

DALLAS HOUSING LAWYERS WIN BIG AT SCOTUS, CITY TAKES A HIT

BY JIM SCHUTZE

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Can proper maintenance of Klyde Warren Park be achieved only by excluding racial minorities and handicapped persons? (Hall needs to know.

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Veteran Dallas fair housing advocates Mike Daniel, Betsy Julian and Laura Beshara won a huge victory at the U.S Supreme Court yesterday; civil rights lawyers all over America heaved a sigh of relief; and Dallas housing policies suffered yet another big black eye.

The impact locally will be one more powerful piece of ammunition for those who accuse Dallas of deliberate City-Hall-based racial segregation, including real estate developers **Curtis Lockey and Craig MacKenzie**, who allege they caught the city conspiring to break federal housing and civil rights laws, about which we have spoken here often.

Civil rights leaders and lawyers all over the country were **biting their nails** a year ago when Dallas-based Inclusive Communities Project, which Julian leads, represented by the law firm Daneil & Beshara, insisted on taking its “disparate impact” case all the way to the top.

The legal arguments against pursuing such a case at the time could be summarized as, “What, are you nuts?” The fear was that an increasingly conservative Supreme Court would see the ICP case as a great chance to shoot down disparate impact in all civil rights law. Instead, the court yesterday upheld disparate impact.

Disparate impact means you don’t have to prove a government entity sat down at a secret meeting and said, “Let’s scheme how to screw black people or Hispanics or handicapped people out of living here.” All you have to prove is that the effect of what that government did was to increase the segregation of legally protected classes of people, no matter what the government said it was doing or why.

In other words: count faces. You, Mr. Local Government, spent millions of our federal dollars building the new **Frazier Courts** publicly subsidized housing development in southeast Dallas. You said you did it to build strong communities and some other kind of blah-blah-blah.

But when we count the faces, we see either the same amount or even more segregation in Dallas than there was before. That federal money was for reducing segregation. So you just broke the law, Jack.



Mike Daniel and Laura Beshara

Daniel & Beshara

Disparate impact has always been the law. That’s how the law worked before the ICP suit decided by SCOTUS yesterday. But the state of Texas, which has jurisdiction over some federal funding for fair housing here, wanted to change the law. The state wanted to ditch disparate impact and say it’s OK to use the money in ways that won’t reduce segregation if you achieve other good ends instead, like economic redevelopment of poor neighborhoods.

That’s why Julian, Daniel and Beshara went to court. Eleven federal appeals courts around the country had upheld disparate impact in other areas of federal civil rights law, because it seems like a no-brainer, as in, “You got the smokin’ gun, you got the marked money, you’re driving real fast away from the bank. We think you did it.”

But many housing advocates had the heebie-jeebies about this one, convinced that ICP and Daniel & Beshara were over-reaching, lobbing a slow ball to the Supreme Court, giving it a chance to knock disparate impact right out of the park. But apparently Daniel & Beshara put the right smoke on it.

Julian told me yesterday the victory at the Supreme Court doesn't confer any new rights on anybody. It upholds the law as it was before Texas tried to undermine it. And she said it doesn't mean Dallas or any other entity won't be able to try out policies that may not affirmatively further fair housing. She said it just means they will have to be ready to say why.

"If they come in and say, 'Well, we want to keep poor people out of the housing that fronts **Klyde Warren Park** because we need those rich people there to support picking up the dog poop,' if that's a rationale for doing it, then the court can hear that.

"Then the burden will shift back to us to say there are less discriminatory ways to achieve that goal of getting the maintenance of Klyde Warren funded than excluding people who can't put big money into the coffers to do that. Then the court decides if the justification for a policy of exclusion is one that justifies the impact. Is that explanation sufficient to justify the harmful impact on people of color, for example?

"At the end of the day, why would you do it the most discriminatory way when you can do it in a less discriminatory way?"

Or, as I would put it in a news bulletin to the Park Cities and Preston Hollow, where so many people live who make these decisions for us: "SUPREME COURT RULES SEGREGATION NOT NATURAL LAW." Then I might drive out there with some popcorn to watch while people rend their garments and snatch themselves bald in the streets.

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