

# OPENING THE DOOR

HIGHLIGHTS IN  
FAIR HOUSING ACT  
ENFORCEMENT

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**Housing and Civil  
Enforcement Section  
Civil Rights Division  
Department of Justice**





# THE FAIR HOUSING ACT

## INTRODUCTION

On April 11, 1968, President Lyndon B. Johnson signed the Fair Housing Act (FHA) into law, declaring “fair housing for all . . . is now a part of the American way of life.” Since the passage of the FHA, the country has made progress in breaking down barriers to fair housing. The Department of Justice has brought cases against cities, housing developers, landlords, and lenders to increase access to housing. These cases have challenged racial segregation, confronted religious and national origin discrimination, shined a light on sexual harassment in housing, and highlighted issues that families with children and persons with disabilities face in securing suitable housing. The Department of Justice has brought and resolved thousands of cases that have directly affected thousands of people who experienced housing discrimination. Since the FHA was amended in 1988, the

Department has brought over 1,500 cases under the FHA, obtaining over \$200 million in monetary relief and civil penalties, much of which has gone back to tens of thousands of victims, individuals, and communities that have experienced housing discrimination. These cases have had ripple effects on people, industries, and communities across the country.

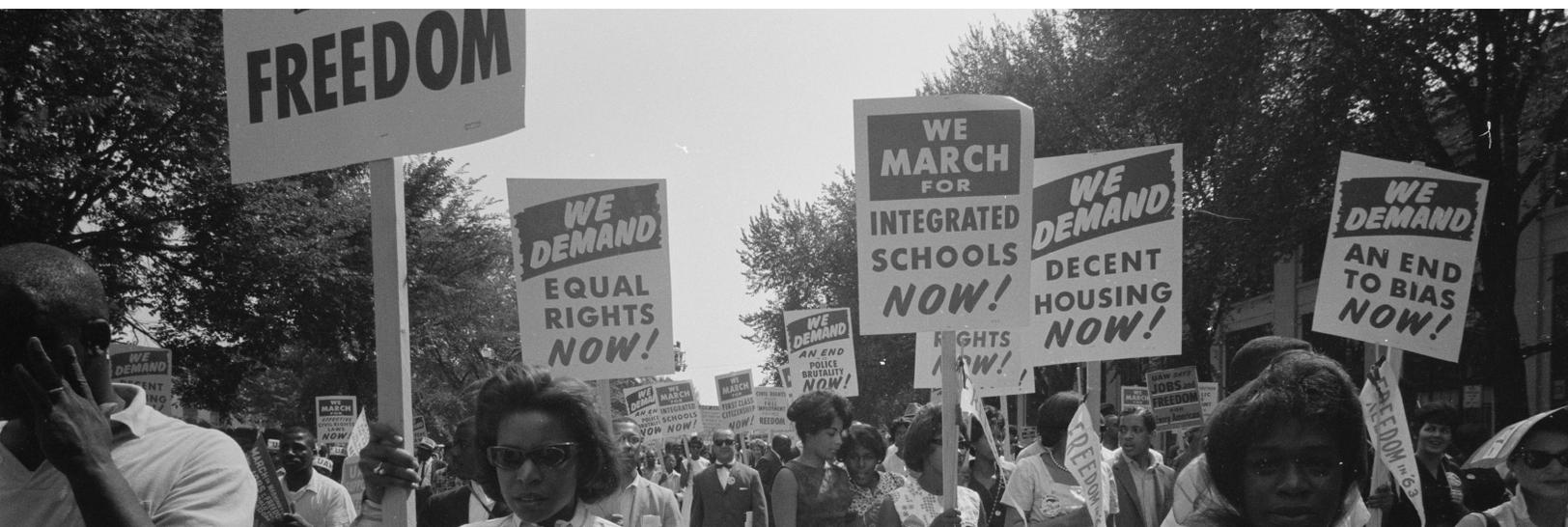
In addition to reviewing the history of the FHA and its amendments, this document highlights the wide range of matters that the Department of Justice has pursued since the FHA was passed in 1968, with a look at ten early landmark cases that sought to safeguard the rights of all persons to fair housing, regardless of race, national origin, sex, religion, disability, and familial status. From Yonkers, New York, to Hildale, Utah, the cases discussed in this document have affected individuals and communities across the country. These cases demonstrate that change, even where long resisted, is possible.

# THE HISTORY OF THE FAIR HOUSING ACT

The FHA was born from a mixture of grassroots organizing, political pressure, and an increasing sense of urgency to address discrimination. This civil rights legislation followed the Civil Rights Act of 1964, which prohibited discrimination in schools, places of employment, and places of public accommodation. After the Civil Rights Act of 1964 became law, politicians and organizers alike sought to extend its discrimination prohibitions to housing. The result was the FHA—a law with a history that connects local leaders and national politics.

In 1964, an African-American teacher named Albert Raby became the leader of the Coordinating Council of Community Organizations (CCCO), a coalition of groups fighting for civil rights in Chicago. In 1965, Mr. Raby invited Dr. Martin Luther King, Jr. and the Southern Christian Leadership Conference (SCLC) to join the CCCO to campaign to end segregation and discrimination in

housing, schools, and employment in Chicago. This joint effort of the CCCO and the SCLC, known as the Chicago Freedom Movement, embarked in earnest in 1966. The Chicago Freedom Movement organized a series of meetings, rent strikes, protests of real estate offices that turned away African-American home seekers, and peaceful marches into all-white neighborhoods. During the summer of 1966, some of these demonstrations were met with open hostility and violence, including rock-throwing mobs that waived Confederate flags and set fire to cars. Seeking to end these confrontations, Chicago's business and political leaders, including Mayor Richard Daley, met with Chicago Freedom Movement leaders in August 1966. After several days of negotiating, they came to an agreement on August 26. This agreement included promises to support local open or fair housing laws and desegregate future public housing. Although this agreement fell short of the goal of citywide desegregation, it brought national attention to housing discrimination and encouraged the circulation of fair housing bills in the United States Congress.



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By 1967, cities across the country were experiencing unrest. President Lyndon B. Johnson created the President's Commission on Civil Disorders, chaired by Governor Otto Kerner, Jr. of Illinois. Also called the "Kerner Commission," the eleven-member commission's charge was to determine the causes of the unrest and propose solutions to prevent it. Senator Edward Brooke from Massachusetts, the first African-American senator elected by popular vote, was one of the members of the commission.

The Kerner Commission issued its report on February 29, 1968, in which it famously warned that the nation was "moving toward two societies, one black, one white—separate and unequal." The Kerner Commission identified twelve "deeply held grievances" that contributed to the social unrest. One of the most important grievances it identified was inadequate housing. The Kerner Commission indicated that discrimination prevented African-Americans from accessing "non-slum" areas. It recommended enacting "a comprehensive and enforceable federal open housing law to cover the sale or rental of all housing, including single family homes."

Determined to address this issue, Senator Brooke joined Senator Walter Mondale from Minnesota in sponsoring fair housing legislation in 1968. Two prior attempts to pass fair housing legislation had failed, but the results of the Kerner Commission provided additional support for the law. In

addition, Dr. King's role in advocating for fair housing, his tragic assassination on April 4, 1968, and the subsequent rioting allowed President Lyndon B. Johnson to further highlight to Congress the importance of the legislation.



On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968, which included the FHA. The law made discrimination in the financing, sale, or rental of housing illegal. It also gave the Attorney General the authority to bring a lawsuit where there was reason to believe that there was a pattern or practice of discrimination. Upon signing the Civil Rights Act of 1968, President Lyndon B. Johnson remarked that, "with this bill, the voice of justice speaks again [and] it proclaims that fair housing for all, all human beings who live in this country, is now a part of the American way of life." Thus, the Department of Justice's Civil Rights Division initiated its enforcement of the FHA, beginning with four protected classes—race, color, national origin, and religion.

# UNITED STATES V. YONKERS: RESIDENTIAL RACIAL SEGREGATION

The City of Yonkers, New York, located just north of the Bronx, is emblematic of the struggle to correct deeply entrenched, segregated housing patterns in this country. In 1980, most white residents in Yonkers lived to the east of the Saw Mill River Parkway. Runyon Heights, the only African-American neighborhood on the east side of Saw Mill River Parkway, was sealed off from other neighborhoods by a strip of land that once contained a fence. Most of the African-American and Hispanic neighborhoods sat west of the Saw Mill River Parkway, where the City of Yonkers located 97% of its low-income housing. The segregation in Yonkers extended beyond its neighborhoods and into its school system, where African-American and Hispanic students on the southwest side had less-experienced teachers than their white peers, were assigned to special education programs disproportionately, and were steered into inadequate vocational programs instead of the traditional curriculum.

On December 1, 1980, the United States filed a lawsuit against the City of Yonkers, the Yonkers Board of Education, and the Yonkers Community Development Agency alleging that the Defendants' actions created and perpetuated segregation

in housing and schools. The United States stated that, in violation of the FHA, the City Council and the Community Development Agency had repeatedly selected sites for public and subsidized housing in African-American and Hispanic neighborhoods. In an amended complaint filed, the United States claimed that the actions of the City Council and the Community Development Agency "promoted racial segregation in the public schools." This marked the first time that the United States linked housing and school segregation in a complaint. The Yonkers branch of the NAACP intervened in the matter.

The bench trial before the Honorable Leonard B. Sand in the Southern District of New York began on August 2, 1983, and ended over thirteen months later on September 19, 1984. The City did not contest that its housing and schools were segregated, but it claimed that it did not create or perpetuate the segregation. Thus, the sole issue at trial was whether the Defendants were liable for the segregation in Yonkers. On November 20, 1985, over a year after the trial's conclusion, Judge Sand issued a 600-page opinion. He found that "the extreme concentration of subsidized housing . . . in Southwest Yonkers

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today is the result of a pattern and practice of racial discrimination by City officials, pursued in response to constituent pressures to select or support only sites that would preserve existing patterns of racial segregation, and to reject or oppose sites that would threaten existing patterns of segregation.” He also found that the City’s housing practices provided a basis to hold it liable for the racial segregation in the schools, making this the first court to link liability for housing and school segregation.

Despite this legal victory, the battle waged on in Yonkers, particularly on the housing front. On May 28, 1986, Judge Sand ordered the City to remedy the housing segregation by establishing a fair housing policy to build 200 units of low-income housing immediately in white neighborhoods and 800 units of subsidized, middle-income housing in mainly white, middle-class areas as part of a long-term plan. In response to the remedy, one white male resident said at a community meeting that he “delivered newspapers to blacks, but [he] can’t live next to what the government has in these projects.” Mary Dorman, another white resident in east Yonkers, was “opposed to what the housing was about” and was concerned about the neighborhood and “the kind of people that would be coming.” She had joined the Save Yonkers Federation, a community group established to oppose the housing remedy. The resulting backlash from white residents in east Yonkers prompted the City to appeal the

remedial order. The Second Circuit affirmed Judge Sand’s opinion on December 28, 1987, and the Supreme Court declined to review the case.

Despite the Second Circuit’s decision affirming Judge Sand’s opinion, the City refused to comply with the court’s order and remedy. During the summer of 1988, the seven-member City Council failed to adopt an affordable housing ordinance to implement the remedy. Only three City Council members, including Mayor Nicholas Wasicsko, voted in favor of adoption. Judge Sand responded by implementing fines starting at \$100 and doubling each day until the City adopted the ordinance. The City failed to adopt the ordinance for over a month. Finally, facing bankruptcy and dramatic layoffs, the City adopted the ordinance on September 9, 1988.

The City finished building the first 200 units in 1992 and, in accordance with court orders, continued to implement programs that provided rental and home-purchase assistance in a manner that promotes desegregation. On May 1, 2007, the United States and the Defendants entered into a settlement agreement that ended the court’s supervision of the case, and required the city to maintain affordable housing units—approximately 300 resident-owned units and 315 rental units—for 10 to 30 years.

The housing remedy has had a positive impact on residents and on the greater community. It helped to ground and

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stabilize Adrean Owens-Saunders and her family. They moved from deteriorated public housing in southwest Yonkers into a “simply gorgeous” townhouse in east Yonkers in 1992. When Ms. Owens-Saunders moved in, she was on public assistance, but she “made it [her] business to get out of the system.” She attended college, and learned “a lot of things that [she] should have learned when [she] was in grade school [in southwest Yonkers].” Having witnessed her mother’s abuse by boyfriends, Ms. Owens-Saunders used this education to become an advocate for survivors of domestic violence

The housing remedy helped to transform Mary Dorman’s attitude toward public housing residents. After families began moving into the new public housing units, she said, “[T]here’s so much integration in the city, it’s wonderful. It’s not the same

city.” She became involved in helping new residents transition into the neighborhood and severed ties with the Save Yonkers Federation.

In reflecting on Yonkers in the 2000s, Gene Capello recognized that the remedy was only the beginning and that there is much more work to do to ensure the City desegregates. In stating why we, as a country, must continue working on what some perceive as an uphill battle, he said: “We continue our efforts because we have to. We can’t give up on this kind of thing because we won’t have won anything [if we give up]. We’ll have a hollow victory—a victory on paper without having the thing that we really fought for, which is some form of equality, some form of equal opportunity.”

## UNITED STATES V. VILLAGE OF HATCH: NATIONAL ORIGIN DISCRIMINATION IN LAND USE AND ZONING LAWS

In the 1980’s, the Village of Hatch, a three-square-mile town in southern New Mexico, was the self-proclaimed “Chile Capital of the World,” and home to many farmworkers and their families from Mexico who worked in the agricultural valley.

Affordable housing was in short supply in the Village. Mobile homes were one of the few ways that farm workers and their families could afford to reside in the town.

Many Mexican and Mexican-American families chose to reside on Elm Street, a neighborhood with many mobile homes. Without mobile homes, many of these residents would have been forced to live in colonias, towns along the Mexican border that often had unsafe and inadequate housing, limited or no drinkable water, and poor or non-existent sewer and drainage systems.

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In 1986, the Village of Hatch began a campaign to prevent farm workers, who were predominantly of Mexican national origin, from living in or moving into the Village. The Village passed a zoning ordinance temporarily prohibiting new mobile homes from coming into the Village. In 1990, the Village made that prohibition on mobile homes permanent. And on August 12, 1993, the Village adopted another zoning ordinance that prohibited all mobile homes that were not located in mobile home parks and severely limited the areas where mobile home parks could locate. This ordinance banned mobile homes on Elm Street. In adopting the 1990 and 1993 ordinances, Village officials indicated that the purpose of these ordinances was to remove residents of Mexican national origin from the town. The Village enforced the 1993 ordinance exclusively along Elm Street, pushing residents into colonias.

On June 15, 1995, the United States filed a complaint in the District Court of New Mexico alleging that the Village of Hatch violated the FHA by adopting and enforcing zoning ordinances with the intent to remove residents of Mexican national origin from the town. The court consolidated the United States' lawsuit with a similar case that thirteen Mexican nationals had filed against the Village on May 9, 1994.

On December 12, 1996, the parties resolved the lawsuit against the Village. The resulting consent decree required the Village to stop enforcing the 1993 ordinance, allow mobile homes on Elm



Street and in other areas of the Village, develop a plan to increase affordable housing in the Village, apply for funding for affordable housing programs, adopt a fair housing policy, and train Village employees on the consent decree's requirements. The Village also was required to pay \$260,500 to people harmed by the ordinances and \$2,000 to the United States as a civil penalty.

For the Mexican and Mexican-American residents of the Village, this case meant more than the ability to live in mobile homes. Resolving this case allowed them to escape abysmal living conditions and return to their homes and community in the Village. Assistant Attorney General for Civil Rights at the time, Deval Patrick noted that this case sends a message that "[m]unicipalities must not be allowed to abuse their zoning authority by making housing unavailable to persons because of their national origins—especially where affordable housing options are in short supply."

# UNITED STATES V. COLORADO CITY: RELIGIOUS DISCRIMINATION IN HOUSING AND HOUSING-RELATED SERVICES

The adjoining towns of Colorado City and Hildale are located on the border of Arizona and Utah, also known as Short Creek, and are populated primarily by members of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS). The cities and their joint police force operated as an arm of the FLDS, carrying out the directions of FLDS leaders, particularly Warren Jeffs, who remained head of the FLDS even while a fugitive and then while in prison following conviction for child sexual assault. Non-FLDS had no recourse – no city officials nor law enforcement to which to turn. For example, the police used its authority to facilitate unlawful evictions of non-FLDS residents. Only when county sheriff deputies intervened could non-FLDS residents obtain any relief. The discriminatory conduct extended well beyond unlawful policing. Defendants also denied or unreasonably delayed providing water and electric service to non-FLDS residents, refused to issue them building permits, and otherwise prevented individuals from constructing or occupying existing housing.

In addition, much of the land in the towns belonged to the United Effort Plan Trust, to which members of the FLDS traditionally contributed significant portions of their money, property, and time. In 2005, a Utah

court determined that the Trustees had violated their legal duties in administering the Trust, including duties relating to former members of the FLDS Church who were beneficiaries of the Trust. The court appointed a special fiduciary, and ordered the Trust be operated free of discrimination. Notwithstanding the court's ruling, the local police consistently disregarded the validity of Trust-signed occupancy agreements and of legal rulings upholding the rights of non-FLDS Trust beneficiaries.

In 2012, the Department filed a lawsuit against the cities of Colorado City and Hildale, and local utility companies, alleging a longstanding pattern or practice of religious discrimination. In a first-of-its-kind lawsuit under both the Fair Housing Act and the Violent Crime Control and Law Enforcement Act, the Department alleged that the cities, and their joint police department and local utility providers, allowed the FLDS Church to improperly influence the provision of policing services, utility services, and access to housing, and that this improper influence led to discriminatory treatment against non-FLDS residents. On March 7, 2016, following a seven-week trial, a jury found that the Defendants discriminated against non-FLDS individuals in providing housing, utilities, and police services. Just before the jury verdict, the parties agreed that the Defendants would pay \$1.6

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million to compensate the victims of discrimination and pay civil penalties. In discussing the verdict, Isaac Wyler, one of the aggrieved persons, said, "I feel it is a very good moment. I'm looking forward to helping this community grow now. This is a huge step in the right direction."

On April 18, 2017, Judge H. Russel Holland issued an order granting extensive injunctive relief. He wrote that "[a]ll residents . . . must be afforded equal access to housing and residential services, to nondiscriminatory law enforcement, and to free exercise of their religious preferences that are not contrary to law." Former FLDS Church members who left Short Creek when they left the church described the court order as being exactly what they wanted. One such former FLDS Church member, Shirlee Draper, said she "could not be more ecstatic" about the court order because it "really reflects what the people want."

Following the verdict and the court's order, change has come to the twin cities. Non-FLDS residents are becoming more integrated into the community. Many former-FLDS members have returned home. The towns have reinstated community festivals and celebrations that the FLDS Church had banned. Students are continuing to enroll in the re-opened public school—a school that had shuttered its doors in 2002 after Warren Jeffs banned public education. The cities formed their first Chamber of Commerce, which wants "to reach out to people who were born and

raised in the area and told they're no longer welcome" and "people from the outside who have questions or fears" to "let them know they're welcome here."

In November 2017, for the first time in the city's history, Hildale elected its first non-FLDS and first female mayor—Donia Jessop—and its first majority non-FLDS city council. Mayor Jessop believes these changes are long overdue: "The things that were happening . . . were so destructive. And now that destruction can stop, and we can start to rebuild." At least one resident said that there is "a renewed feeling of hope," and they believe the changes will help everyone and will provide "a fresh beginning and an opportunity to heal and prosper."





## ADDING SEX AS A PROTECTED CLASS

On August 22, 1974, six years after President Lyndon B. Johnson signed the FHA into law, Congress passed the Housing and Community Development Act of 1974. The primary focus of the Act was to establish a federal block grant program that gave financial assistance to states and local governments to “provid[e] decent housing and a suitable living environment and expand[] economic opportunities, principally for persons of low and moderate income.” This legislation also amended the FHA to prohibit discrimination in the financing, sale, or rental of housing because of sex. Senator William Brock of Tennessee, the sponsor of the amendment, stated that “the assumption that men could perform these [home ownership] tasks while women could not is just the sort of discrimination based on sex that we are talking about.”

Upon the signing of the Housing and Community Development Act of 1974, President Gerald R. Ford noted that prohibiting housing discrimination because of sex will “enable millions of hardworking women and married couples to obtain the mortgage credit to which their economic position clearly entitles them.” This amendment enabled the Department of Justice to combat discrimination in housing based on stereotypes about women and men. It also allowed the Department to address additional differences in treatment that women and men experience in the housing context, such as sexual harassment.

*In October 2017, the Department launched a Sexual Harassment in Housing Initiative led by the Civil Rights Division, in coordination with U.S. Attorney’s Offices across the country. The goal of the Department’s Initiative is to address and raise awareness about sexual harassment by landlords, property managers, maintenance workers, loan officers, or other people who have control over housing. Since launching the Initiative, the Department has filed 23 lawsuits alleging sexual harassment in housing and recovered over \$39.5 million for persons harmed by such harassment.*

# UNITED STATES V. CRAWFORD: SEXUAL HARASSMENT IN HOUSING

In the mid-1990s, Lakeisha Johnson was looking to rent a home in the Akron, Ohio, area. She decided to rent a property from Paul F. Crawford, who owned and managed dozens of rental properties in the area. However, as the United States explained at trial, Ms. Johnson’s “dream home became a nightmare after she signed her lease.”

Crawford created this nightmare for Ms. Johnson and at least 25 other female tenants by sexually harassing them. The sexual harassment included unwanted sexual advances on tenants and prospective tenants, a requirement that tenants and prospective tenants engage in sexual acts to rent a home or avoid eviction, and unwanted sexual touching.

On March 30, 1998, the Department of Justice filed a lawsuit against Crawford and the company that owned some of the rental properties. In the complaint, the United States alleged that the Defendants violated the FHA by discriminating against female tenants and prospective tenants on the basis of sex. The case was consolidated with another lawsuit brought by the Fair Housing Contact Service—a local fair-housing agency—and eight former tenants who also alleged that Crawford sexually harassed them.

When the case went to trial on October 6, 1999, it was one of the first sexual

harassment cases under the FHA to reach this litigation stage. The United States won the case, and the jury awarded \$490,000 to 16 women and the Fair Housing Contact Service. A month later, Judge Kathleen O’Malley issued a consent order that required Crawford to stop managing the rental properties and hire an independent manager to oversee the properties. She also ordered the Defendants to pay \$80,000 as a civil penalty.

Upon hearing the verdict, Betty Brown, a former tenant who experienced harassment, expressed her relief that “Paul Crawford won’t do this to anyone else.” For Ms. Brown and for many other women, this verdict meant that “[t]he truth won.”



# FAIR HOUSING AMENDMENTS ACT OF 1988: ADDING DISABILITY AND FAMILIAL STATUS AS PROTECTED CLASSES

In 1988, twenty years after the passage of the FHA, Congress recognized the importance of the law, but noted that it had “been ineffective because it lack[ed] an effective enforcement mechanism.” Congress wanted to increase private enforcement of the law, strengthen the federal government’s enforcement role, and protect persons with disabilities and families with children. Persons with disabilities faced housing discrimination “because of misperceptions, ignorance, and downright prejudice.” Families with children were denied housing despite their ability to pay. Congress highlighted that this discrimination has a disproportionate effect on African-American and Hispanic families and perpetuates segregation.

Congress made several attempts to resolve these deficiencies in the FHA. Finally, in 1987, Senator Edward Kennedy of Massachusetts and Congressman Hamilton Fish of New York introduced bills that eventually passed their respective legislative chambers. On September 13, 1988, President Ronald Reagan signed into law the Fair Housing Amendments Act of 1988 (FHAA). The FHAA added persons with disabilities and families with children under the age of 18 to the groups that the law protects. It also allowed the Department of Justice to seek monetary awards for people harmed by housing discrimination and civil penalties, which are monetary penalties paid by defendants to the United States. On March 12, 1989, the FHAA took effect, ushering in an era of broader federal enforcement.



# UNITED STATES V. CHICAGO HEIGHTS: DISABILITY DISCRIMINATION IN LAND USE AND ZONING LAWS

When Congress amended the FHA in 1988, it recognized that cities and other local entities have used land use and zoning laws to limit or exclude persons with disabilities from living in residential neighborhoods. Shortly after the 1988 amendments were enacted, the United States filed the first of two disability discrimination cases it would eventually file against the City of Chicago Heights, Illinois, a suburban town located approximately 30 miles south of Chicago.

The United States alleged that the City denied a building permit for a group home for adults with developmental disabilities because of neighbors' fears and stereotypes about the future residents. The United States and Chicago Heights settled the lawsuit on January 16, 1990. The City provided \$30,000 to the group home to compensate for construction delays and \$15,000 to be divided equally among the group home's first fifteen residents.

Approximately five years after that lawsuit settled, a similar issue began to emerge in Chicago Heights. Thresholds, Inc., an organization that provides psychological and social services to individuals with mental illness, sought to address an identified lack of community-based housing for persons with mental illness in Chicago's south suburbs as an alternative to institutionalization.

In May 1995, Thresholds sought approval

from the City before purchasing land in a residential neighborhood to build a five-person group home for individuals with mental health conditions. Although the City initially told Thresholds that the property was appropriately zoned for a group home, after Thresholds had begun construction, the City informed Thresholds that the home could not operate because it was located within 1,000 feet of another group home. Thresholds sought a special-use permit to waive the 1,000-foot spacing requirement as a reasonable accommodation under the Fair Housing Act, which the City denied after community members expressed concerns about "crazy people" living in the neighborhood.

At the same time, the City amended its zoning code to place additional limitations on group homes for individuals with disabilities, including requiring that the home be inspected by the City's code inspectors before it could be occupied. These requirements did not apply to homes with a similar number of residents without disabilities. Furthermore, the City's 1,000-foot spacing requirement rendered numerous homes and apartments unavailable as group homes for persons with disabilities.

On July 7, 1999, the United States filed another lawsuit against the City in the Northern District of Illinois. The lawsuit

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claimed that the City’s refusal to allow Thresholds’ group home to operate violated the Fair Housing Act. The lawsuit also challenged zoning provisions, such as the City’s 1,000-foot spacing requirement for group homes, as violating the Fair Housing Act. In entering summary judgment for the United States on March 21, 2001, the Court found that the City’s zoning ordinance discriminated against persons with disabilities and that the City violated the Fair Housing Act when it refused to allow Thresholds’ group home.

a settlement agreement on August 21, 2001. The City agreed to pay \$122,878 in damages to Thresholds. A few weeks prior to the settlement, the City removed the provisions from its zoning code that the United States had alleged were facially discriminatory. Not only did this lawsuit enable Thresholds’ residents to live in a home of their choice, but it also helped to remove obstacles for other individuals with disabilities who want to live closer to their family and friends.

After the district court entered judgment against the City, the parties entered into



## ESTABLISHMENT OF THE FAIR HOUSING TESTING PROGRAM

On February 24, 1982, the Supreme Court issued its opinion in *Havens Realty Corp. v. Coleman*, holding that housing “testers”—individuals who pose as prospective tenants to test whether a landlord is discriminating—may sue a landlord for denial of housing under the FHA. The Court stated that Section 804(d) of the Act establishes an enforceable right of

“any person” to truthful information concerning the availability of housing. Further, the Court said that a tester who has been the object of a misrepresentation made unlawful under Section 804(d) has suffered injury in precisely the form that the statute intended to guard against, and therefore has a claim for damages under the Act. This ruling allowed fair

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housing testing by civil rights groups to flourish.

In November 1991, the Department of Justice established the Fair Housing Testing Program (Testing Program) and began testing for housing discrimination in 1992. The FHTP's primary goal is to enhance enforcement of the FHA.

Evidence found through testing is often "hidden discrimination" that is difficult or even impossible to find through other means. Potential home seekers who are told that no housing is available have no way of knowing that the housing provider may have treated them differently based on their membership in a protected class.

The Testing Program primarily conducts matched paired tests, in which two individuals—one acting as the "control group" (e.g., white male) and the other as the "test group" (e.g., African-American male)—pose as similarly-situated prospective buyers or renters of real estate for the purpose of determining whether a housing provider is complying with fair housing laws. The Testing Program not only tests for violations of the FHA, but also tests for discrimination in lending and public accommodations under the Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Servicemembers Civil Relief Act.

In 2006, the Department of Justice announced Operation Home Sweet Home, an initiative to expose and eliminate housing discrimination in America by increasing its focus on testing, including in areas that were recovering from Hurricane Katrina. In 2015, the Testing Program expanded its in-person and telephone-based testing to include email and internet testing. In 2021, in light of *Bostock v. Clayton County*, where the Supreme Court held that sex discrimination includes discrimination on the basis of gender identity and sexual orientation, the Testing Program expanded its scope to include testing for sexual orientation and gender identity discrimination.

Since its inception, the Testing Program's work has resulted in the resolution of over 100 pattern or practice cases, including more than \$14 million in total relief.

# UNITED STATES V. KENDALL HOUSE APARTMENTS: TESTING FOR RACE AND FAMILIAL STATUS DISCRIMINATION

After learning of complaints of racial discrimination by certain housing providers in south Florida in the early 1990s, the United States sought to determine whether property managers in the area treated African-American prospective tenants differently from white prospective tenants. In collaboration with a Miami-based fair housing organization called Housing Opportunities Project for Excellence (HOPE), the Department of Justice's Fair Housing Testing Program (Testing Program) conducted a series of tests at properties in south Florida from September 1994 to May 1995. One of the properties tested was Kendall House Apartments, a 160-unit residential complex located in a middle-class neighborhood in Miami. During those tests, the Kendall House property managers told African-American testers that they did not have available units, but they told white testers that they had available units. The property managers also told testers that they did not want to rent to families with children.

Interviews of former employees and prospective tenants helped to confirm the testing results and provide additional information about the discriminatory practices of Kendall House. For example, an

African-American student whose parent was willing to guarantee rental payments attempted to rent an apartment at Kendall House. Kendall House rejected his application, even though it regularly accepted applications of non-African-American students whose parents guaranteed rental payments. In addition, former Kendall House employees said that if African Americans submitted rental applications, the employees flagged them by coloring in an "O" or a "P" at the top of the form. Kendall House did not process those applications. Kendall House employees falsely told African-American prospective tenants that there were no available apartments.

In addition to discrimination on the basis of race, the former employees also reported that the property managers told them that Kendall House did not rent to families with children. Kendall House employees told prospective tenants that no children lived in the complex, they did not allow children to live there, and the apartments were too small for children. Employees also told prospective tenants that Kendall House prohibited children under the age of 18 from using the swimming pool. Moreover, Kendall House initially

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accepted the application of a prospective tenant, but then rejected her application when employees learned she had a child.

On September 19, 1995, the United States filed a lawsuit in the Southern District of Florida against the owners and managers of Kendall House Apartments. This was one of eight lawsuits that the United States filed in 1995 against owners and managers of apartment complexes in south Florida as a result of the work of the Testing Program. In the Kendall House lawsuit, the United States alleged that the Defendants engaged in a pattern or practice of discrimination on the basis of race, color, and familial status, in violation of the FHA. In response, the Defendants filed a counterclaim alleging that employees of the United States violated the Florida Security of Communications Act by recording the fair housing tests.

After approximately a year of litigation, on November 14, 1996, the United States and the owners and managers of Kendall House announced that they had reached an agreement to resolve the case. The consent order required the Defendants to adopt non-discriminatory policies, train employees on the FHA, and pay \$1 million. At the time, it was the largest monetary amount obtained for a case stemming from the Testing Program. The Defendants had to

distribute \$350,000 to ten already-identified households that experienced discrimination, \$400,000 for additional households that experienced discrimination, \$100,000 as a civil penalty, \$50,000 to pay for notices to potential victims, and \$10,000 for advertisements to attract African-American tenants. The Defendants also dismissed their counterclaim.

Upon the announcement of the settlement, the then Chief of the Housing and Civil Enforcement Section explained that the conduct in this lawsuit “causes and perpetuates segregated living patterns. It’s harmful to our cities and even more harmful to the persons who are the intended [targets] of such discriminatory practices.” Former Assistant Attorney General Deval Patrick hoped that the lawsuit would “ensure fair treatment for all South Floridians who wish to rent a home.” He emphasized that the United States will continue to use the Testing Program to detect discrimination and “urge housing providers to do the right thing.”

# UNITED STATES V. EDWARD ROSE & SONS: TESTING THE DESIGN AND CONSTRUCTION OF HOUSING FOR ACCESSIBILITY BY PEOPLE WITH DISABILITIES

When Congress amended the FHA in 1988 to add disability as a protected class, it recognized that “[a] person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as by a posted sign saying ‘No Handicapped People Allowed.’” As a result, the FHA was amended to require that newly-constructed multifamily housing have certain accessible features to allow individuals with disabilities, such as a person using a wheelchair, to maneuver independently about their apartment and the property’s common areas. These requirements include, but are not limited to: ensuring light switches, outlets, and temperature controls are at a height usable for an individual in a wheelchair; that doorways are wide enough for an individual with a wheelchair to maneuver through; and that there are no steps to the front entrance of an apartment unit.

The United States regularly brings lawsuits to enforce these requirements against properties that are already built. But in the case described below, the United States was, for the first time, able to preemptively halt construction on multifamily housing that was being constructed without the necessary accessibility requirements.

In the early 2000s, Edward Rose and Sons, headquartered in Michigan, was one of the largest real estate developers in the Midwestern United States. It has constructed and/or managed at least forty-nine apartment complexes in fifteen states, including in: Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, Ohio, and Wisconsin. The Testing Program identified this developer and gathered evidence that some features of Edward Rose and Sons’ properties were inaccessible to persons with disabilities. Testers observed that, at the typical building constructed by Edward Rose and Sons, the front entrance was located below grade level and could be accessed only by going down at least half a flight of stairs. At most of the buildings, there was a walkway from one side of the building that led to a rear patio door that was located at grade level. However, for a person traveling by way of the sidewalk, the rear patios doors were generally considerably farther away from the parking lot than the front entrances.

Based on these observations, on January 18, 2001, and September 3, 2002, the Department filed complaints in the United States

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District Courts for the Northern District of Indiana and the Eastern District of Michigan, respectively. The United States' complaints alleged that Defendants violated the FHA and the Americans with Disabilities Act (ADA) by failing to construct multifamily apartment complexes and leasing offices so that they are accessible to persons with disabilities.

Specifically, the complaints alleged that steps to the front entrances made them inaccessible to persons with disabilities; the kitchens and bathrooms did not have enough space to turn a wheelchair; doorways were too narrow for persons using wheelchairs; thermostats and environmental controls were too high for persons using wheelchairs; and bathroom walls lacked reinforcement for potential installation of grab bars. The complaints also alleged that the rental office, parking lots, clubhouse, and recreational facilities for use by all tenants were not accessible to persons with disabilities. Finally, the complaints alleged other violations of the FHA, including charging additional fees for providing an accessible parking space to a person with a disability. On February 24, 2003, the lawsuit in the Northern District of Indiana was transferred to the Eastern District of Michigan, thereby combining the two cases into one.

While the case was pending, the United States learned that the

Defendants were in the process of building nineteen apartment buildings in Michigan and Ohio with similar designs to those that the United States had already alleged were inaccessible to persons with disabilities. The United States filed a motion for a preliminary injunction to stop construction on the properties until they could be redesigned or retrofitted to bring them into compliance with the FHA.

On February 21, 2003, the Honorable Victoria Roberts in the United States District Court for the Eastern District of Michigan issued an injunction halting the construction of the nineteen apartment complexes, making the order the first of its kind in a fair housing case. The court found that the complexes violated the FHA because the primary entrances directly across from the parking lot could be accessed only by going down stairs, resulting in persons with disabilities or mobility devices having to go around the apartment to enter through the back sliding-glass door. In her opinion, Judge Roberts stated that the company appeared "to be comfortable in providing only 'back door' access to persons with disabilities . . . ."

On September 30, 2005, the parties settled the case and the court entered a consent order. The consent order required that the Defendants fix more than 5,400 ground floor apartments to make them accessible to persons with disabilities, pay \$950,000 to a fund

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for persons who may have been harmed by the lack of accessibility features at the Defendants' apartment complexes, and pay a \$110,000 civil penalty to the United States.

On December 12, 2007, the court approved the distribution of \$700,000 to 37 persons negatively affected by the lack of accessible design at the Defendants' apartment complexes.

The remaining \$250,000 in the fund created during the settlement went toward increasing housing opportunities for persons with disabilities in the states where the Defendants operated. John O'Hara, general counsel for the Defendants, said the company was pleased to have settled the case. "The law has a noble purpose," O'Hara said.



## LENDING UNDER THE FAIR HOUSING ACT

The FHA prohibits discrimination in home mortgage loans, home improvement loans, and other residential credit transactions. In November 1991, the Department of Justice announced a new fair lending initiative aimed to vigorously enforce fair lending practices under the FHA. Fair lending cases challenge discriminatory pricing, underwriting, and the practice of mortgage "redlining," discussed below.

In November 2009, President Barack Obama established the Financial Fraud Enforcement Task Force. Led by then Attorney General Eric Holder,

the Task Force brought together relevant federal agencies that regulate lending. In conjunction with the establishment of the Task Force, in January 2010, the Department of Justice created a dedicated fair lending unit within the Housing and Civil Enforcement Section to root out lending discrimination in all forms. Since 2010, the Section has brought over forty lending cases, most of which allege discrimination based on race, color, or national origin. From these cases, the Section has obtained over \$1 billion in monetary relief. More important still, the settlements in these cases have required lending institutions to adopt policies that ensure fair treatment for all customers.

# UNITED STATES V. DECATUR FEDERAL SAVINGS & LOAN ASSOCIATION: RACE DISCRIMINATION IN MORTGAGE LENDING

In the 1930s, the federal government began incentivizing home ownership by insuring mortgages. Beginning in 1934, the federal government created “Residential Security Maps.” These maps were color-coded to indicate where within a metropolitan area it was “safe” to lend. African-American neighborhoods were outlined in red and considered “hazardous” for lending. These maps were used by public and private entities to engage in “redlining,” which is the practice of providing credit to residents of white neighborhoods while avoiding minority neighborhoods. The FHA made redlining and other discriminatory lending practices illegal. Decades after the passage of the Act, however, the practice of redlining continues.

Approximately twenty years after the passage of the FHA, Bill Dedman, a staff writer for the Atlanta Journal-Constitution, wrote: “Race—not home value or household income—consistently determines the lending patterns of metro Atlanta’s largest financial institutions . . . .” This statement, supported by the newspaper’s examination of local lending data, was the central argument of the award-winning investigative reporting series, “The Color of Money.” By examining statistics and relaying stories

of Atlanta residents, the series detailed the lending disparities between African-American and white residents and highlighted this local and national problem, a problem that the Department of Justice wanted to address.

After the four-day series ran in May 1988, the Department of Justice launched an investigation of 64 Atlanta lending institutions to determine whether they were violating the FHA and the Equal Credit Opportunity Act. One of these institutions was Decatur Federal Savings and Loan (Decatur Federal), a lender with over \$2 billion in deposits and assets and 35 branches in the Atlanta metropolitan area. The investigation revealed that Decatur Federal was engaging in redlining. Decatur Federal marketed “its services and products primarily to white residents of the Atlanta area.” When Decatur Federal established branches, they were located in majority-white neighborhoods. Decatur Federal excluded most of the predominantly African-American neighborhoods in Atlanta and South Fulton County from its assessment area under the Community Reinvestment Act (CRA). The boundaries of the assessment area followed the railroad tracks and

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excluded neighborhoods on the “wrong side” of the tracks. In addition, nearly all of the account executives, appraisers, and real estate agents who worked with Decatur Federal were white.

The United States filed both a complaint and a consent decree in the United States District Court for the Northern District of Georgia on September 17, 1992, marking the Department of Justice’s entry into fair lending enforcement. In the complaint, the United States alleged that Decatur Federal had “served the credit needs of predominantly white neighborhoods of the Atlanta Region to a significantly greater extent than it ha[d] served the credit needs of predominantly African-American neighborhoods.” The policies and procedures of Decatur Federal were associated with dramatic and statistically significant differences in application rates, origination rates, and rejection rates between white and African-American residents.

The consent decree required measures designed to reverse the bank’s pattern of racially discriminatory lending. These measures included expanding the CRA assessment area; opening a loan office or branch in a predominantly African-American area; advertising home mortgage loans to African-American communities; recruiting and working with more African-American account executives,

underwriters, loan counselors, real estate agents, and appraisers; implementing measures, including a checklist, to ensure fair evaluation of applications; and providing or participating in programs that aim to increase African-American residents’ knowledge, readiness, and access to home mortgage loans. Decatur Federal also placed \$1 million into a fund that the Department of Justice disbursed to 48 African-American applicants whom the lender had rejected for home mortgage loans.

The lawsuit provided justice for even more than the 48 Atlanta applicants who had been rejected. Many lenders voluntarily adopted remedies that were modeled after the Decatur Federal consent decree. From 1993 to 1995, mortgage originations in the United States increased by 70% to African American borrowers and by 48% to Hispanic borrowers. In the words of former Attorney General Janet Reno, the case “had a resounding effect [on the lending industry].” The lawsuit also demonstrated the beginning of the Department of Justice’s commitment “to eliminating considerations of race or national origin from home mortgage lending.” These lending disparities have not yet vanished, but, as Attorney General Reno emphasized, “the struggle can be won if all of us work together.”

# UNITED STATES V. WELLS FARGO BANK, NA: RACE AND NATIONAL ORIGIN DISCRIMINATION IN MORTGAGE LENDING

Since 2008 Wells Fargo has originated one out of every four mortgages in the United States. As the nation's largest mortgage lender, each year Wells Fargo comes into contact with thousands of people who are trying to achieve the dream of homeownership. In 2009, the Office of the Comptroller of the Currency (OCC) examined the lending practices of Wells Fargo and determined that the bank might be discriminating against African-American and Hispanic borrowers in the Baltimore-Washington-Northern Virginia area. In December 2010, the OCC referred its findings to the Department of Justice.

The Department of Justice investigated Wells Fargo's conduct. On July 12, 2012, the United States filed a complaint in the United States District Court for the District of Columbia alleging that, in violation of the FHA and the Equal Credit Opportunity Act, Wells Fargo systematically discriminated against more than 30,000 minority borrowers in 36 states over a period of five years. Specifically, the United States alleged that, between 2004 and 2008, Wells Fargo placed over 2,300 African-American and over 1,600 Hispanic borrowers into subprime loans, even though they had the same credit characteristics as

white borrowers who received prime loans. Subprime loans have higher interest rates and are generally offered to individuals with credit issues because they have a greater risk of defaulting on the loan. As a result, African-American and Hispanic borrowers who were steered into subprime loans paid tens of thousands of dollars more for their mortgages because of the higher interest rates. The United States also alleged that, between 2004 and 2009, Wells Fargo charged approximately 30,000 African-American and Hispanic borrowers higher fees and rates on certain loan products because of their race or national origin, rather than their creditworthiness.

On the same day, the United States filed a consent order with the court resolving the case. Wells Fargo agreed to pay a total of \$184.3 million to settle the lawsuit, making it the second-largest fair lending settlement in the Department of Justice's history. Of that amount, \$125 million went to compensate thousands of borrowers who were steered into subprime mortgages or who paid higher fees and rates.

The final settlement also included a \$50 million fund to be used for down

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payment assistance for borrowers in communities where the United States identified large numbers of victims and that were devastated by the housing crisis. The metropolitan areas identified were Washington, D.C.; Baltimore, Maryland; Chicago, Illinois; Philadelphia, Pennsylvania; San Francisco, California; New York, New York; Cleveland, Ohio; and San Bernardino, California. Wells Fargo created a program called CityLIFT to distribute these funds by offering down payment grants of approximately \$15,000 to \$20,000 to qualified individuals.

Finally, as part of the settlement, Wells Fargo agreed to do an internal review to identify additional African-American and Hispanic borrowers who were steered into subprime mortgages. Wells Fargo found 4,000 more victims, bringing the total settlement amount to \$234.3 million.

Home ownership is an important component of the "American Dream" for many people. Monica M., a resident of San Bernardino, California, had envisioned buying a home for her family. She put down a deposit and had a closing date scheduled. A week before her closing date, however, she had to cancel the purchase. "I lost my deposit. I felt like I had lost everything." Heartbroken, she wondered if she would ever be able to buy a home for her family. She attended the CityLIFT

launch event on August 9, 2013, and became the first customer to reserve grant funds through the program, which enabled her to achieve her dream of homeownership. "I knew that God had done that for me and my children," she said. Now that Monica is a successful homeowner, she feels a sense of accomplishment and pride, and she knows that she is setting a good example for her children. "I needed for my children to know they can do anything, and for my mother to know she's done well."



RACE

COLOR

NATIONAL  
ORIGIN

RELIGION

SEX

DISABILITY

FAMILIAL  
STATUS

## CONCLUSION

More than fifty years of FHA enforcement has increased access to housing, but there remains work to do. Discrimination because of race, color, religion, sex, familial status, national origin, or disability still serve as barriers to people living in housing of their choice. We have not yet achieved Mr. Raby and Dr. King's goal of open housing, and we have not addressed all of the concerns of the Kerner Commission. Therefore, the Department of Justice will continue to enforce the FHA until fair housing becomes "part of the American way of life."

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