Housing Discrimination Claims Given Boost By Supreme Court

Insights
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Today, by a 5-4 vote, the U.S. Supreme Court held that the federal Fair Housing Act (FHA) encompasses claims of disparate-impact discrimination. This decision, which marks the first time that the Supreme Court addressed this issue, ensures a broad reading of the FHA and makes it easier for aggrieved parties to bring housing bias claims. It also reaffirms the principle that disparate-impact claims are alive and well in employment discrimination contexts. *Texas Dept. of Housing v. Inclusive Communities Project, Inc.*

Facts Of The Case

The Inclusive Communities Project (ICP) claimed that the Texas Department of Housing and Community Affairs (DHCA) was violating the FHA by allocating tax credits to inner-city housing projects in minority neighborhoods in a way that had a disproportionately negative effect on African Americans. The ICP's mission is to further fair housing throughout Texas by helping low-income, predominately African American families find affordable housing in the mostly white suburbs of Dallas via the Dallas Housing Authority's Section 8 Housing Choice Voucher program. It claimed that the DHCA was preventing African Americans from renting property in many of Dallas' financially better-off communities.

Although private landlords, including those in the Dallas suburbs, are free to accept Section 8 vouchers, many refuse to do so. This means that the ICP generally places the low-income tenants in public housing developments that have been approved to receive tax credits under the program because such public housing developments cannot refuse tenants because of their Section 8 status. But state government agencies, such as the DHCA, determine where to allocate the tax credits and, therefore, can affect the location of the projects. Such state agencies must comply with the FHA's anti-discrimination provisions.

The FHA makes it illegal to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race." To deliberately deal with a member of one race differently than a member of another race is referred to as disparate treatment. On the other hand, a "disparate-impact" claim is one that alleges that a facially neutral policy or practice is unlawful because it has a disproportionately negative effect on a certain protected class rather than alleging any kind of intentional discrimination.

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That sort of unintentional discrimination claim was brought in this case. In bringing the lawsuit, the ICP alleged that the DHCA disproportionality approved tax credits for affordable housing developments in predominately minority neighborhoods, while simultaneously denying tax credits for projects that were to be built in the wealthier, predominately white Dallas suburbs. This, in turn, meant that the housing options for Dallas' Section 8 tenants, who were predominately African American, were often in the poorer, minority communities rather than the suburbs.

The Issues Before The Court

The ICP originally filed this lawsuit in federal district court in 2008. The district court agreed with the ICP and held that the Texas DHCA's allocation of tax credits violated the FHA because it had a disparate impact on Dallas' predominately African-American, Section 8 residents. Under this ruling, the issue of whether Texas intended to discriminate against the Section 8 residents was irrelevant. Instead, the analysis focused on whether the agency's policy of awarding tax credits to projects in predominately minority communities had an unduly negative impact on a certain racial group.

The U.S. Court of Appeals for the 5th Circuit affirmed the district court's ruling by holding that disparate-impact claims were actionable under the FHA. The state then appealed the matter to the Supreme Court and urged it to hold that the FHA does not permit disparate-impact claims. This issue has been before the Supreme Court on two separate occasions in recent years but both cases settled before oral arguments occurred. Therefore, the question before the Supreme Court was a big one: does the FHA allow for disparate-impact claims or is it limited to only claims of intentional discrimination?

The Court's Ruling

Relying on the legislative history and the reasoning of the 11 federal courts of appeals that had previously addressed this issue, the Supreme Court held in a narrow 5 to 4 decision that disparate-impact claims are actionable under the FHA. Writing for the slimmest of majorities, Justice Anthony Kennedy noted that the FHA is very similar to two employment law statutes which permit disparate-impact lawsuits: Title VII of the Civil Rights Act, and the Age Discrimination in Employment Act. Because all three of these statutes have the central purpose of eradicating discriminatory practices within the national economy, it makes sense, according to the Court, to read them broadly and allow great freedom to those seeking relief under them.

The Court also noted allowing disparate-impact claims under the FHA plays a particularly important role in uncovering hidden discriminatory intent in housing decisions: "permitting plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification." For these reasons, the Court permitted disparate-impact claims to continue in the housing context.

The Court did place some restrictions on the framework of such claims, however. It noted that disparate-impact claims need to be limited so that employers and other regulated entities (like housing groups) are able to make practical business choices and profit-related decisions that sustain the American free-enterprise system. It specifically held that it did not want plaintiffs to be

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able to prevail simply by showing apparent statistical evidence of discrimination, and that it did not want covered entities to simply resort to the use of racial quotas.

Significance For Defendants

The Court's ruling has no immediate effect on employers because the case only interpreted the FHA, which applies to equal opportunities in housing rather than employment. That said, the Court's disparate-impact analysis borrows heavily from cases addressing civil rights issues in the employment context, and employment statutes were front-and-center in today's decision.

This means that the Supreme Court's disparate-impact analysis under the FHA will continue be used in the context of other discrimination laws, such as Title VII and the Age Discrimination in Employment Act. In other words, disparate impact claims will not be going away anytime soon.

As for housing organizations covered by the FHA, this case has massive significance. Residents and advocacy groups will be sure to test the boundaries of this decision in the coming years, and an increase in discrimination litigation is all but assured. Those covered by the FHA will want to immediately review their housing practices to ensure that even non-discriminatory actions are not having a disproportionately negative impact on any protected categories.

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