The New York Times https://www.nytimes.com/2015/06/26/us/justices-back-broad-interpretation-of-housing-law.html

Justices Back Broad Interpretation of Housing Law

By Adam Liptak
June 25, 2015

WASHINGTON — The Supreme Court on Thursday endorsed a broad interpretation of the Fair Housing Act of 1968, allowing suits under a legal theory that civil rights groups say is a crucial tool to fight housing discrimination.

“Much progress remains to be made in our nation’s continuing struggle against racial isolation,” Justice Anthony M. Kennedy wrote for the majority in the 5-to-4 ruling. “The court acknowledges the Fair Housing Act’s continuing role in moving the nation toward a more integrated society.”

The court divided along familiar lines, with its four more liberal members — Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan — joining Justice Kennedy.

The question in the case was whether plaintiffs suing under the housing law must prove intentional discrimination or merely that the challenged practice had produced a “disparate impact.” Drawing on decisions concerning other kinds of discrimination, Justice Kennedy said the housing law allowed suits relying on both kinds of evidence.

The first kind of proof can be hard to come by, as agencies and businesses seldom announce that they are engaging in purposeful discrimination. “Disparate impact,” on the other hand, can be proved using statistics.

Justice Kennedy wrote that the history of the law and of the civil rights movement supported the broader interpretation.

“In April 1968, Dr. Martin Luther King Jr. was assassinated in Memphis, Tenn., and the nation faced a new urgency to resolve the social unrest in the inner cities,” Justice Kennedy wrote. Congress responded, he went on, by passing the Fair Housing Act.

Civil rights groups and the Obama administration, fearing an unfavorable ruling from

the Supreme Court, had worked hard to keep the issue away from the justices. Two earlier cases on the question were withdrawn just before they were to be argued.

The latest case, Texas Department of Housing and Community Affairs v. Inclusive Communities Project, No. 13-1371, was brought by a Texas group that favors integrated housing. The group helps its clients, who are mostly lower-income black families, find housing in the Dallas suburbs, which are mostly white.

The families use housing vouchers, but not all landlords accept them. Landlords receiving federal low-income tax credits, however, are required to accept the vouchers.

The fair housing group argued that state officials had violated the Fair Housing Act by giving a disproportionate share of the tax credits to landlords in minority neighborhoods.

The Supreme Court returned the case to the lower court for further proceedings, cautioning that allowing disparate-impact suits did not mean that they should always succeed. Indeed, Justice Kennedy expressed concern about "abusive disparate-impact claims" and suggested that the case before the court would face headwinds.

"This case," Justice Kennedy wrote, "may be seen simply as an attempt to second-guess which of two reasonable approaches a housing authority should follow in the sound exercise of its discretion in allocating tax credits for low-income housing."

In dissent, Justice Samuel A. Alito Jr. wrote that the majority had misread the housing law and the court's own precedents.

"And today's decision," he added, "will have unfortunate consequences for local government, private enterprise and those living in poverty. Something has gone badly awry when a city can't even make slumlords kill rats without fear of a lawsuit."

The fair housing law, Justice Alito wrote, bars discrimination "because of" race. He gave several examples of why the phrase should be understood to refer only to intentional discrimination.

For instance, he wrote, "of the 32 college players selected by National Football League teams in the first round of the 2015 draft, it appears that the overwhelming majority were members of racial minorities."

"Teams presumably chose the players they think are most likely to help them win games," Justice Alito added. "Would anyone say the N.F.L. teams made draft slots unavailable to white players 'because of' their race?"

Chief Justice John G. Roberts Jr. and Justices Antonin Scalia and Clarence Thomas joined Justice Alito's dissent, which was almost half again as long as the majority opinion.

A version of this article appears in print on , Section A, Page 18 of the New York edition with the headline: Justices Take Broad View of Bias Suits in Housing