

After Supreme Court victory, Dallas nonprofit loses racial bias suit against Texas agency

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A Texas agency has won an eight-year legal fight in Dallas that spurred the U.S. Supreme Court to rule that housing policies that unintentionally harm minorities can be challenged under federal law.

At issue was how the state awards tax credits to developers of low-income housing. A Dallas nonprofit accused the Texas Department of Housing and Community Affairs of disproportionately hurting black and Hispanic families by pushing subsidized housing to poor, minority neighborhoods.

But a federal judge sided with Texas last week, declaring that Inclusive Communities Project, or ICP, had failed to prove that the state's policies maintained segregation.

The ruling punctuates a lawsuit that was fought all the way to the U.S. Supreme Court.

Last summer, in a move deemed a victory for ICP, the high court upheld that housing decision-makers can be held liable for practices that have a disparate impact on minorities even if the bias was unintended. But the justices also tightened the standards for a complainant to prevail in such suits. They sent the Dallas case back to a lower court to be decided again.

ICP had pointed out that as of 2008, nearly three-quarters of units built with tax credits in the Dallas area were in minority-heavy neighborhoods, while the rest were in predominantly white neighborhoods.

However, a Dallas federal judge wasn't convinced that the state's housing decisions were responsible for the disparity in the placement of those units.

"ICP has failed to demonstrate that local zoning rules, community preferences, or developers' choices did not contribute to the statistical disparity," U.S. District Judge Sidney Fitzwater wrote in his ruling.

Most subsidized rentals today are not barrack-style public housing but apartments built by private developers with the help of federal tax credits awarded by state agencies. After ICP sued in 2008, the Texas housing department began giving priority to rentals proposed in "high opportunity" areas -- wealthy neighborhoods with good schools.

The state awards tax credits based on a complicated scoring system that considers such factors as location, financial feasibility and city council support. The point system is tweaked every year.

ICP attributed the racial imbalance in low-income housing to the state's decisions over the span of nine years. But Fitzwater ruled that those decisions lumped together didn't represent a specific policy that could be remedied in court.

How disparate impact works

This kind of lawsuit involves a three-part test.

Part 1: The plaintiff must prove a housing policy has a discriminatory effect on a group of people in a protected class, such as race or national origin.

The Supreme Court toughened this standard in 2015. In the past, some plaintiffs had presented statistical disparities and suggested that they were probably caused by a discriminatory

policy. ICP coasted through this step when it originally challenged the Texas housing department.

But the Supreme Court established that a statistical discrepancy alone was not proof that a policy had resulted in disparate impact. It called on plaintiffs to show "robust causality."

Fitzwater decided that ICP didn't satisfy this requirement. For example, the nonprofit disputed a past practice that allowed the state to commit future tax credits to projects rejected in a given year. But the judge said that ICP didn't explain how the racial imbalance would have been lessened had Texas not engaged in this practice.

Part 2: If the plaintiff meets her burden in the first step, the defendant must show the policy is necessary to achieve a "substantial, legitimate, nondiscriminatory" interest.

The Dallas case didn't make it to this stage in the most recent round. But some attorneys think the Supreme Court ruling last year lessened this burden for defendants.

The high court described costs, traffic patterns and the preservation of historic architecture as legitimate concerns for housing authorities. It also said that the point of disparate impact suits is to remove "artificial, arbitrary and unnecessary barriers" in government policies.

As part of his analysis, Fitzwater concluded that ICP didn't seek to remove a barrier to fair housing but to impose on the state the requirement that it award extra points for housing that promotes desegregation.

Part 3: If the defendant meets her burden in the second step, the plaintiff must prove there is a less-discriminatory policy that would serve the defendant's interests.

The Supreme Court warned against remedies that impose racial quotas, "a circumstance that itself raises serious constitutional concerns."

While the Dallas case didn't reach this step, Fitzwater questioned a complaint by ICP that the state didn't set aside applications for units in white areas to score as a subset. The state uses this strategy for elderly housing applications, which are scored separately from those for general population housing.

"Such a remedy is not constitutionally sound, does not eliminate an offending practice, and may result in the use of racial quotas," Fitzwater wrote.

What they said

Office of Texas Attorney General Ken Paxton

"The district court previously rejected ICP's claim that TDHCA engaged in intentional racial discrimination. [Last week's] ruling rejects ICP's disparate-impact claim, finding that ICP failed to prove that any policy or practice of TDHCA caused a racial disparity in the distribution of tax credits."

Inclusive Communities Project

"As ICP and our attorneys review the District Court's August 26, 2016 decision in ICP v. TDHCA and consider our next steps, we will continue our efforts to ensure low income families of color are able to exercise their fair housing rights and have access to housing outside of high poverty, underresourced, segregated areas of the Dallas Metroplex. Since ICP first filed the case against TDHCA in 2008, a growing supply of low income housing tax credit units have been built and now provide a limited number of families of color with access to neighborhoods free from distress and segregation."