

LEGAL UPDATES

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## Service

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Community  
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# U.S. Supreme Court Finds Lenders and Developers Can Be Liable for Unintentional Discrimination Under the Fair Housing Act

The U.S. Supreme Court held on June 25, 2015, that disparate-impact claims are cognizable under the Fair Housing Act (FHA). In a 5-4 decision, the Court ruled that in addition to intentional housing discrimination based on race, color, religion, national origin, familial status or disability, the FHA prohibits unintentional housing discrimination, or disparate impacts, against protected classes.

## The Supreme Court Decision

In the case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, a Texas nonprofit alleged that the state housing department unintentionally perpetuated segregated housing by allocating too many low-income housing tax credits to projects in predominantly minority neighborhoods and too few in predominantly white neighborhoods.

The Court held that two anti-discrimination laws -- the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967-- provided evidence that Congress intended the FHA to include disparate-impact liability and that these claims are consistent with the FHA's central purpose of eradicating discriminatory housing practices. The Court explained that disparate-impact liability plays an important role in counteracting unintentional discrimination that may cause segregated housing patterns. For example, a zoning law that bars apartment construction in wealthy suburbs can have the unintentional effect of discriminating against a protected class.

In an effort to ensure that FHA disparate-impact claims prevent only “artificial, arbitrary, and unnecessary barriers” to equal housing opportunities, the Court placed limits on FHA disparate-impact liability. To support a prima facie showing of a disparate impact, a plaintiff must show not only a statistical disparity but also that a defendant’s policy caused the disparity. In addition, a defendant must be given an opportunity to explain the valid interest served by a challenged policy. The Court warned that disparate-impact liability should not be expansively interpreted so as to inject racial considerations into every housing decision.

The case has been remanded to the Fifth Circuit to determine if the Texas housing department’s policy creates a disparate impact. This decision will provide important additional insight as to how courts will determine the existence of a disparate impact under an FHA claim.

### **What This Means to You**

Civil rights lawyers and housing advocates may be pleased that they can rely on disparate-impact claims to remedy housing discrimination. Even though the Court has set limits intended to protect potential defendants from unnecessary or frivolous litigation, the case’s holding will likely lead to an increase in FHA-based suits against lenders and developers. In preparation for these suits, lenders and developers should carefully review policies related to housing projects for possible unintentional discriminatory effects. Lenders and developers also should ensure that each policy serves a substantial, legitimate and nondiscriminatory interest.

### **Contact Information**

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