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Courts & Law

Supreme Court upholds key tool for fighting housing bias

By **Sam Hananel** | AP June 25 at 12:36 PM

WASHINGTON — The Supreme Court handed a surprising victory to the Obama administration and civil rights groups on Thursday when it upheld a key tool used for more than four decades to fight housing discrimination.

The justices ruled 5-4 that federal housing laws prohibit seemingly neutral practices that harm minorities, even without proof of intentional discrimination.

Justice Anthony Kennedy, often a swing vote, joined the court's four liberal members in upholding the use of so-called "disparate impact" cases.

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The ruling is a win for housing advocates who argued that the 1968 Fair Housing Act allows challenges to race-neutral policies that have a negative impact on minority groups. The Justice Department has used disparate impact lawsuits to win more than \$500 million in legal settlements from companies accused of bias against black and Hispanic customers.

In upholding the tactic, the Supreme Court preserved a legal strategy that has been used for more than 40 years to attack discrimination in zoning laws, occupancy rules, mortgage lending practices and insurance underwriting. Every federal appeals court to consider it has upheld the practice, though the Supreme Court had never previously ruled.

Civil rights groups had tried years to keep the issue out of the Supreme Court, fearing that conservatives would end the strategy.

Writing for the majority, Kennedy said language in the housing law banning discrimination “because of race” allows for disparate impact cases. He said such lawsuits “may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.”

“The court acknowledges the Fair Housing Act’s continuing role in moving the nation toward a more integrated society,” Kennedy said.

Kennedy was joined by Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan.

The ruling is a defeat for banks, insurance companies and other business groups that claimed such lawsuits — often based on statistics — are not explicitly allowed under the landmark housing law that sought to eliminate segregation that has long existed in residential housing.

Business groups complained that using disparate impact to expose every decision to legal challenge is unfair if those practices are based on sound underwriting and compliance with federal regulations.

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In dissent, Justice Samuel Alito said disparate impact was not specifically allowed in the text of the housing law. He warned that the tactic can also result in perverse outcomes, such as a recent Minnesota case where a landlord claimed a city's efforts to make him combat rat infestation and unsanitary conditions in low income housing would cause an increase in rent.

"Something has gone badly awry when a city can't even make slumlords kill rats without fear of a lawsuit," Alito said.

Alito was joined by Chief Justice John Roberts and Justices Antonin Scalia and Clarence Thomas.

The case involved an appeal from Texas officials accused of violating the Fair Housing Act by awarding federal tax credits in a way that kept low-income housing out of white neighborhoods.

A Dallas-based fair housing group, Inclusive Communities Project Inc., said that even if there was no motive to discriminate, the government's policies still harmed black residents. The effect, the group claimed, was perpetuating segregated neighborhoods and denying blacks a chance to move into areas with better schools and lower crime.

The 5th U.S. Circuit Court of appeals in Texas said the group could use statistics to show that the effect of policies used by the Texas Department of Housing and Community Affairs had a negative impact on black residents.

Texas officials appealed, saying it was unfair to have to justify or change policies that don't facially discriminate. While disparate impact has been used routinely in employment discrimination cases, they said such claims were not expressly written into the housing law. They argued that allowing them would essentially force them to make race-conscious decisions to avoid liability.

Attorney General Loretta Lynch said disparate impact remains “an all-too-necessary mechanism for rooting out discrimination in housing and lending.”

“Bolstered by this important ruling, the Department of Justice will continue to vigorously enforce the Fair Housing Act with every tool at its disposal - including challenges based on unfair and unacceptable discriminatory effects.”

Both the Obama administration and civil rights groups have tried for years to keep the issue away from the Supreme Court, fearing that conservative justices wanted to end the use of disparate impact lawsuits in housing cases. In fact, two similar cases out of Minnesota and New Jersey previously had reached the court in recent years, but those cases were settled or strategically withdrawn just weeks before oral argument.

Yet the court took up the Texas case last year despite the fact that there was no split among lower courts over the issue. That led to major worries for the NAACP and other civil rights groups that the court was prepared to end the strategy.

In one recent disparate impact case, Wells Fargo agreed in 2012 to pay \$175 million to settle charges that its independent brokers charged higher fees and rates to black and Hispanic borrowers than whites who had similar credit scores. The Justice Department also accused the lender of steering minorities into risky subprime mortgages more often than whites.

Like most disparate impact cases, the allegations in the Wells Fargo case were based on statistical data rather than any proof of intentional discrimination. Wells Fargo agreed to settle the case without admitting any wrongdoing. A similar case against Bank of America in 2011 netted a record \$335 million settlement.

Sherrilyn Ifill, president of NAACP Legal Defense Fund, told reporters outside the court that the housing law was critical in bridging the nation’s racial divide, especially in light of the shooting at a black church in Charleston, South Carolina.

“Anyone who has been paying attention in the last week knows that we can no longer afford to live the way we have as two separate bifurcated parts of this country,” Ifill said.

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Associated Press writer Connie Cass contributed to this report.

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