haven, Connecticut, with the purposes of creating a group home for individuals recovering from drug and alcohol addictions. The group home was be overseen by Oxford House, Inc., an organization that oversees more than 900 independent Oxford Houses for people recovering from alcohol and drug addictions, in the United States and abroad. After six men moved into the residence, neighbors complained to the city that the house was being operated as an illegal boarding house in a residential zone. The city responded to the complaint by inspecting the home and declaring it a lodging and rooming house due to the six unrelated individuals that rented the house. The City also stated that Tsombanidis had a limited time to comply with safety measures in compliance with state fire safety code for lodging and rooming houses. The plaintiffs, which included Tsombanidis, Oxford House, Inc. and the John Does that resided at the house, brought suit against the Fire District and the City alleging that both governmental entities [the City and the Fire Department] violated the Federal Fair Housing Act and the ADA by intentionally discriminating against the plaintiffs, implementing policies that disparately impacted the plaintiffs, and failing to make reasonable accommodations.

²⁰ Dews v. Sunnydale, 109 F. Supp. 2d 526 (N.D. Tex. 2000)

²¹ Dews v. Sunnydale, 109 F. Supp. 2d 526 (N.D. Tex. 2000)

Outcome

The District Court held that there was sufficient evidence to support plaintiffs' claim of intentional discrimination against the city but not against the Fire District. Additionally, the Court held that since the plaintiffs had not submitted a request for reasonable accommodation that claim could not be considered by the Court. The plaintiffs' subsequent request to the City for reasonable accommodation was denied (but the request to the Fire District was ultimately approved.) The case was then appealed to the U.S. Court of Appeals, Second Circuit. This Court agreed that the city intentionally discriminated against the plaintiffs in its code enforcement because the plaintiffs' disability was a motivating factor, in violation of FHA and ADA. It also held that the city failed to provide reasonable accommodation in the form of a zoning variance because of the disability.

Wisconsin Community Services Inc. v. City of Milwaukee: 2006

Key Finding: The court found that the duty to make reasonable accommodations/modifications is an independent basis for liability under both the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (ADA). This duty applies to municipal zoning.

Background

In 2006, Wisconsin Community Services, Inc. (WCS), a private, non-profit organization that provides services to individuals with severe mental illnesses, identified a potential building in Milwaukee for relocating their clinic, which had outgrown its current location. The zoning district where the building was located only permitted "health clinics" as "special uses" that required a special permit. WCS' special permit application was denied by the Board of Zoning Appeals (BOZA) on the basis that it endangered the City's ability to protect the use, value and enjoyment of other property in the neighborhood. WCS filed suit, alleging that BOZA had violated the ADA, the Rehabilitation Act and the Fair Housing Act by failing to make reasonable modifications/accommodations to its methods for determining whether to issue a special use permit.

Outcome

The District Court found that the city had an obligation under the ADA and the Rehabilitation Act to make reasonable modifications/accommodations in its zoning rules which would allow WCS to relocate the clinic. The District Court found that the Fair Housing Act did not apply in this case because WCS did not seek an accommodation to obtain housing but to provide mental health services to its patients. A divided three-judge panel of the U.S. Court of Appeals, Seventh Circuit reversed and remanded the case back to the District Court, stating that WCS must prove either intentional discrimination or disparate impact to trigger the City's duty of reasonable modification/accommodation. After agreeing to rehear the case, the Seventh Circuit issued an opinion that the duty to make reasonable modifications under Title II of the ADA and the Fair Housing Act is an independent basis of liability and therefore it does not warrant allegations by WCS of disparate treatment or disparate impact. The Seventh Circuit sent the case back to the District Court for further consideration in the context of this opinion. On remand, the District Court was to give the parties the opportunity to address the question of whether WCS had

been prevented because of its clients' disabilities from locating a new facility.²² The case was settled by the parties and dismissed in September of 2007.

Anti-Discrimination Center of Metro New York v. Westchester County: 2009

Key Finding: The case reinforced the principle that affirmatively furthering fair housing includes the obligation of HUD grantees to address racial and ethnic impediments to housing choice which is distinctly separate from the exploration of impediments based on income. The eventual reallocation of funds by HUD after Westchester's failure to meet the terms of the settlement stands as an example of HUD's actions in the face of noncompliance.

Background

The Anti-Discrimination Center of Metro New York (ADC) filed a claim under the False Claims Act, which alleged that Westchester County and its municipalities failed to affirmatively further fair housing. Westchester County is a CDBG entitlement jurisdiction which carries out the CDBG program in part by disbursing funds to municipalities within the County. As one of the requirements of the CDBG program, the County was submitting certifications to HUD stating that both the County and its municipalities were affirmatively furthering fair housing. Despite its characterization as a racially and ethnically segregated area, the County did not address this segregation in its existing Analysis of Impediments (AI). Instead the AI focused only on impediments to affordable housing based on income, which is not considered by HUD to sufficiently address the obligation to affirmatively further fair housing.²³

Outcome

The U.S. District Court, Southern District of New York, found that the certifications the County submitted to HUD were falsely made. This finding was based on the failure of the County's Analysis of Impediments to Fair Housing to adequately address issues of race and ethnicity, and because the County provided CDBG and other funds to municipalities where zoning and land use rules were hostile to affordable housing, with the effect of discriminating against households of color.²⁴ A settlement was reached, which required Westchester County to (among other requirements):

- Expend \$51.6 million in public funds to build 750 units of integrated affordable housing within seven years;
- Market affordable housing within the County and in geographic areas with large non-white populations;
- Complete an Analysis of Impediments to Fair Housing that includes actions to address residential segregation;
- Work with communities in the County to implement inclusionary zoning as well as identify and eliminate exclusionary zoning in the County.²⁵

²² Wisconsin Community Services Inc. v. City of Milwaukee, 465 F.3d 737 (7th Cir. 2006)

²³ Anti-Discrimination Center of Metro New York v. Westchester County, 668 F. Supp. 2d 548 (S.D.N.Y. 2009)

²⁴ MAPC, " Fair Housing and Equity Assessment", July, 2013, p. 80-81

²⁵ Anti-Discrimination Center of Metro New York v. Westchester County, 668 F. Supp. 2d 548 (S.D.N.Y. 2009)

Westchester County failed to comply with many of the terms of the settlement. Initially, the county was required to develop an implementation plan to meet the terms of the settlement. The draft implementation plan submitted to HUD by the county was rejected by HUD three times, because it failed to include specific strategies for all elements of the settlement. The current [implementation plan](#) is still under review by HUD. HUD encountered additional resistance from Westchester on the portion of the settlement that required the county to complete a satisfactory Analysis of Impediments (AI), including a zoning analysis to address exclusionary zoning in the County. [Westchester's AI](#), which was submitted in 2010, was subsequently [rejected by HUD](#) based on its failure to address the identified impediments, including "...strategies to combat exclusionary zoning practices and promote fair housing choice for low-income families of color."²⁶ Consequently, HUD also rejected the County's FY2011 Action Plan and disapproved the County's application for CDBG funding.²⁷ After several failed attempts at submitting a satisfactory analysis by Westchester County, HUD contracted with a housing consultant to complete an Analysis of Municipal Zoning. Westchester County refused to adopt the [consultant's final report](#), which identified multiple areas of exclusionary zoning in the County. After failing to adopt the report, in September, 2013, HUD reallocated \$7.4 million in CDBG, HOME and ESG funds from Westchester County to other eligible jurisdictions.²⁸

As a result of the Westchester settlement and the subsequent compliance issues, HUD has ramped up its enforcement of grantees' obligation to affirmatively further fair housing, particularly honing in on those entities that fail to address racial and ethnic discrimination as a potential impediment to housing choice in their Analysis of Impediments. In July 2013, [HUD's Affirmatively Furthering Fair Housing Proposed Rule](#) was issued, clarifying the expectations and requirements for fair housing assessment, planning, and implementation.

[Inclusive Communities Project v. Texas Dept. of Housing and Community Affairs: 2010, 2012](#)

Key Finding: The court held a state agency administering the Low Income Tax Credit program liable under the Fair Housing Act for creating a disparate impact through project siting decisions.

Background

Inclusive Communities Project (ICP), a non-profit housing organization in Dallas, Texas, filed suit against the Texas Department of Housing and Community Affairs (TDHCA), the state agency responsible for administering the Low Income Housing Tax Credit Program in Texas. ICP alleged that TDHCA perpetuated racial segregation in Dallas and other urban areas in the state by

²⁶ Plunkett, Kevin, 2010. John Trasvina, Assistant Secretary for Fair Housing and Equal Opportunity, HUD, Mercedes M. Marquez, Assistant Secretary for Community Planning and Development to Kevin Plunkett, Deputy County Executive, Westchester County, 21 December.

²⁷ U.S. Department of Housing and Urban Development, *FY2011 Annual Report on Fair Housing*.

²⁸ Donnelly, B. (2013, September 22). Westchester Loses \$7.4 M in HUD Grants. *The Hudson Valley Reporter*. Retrieved from <http://hudsonvalleyreporter.com/westchester/2013/09/westchester-loses-7-4-m-hud-grants/>

disproportionately approving LIHTC projects in minority areas and denying non-elderly LIHTC projects in predominately Caucasian areas.²⁹

Outcome

In 2010, the U.S. District Court, Northern District of Texas, ruled that ICP had established a *prima facie* case of discriminatory impact under the Fair Housing Act. In response, TDHCA was unable to prove that there were non-discriminatory benefits that justified the discriminatory impact of the allocation decisions made by the agency within the LIHTC program. In 2012, the U.S. District Court issued a remedy to TDHCA for awarding LIHTC in the Dallas metropolitan area. Among other mandates, the Court required TDHCA to adopt an "Opportunity Index" to strengthen TDHCA's criteria in siting LIHTC projects in areas of high opportunity. TDHCA was also required to conduct an annual disparate impact analysis for a period of 5 years.³⁰

St. Bernard Parish Court Cases: 2008-2013

Key Finding: The court held St. Bernard Parish responsible for a series of zoning actions taken by the Parish that had the effect of discriminating against protected classes under the Fair Housing Act.

Background

The cases involving St. Bernard Parish concern events following Hurricane Katrina's landfall in 2005. As a result of the flooding associated with the Hurricane, St. Bernard's Parish and its surrounding communities lost a substantial percentage of its rental housing stock. In 2006, St. Bernard Parish approved an ordinance which required owners of single-family residences to acquire a permit from the Parish before renting out their property (unless the tenant was a blood relative). At the time, St. Bernard Parish was approximately 86 percent white and 10 percent African American.

The Greater Orleans Fair Housing Action Center (GNOFHAC), a private nonprofit organization, and Wallace Rodrigue (an individual denied the opportunity to rent his property because of the blood relative ordinance) filed suit against St. Bernard Parish alleging that the ordinance was discriminatory under the Fair Housing Act. In 2008, the United States District Court, Eastern District of Louisiana, entered a [consent order](#) in which the Parish was enjoined from discriminating on the basis of race and national origin and ordered to pay the plaintiffs' attorneys fees and costs.

In 2011, the [District Court held St. Bernard Parish in contempt](#). The GNOFHAC alleged that the Parish refused to renew Provident Realty Advisors Inc.'s ("Provident") expired building permits for multi-family dwellings because the Parish's Comprehensive Zoning Ordinance (CZO) no longer permitted multi-unit dwellings on Provident's land. The Court found St. Bernard's Parish in contempt for violating the 2008 Consent Order, on the basis that the CZO had a significant discriminatory impact.

²⁹ Inclusive Communities Project v. Texas Dept. of Housing and Community Affairs, 749 F.Supp.2d 486 (N.D. Tex. 2010)

³⁰ Inclusive Communities Project v. Texas Dept. of Housing and Community Affairs, 860 F. Supp. 2d 312 (N.D. Texas 2012)

In 2012, the [U.S. Department of Justice filed suit](#) against the Parish, in District Court, charging it with a “pattern or practice” of discrimination through a multi-year campaign to limit rental housing opportunities for African-Americans.

Outcome

A settlement of the government’s suit, along with a separate suit by private plaintiffs, concerning the permissive use of permit requirement, was entered with the court in May, 2013. This settlement provides for annual expenditures for marketing and advertising to attract renters and developers of multi-family rental housing; the establishment of a rental land grant program for rental housing purposes; damage payments to identified aggrieved persons; a civil penalty to the U.S.; the hiring of a fair housing coordinator; fair housing training and required reports; and substantial compensation and attorneys fees to the private plaintiffs.

Mt. Holly Gardens Citizens in Action Inc. V. Township of Mount Holly: 2011

Key Finding: This case called into question whether disparate impact is a violation of the Fair Housing Act (FHA), even if there is no discriminatory intent. On appeal from the U.S. Court of Appeals to the U.S. Supreme Court, the case was settled by the parties before the Supreme Court hearing was held. The settlement agreement provided some relief for current residents in exchange for allowing redevelopment of their homes.

Background

In 2002 the Township of Mount Holly began purchasing homes in Mount Holly Gardens and by 2008 had purchased, vacated and boarded up more than 200 of the 330 homes in the neighborhood. A total of 70 of the homes were demolished. Prior to the township's action, about half of the 330 homes were occupied by homeowners and nearly all of the households were defined as very low income (less than 50% of the area median income) or extremely low income (less than 30% of the area median income). The Township's redevelopment of the site called for 464 homes selling for between \$200,000 and \$275,000, a price which is unaffordable to the residents of the neighborhood. Although the development was slated to have 56 deed restricted, affordable units, these units would not be affordable to very low income households. The plaintiffs argued that the redevelopment, which forces residents to leave the neighborhood, would disproportionately affect the minority population of Mount Holly and was therefore a violation of the Fair Housing Act (FHA). Their argument was based on the fact that the Mount Holly Gardens neighborhood was comprised of 32 percent of Mount Holly's Hispanic population and 21 percent of the township's African American population. The plaintiffs also claimed that there is an affordable housing shortage in the township and in Burlington County, where Mount Holly is located.³¹

Outcome

In 2008, the plaintiffs filed a complaint with the United States District Court, District of New Jersey. The Court granted summary judgment for the defendants, finding that the plaintiffs had not presented a prima facie case under the disparate impact argument. The Court rejected the

³¹ Mt. Holly Gardens Citizens in Action , Inc. v. Township of Mount Holly, 1159 3rd Cir. (2011)

plaintiffs statistical analysis and held that the redevelopment plan had the same effect on minorities and non-minorities. Additionally, the Court found that the defendants had met their burden to show a legitimate government interest for their actions and the plaintiffs had failed to rebut this evidence by showing that there were alternative actions that could accomplish the same result with less discrimination. Finally, the Court concluded that the plaintiffs had not succeeded in showing intentional discrimination.

On June 3, 2011, the United States Court of Appeals for the Third Circuit reversed the District Court's decision, finding that the plaintiffs had produced evidence sufficient to establish a prima facie case of disparate impact under the Fair Housing Act. On June 17, 2013, the U.S. Supreme Court agreed to hear the case and in doing so consider the larger question of whether a Fair Housing Act violation may be established under the disparate impact theory, which focuses on discriminatory effects not discriminatory intent.³² Before the case could be heard by the U.S. Supreme Court it was settled by the parties on November 13, 2013.³³

MASSACHUSETTS CASES

[NAACP, Boston Chapter v. Boston Housing Authority \(BHA\): 1989](#)

Key Finding: The BHA's tenant assignment practices were found to be racially discriminatory by the court.

Background

In 1988, the Boston Branch NAACP brought a class action lawsuit against the Boston Housing Authority for racial discrimination through the BHA's tenant assignment practices. People of color were discouraged from applying for public housing in the predominately white neighborhoods of South Boston, Charlestown and East Boston.³⁴

Outcome

As a result of the lawsuit, the Boston Housing Authority was forced to integrate all of its white housing developments, revise its Tenant Selection and Assignment Plan (TSAP) and to compensate those applicants who had been denied or discouraged by their practices. The BHA was also required to establish a half million dollar Community Benefit Fund that would be jointly administered by the BHA and NAACP, with the goal of providing "equal housing opportunity for persons of all races in the City of Boston."³⁵

³² The Lexiblog Network, *Township of Mount Holly v. Mt. Holly Gardens Citizens in Action* [website], accessed 6 of October (2013) <http://www.lxbn.com/tag/township-of-mount-holly-v-mt-holly-gardens-citizens-in-action/>

³³ The Lexiblog Network, *Township of Mount Holly v. Mt. Holly Gardens Citizens in Action* [website], accessed 20 of November (2013) <http://www.lxbn.com/tag/township-of-mount-holly-v-mt-holly-gardens-citizens-in-action/>

³⁴ Fair Housing Center of Greater Boston, *Interactive Timeline of Housing Segregation in Eastern Massachusetts*, [website], accessed 27 of May (2013), <http://www.bostonfairhousing.org/timeline/1988-NAACP-v-BHA.html>

³⁵ N.A.A.C.P. v. Boston Housing Authority, 723 F. Supp. 1554 (D. Mass 1989)

Langlois v. Abington Housing Authority: 2002

Key Finding: The local preference policy instituted by a group of Massachusetts housing authorities was found to have an unlawful disparate impact.

Background

In 1998, four extremely low-income women of color, that were either homeless or had serious housing problems, brought suit against the Public Housing Authorities (PHAs) of Avon, Abington, Bridgewater, Halifax, Holbrook, Middleborough, Pembroke and Rockland, after experiencing barriers in their attempt to participate in the PHAs' lottery system for Section 8 Vouchers. The eight PHAs that were defendants in the suit had a joint, regional waiting list for Section 8 Vouchers. The communities where the PHAs were located were characterized as predominantly white, with a low overall rate of poverty. The plaintiffs asserted that the housing authorities' implementation of residency preferences in the lottery system was discriminatory. "...They maintain[ed] that the PHAs' policies effectively discriminated against minorities by favoring local, predominantly white applicants and violated the PHAs' duties to target housing to extremely low-income families, and to 'affirmatively further' fair housing."

Outcome

The United States District Court, Massachusetts ruled that the residency preferences of the Abington, Avon, Bridgewater, Middleborough, Pembroke, and Rockland housing authorities, had a substantial disparate impact on minorities, and that the justifications attempted by the authorities were inadequate. Also the court found that the PHAs' failure to evaluate the effect that the residency preference would have on minorities was a violation of the PHAs' duty to affirmatively further fair housing.³⁶ These authorities were required to revise the use of the residency preference in the Section 8 Voucher application and selection process.

United States of America v. The City of Agawam, Massachusetts & others: 2002

Key Finding: The U.S. Supreme Court ruled that Agawam's zoning, which did not permit agricultural worker housing, was discriminatory on the basis of race, color and national origin.

Background

In 2001, C&E Tobacco, an agricultural company, submitted an application to the Agawam Planning Board for a residence accommodating 27 seasonal farm workers. Historically, all of C & E's seasonal non-local farm workers who have required worker housing have been Black Jamaican or Hispanic Puerto Rican men. At the time, Agawam was characterized as predominantly white community. According to the 2000 Census, 97 percent of the town's residents were classified as White. The planning board voted to approve C&E's application. This approval was conditioned upon a letter from the building inspector indicating that the proposed uses were allowed under the municipal zoning. The subsequent correspondence from the law department (on behalf of the mayor and the building inspector) stated that housing for seasonal farm workers was not an allowed or permitted use under the Town of Agawam zoning ordinances.

³⁶ Langlois v, Abington Housing Authority, 234 F. Supp. 2d 33 (D. Mass. 2002)

Outcome

The U.S. Supreme Court found that the actions of the defendants made the housing unavailable to persons based on their race, color and national origin, and that these actions were in violation of the Fair Housing Act. In addition to assessing damages to settle the existing incident of discrimination, the Court also required Agawam to take affirmative steps to prevent the future recurrence of any discriminatory housing practices.³⁷

City of Worcester v. Bonaventura: 2002

Key Finding: The court system affirmed the police power of municipalities to use the legal/biological concept in defining "family" in zoning matters not involving persons with a disability.

Background

The *Worcester v. Bonaventura* arose out of a series complaints filed by the City of Worcester against six condominium owners that the City asserted were operating their units as lodging houses without a special permit. Each condominium unit was being rented to four unrelated students. Worcester's zoning ordinance defines a "lodging house" as: "A dwelling or that part of a dwelling where sleeping accommodations are let, with or without kitchen facilities, to four (4) or more persons not within the second degree of kindred to the person conducting it, and shall include rooming houses, boarding houses and tourist homes, but shall not include hotels, motels, inns, sorority, fraternity and cooperative residences, dormitories, or convalescent homes, nursing homes, rest homes, or group residences licensed or regulated by agencies of the Commonwealth."

Outcome

The Housing Court declared the definition of "lodging house" to be "unconstitutionally vague." The Court further ruled that Worcester's definition of "family" was too narrow and relied too heavily on biological relationships. The Court stated that the structure of the definition created the potential for arbitrary and discriminatory enforcement. In addition, the Housing Court ruled that the students living in the six condominiums were tenants and formed a single housekeeping unit with the rights provided to a traditional family under Worcester's zoning ordinance. The case advanced to the Appeals Court, where the Court found in favor of the City of Worcester, citing the definition of family and lodging house in Worcester's zoning ordinance as clearly defined and mutually exclusive. The Appeals Court also ruled that the city's definition of "family" did not extend beyond permissible police powers.³⁸

The *Bonaventura* case signifies the continuing tension between the legal/biological concept of "family" and the functional concept of "family." This discussion began with *Village of Belle Terre v. Boraas* (1974), when the court "upheld against constitutional challenge a municipality's ability to limit the number of unrelated persons living together in residential zoning districts by defining the word "family" to include only persons related by blood, marriage or adoption."³⁹

³⁷ *The Department of Justice*, [website], accessed 24 of May (2013), <http://www.justice.gov/crt/about/hce/documents/agawamcomp.php>

³⁸ *City of Worcester v. Anthony Bonaventura & others*, 56 Mass. 166 (2002)

³⁹ *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974)

Eileen Standerwick et al v. Zoning Board of Appeals of Andover: 2006

Key Finding: The Supreme Judicial Court found that the plaintiffs, in this case, lacked standing to challenge a comprehensive permit based on the diminution of property values.

Background

In 2002, the zoning board of appeals of the Town of Andover issued a comprehensive permit to Avalon at St. Clare, Inc., to construct a four-story apartment building, with one-quarter of the units to be reserved as affordable rental housing for low and moderate income tenants. The plaintiffs, abutting and neighboring landowners, filed suit with the Superior Court claiming that, if built, the proposed affordable housing development project would diminish their property values. The Court found that the plaintiffs lacked standing, under G.L. c. 40B, to challenge the comprehensive permit. The Appeals Court reversed this decision, stating that the diminution of property values is “an injury that is a tangible and particularized injury to a private property or legal interest protected by zoning law,” and the case went to Massachusetts Supreme Judicial Court.

Outcome

The Supreme Judicial Court describes the intent of Chapter 40B as promoting affordable housing not only by streamlining the permitting process but also by minimizing lengthy and expensive delays caused by those whose purpose is only to exclude affordable housing from their neighborhoods. The Court held that abutting landowners do not have standing to challenge a Chapter 40B comprehensive permit based on a claim of diminution of property value, because the preservation of real estate values is not an injury to an interest that Chapter 40B was designed to protect.⁴⁰

John Boothryd & others v. Zoning Board of Appeals of Amherst & others: 2007

Key Finding: The court found that a community's fulfillment of their minimum affordable housing obligation under MGL Chapter 40B did not preclude the approval of additional comprehensive permits under Chapter 40B, and the creation of affordable housing.

Background

In 2002, the Amherst Zoning Board granted a comprehensive permit under G. L. c. 40B, §§ 20-23 (Chapter 40B), for a development containing twenty-six units of affordable rental housing (to be developed by HAP, Inc.). At the time of the approval the Town of Amherst had fulfilled its minimum affordable housing obligation under Chapter 40B. The board's decision to grant the comprehensive permit rested on their conclusion “...that the need for affordable housing in Amherst was not mitigated by the fact that the town had met its minimum affordable housing obligation.” Residents of Amherst, including some abutters to the project site, challenged the board's decision based on the assertion that the town's bylaws could not be superseded by 40B and that the board had exceeded its authority in granting the comprehensive permit.

⁴⁰ Eileen Standerwick & others v. Zoning Board of Appeals of Andover & another, 447 Mass. 20 (Essex County (2006)

The Land Court sided with the board and the plaintiffs appealed to the Supreme Judicial Court of Massachusetts. In the Supreme Judicial Court case, the plaintiffs asserted that once a community's minimum affordable housing obligation is met under 40B, the developer must apply for a special permit or variance to override local zoning law, instead of submitting a comprehensive permit under 40B. The zoning board of appeals may not employ what the plaintiffs identified as the "regional need test" to establish the grounds for approving a comprehensive permit. Instead the developer must apply for a special permit or variance to override local zoning law.

Outcome

The Court found in favor of the Zoning Board, stating that a "...municipality's attainment of its minimum affordable housing obligation in many cases does not eliminate the need for affordable housing within its borders." The Court ruled that the local zoning board of appeals still has the power to grant a comprehensive permit under Chapter 40B.⁴¹

Zoning Board of Appeals of Amesbury vs. Housing Appeals Committee: 2010

Key Finding: The court established that the scope of local zoning boards to issue conditions on comprehensive 40B applications is limited to matters related to the siting and design of the development.

The *Amesbury* case centers around the conditions imposed by the Amesbury Zoning Board of Appeals on an application filed under Chapter 40B. In 2005, a developer, Attitash Views, LLC (Attitash), submitted an application to the board for a comprehensive 40B permit. The application included a forty-unit condominium development containing ten affordable units. In 2006 the board approved the permit application subject to ninety-four conditions. Some of the conditions imposed on Attitash included mandates related to construction, density, and bedroom limitations as well as restrictions on land acquisition values, allowable profit, regulatory documents, and marketing. Attitash appealed the board's decision to the Housing Appeals Committee (HAC) arguing that several of the conditions imposed by the board were "legally beyond the authority of the board to impose; improperly infringed on the role of the State or Federal subsidizing agency in the comprehensive permit process; or rendered the project uneconomic or otherwise incapable of obtaining funding."⁴²

Outcome

In 2007, the HAC issued a summary decision in favor of Attitash. The HAC stated that the board went "beyond its traditional role of reviewing the siting and design of the housing development" and attempted to: "limit how the housing may be subsidized [;] involve itself in the drafting of the documents that ensure long-term affordability[;] shape the group of people who will be eligible to rent the housing[;] influence how the housing will be marketed[;] dictate how parts of the calculation of the profit limitation will be conducted[;] restrict the choice of the agent that will monitor the development[;] and otherwise insert itself into programmatic

⁴¹ John Boothryd v. Zoning Board of Appeals of Amherst & others, 449 Mass. 333 (2007)

⁴² Zoning Board of Appeals of Amesbury v. Housing Appeals Committee & another. 457 Mass. 748 (2010)

aspects of the development." The decision was appealed and the Massachusetts Supreme Judicial Court also found in favor of Attitash/The Housing Appeals Court.⁴³

South Middlesex Opportunity Council (SMOC) v. the Town of Framingham: 2010

Key Finding: "Discrimination under the Fair Housing Act includes delays in issuing permits that are caused in part by discriminatory intent, even if the permits are ultimately granted."⁴⁴

Background

SMOC operates residential substance abuse treatment programs in Massachusetts, including several in the Town of Framingham. In 2007, SMOC filed a lawsuit charging the Town of Framingham, town leaders (town meetings members, board of selectman members, planning board members and the human services coordinator) and residents, with discriminating against the population served by the agency. Specifically, SMOC alleged that three of the organization's residential substance abuse treatment programs: the Sage House, the Common Ground Shelter and Larry's Place were all targeted with discriminatory actions by the defendants. The Sage House project was subjected to continued evaluation of its applicability under the Dover Amendment as part of the site plan approval process. These evaluations resulted in a delay of the approval of permits necessary to move the project forward. The Town's building commissioner recommended closure of the Common Ground Shelter based on the fact that it no longer qualified for an exemption under the Dover Amendment and SMOC was denied a request for an exemption from the Town's zoning requirements under the Dover Amendment to build Larry's Place.

SMOC alleged that the defendants violated the Fair Housing Act (FHA) by intentionally discriminating against the programs' housed at Sage House, Common Ground Shelter and Larry's Place and the client participants in those programs. SMOC also claimed that the defendants' violated the provision of the FHA which provides that a person cannot "coerce, threaten, or interfere with any persons in the exercise or enjoyment of" rights protected under the FHA. Additionally, SMOC asserted that the town violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 by discriminating against the three SMOC programs and the client participants of those programs.⁴⁵

Outcome

SMOC originally filed a case in United States District Court, District of Massachusetts in 2007 and, in response, the defendants filed a motion to dismiss in 2008. The Court dismissed some of the claims and allowed federal claims against the FHA, ADA and Rehabilitation Act to move forward. In response to the defendants' motion for summary judgment on these federal claims, Judge Woodlock issued a memorandum and order on September 9, 2010. Judge Woodlock dismissed the defendants' motion for summary judgment based on the finding that SMOC had provided sufficient evidence to raise the question at trial as to whether intentional discriminatory action was taken by defendants in the form of interference and creation of

⁴³ Zoning Board of Appeals of Amesbury v. Housing Appeals Committee & another. 457 Mass. 748 (2010)

⁴⁴ Memorandum and Order, SMOC v. Town of Framingham, 07-12018-DPW, D. Mass (2010)

⁴⁵ Memorandum and Order, SMOC v. Town of Framingham, 07-12018-DPW, D. Mass (2010)

delays. The court also held that the town officials were not protected by immunity or constitutional First Amendment defenses. SMOC and the Town of Framingham met with a mediator in October of 2010 and settled the case out of court. The Town agreed to pay SMOC \$1 million dollars and train town employees on the FHA, ADA and Rehabilitation Act, as part of the settlement.⁴⁶

⁴⁶ Memorandum and Order, SMOC v. Town of Framingham, 07-12018-DPW, D. Mass (2010)