

## COURT RULES IN FAVOR OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS ON REMAND FROM THE SUPREME COURT

*The Inclusive Communities Project, Inc. v. The Texas Department of Housing and Community Affairs, et al.*

United States District Court for the Northern District of Texas, Dallas Division  
August 29, 2016

The United States District Court for the Northern District of Texas, Dallas Division (the “Court”) issued an opinion in *The Inclusive Communities Project, Inc. v. The Texas Department of Housing and Community Affairs, et al.* The case, on remand from the Supreme Court and the Fifth Circuit, assessed the Texas Department of Housing and Community Affairs’ (“TDHCA”) method of distributing low income housing tax credits (“LIHTCs”). The Inclusive Communities Project, Inc. (“ICP”) alleged that TDHCA’s use of discretion when allocating LIHTCs perpetuated racial segregation, resulting in a “disparate impact” and, thereby, violating the Fair Housing Act. A policy or practice has a “disparate impact” when the policy, even if seemingly neutral or without discriminatory intent, has an adverse impact upon one or more protected classes, such as race.

The Court explained that a disparate impact case involves three steps:

- Step 1: A plaintiff must demonstrate that a facially-neutral practice causes a discriminatory effect.
- Step 2: If plaintiff satisfies Step 1, the defendant must prove that the challenged practice is “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.”
- Step 3: If defendant satisfies Step 2, the plaintiff must then establish that the defendant could achieve its goals by “another practice that has a less discriminatory effect.”

In the Court’s view, ICP “failed to point to a specific, facially neutral policy that purportedly caused a racially disparate impact” or discriminatory effect. By relying on TDHCA’s generalized policy of discretion in awarding tax credits, ICP did not isolate a specific practice that caused a disparity in the location of low-income housing. Furthermore, ICP failed to prove that it was TDHCA’s exercise of discretion, not other factors, that caused a disparity in locations. Relying on prior cases, the Court said “the use of discretion ‘should itself raise no inference of discriminatory conduct.’”

Additionally, because ICP’s complaint was not about TDHCA’s discretion but rather the results of TDHCA’s discretion, the Court found that ICP’s claim did not meet the requirements for a disparate impact claim and was actually a complaint about “disparate treatment,” or intentional discrimination – claims which the Court previously rejected.

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