

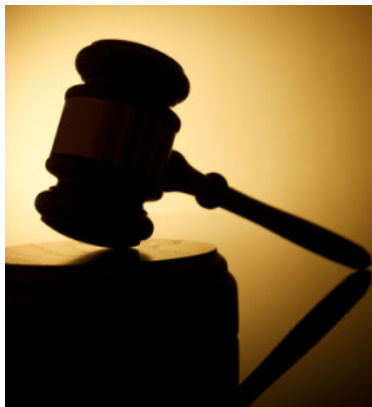


Community and Economic Development in North Carolina and Beyond Blog: Discriminatory Effect without Intent: A Fair Housing Challenge to the Allocation of Low Income Housing Tax Credits

By CED Program Interns & Students

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A court case pitting two unlikely opponents in the effort to provide better housing

opportunities for low-income households has captured the attention of state housing finance agencies around the country. At issue in *Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs* is a claim that the Department has contributed to a racially segregated housing pattern in the city of Dallas through its process of awarding Low-Income Housing Tax Credits. A recent Court of Appeals opinion laid out the groundwork for how ICP and the Department must defend their positions, adopting HUD's standards for presenting the burden of proof regarding disparate impacts claims under the Fair Housing Act.

Inclusive Communities Project, Inc. (ICP) is a non-profit organization that strives to help low-income families use their Housing Choice Vouchers to find quality housing in "lower poverty, higher opportunity" neighborhoods in Dallas and surrounding counties through housing search and counseling services. Given the geography and demographics of poverty in that community and much of the country, ICP finds that it is trying to help predominantly African-American households relocate to predominantly Caucasian neighborhoods. The Housing Choice Voucher is the main vehicle that enables these families to pursue relocation. Low-income housing tax credit (LIHTC) projects must accept the voucher, and as such become a primary destination for ICP's clients, they claim.

The Department is responsible for scoring applications for LIHTC awards and allocating the tax credit to projects across the state of Texas each year according to an approved Qualified Allocation Plan (or QAP). However, ICP contests that too many of these family housing LIHTC developments are approved in minority-concentrated neighborhoods in the Dallas metropolitan area and too few are approved in the higher-opportunity Caucasian neighborhoods, perpetuating segregated housing. ICP filed suit against the Department for violating the Fair Housing Act on the grounds of intentional discrimination and disparate impacts (discriminatory effect without proof of discriminatory intent).

Only the disparate impacts argument was upheld on statistical evidence that demonstrates a pattern of awarding LIHTC funds disproportionately to projects in majority-minority neighborhoods. However, on appeal the Fifth Circuit Court reversed and remanded the case to the lower court to apply a new legal standard for demonstrating the disparate impact of the Department's tax credit allocation procedure on minority residents. In their opinion on March 24, the court laid out the groundwork for how ICP (plaintiff) and the Department (defendant) must argue their case in what is called a "burden-shifting" approach under HUD regulation 24 C.F.R. § 100.500.



According to the regulation, burden-shifting in a disparate impacts case is a multi-step procedure:

1. First, the plaintiff has the burden of proving discriminatory effect from the challenged practice.
2. Second, if the plaintiff satisfactorily proves discriminatory effect, the defendant has the burden of proving that the practice “is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” of the defendant.
3. Third, if the defendant satisfactorily justifies the practice on the grounds above, the plaintiff must prove that the interests supporting the practice can be fulfilled through a different practice with less discriminatory effect.

Based on the Fifth Circuit’s ruling, the district court must apply this standard to *ICP v. TDHCA*, which could be a drawn-out process. Meanwhile, state housing finance agencies and affordable housing partners around the country will be eager to see the outcome as it affects the method of awarding LIHTC projects and, ultimately, the pattern of housing for lower-income Americans.

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