Civil Rights and Fair Housing in Illinois

A Briefing Report of the Illinois Advisory Committee to the U.S. Commission on Civil Rights

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Panelists for the May 3, 2019 Briefing on Fair Housing
(All Titles and Positions as of May 3, 2019)

**Sara Pratt**

Sara Pratt is Counsel at Relman Colfax. Prior to joining the firm, Sara was Deputy Assistant Secretary for Fair Housing Enforcement and Programs and Senior Advisor to the Assistant Secretary at HUD. She directed HUD’s national civil rights enforcement efforts and led the development of regulations and policy guidance on numerous emerging civil rights issues, including the application of the Fair Housing Act to domestic violence in housing, criminal background criteria for housing, accessibility, the obligation to affirmatively further fair housing.

**Maurice McGough**

Maurice McGough is the Region V Regional Director of the Office of Fair Housing and Equal Opportunity.

**Kimberly Nevels**

Kimberly Nevels is the Chicago Program Center Director for HUD’s Office of Fair Housing and Equal Opportunity (FHEO). Region V covers the six Great Lakes states of IL, IN, MI, MN, OH and WI. Kim supervises the staff responsible for the enforcement of the federal Fair Housing Act, the investigation of complaints filed under Section 504 of the Rehabilitation Act and Title VI of the Civil Rights Act of 1964.

**Geoff Smith**

Geoff Smith is the Executive Director of the Institute for Housing Studies at DePaul University. The institute conducts research, policy analysis and data analysis that inform the local and national policy debates around neighborhood stability and the preservation and production of affordable rental housing.
Ken Gunn

Ken Gunn currently serves as the Chairperson of the Cook County Commission on Human Rights. He also provides the Commission with a critical line of communication to its sister agency at the City where Mr. Gunn also serves as the First Deputy Commissioner of the City of Chicago’s Commission on Human Relations. He has worked in the field of civil rights law for over twenty years with a focus on employment discrimination, housing discrimination, public accommodation discrimination and hate crimes.

Patricia Fron

Patricia Fron is the Co-Executive Director of the Chicago Area Fair Housing Alliance, jointly leading the organization’s membership programming, policy and advocacy initiatives, and providing individualized fair housing training and technical assistance to a wide array of stakeholders including counties, municipalities, housing providers, developers, housing counselors, and community-based organizations.

Victor Dickson

Victor Dickson is President and CEO of the Safer Foundation, a nonprofit social impact organization based in Chicago, Illinois, which was founded in 1972. Its mission is to reduce recidivism by supporting, though a full spectrum of services, the efforts of people with arrest and conviction records to become employed, law-abiding members of the community.

Esther Beard

Esther Beard is the statewide campaign organizer and trainer for Community Organizing and Family Issues (COFI.) She has participated in statewide policy tables for the Governor’s Office of Early Childhood Development, the Illinois Interagency Council Of Early Intervention and Greater East St. Louis Early Learning Collaboration.

Leah Levinger

Leah Levinger is the Executive Director and Community Organizer at the Chicago Housing Initiative Coalition. Founded in 2009, the Chicago Housing Initiative (CHI), is a citywide coalition dedicated to the mission of building the power of low-income people to expand and preserve low-cost rental housing, stabilize communities facing displacement, and advance racial and economic equity and inclusion.
Christian Diaz

Christian Diaz is a lead housing organizer with Logan Square Neighborhood Association, a plaintiff organization represented by Chicago Lawyer’s Committee in a lawsuit to reform property tax assessments in Cook County, IL.

Niya Kelly

Niya Kelly is the legislative director for the Chicago Coalition for the Homeless, the only non-profit in Illinois dedicated to advocating for public policies that curb and ultimately end homelessness. The organization leads strategic campaigns, community outreach, and public policy initiatives that target the lack of affordable housing in metropolitan Chicago and across Illinois.

Josh Roska

Josh Roska is attorney with Land of Lincoln Legal Aid whose mission is to provide low income and senior residents of central and southern Illinois with high quality legal services in order to obtain and maintain their basic human needs. Through advice, representation, advocacy, education, and collaboration, we seek: to achieve justice for those whose voices might otherwise not be heard; to empower individuals to advocate for themselves; and, to make positive changes in the communities we serve.

Kate Walz

Kate Walz is Vice President of Advocacy at the Shriver Center which works to remove barriers that limit people’s ability to access safe, affordable, healthy housing that everyone deserves. The center educates policymakers so they can pass more effective policies.

Barbara Barreno-Paschall

Barbara Barreno-Paschall is the Senior Staff Attorney at the Chicago Lawyers’ Committee for Civil Rights, a group of civil rights lawyers and advocates working to secure racial equity and economic opportunity for all. Their vision is to root out and dismantle deeply entrenched systems of discrimination, racism, and economic oppression.

(Ms. Barreno – Paschall is a current member of the Illinois Advisory Committee and recused herself from all committee deliberations, votes, and edits concerning her 2019 testimony.)
Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory Committee in each of the 50 states and the District of Columbia. These Committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission’s jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district’s concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to Committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

Acknowledgements

The Illinois Advisory Committee would like to thank each of the panelists who presented to the Committee during the May 3, 2019 meeting of the Illinois Advisory Committee, and the members of the public who either submitted written testimony or who spoke during the period of public comment. The Committee would also like to thank the Ralph H. Metcalfe Federal Building for hosting the public event.
Illinois Advisory Committee to the
U.S. Commission on Civil Rights

The Illinois Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding civil rights and fair housing in Illinois, and the potential disparate impact in access to housing on the basis of race, color, age, religion, or disability. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Illinois. The contents of this report are primarily based on testimony the Committee heard during a public hearing on May 3, 2019 in Chicago, IL.

This report details civil rights concerns relating to potential disparities regarding access to housing and discrimination based upon the race, national origin, religion, sex, disability, and age. It also addresses challenges to fair access to housing facing the previously incarcerated, Limited English Proficient individuals, individuals with disabilities, and those experiencing homelessness. Primary concerns included examining fair housing and equal access to housing in Illinois. Specifically, the Committee examined the extent to which residents in the state have fair and equal access to housing without regard to race, color, disability status, national origin, age, religion, and/or sex. Findings were made from the testimony, and the Committee offers recommendations to the Commission for addressing these problems of state, regional, and national importance.

The Illinois Advisory Committee to the
U.S. Commission on Civil Rights

Ryan Dunigan, Chair, Illinois Advisory Committee, Chicago

Jonathan J. Bean, Carterville                      Tabassum A. Haleem, Naperville
Barbara Barreno – Paschall, Chicago              Reyahd D. J. Kazmi, Chicago
Joanna Bohdziewicz-Borowiec, Chicago            Matthew Paprocki, Chicago
Cindy Buys, Murphysboro                          Gregory Sanford, Chicago
Mark Calaguas, Chicago                           Kyle Westbrook, Chicago
Trevor Copeland, Chicago
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I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory Committees in each of the 50 states and the District of Columbia. These advisory Committees advise the Commission of civil rights issues in their states/district that are within the Commission’s jurisdiction.

Among the responsibilities of each Advisory Committee is to advise the Commission “concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal government with respect to equal protection of the laws.”1 Through this study, the Illinois Advisory Committee examines fair housing in Illinois. Specifically, the Committee examined the extent to which people in Illinois have equal protection of the law to be free from discrimination in the sale or rental of housing, the finance of housing, or the provision of brokerage services.

The Illinois Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to conduct a study of access to fair housing throughout the state. Specifically, the Committee sought to examine fair housing and equitable access to housing in Illinois, and any disparities on the basis of race, color, disability status, national origin, age, religion, and/or sex. The Committee also sought to examine the extent to which specific state or local policies and practices may contribute to indicated disparities as well as alternative practices or recommendations with the demonstrated potential to address such concerns.

On May 3, 2019, the Committee convened a public meeting in Chicago, Illinois to hear testimony regarding challenges and recommendations to improve equitable access and fair housing across Illinois. The following report results from the testimony provided during this meeting, as well as

1 45 C.F.R. § 703.2.
testimony submitted to the Committee in writing during the related period of public comment. It begins with a background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies recommendations for addressing related civil rights concerns. The Committee adopted this report and the recommendations included within it on December 8, 2020 by a vote of 7 (yea) and 0 (nay) with 0 members abstaining.

II. BACKGROUND

Problems in securing adequate housing persist, particularly in minority communities. Institutional racism has always played a part. In 1924 the National Association of Real Estate Brokers adopted an article in its code of ethics stating that “a Realtor should never be instrumental in introducing into a neighborhood…members of any race or nationality…whose presence will clearly be detrimental to property values in that neighborhood,” a clause that remained in effect until 1950.\(^2\)

In 1927 the Chicago Real Estate Board followed up by developing a restrictive covenant to serve as a model for neighborhood organizations and real estate boards throughout the nation.\(^3\) A covenant was a private contract between property owner within a specific geographic area who agreed not to rent or sell homes to African Americans. Once a majority of property owners in a covered area had signed the covenant, it became binding and violators could be sued in court for breach of contract.\(^4\) Restrictive covenants remained the legal tool institutionalizing segregation until they were declared unenforceable and contrary to public policy by the U.S. Supreme Court in its 1948 *Shelly v. Kraemer*\(^5\) decision.

During the 1950’s the country experienced mass suburbanization that was substantially tied to federal policies. Mortgage insurance from the Federal Housing Administration and a similar benefit available to veterans from the Veterans Administration created a surge in housing demand


\(^5\) 334 U.S. 1 (1948).
that developers were happy to satisfy by purchasing cheap land on the urban fringes and mass-producing standardized homes.\textsuperscript{6} The bias in favor of suburbs was exacerbated by Federal Housing Administration regulations that favored new construction, single family homes, large lot sizes, and cheaper mortgages compared to rent in an older dwelling in the central city.\textsuperscript{7}

The resulting wave of suburbanization was for whites only, however, as the Federal Housing and Veteran’s administrations color-coded neighborhoods on maps according to their creditworthiness, using red to indicate risky neighborhoods that were deemed ineligible for federally insured loans.\textsuperscript{8} Neighborhoods that were black or perceived as to be in danger of becoming black were automatically colored red, thus cutting them off from credit and institutionalizing the practice that would become known as \textit{redlining}.\textsuperscript{9}

The outflow of whites to suburbs opened housing opportunities for blacks in central cities. The expansion of black neighborhoods inevitably threatened districts where white elites held place-bound investments, and for protection they turned to urban renewal and public housing programs to block the expansion of black settlement toward their imperiled zones.\textsuperscript{10} Whenever this expansion threatened a favored district, a local urban renewal authority was established to gain control of the land using the power of eminent domain.\textsuperscript{11} Public housing was constructed in other black neighborhoods to house the displaced residents, thus creating geographic concentrations of black poverty.\textsuperscript{12}

\begin{thebibliography}{9}
\bibitem{6} See Jackson, \textit{supra} note 4.
\bibitem{7} Ibid.
\bibitem{8} Ira Katznelson. When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth Century America (2005).
\bibitem{9} Ibid.
\bibitem{11} Ibid.
\bibitem{12} Ibid.
\end{thebibliography}
By the late 1960’s racial unrest and outright rioting in American cities like Los Angeles, Detroit and Newark (among others), prompted President Lyndon Johnson on July 28, 1967 to establish the National Advisory Commission on Civil Disorders. The goals of the Commission were to find the root causes of the racial unrest, and what can be done to prevent future occurrences. The Commission, chaired by Illinois Governor Otto Kerner, established several important findings after the one of the nation’s most comprehensive investigations of racial discord and reported pervasive discrimination and segregation in employment, education, and housing as the fundamental causes for the racial disorders. The Commission quickly realized the nexus between inadequate housing and civil disorder. They concluded that after more than three decades of housing programs, for many “the goal of a decent home and suitable environment is as far distant as ever.” In essence, the Commission found inadequate housing conditions, in part, led to the unrest that caused the riots. The housing problem by their analysis was a political problem, one that required a political response.

The political leaders of the country moved quickly to pass legislation intended to address the issues, including the problem of inadequate housing.

A. The Fair Housing Act (FHA)

The Fair Housing Act (FHA) was enacted “to provide, within constitutional limitations, for fair housing throughout the United States.” The original 1968 act prohibited discrimination on the basis of “race, color, religion, or national origin” in the sale or rental of housing, the finance of

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14 Ibid.

15 Ibid. p.7.

16 Ibid. p.467.

housing, or the provision of brokerage services. In 1974 the act was amended to add sex discrimination to the list of prohibited activities. The last major change to the act occurred in 1988 when it was amended to prohibit discrimination on the additional grounds of physical and mental handicap, as well as familial status. Legislation that would amend the FHA, however, is routinely introduced in Congress, including proposals to extend the act’s anti-discrimination provisions to prohibit discrimination based on sexual orientation, gender identity, marital status, source of income, and status as a military servicemember or veteran.

In general, the FHA applies to a broad assortment of housing, both public and private, including single family homes, apartments, condominiums, mobile homes, and others. The act’s coverage extends to “residential real estate-related transactions,” which include both the “making and purchasing of loans…secured by residential real estate and the selling, brokering, or appraising of residential real property.” Thus, the provisions of the FHA extend to the secondary mortgage market.

1. **Prohibited Housing Practices under the Fair Housing Act**

The United States Department of Housing and Urban Development’s (HUD) regulations elaborate on the types of housing practices in which discrimination is prohibited and provide illustrations of such practices. Under the regulations, practices in which discrimination is prohibited include:

A. **The sale or rental of a dwelling.** Prohibited actions under this section include: (1) failing to accept or consider a bona fide offer, (2) refusing to sell or rent a dwelling, or to negotiate

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18 42 U.S.C. §§3604-06.


23 See 24 C.F.R. §100.125.

24 24 C.F.R. Part 100.
for a sale or a rental, (3) imposing different sales prices or rental charges for the sale or rental of a dwelling, (4) using different qualification criteria or applications, or (5) evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin.25

B. **The provision of services or facilities in connection with the sale or rental of a dwelling.** Such discriminatory conduct includes: (1) using different provisions in leases or contracts of sale, (2) failing or delaying maintenance or repairs of dwellings, (3) failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately, (4) limiting the use of privileges, services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or (5) denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.26

C. **Other conduct which makes dwellings unavailable to persons.** Such discriminatory conduct includes: (1) discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory practice, (2) employing codes or other devices to segregate or reject applicants, purchasers or renters or refusing to deal with certain real estate brokers or agents, (3) denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium, or (4) refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.27

D. **Steering.** Prohibited steering practices include: (1) discouraging any person from inspecting, purchasing, or renting a dwelling, (2) discouraging the purchase or rental of a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development, (3) communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development, or (4) assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.28

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25 24 C.F.R. §100.60.
26 24 C.F.R. §100.65
27 24 C.F.R. §100.70(d)
28 24 C.F.R. §100.70(c).
E. **Advertising or publishing notices with regard to the selling or renting of a dwelling.**

Discriminatory advertisements or notices include: (1) using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons, (2) expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter, (3) selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities, or (4) refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.\(^{29}\)

F. **Misrepresentations as to the availability of a dwelling.** Illustrations of this prohibited activity include: (1) indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, (2) representing that [a person cannot rent or purchase a dwelling because] covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of a dwelling, (3) enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person, (4) limiting information, by word or conduct, regarding suitably priced dwellings, or (5) providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person because of race, color, religion, sex, handicap, familial status, or national origin.\(^{30}\)

G. **Blockbusting.** The HUD regulations define “blockbusting” to mean “for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.” For blockbusting to be established, profit does not have to be realized, as long as profit was a factor for engaging in the activity.\(^{31}\)

H. **The denial of access to membership or participation in a multiple-listing service, real estate brokers association, or other service relating to the business of selling or renting dwellings.** Such prohibited actions include: (1) setting different fees for access to or membership in a multiple listing service, (2) denying or limiting benefits accruing to members in a real estate brokers’ organization, (3) imposing different standards or criteria for membership in a real-estate sales or rental organization, or (4) establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers’ organization or other

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\(^{29}\) 24 C.F.R. §100.75.

\(^{30}\) 24 C.F.R. §100.80.

\(^{31}\) 24 C.F.R. §100.85(a)-(b).
service ... because of race, color, religion, sex, handicap, familial status, or national origin.32

I. **It is unlawful to coerce, intimidate, threaten, or interfere with individuals for exercising, or aiding others in the exercise of their rights under the FHA.** Violations of this section include: (1) coercing a person to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction, (2) threatening, intimidating, or interfering with persons in their enjoyment of a dwelling, (3) threatening an employee or agent with dismissal or adverse action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, (4) intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of their fair housing rights, or (5) retaliating against any person because that person has made a complaint, testified, assisted, or participated in a proceeding under the Fair Housing Act.33

A number of lawsuits over the years have challenged the fair housing practices of state and local housing authorities, and even HUD itself, particularly with respect to discrimination in low-income public housing.34

2. **Enforcement of the Fair Housing Act**

The Secretary of HUD, the United States Attorney General, and victims of discrimination may each take action to enforce the FHA’s protections against discrimination. HUD has primary administrative enforcement authority of the act, which it typically fulfills through administrative adjudications.35 The Attorney General may bring a civil action in federal district court if the Attorney General has reasonable cause to think that an individual or a group is engaged in a pattern or practice of denying one’s rights under the FHA and such denial raises an issue of general public

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32 24 C.F.R. § 100.90.
33 42 U.S.C. § 3617.
34 See, e.g., N.A.A.C.P. v. Sec’y of Hous. and Urban Dev., 817 F.2d 149 (1st Cir. 1987).
importance. An “aggrieved person” may initiate a civil action, in either federal or state court, within two years of “the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement.”

Fair Housing Act discrimination claims fall into two broad categories: (1) intentional, also referred to as disparate treatment discrimination, which is “The practice…of intentionally dealing with persons differently because of their race, sex, national origin, age, or disability”;

and (2) disparate impact discrimination which is “the adverse effect of a facially neutral practice…that nonetheless discriminates against persons because of their race, sex, national origin, age, or disability, and that is not justified by necessity.”

Courts apply different legal tests to assess the validity of intentional versus disparate impact discrimination claims. Disparate treatment claims allege that a defendant made a covered housing decision based on “a discriminatory intent or motive.” Disparate impact claims, on the other hand, involve allegations that a covered practice has “a disproportionately adverse effect on a protected class and [is] otherwise unjustified by a legitimate rationale.”

3. Disparate Treatment Discrimination

Claims of intentional discrimination under the FHA can be supported through (1) direct evidence of discrimination, or (2) indirect/circumstantial evidence. Courts apply different legal tests to

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36 42 U.S.C. §3614(a)-(b).
37 “An ‘aggrieved person’ includes any person who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur.” 42 U.S.C. §3602(i).
38 42 U.S.C. §3613(a)(1). The calculation of the two-year period does not include the time that an administrative proceeding is pending. Id.
39 BLACK’S LAW DICTIONARY, 210-211 (2nd Pocket ed. 2001).
40 Id.
42 Id.
assess claims involving direct and indirect evidence. Additionally, courts apply a different legal framework to assess a subset of disparate treatment claims in which statutes or local ordinances that discriminate on their face against a protected class are challenged.43

Direct evidence is “evidence showing a specific link between the alleged discriminatory animus and the challenged decision sufficient to support a finding… that an illegitimate criterion actually motivated the adverse…decision.”44 When a plaintiff provides sufficient direct evidence to support an intentional discrimination claim, the defendant generally has the burden of proving, by a preponderance of the evidence,45 that it would have denied or revoked the housing benefit regardless of the impermissible motivating factor in order to avoid liability under the FHA.46

Claims based on indirect or circumstantial evidence from which discrimination may be inferred are generally evaluated under the McDonnell Douglas47 burden-shifting scheme. Under McDonnell Douglas, the initial burden rests with the plaintiff to establish a prima facie case by a preponderance of the evidence.48 A plaintiff can establish a prima facie case by establishing that (a) she is a member of a protected class; (b) she qualified for a covered housing – related service or activity (e.g., housing rental or purchase); (c) the defendant denied an application for or revoked


44 Gallagher v. Manger, 619 F.3d 823, 831 (8th Cir. 2010). See also Kormoczy v. Sec’y, Dept. of Hous. and Urban Dev., 53 F.3d 821, 824 (7th Cir. 1995) (“direct evidence is that which can be interpreted as an acknowledgement of the defendant’s discriminatory intent.”).

45 The burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. BLACK’S LAW DICTIONARY, 547 (2nd Pocket Edition, 2001).

46 See, e.g. supra note 31.

47 McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). McDonnell Douglas is a Title VII of the Civil Rights Act of 1964 employment discrimination case, but it has been applied to the Fair Housing Act, as well. See, e.g., 2922 Sherman Avenue Tenants’ Assn. v. District of Columbia, 444 F. 3d 673, 682 (D.C. Cir. 2006); Sanghvi v. City of Claremont, 328 F.3d 532, 536-38 (9th Cir. 2003); Reg’l Econ. Cmty. Action Program, Inc. v. City of Middletown, 294 F.3d 35, 48-52 (2d Cir. 2002); Kormoczy v. HUD, 53 F.3d 821, 823-24 (7th Cir. 1995).

48 McDonnell Douglas, 411 U.S. at 802.
use of the plaintiff’s housing benefit; and (d) the relevant housing–related service or activity remained available after it was revoked from or denied to the plaintiff.49

If a plaintiff can establish a *prima facie case*, then the burden shifts to the defendant to provide evidence that the revocation or denial of the housing benefit furthered a legitimate, nondiscriminatory purpose. The Supreme Court has explained that “[t]he explanation provided must be legally sufficient to justify a judgment for the defendant.”50 The justification requires actual evidence and must be more than “an answer to the complaint or [an] argument by counsel.”51 If the defendant is able to meet this burden, then the plaintiff can still prevail on her disparate treatment claim if she is able to show, by a preponderance of the evidence, that the stated purpose for the denial or revocation was really just pretext for discrimination.52

### 4. Disparate Impact Discrimination

Historically, courts have generally recognized two types of disparate impacts resulting from facially neutral decisions that can result in liability under the FHA.53

The first occurs when that decision has a greater adverse impact on one [protected] group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.54

There has been controversy over whether, in addition to outlawing intentional discrimination, the FHA also prohibits certain housing-related decisions that have a discriminatory effect on a protected class. That controversy was settled in June 2015, when the United States Supreme Court

49 *Id.*


51 *Id.* at 256 (“[A]n articulation not admitted into evidence will not suffice. Thus, the defendant cannot meet its burden merely through an answer to the complaint or by argument of counsel.”).


54 *Id.* The FHA’s protections are not limited to race. *See also Inclusive Communities*, 576 U.S. at 540.
in *Texas Department of Housing Community Affairs v. Inclusive Communities Project*\(^{55}\) ruled that disparate impact claims are cognizable under the FHA. The Supreme Court’s holding mirrors previous interpretations of HUD\(^ {56}\) and all 11 federal courts of appeals\(^ {57}\) that had ruled on the issue.

The *Inclusive Communities* Court adopted a three-step burden-shifting test to determine if an apparent neutral policy causes a disparate impact and violated the FHA. At step one, the plaintiff has the burden of establishing evidence that a housing decision or policy caused a disparate impact on a protected class.\(^ {58}\) At step two, defendants can counter the plaintiff’s *prima facie* showing by establishing that the challenged policy or decision is “necessary to achieve a valid interest.”\(^ {59}\) The defendant will not be liable for the disparate impact resulting from a “valid interest” unless, at step three, the plaintiff proves “that there is an available alternative practice that has less disparate impact and serves the entity’s legitimate needs.”\(^ {60}\)

Additionally, the Court outlined several limiting factors that HUD and the lower courts should apply when assessing disparate impact claims. The Court made clear that, before a plaintiff can

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\(^{57}\) *Vill. of Arlington Heights*, 558 F.2d at 1290 (7th Cir. 1977); Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 149-50 (3d Cir. 1977); Betsy v. Turtle Creek Assocs., 736 F.2d 983, 988-89 (4th Cir. 1984); Keith v. Volpe, 858 F.2d 467, 484 (9th Cir. 1988); Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 938 (2d Cir. 1988), judgment aff’d, 488 U.S. 15 (1988); Jackson v. Okaloosa County, Fla., 21 F.3d 1531, 1543 (11th Cir. 1994); Simms v. First Gibraltar Bank, 83 F.3d 1546, 1555 (5th Cir. 1996); Langlois v. Abington Hous. Auth., 207 F.3d 43, 49-50 (1st Cir. 2000); Charleston Hous. Auth. v. U.S. Dep’t of Agric., 419 F.3d 729, 740-41 (8th Cir. 2005); Graoch Assocs. #33, L.P. v. Louisville/Jefferson Cnty Metro Human Relations Comm’n, 508 F.3d 366, 374 (6th Cir. 2007); Reinhart v. Lincoln Conty, 482 F.3d 1225, 1229 (10th Cir. 2007). The U.S. Court of Appeals for the District of Columbia (D.C. Circuit) has never ruled on the issue. *See id.* at 46; 2922 Sherman Ave. Tenants’ Assoc. v. District of Columbia, 444 F.3d 673, 679 (D.C. Cir. 2006) (“Given that only one side of the issue has been briefed, however, instead of simply adopting the approach of our respected sister circuits, we think it more appropriate to assume without deciding that the tenants may bring a disparate impact claim under the FHA.”).

\(^{58}\) *Inclusive Communities*, 576 U.S. at 540.

\(^{59}\) *Id.* at 541.

\(^{60}\) *Id.* at 2517-18 (*citing* and *quoting* Title VII and ADEA cases). The Court did not expressly state that the burden should be on the plaintiff to prove the existence of a less discriminatory alternative in the FHA context. Instead, it stated that the plaintiff carries the burden of the third step in the burden-shifting tests applied in Title VII and ADEA cases, and that “[t]he cases interpreting Title VII and the ADEA provide essential background and instruction in the case now before the Court.” *Id.*
establish a prima facie case of discriminatory effect based on a statistical disparity, courts should apply a “robust causality requirement” that requires the plaintiff to prove that a policy or decision led to the disparity. The Court stressed that a careful examination of the plaintiff’s causality evidence should be made at preliminary stages of litigation to avoid “the injection of racial considerations into every housing decision”; the erection of “numerical quotas” and similar constitutionally dubious outcomes, the imposition of liability on defendants for disparities that they did not cause; and unnecessarily protracted litigation that might dissuade the development of housing for the poor, which would “undermine [the FHA’s] purpose as well as the free-market system.”

B. The Department of Housing and Urban Development

The Department, through its Office of Fair Housing and Equal Opportunity (FHEO), receives and investigates complaints under the Fair Housing Act and determines if there is reasonable cause to believe that discrimination has occurred or is about to occur. FHEO also oversees federal funding to state, local, and nonprofit organizations that investigate fair housing complaints based on federal, state, or local laws through the Fair Housing Assistance Program and Fair Housing Initiatives Program.

The United States Department of Housing and Urban Development, together with state and local fair housing agencies and private fair housing organizations, investigates fair housing complaints. HUD receives complaints from individuals who believe they have been subject to discrimination or are about to experience discrimination. If the discrimination takes place in a state or locality with its own similar fair housing enforcement agency, most often referred to as a Fair Housing Assistance Program (FHAP) agency, HUD must refer the complaint to that agency. In addition,

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61 Id. at 2523.

62 Id.

63 42 U.S.C. § 3610(f).
HUD also refers complaints with possible criminal violations or patterns or practices of discrimination to DOJ.\footnote{42 U.S.C. § 3610(e).}

HUD investigates complaints to determine if there is reasonable cause to believe a discriminatory practice has occurred or is about to occur.\footnote{42 U.S.C. § 3610(g).} While an investigation is ongoing, HUD may also engage in conciliation to try to reach an agreement between the parties.\footnote{42 U.S.C. § 3610(b).} Conciliation requires voluntary participation of both parties. Relief can be sought both for the aggrieved party and for the public interest. If parties do not reach an agreement, then HUD determines whether there is reasonable cause to believe discrimination occurred or was about to occur.\footnote{42 U.S.C. § 3610(g), 24 C.F.R. § 103.400.}

If HUD finds no reasonable cause to believe discrimination occurred, then it dismisses the complaint. If HUD finds reasonable cause to believe that discrimination occurred, it issues a statement of facts on which the determination or reasonable cause is based.\footnote{42 U.S.C. § 3610(g), 24 C.F.R. § 103.405.} Either party may request that the case be heard in court, but if neither party makes this election, then the case is heard before an administrative law judge.\footnote{42 C.F.R. § 3612.} If the case goes to federal court, then HUD transfers the case to the DOJ.\footnote{Id.} An administrative law judge may impose a civil penalty to “vindicate the public interest” (amounts vary based on whether there have been previous infractions) and to order injunctive relief.\footnote{42 U.S.C. § 3612(g)(3).}

HUD oversees two programs that promote fair housing at the state and local level: The Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP). FHAP funds state and local fair housing agencies, and FHIP funds eligible entities that largely include
private nonprofit organizations. These recipients in turn supplement HUD’s efforts to promote fair housing, detect discrimination, investigate complaints, and enforce the federal Fair Housing laws. The following subsections describe FHAP and FHIP and provide funding levels for the programs.

1. **Fair Housing Assistance Program (FHAP)**

The Fair Housing Assistance Program funds state and local agencies that HUD certifies as having their own laws, procedures, and remedies that are substantially equivalent to the federal Fair Housing Act. The Fair Housing Act requires HUD to refer complaints that violate state and local fair housing laws to the certified agencies responsible for enforcing them (in jurisdictions that have such agencies). At the time of the enactment of the Fair Housing Act, multiple states and local jurisdictions had enacted their own laws and established agencies for their enforcement.

Activities for which FHAP agencies receive funding include capacity building, processing complaints, administrative costs, training, and special enforcement efforts. When a FHAP agency receives a fair housing complaint, it goes through much the same process as HUD. The agency investigates, and, as the investigation is ongoing, works on conciliation with the parties. In FY2016, there were 7,019 complaints filed with FHAP agencies around the country. Of these,


76 24 C.F.R. § 115.302 and § 115.304.

77 24 C.F.R. § 115.204. HUD regulations specify criteria that must be included in state and local laws.

5.3% led to FHAP agencies finding reasonable cause to believe that discrimination occurred, 28.9% were settled through conciliation, and 50.7% resulted in a finding of no reasonable cause.\textsuperscript{79} The remainder of complaints had an administrative closure or were withdrawn with a resolution.

2. \textit{The Fair Housing Initiatives Program (FHIP)}

The Fair Housing Initiatives Program (FHIP) was created as part of the Housing and Community Development Act of 1987\textsuperscript{80} as a demonstration program and was made permanent in 1992.\textsuperscript{81} Through FHIP, HUD enters into contracts or awards competitive grants to eligible entities—including state and local governments, nonprofit organizations, or other public or private entities, including FHAP agencies—to participate in activities resulting in enforcement of federal, state, or local fair housing laws, and for education and outreach. The majority of FHIP grantees are private nonprofit organizations.\textsuperscript{82}

FHIP was added to the Fair Housing law in recognition of the fact that additional assistance was needed to detect fair housing violations and enforce the law. HUD funds three activities that are provided for under the statute:\textsuperscript{83}

- \textbf{Private Enforcement Initiative.}\textsuperscript{84} Provides funds for fair housing enforcement organizations to investigate violations of the federal Fair Housing Act and similar state and local laws, and to obtain enforcement of the laws. Fair housing enforcement organizations are private nonprofit organizations that receive and investigate complaints about fair

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\textsuperscript{79} Ibid., p.21.

\textsuperscript{80} Pub. L. 100-242, 101 Stat. 1815.


\textsuperscript{82} \textit{Supra} note 57.

\textsuperscript{83} 42 U.S.C. § 3616a.

\textsuperscript{84} 42 U.S.C. § 3616a(b), 24 C.F.R. § 125.401.
housing, test fair housing compliance, and bring enforcement actions for violations. Organizations may receive Private Enforcement Initiative funding if they have at least one year of experience participating in these activities.

- **Education and Outreach Initiative.** The statute provides for awards to fair housing enforcement organizations, private nonprofit organizations, public entities, and state or local FHAP agencies to be used for national, regional, local, and community-based education and outreach programs. Such activities include developing brochures, advertisements, videos, presentations, and training materials.

- **Fair Housing Organization Initiative.** Provides funding for existing fair housing enforcement organizations or new organizations to build their capacity to provide fair housing enforcement.

Organizations that receive FHIP funding investigate fair housing complaints brought to them by individuals and also initiate their own investigations. If there is evidence that discrimination occurred, then FHIP agencies can help individuals file complaints with HUD or a state or local FHAP agency, or bring a private action in court.

In FY2018, appropriations were approximately $24 million for FHAP and almost $39 million for FHIP. These are reductions from peak funding, which occurred between FY2010 and FY2012 (see Figure 1).

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85 42 U.S.C. § 3616a(h).
86 42 U.S.C. § 3616a(d), 24 C.F.R. § 125.301.
HUD reports the number of fair housing complaints it receives as well as those received by FHAP agencies. In recent years, the number of complaints filed with both HUD and FHAP agencies has declined, from a high of 10,552 in FY2008 to 8,385 in FY2016, the most recent year in which data are available.89 During this time period, the number of FHAP agencies decreased from 108 operating at the end of FY2008 to 85 at the end of FY2016.90 In addition, complaints received by private fair housing organizations (those not receiving FHAP funding), as reported by the National Fair Housing Alliance, decreased slightly between 2008 and 2015, with about 500 fewer requests in 2015 than the 20,173 reported in 2008.91 See Figure 2 for HUD and FHAP agency complaints between FY2005 and FY2016.

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90 FY2016 Annual Report to Congress, p. 15.

91 Ibid.
C. Other Federal Statutes and Regulations

In addition to the Fair Housing Act, there are other federal statutes and regulations that prohibit discrimination in housing, or housing-related activities. The following is a sample, but not a comprehensive list of such statutes:

- **Title VI of the Civil Rights Act of 1964.** Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

- **Section 504 of the Rehabilitation Act of 1973.** Section 504 prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

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• **Section 508 of the Rehabilitation Act of 1973.**[^508] Section 508 requires federal agencies to ensure that the electronic and information technology they develop, procure, or use, allows individuals with disabilities to have ready access to and use of the information and data that is comparable to that of individuals without disabilities.

• **Title II of the Americans with Disabilities Act of 1990.**[^title_II] Title II of the ADA prohibits discrimination based on disability in programs and activities provided or made available by public entities. HUD enforces Title II with respect to housing-related programs and activities of public entities, including public housing, housing assistance and housing referrals.

• **Title III of the Americans with Disabilities Act of 1990.**[^title_III] Title III of the ADA prohibits discrimination based on disability in the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodations owned, leased, or operated by private entities. The Department of Justice enforces Title III of the ADA, but certain HUD recipients and private entities operating housing and community development programs are covered by Title III of the ADA.

• **Architectural Barriers Act of 1968.**[^architectural] The Architectural Barriers Act requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by persons with disabilities.

• **Section 109 of Title I of the Housing and Community Development Act of 1974.**[^section_109] Section 109 prohibits discrimination on the basis of race, color, national origin, sex, and religion in any program or activity funded in whole or in part under Title I of the Community Development Act of 1974, which includes Community Development Block Grants.

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[^508]: 29 U.S.C. § 794d.
[^architectural]: 42 U.S.C. § 4151 et seq.
• **Title IX of the Education Amendments Act of 1972.** Title IX prohibits discrimination on the basis of sex in any education programs and activities that receive federal financial assistance. HUD enforces Title IX when it relates to housing affiliated with an educational institution.

• **Violence Against Women Act.** The Violence Against Women Act provides housing protections for victims of domestic violence, dating violence, sexual assault, and stalking in many of HUD’s housing programs. The Act also requires the establishment of emergency transfer plans for facilitating the emergency relocation of certain tenants who are victims of domestic violence, dating violence, sexual assault, or stalking.

• **Age Discrimination Act.** The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.

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100 42 U.S.C. § 14043e-11.
III. SUMMARY OF PANEL TESTIMONY

Fifty-two years ago, Congress passed Title VIII of the Civil Rights act of 1968, also known as the Fair Housing Act. The law, as amended, prohibits discrimination in public and private housing markets based on familial status, disability, religion, sex, race, color, or national origin.\(^{102}\) Despite over five decades of the protections of the Fair Housing Act, and billions of dollars spent by federal, state, and local agencies to further fair housing, equal opportunity in housing remains a major challenge in Illinois.

The Illinois Advisory Committee held a fair housing briefing on May 3, 2019, at the Ralph H. Metcalfe Federal Building in Chicago, Illinois. The committee heard testimony from diverse panels of academic experts, legal professionals, community advocates, and elected officials who discussed challenges to fair housing along with recommendations for potential improvements.\(^{103}\) The testimony exposed several themes among which is that despite strong legislation, past and ongoing practices in the housing and lending markets continue to produce significant disparities in access to quality housing, and homeownership between minorities and non-minorities. This has led some, including some panelists at the briefing, to question whether the federal government is doing all it can to combat discrimination and promote fair housing.

The Committee notes that where appropriate, all invited parties who were unable to attend personally were offered the opportunity to send a delegate; or, at a minimum, to submit a written statement offering their perspective on the civil rights concerns in question. It is in this context that the Committee submits the following findings and recommendations in this report.

\(^{102}\) Supra note 72.

\(^{103}\) The complete agenda from this meeting can be found in Appendix A.
Fair Housing Enforcement in Illinois

A. The Need for Adequately Staffed and Funded Agencies

1. U. S. Department of Housing and Urban Development (HUD)

A 2019 memorandum from HUD’s Office of the Inspector General states, “[b]y HUD’s own assessment, its top enterprise risks include the hiring and retention of qualified staff, the justification of staffing levels and reassignments, and staff training and skill gaps.”

HUD’s mission is challenged by a steady decline in staffing, “as of May 2019, HUD had 7,306 employees, nearly 30 percent fewer than it had 20 years ago. HUD predicts that by fiscal year 2020, 57 percent of its employees will be retirement eligible.” Specifically, the Inspector General identified the Office of Fair Housing and Equal Opportunity (FHEO) and said, “nearly two-thirds of the field management positions are either vacant or held by acting staff.”

The Illinois Advisory Committee heard testimony that affirmed the agency’s own assessment. Sarah Pratt, former Deputy Assistant Secretary for Fair Housing Enforcement and Programs and Senior Advisor to the Assistant Secretary at HUD, told the committee when it comes to “segregation in local communities by race or national origin or even by disability, in many of these cases it's the federal government that's uniquely qualified to step in.” Ms. Pratt said, “Although no administration has fully staffed civil rights enforcement at HUD, and the people here at this table have heard me say this over and over again, this administration has allowed staffing levels nationally to drop to historic lows.”

Ms. Pratt commented on the staffing deficiencies, “In my opinion there is no question that key losses of career leadership in FHEO in the last two years [2016-2018] have harmed effective management and organizational leadership in … civil rights enforcement at HUD. The positions of General Deputy assistant secretary, deputy assistant secretary for enforcement, the position that


105 Ibid.


108 Ibid. p.36.
I held, and deputy assistant secretary for programs and operations have all been vacated within the last few months. That is the career leadership that operationalizes fair housing nationally. All are gone."109

Additionally, “staffing levels of fair housing enforcement are so low that it's easy to believe that understaffing of the civil rights function is a deliberate action designed to reduce the effectiveness of enforcement and the other work that FHEO does.”110 Ms. Pratt noted “Numerous studies and reports and my own testimony before Congress in the past have supported a minimum staffing level of at least 750 persons...at the national level to effectively do the basic enforcement compliance program monitoring functions that FHEO has. And that does not include add-on responsibilities, such as... the obligation to enforce affirmatively furthering fair housing.”111 Ms. Pratt pointed out, “The current rate of employment in FHEO across the country dropped to 481 in 2018, the lowest level since 1981. And this administration has submitted reduced staffing requests for FHEO asking for fewer people in the next year [2019] in their budget requests."112

Speaking on the importance of a fully staffed and experienced agency, Ms. Pratt said,

FHEO's political and career leadership in Washington has to be knowledgeable about fair housing and civil rights, and they must interpret the law as credibly and sensibly and consistently across the country. You have had great leadership here in this region [Region 5], but other regions have different forms of leadership. And it's important in a national civil rights enforcement program that you have good leadership that can make sure that things are consistently interpreted, and that work goes on in different regions in a way that interprets the law consistently and takes the same kinds of actions on the same kinds of facts.113

Ms. Pratt opined that the staff of FHEO “for several years, not just in the last two years, have not been given adequate resources to provide contractual support for investigations”114 and they “don't have the resources to staff up to do the kind of work that's required.”115 She observed, “this administration at HUD has also devoted itself to undoing important work that was done because it was needed to strengthen fair housing. In today's world from the secretary of HUD on down, it

109 Ibid. p.34-35.
110 Ibid. p.37.
111 Ibid. p.36.
112 Ibid.
113 Ibid. p.34.
114 Ibid. p.65.
115 Ibid. p.40.
appears that HUD's primary mission appears to undo, not to do, in fair housing, to tear down rather than to lead and to disrupt rather than to strengthen.”116

Maurice McGough, HUD Regional Director for Region V Office of Fair Housing and Equal Opportunity, said in response to a committee question about staffing and funding, “the office [FHEO] funding comes through appropriations from Congress…the budgetary process works in such a way that the administration makes a budget proposal to Congress, Congress then makes a determination as to whether they are going to fund that proposal at the level requested, at a lower level or a higher level.”117

Mr. McGough added that the current administration has submitted budget proposals that are, “significantly less in terms of staff than previous administrations have done…these funding proposals ultimately result in staffing levels [declining].”118 Ms. Pratt added that staffing is managed by “budget numbers.”119 She indicated the agency has made “lower requests for budgetary appropriations…to handle salary and expenses” which is “unheard of in the federal government.”120

When asked if the FHEO is staffed at a level to maintain a minimum threshold of enforcement, Mr. McGough said he believed the national level is 482 employees in FHEO, and 50 staff persons in the Chicago region.121 He added that when he became regional director in 2011 that number in the Chicago office was 82 staff members.122 He emphasized that the Chicago office “covers six states in the industrial Midwest, and includes the city of Chicago, Detroit, Cleveland, and Milwaukee, areas where there is a great deal of housing segregation and concurrent discrimination.”123

Kimberly Nevels, HUD’s Chicago FHEO Center Director, confirmed Mr. McGough’s estimate that there are 50 staff members in the Chicago office, but added she has lost 20 percent of staff (11

116 Ibid. p.35.
117 McGough Testimony, Chicago Briefing, p. 63.
118 Ibid. p.63-64.
119 Pratt Testimony, Chicago Briefing, p.64.
120 Ibid. p.65.
121 McGough Testimony, Chicago Briefing, p.66.
122 Ibid.
123 Ibid. p.67.
people) in the period from July 2018 to May 2019, including two supervisory positions. In response to a question about their workload, Ms. Nevels said, “170 housing discrimination complaints had been filed and ruled jurisdictional from the period October 1, 2018 to May 1, 2020. She indicated “About 117 of those complaints had actually gone to the Illinois Department of Human Rights for investigation under a memorandum of understanding.”

2. **State and Local Enforcement**

Patricia Fron, Executive Director of the Chicago Area Fair Housing Alliance, referred to the Chicago metro area as, “one of the most segregated in the nation…populations are clearly clustered by race and ethnicity.” Ms. Fron told the committee,

> Local governments often intentionally or sometimes unintentionally uphold segregation because of ambivalence to fair housing issues or more directly perhaps by using their home rule authority to thwart fair and affordable housing efforts. This really creates a patchwork of compliance, and this harms the county and the state’s ability to comprehensively address these issues and comprehensively and affirmatively further fair housing.

She referenced data from the 2010 U.S. Census (see figure 3) and said this segregation did not occur on its own, saying segregation is “the direct result of public and private mechanisms that were directly intended to restrict housing choice particularly for minority households…[including] lending practices like redlining, the misuse of HUD funds, racial steering, and restricted covenants.”

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124 Nevels Testimony, Chicago Briefing, p.67.
125 Ibid.
126 Ibid. p.16.
127 Ibid. p.92.
128 Fron Testimony, Chicago Briefing, p.95.
129 Ibid. p.94.
Figure 3. **Illustration depicting population clusters by race in Chicago.** (provided to the committee by Patricia Fron, Executive Director of the Chicago Fair Housing Alliance.)

Barbara Barreno – Paschall\(^{130}\), Senior Staff Attorney with the Chicago Lawyers’ Committee for Civil Rights, said a report in 2010 ranked the Chicago region in the top 10 nationwide with respect

\(^{130}\) Ms. Barreno-Paschall is a current member of the Illinois Advisory Committee. She recused herself during all discussion regarding her testimony before the committee.
to highest combined racial and economic segregation, highest Latino-white segregation and highest African American-white segregation.\footnote{Barreno-Paschall Testimony, Chicago Briefing, p.229.}

The Affordable Housing Planning and Appeal Act passed in 2003.\footnote{The Affordable Housing Planning and Appeal Act of 2003, Pub. Act 93-595, 310 Ill. Comp. Stat. 367.} This Illinois law encourages local governments to incorporate affordable housing into their communities.\footnote{Id.} According to Ms. Fron, “the Act responded to the shortage of affordable housing in the state and it encourages local governments within Illinois that do not have a sufficient supply of affordable housing to provide affordable housing to assure the health, safety, and welfare of all citizens in the state of Illinois.”\footnote{Fron Testimony, Chicago Briefing, p. 97.} Ms. Fron added, “communities in Illinois that have the population level threshold [from the act] but are not meeting the threshold affordable housing level are required then to adopt an affordable housing plan…and start working to create affordable housing.”\footnote{Ibid. p.98.}

In regard to fair housing enforcement, Ms. Fron said many municipalities have enacted their own fair housing ordinances, and of those municipalities that had a fair housing ordinance, many “fall very short of the protections that are offered at least at the county level.”\footnote{Ibid. p.100.} She told the committee, “Race and religion were the only protected classes included in all of the ordinances we reviewed. It is much less common to see, for instance, Section 8 or housing choice voucher protections.”\footnote{Ibid. p.99} She added, “when municipalities advance local ordinances that fail to include all of the protections at the county level, this really undercuts the positive impacts of having a local ordinance at all.”\footnote{Ibid.}

Ms. Fron explained that “many municipalities are really just unprepared to handle complaints of discrimination within their communities.”\footnote{Ibid. p.100.} She referenced the Cook County Analysis of Impediments to Fair Housing report of 2012 and stated, “while most of the municipalities have complied with the requirement by the Department of Planning and Development to adopt an
ordinance, in many instances the resulting ordinances have been superficial acts without procedures or policies in place to ensure enforcement.”140

Ms. Fron told the committee that many municipalities “lack even simple procedures, policies or staffing to direct complaints of discrimination.”141 She said complaint forms are available on many municipality websites, but there is no person designated to review the complaints.142

There are about 100 nuisance ordinances in Illinois alone.143 According to Ms. Fron, “local crime-free and nuisance-free ordinances have the effect of locking individuals with backgrounds out of their communities.”144 Ms. Walz said her organization has, “a case against the City of Peoria for its nuisance ordinance. This is the intersection of discriminatory policing and housing policy. They are allowing the police to dictate who is evicted for what is considered to be a nuisance. They are targeting black and brown communities.”145

Explaining local fair housing enforcement, Mr. Gunn said the Chicago Fair Housing Ordinance was passed in 1963, but it was very weak.146 In 1989 the Chicago Fair Housing Ordinance and the Chicago Human Rights Ordinance were totally redrafted giving the Chicago Commission on Human Relations authority to hold its own hearings.147 After the investigation discrimination complaints, “[the Commission was] given the authority to award damages, injunctive relief, attorney's fees and, of course, the city has to collect its fines. So, [it has] fines also.”148 He added, there have been several amendments to the ordinance since 1990, which made the Commission even more powerful. The Commission can award punitive damages and the fines have been raised from 500 to one thousand dollars.149

Mr. Gunn described some of the types of housing discrimination prohibited by the ordinance: “We prohibit failure to sell or rent a dwelling, posting of discriminatory notices or advertising, imposing

140 Ibid.
141 Ibid. p.101.
142 Ibid.
143 Walz Testimony, Chicago Briefing, p.227.
144 Fron Testimony, Chicago Briefing, p.135.
146 Gunn Testimony, Chicago Briefing, p.47.
147 Ibid.
148 Ibid.
149 Ibid.
different terms and conditions of sale or rental, steering and termination of tenancy of ownership rights, harassment and sexual harassment and failure to accommodate residents based on disabilities and religious beliefs.\textsuperscript{150}

The Affordable Housing Planning and Appeal Act was passed to encourage local governments to incorporate affordable housing into their communities.\textsuperscript{151} The Act responds to a shortage of affordable housing in the State and the acknowledgment that action is necessary to ensure that this housing exists in a balanced way throughout the State.\textsuperscript{152} The Act encourages local governments within Illinois that do not have a sufficient supply of affordable housing to provide affordable housing in order to assure the health, safety and welfare of all citizens in the State of Illinois.\textsuperscript{153}

The Illinois Housing Development Authority (IHDA) is the State-administering agency and provides tools to aid municipalities that are considered nonexempt or those that are subject to the Affordable Housing and Appeals Act to comply.\textsuperscript{154} Nonexempt status means that these communities have a population of at least one thousand residents and less than 10 percent of their housing stock is considered affordable.\textsuperscript{155}

Communities in Illinois that are found to be nonexempt, meaning they have the threshold population level but are not meeting the threshold affordable housing level, are required then to adopt an affordable housing plan and start working toward a plan to create affordable housing.\textsuperscript{156} Forty-six municipalities within Illinois are nonexempt according to the most recent review by IHDA in 2018.\textsuperscript{157} Additionally, several municipalities have indicated because of their home rule status they can opt out of the Illinois Affordable Housing and Appeals Act so, they're not developing a plan, they're not going to work towards a plan, they're basically saying we're not going to follow this.\textsuperscript{158}

\textsuperscript{150} Ibid. p.48.
\textsuperscript{151} Affordable Housing Planning and Appeal Act (AHPAA) (310 ILCS 67), 2003; Fron Testimony, Chicago Briefing, p.97.
\textsuperscript{152} Fron Testimony, Chicago Briefing, p. 97.
\textsuperscript{153} Ibid.
\textsuperscript{154} Ibid. p.98.
\textsuperscript{155} Ibid.
\textsuperscript{156} Ibid.
\textsuperscript{157} Ibid.
\textsuperscript{158} Ibid.
Recommendation

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights should make a recommendation to the U.S. Department of Housing and Urban Development, and other agencies responsible for the investigation of complaints and enforcement of fair housing laws, that their fair housing offices should be adequately staffed and funded to allow for proper investigation of complaints and enforcement of fair housing laws.

B. HUD Must Establish Reporting Requirements

Under the requirement to further fair housing, HUD required entitlement communities who receive HUD dollars to report on their impediments to fair housing and to develop measurable goals and benchmarks that could be assessed cyclically to assess if those goals are being met.159 The current HUD leadership rolled back the rule, and HUD “is no longer reviewing those reports”, creating constraints for the ability to really review whether the plans are moving in the right direction.160

Recommendation

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights should make a recommendation to the U.S. Department of Housing and Urban Development, and other agencies responsible for the investigation of complaints and enforcement of fair housing laws, to reinstate reporting requirements for entitlement communities to ensure benchmarks and goals are met in regards to fair housing initiatives.

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159 Fron Testimony, Chicago Briefing, p.125.

C. Web-Based Education on Housing Rights and the Complaint Process

Ms. Nevels explained to the committee the Fair Housing Initiatives Program receives outreach funds from various organizations. Public service announcements also come from not-for-profits and fair housing entities. She highlighted the point that HUD does not provide the funding for the public service announcements, funding comes from the other entities.161

Mr. Ken Gunn, a longtime member of the Chicago Commission on Human Relations, said that his organization conducts “outreach all over the place…we talk to community organizations all the time…but we get a lot of referrals from community organizations, fair housing organizations,”162 and attorneys.

Ms. Fron told the committee, “one of the most noted barriers that we see across municipalities regarding fair housing is just a general lack of understanding of fair housing among their own municipal staff, residents, and also housing industry professionals…it’s important for municipalities to provide education to their staff…so that they know what the issues are and how to handle complaints of discrimination when they arise but also proactively in the community so their residents understand what their rights are.”163

Many victims of discrimination report the event to the proper authority, some do not. Mr. Gunn told the committee, “over the last ten years or so we've averaged about 80 fair housing complaints a year. And remember though, these are reported complaints, we know there are a lot more out there. Unfortunately, when somebody goes to rent an apartment and they're denied, their first thought isn't to come file a discrimination complaint.”164 He added, “we had another 32 percent based on race. But we know too that Section 8 is often -- or a housing choice voucher discrimination is about racist issues quite often, not all the time, but quite often.”165

Mr. Gunn said the idea is to educate them, “A lot of landlords, if they're part of a big development, part of a management company, they may have some fair housing training. But what we see, so many of our cases are small landlords, and in Chicago there are no requirements for landlords to be licensed or to receive any training. People just see it as a way of supplementing their income.

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161 Nevels Testimony, Chicago Briefing, p.70.
162 Gunn Testimony, Chicago Briefing, p.71.
163 Fron Testimony, Chicago Briefing, p.105.
164 Gunn Testimony, Chicago Briefing, p.50.
165 Ibid. p.51.
So because of that we see all kinds of craziness. I mean, we get cases where I'm sure you've heard of it, people come to rent an apartment and the landlord will say, I'm not set up for Section 8, right? Or the thing that kills me all the time is my building won't pass inspection. So why are you renting it to anybody?"  

The committee heard from more panelists about the lack of housing education. Josh Roska, an attorney with the Land of Lincoln Legal Aid, said “the Tenant Union said they get less than ten complaints of discrimination a year, but they get hundreds of complaints about conditions. Despite the problem we hear about criminal records, there had only been one actual complaint in Champaign and Urbana about that. It is something that people simply don’t understand or don’t realize they have the ability to do anything about.”

**Recommendation**

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights should make a recommendation to the U.S. Department of Housing and Urban Development, and other agencies responsible for the investigation of complaints and enforcement of fair housing laws, that they make available on the internet public education and guidance about housing rights and information on how to file a complaint.

**D. Discrimination Based on Criminal History**

When asked if his office tracks how many complaints are made by people alleging they were discriminated against because of their arrest and conviction record, Mr. McGough said his office does not “specifically track cases where the underlying issue has to do with arrests or conviction records…[but] it is important to point out that HUD did issue guidance regarding complaints based on prior convictions.” He explained, “that guidance was based on the disparate impact theory…that a disproportionate number of African Americans have been subjected to arrests and

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166 Ibid. p.54.
168 McGough Testimony, Chicago Briefing, p.69.
convictions and because of the policies that limit individuals’ housing opportunities on the basis of past arrest or conviction disproportionately affect African Americans.”169

Victor Dickson, President and CEO of the Safer Foundation, told the committee “in Cook County approximately 15,000 people return from prison every year. About 11,000 of them return to Chicago, and it is mainly to about seven neighborhoods on the west and south side of the city. Over 50,000 unique individuals cycle in and out of Cook County jail every year, and every one of them now has an arrest on their record.”170

“Most people”, said Mr. Dickson, “who are released from prison find temporary housing with family, friends, etc. but some of them almost immediately face homelessness.”171 In fact, “people who were formerly incarcerated are ten times more likely to be homeless. If they have been incarcerated multiple times, they are about 13 times more likely to be homeless.”172 Mr. Dickson estimated that up to 79 percent of people who have convictions have been denied housing.173

There are many barriers for the formerly incarcerated. Private market landlords will by and large deny the applications of people with records.174 There are still policies in Chicago public housing units that do not permit people with records to move in.175 The availability of transitional, subsidized, and supportive housing are all limited.176 Ancillary to their actual criminal record, the formerly incarcerated face other barriers to housing such as unemployment, low income, the inability to pay a housing deposit, and things that are normally required on a housing application such as references.177

Other factors include background checks and access to records. If a landlord conducts a background check, the landlord may not understand them enough to know the actual outcome of the case.178 The charge could have been dropped, the person could have been found innocent, or

169 Ibid.
170 Dickson Testimony, Chicago Briefing, p.111.
171 Ibid.
172 Ibid. p.113.
173 Ibid.
174 Ibid.
175 Ibid.
176 Ibid.
177 Ibid. p.114.
178 Dickson Testimony, Chicago Briefing, p. 132.
the record may be incorrectly available despite an expungement.\textsuperscript{179} Housing decisions are being made by people without the necessary training to know the status of someone’s record.

Ms. Barreno – Paschall told the committee, “while housing discrimination may not be as overt as it was when the Fair Housing Act was passed in 1968, with clear exception to Cairo, Illinois, there are multiple policies that are neutral on their face but have a disparate impact, as [] discussed in the context of housing admissions policies for individuals with criminal records.”\textsuperscript{180}

\textbf{Recommendation}

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights should make a recommendation to the U.S. Congress that fair housing laws should be amended to prevent unfair discrimination based on criminal history.

\textbf{E. Discrimination Based on Housing Choice Vouchers}

Mr. McGough told the committee that there are 115 housing authorities in the state of Illinois, some are large like the Chicago and Cook County Housing Authorities but the majority of housing authorities are smaller, having between 100-500 units.\textsuperscript{181} According to Mr. McGough, HUD is repositioning public housing, in effect downsizing public housing inventory, by allowing any housing authority with 250 units or less to simply notify HUD of their voluntary conversion to a housing choice voucher program.\textsuperscript{182} Mr. McGough estimated that of the 115 housing authorities in Illinois, 30 to 40 of them will move to vouchers.\textsuperscript{183}

In the city of Chicago and in Cook County source of income discrimination is against the law.\textsuperscript{184} In general, however, “it is not illegal to refuse to rent to somebody because they have a housing

\textsuperscript{179} Ibid.
\textsuperscript{180} Barreno-Paschall Testimony, Chicago Briefing, p.230-231.
\textsuperscript{181} McGough Testimony, Chicago Briefing, p. 72.
\textsuperscript{182} Ibid. p.73.
\textsuperscript{183} Ibid.
\textsuperscript{184} Chicago, IL., Chicago Municipal Code § 5-8-030 (2020).
choice voucher.” Mr. McGough, though, expressed concern for individuals losing their public housing and being given a voucher. He questioned whether the stock of available housing will match the need, and “the secondary problem is making sure that if you find housing, that the housing provider will rent to you with a housing choice voucher.”

Geoff Smith, Executive Director of DePaul University’s Institute of Housing Studies, told the committee, “anyone who knows the geography of Chicago and the history of segregation and its relationship with housing investment and disinvestment…won’t be surprised that these geographic patterns are very significantly correlated with race. High-cost neighborhoods are significantly white (60%), moderate-cost neighborhoods are a bit more diverse, and lower-cost neighborhoods are predominantly African American (80%).”

Mr. Smith added that in regards to the foreclosure crisis and subprime money crisis of 2008, “nearly 35 percent of residential properties in the low-cost neighborhoods were affected by the foreclosure crisis compared to around 13 percent in the higher-cost neighborhoods.” Prior to the crash, housing prices in low-cost areas was driven by sub-prime mortgages, when the market crashed and sub-prime lending went away, there was a significant drop in housing prices in these low-cost areas. Since 2012, “which is when most areas began to recover, you see much weaker recovery in those [low-cost] neighborhoods.”

In the low-cost neighborhoods, “[housing] prices are about 53 percent of what they were as the market peaked. In higher-cost neighborhoods we see those prices have essentially recovered to where they were at peak.” Mr. Smith added, “If you were to buy the average home in 2000 using our price index and estimating what the average typical property would be worth in 2017, we see in those lower-cost neighborhoods the average price was $67,000 in 2000, today it would be worth about $73,000.” He said, [If you look] “in those high-cost neighborhoods, you see the typical homeowner or buyer paid $230,000, now the property is worth over $430,000. So just by virtue of

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185 McGough Testimony, Chicago Briefing, p.74.
186 Ibid.
187 Ibid.
188 Smith Testimony, Chicago Briefing, p.79.
189 Ibid. p.80.
190 Ibid. p.81.
191 Ibid. p.81.
192 Ibid.
193 Ibid. p.83.
being able to purchase a home in those more stable, stronger markets, those households were able to generate substantial wealth through home ownership, and this has significant implications for inequality.”194

Mr. Smith explained that lower-cost mortgage lending “is down across the board but remains virtually inaccessible in those neighborhoods.”195 While there is more demand in the higher-cost neighborhoods because of the substantial increase in income for those neighborhoods196, the supply of affordable housing has declined in the low-cost housing market.”197 And in these low-cost neighborhoods, 15 percent of the housing units have some type of housing choice voucher, like Section 8.”198 The voucher subsidy is not spreading to other higher-cost neighborhoods where there may be different types of opportunities available, meanwhile low-cost neighborhood residents compete with voucher holders for the chance to secure affordable housing.

The affordable housing units in low-cost neighborhoods in the Chicago area have decreased by 10 percent during the period 2012-2016. Using a metric called the “affordability gap” Mr. Smith told the committee that the difference between the need for affordable housing in the city and the supply is about 118,000 units.199 Mr. Smith concluded, “that means there are more folks competing for the smaller number of affordable units, which puts pressure on those folks to either find a unit, live somewhere else, or just pay more for their rent.”200

There is a need for different types of strategies to address the market pressures affecting the various neighborhoods across the city. From the loss of affordable housing units in low-cost neighborhoods, to the loss of affordable housing in the higher-cost neighborhoods, the unequal recovery of the housing market in Chicago is affecting opportunities for different income and race groups in the city.201

Sarah Pratt shared a story about a case her firm handled regarding the small area fair market rent (FMR) process,
My firm also represented individual and organizational plaintiffs in a lawsuit against HUD when they pulled down a rule that had been in the making for many administrations to increase the amount of money that a Section 8 voucher would pay to a renter so that they could pay -- a voucher holder could go to a higher rent neighborhood and live rather than to being concentrated in neighborhoods which were low rent all right but also low quality. And the small area FMR process for 25 cities across the country would increase -- did increase eventually, increase the rent amounts that voucher holders could pay using their vouchers without extra charge to them to allow them to move into new neighborhoods where they had previously been crossed out. And HUD withdrew that rule. 202

Ms. Fron said that her organization brought a lawsuit against HUD “both under the Administrative Procedures Act for failing to engage in the normal administrative procedures that the federal government uses to make changes and have across every administration for years, and also under the Fair Housing Act saying that this decision by HUD violated the Fair Housing Act.”203

Recommendation

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights should make a recommendation to the U.S. Congress, and the Illinois legislature, that fair housing laws should be amended to prevent discrimination based on source of income, such as HUD Section 8 and other housing choice vouchers.

F. Occupancy Limits

Occupancy restrictions can have a disparate impact on people of color, women, families and people with disabilities.204 For example, the number of unrelated individuals in a dwelling may have unintended consequences based on national origin.205

Occupancy limits are often imposed by the type of new housing that is being built. Even under strategies such as inclusionary zoning, which leverages the demand from the private market to

202 Fron Testimony, Chicago Briefing, p. 43.
203 Ibid.
204 Ibid. p. 104.
205 Ibid. p.135.
build new market-rate housing to create affordable housing, new housing created to satisfy the zoning requirement does not always equate to more opportunity.\textsuperscript{206}

Much of the new housing for market-rate developments in downtown Chicago, and other booming neighborhoods, is oriented towards smaller, millennial-type households whereas a lot of the affordable housing need is for family units.\textsuperscript{207} There is a lack of transparency as to the money that gets paid into affordable housing funds, where that funding goes, and what types of developments are a product of those funds.\textsuperscript{208}

\textbf{Recommendation}

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights should encourage Illinois local municipalities to review occupancy limits to ensure compliance with local, state, and federal law.

\section*{G. Partnerships: State/Local Agencies and Private Real Estate Sector}

Ms. Fron said, “We know that local land use zoning laws and also building codes in many jurisdictions prevent the development of balanced affordable and multi-family housing and this perpetuates segregation.”\textsuperscript{209}

Leah Levinger, Executive Director of the Chicago Housing Initiative, told the committee a story from her work as an organizer. She helped to develop public and affordable housing in a predominantly white neighborhood called Jefferson Park, “the neighborhood is 80 percent white…and in February 2017 the local Alderman proposed to build a 100-unit affordable family housing development in Jefferson Park. The proposed development was in a school district with a Level 1 elementary school, one of the best in the city. It is located less than a 5-minute walk from Jefferson Park transit (Blue Line, Metra, 13 bus routes), and access to over 750,000 jobs within a

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\textsuperscript{206} Smith Testimony, p.128.
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\textsuperscript{207} Ibid. p.129.
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\textsuperscript{208} Ibid. 130.
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\textsuperscript{209} Fron Testimony, p.103.
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10 to 15-minute public transit commute.”210 Although this was going to provide an incredible opportunity for just 100 families, it was met with truly incredible backlash.211

Ms. Levinger said, “the affordable housing proposal gets put out to the public by the Alderman and people in the community start calling it a ‘Section 8 Highrise’, or ‘Englewood north’. ‘we don’t need more poor people in high rises.’ A petition gets launched that generates 3,000 signatures in a matter of days.”212

Ms. Levinger described the backlash, “people start saying the sewer capacity won’t be possible to sustain a high rise. Folks comment that the sewer capacity will be the least of their worries, it will be the ‘two-legged shit coming over to hide out at the baby mama’s house’, that will be the problem. Folks responded LOL, at these racist remarks.213

The mood of the residents of Jefferson Park was less than welcoming, “we don’t need or want people with low income. We don’t need CHA residents who bring crime. We don’t need these criminals. Hash tag build a wall. And then people start commenting, well, why not build on the south and the west sides (Chicago’s communities of color).”214

The community sent the housing authority 7,000 letters in opposition against the housing proposal.215 At the community meeting the [proposed occupants] were called rapists, criminals, miscreants. The Alderman was asked if children who would live in the development would be drug tested.”216

A 14 percent spike in voter turnout during the subsequent election in 2019 ousted the Alderman, the voter turnout was largely a reaction to the affordable housing.217 Ms. Levinger said,

> If a local elected official, based on his principles or set of values takes action to lead on the issue, to some degree he does so towards the benefit of an electorate that does not live in his ward at the peril of the electorate who does. It’s asking people to take exceptional leadership to do the right thing, we need to create policies

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211 Ibid.
212 Ibid. p.156.
213 Ibid. p.156.
214 Ibid.
215 Ibid. p.160.
216 Ibid.
in the system that don’t assume exceptionalism…we need to create policies in the system that assume ordinary people doing ordinary things can do the right thing.\textsuperscript{218}

Ms. Levinger concluded by saying affordable housing decisions can’t be so localized because the politics of it retrenches the problems that were build 50 or 60 years ago.\textsuperscript{219}

Christian Diaz, a housing organizer with Logan Square Neighborhood Association, told the committee that in Chicago, Aldermen control zoning and funding that could be used to preserve affordable housing, create affordable housing, but instead it is being handed out to wealthy developers to gentrify the community.\textsuperscript{220} The impact, he said, is that mostly people of color are hurt, and Logan Square is becoming yet another neighborhood in Chicago that is only accessible to the very wealthy.\textsuperscript{221}

In 2017, Logan Square had the most buildings demolished of any Chicago neighborhood with 109 tear-down permits issued (up from 38 in 2012). When buildings are torn down in Logan Square, Mr. Diaz claimed, “it is usually three flats (low-income housing) that are torn down, so we are reducing the stock of naturally affordable housing in our community and replacing them with luxury condominiums that justify increases in property taxes which further hurt those mom-and-pop homeowners who are providing the natural affordable housing in our community.”\textsuperscript{222}

Mr. Diaz offered a solution to the committee, “to undo these racial disparities we just need to do for people of color what our federal government did for white people between 1930 and 1960, which is to allow them to become homeowners at an affordable rate and to be able to build wealth through home ownership.\textsuperscript{223} He added inclusionary zoning democratizes development on the market, developments must be presented to the community for input, and the community then has the opportunity to advocate for affordable units to be included and for the development to be consistent with the historic character of the neighborhood.\textsuperscript{224}

Kate Walz, Vice-President of Advocacy at the Shriver Center said Chicago has “developed the Master Class on the use of hyper-local control to maintain racial boundaries. The power of Aldermen to control their wards and shape neighborhoods, known as Aldermanic prerogative or

\textsuperscript{218} Ibid. p.163
\textsuperscript{219} Ibid.
\textsuperscript{220} Diaz Testimony, Chicago Briefing, p.172.
\textsuperscript{221} Ibid.
\textsuperscript{222} Ibid. p.173.
\textsuperscript{223} Ibid. p.176.
\textsuperscript{224} Ibid.
Aldermanic privilege is so engrained and rooted in our history that many Chicagoans would be surprised to know that this is unique among American Cities.”\textsuperscript{225} She explained Aldermanic prerogative means the power of the city council to maintain control over their wards primarily though initiating or blocking City Council or city governmental actions concerning their wards and, in effect, using it to block affordable housing from coming into their wards.\textsuperscript{226}

One primary trigger for control is zoning. Aldermen are able to down-zone at random almost any parcel in their ward. They are also able to landmark parcels of their ward so as to prevent affordable housing development. One of the ways that forces a developer to deal with the Alderman is they have to seek a zoning change.\textsuperscript{227}

Ms. Walz said, “we found that in predominantly white wards in the City of Chicago, Aldermen had set up formal zoning advisory councils. Those advisory councils were made up of constituents, and the developer would have to meet with that staff in order to get approval for the zoning change and the affordable housing.\textsuperscript{228} These advisory councils became a forum for fomenting racial animus. Constituents would come out to community meetings and make coded and explicit racist statements about who would be moving into these developments, about the crime that they would be bringing. And they would be talking about overcrowding of schools and rising crime, and other racial stereotypes.\textsuperscript{229} Ms. Walz said developers then usually would never even get past the Zoning Advisory Council.\textsuperscript{230}

**Recommendation**

Based on the testimony received from sector experts and public testimony, the Illinois Advisory Committee recommends that the United States Commission on Civil Rights make a recommendation to the U.S. Department of Housing and Urban Development to facilitate partnerships between fair housing advocates and state/local agencies and the real-estate sector in order to foster enhanced communication related to fair housing.

\textsuperscript{225} Walz Testimony, Chicago Briefing, p.215-216.
\textsuperscript{226} Ibid. p.216.
\textsuperscript{227} Ibid. p.218.
\textsuperscript{228} Ibid.
\textsuperscript{229} Ibid. p.219.
\textsuperscript{230} Ibid.
IV. RECOMMENDATIONS

Among their duties, advisory Committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress. The Illinois Advisory Committee heard testimony that current access to fair housing may disproportionately affect individuals on the basis of race, color, sex, age, disability, and national origin. In addition, the Committee heard concerns regarding the need to find reasonable ways to promote fair housing at the local, state, and federal levels.

Based on the testimony received at the Chicago Briefing from sector experts and public testimony, along with the discussion of the salient issues between the committee members, the Illinois Advisory Committee recommends the following to the United States Commission on Civil Rights.

1. The U.S. Commission on Civil Rights should recommend that the U.S. Department of Housing and Urban Development and other agencies responsible for the investigation of complaints and enforcement of fair housing laws should be adequately staffed and funded to allow for proper investigation of complaints and enforcement of fair housing laws.

2. The U.S. Commission on Civil Rights should advise the U.S. Department of Housing and Urban Development to make available on the internet public education and guidance about housing rights and information on how to file a complaint.

3. The U.S. Commission on Civil Rights should recommend that the Department of Housing and Urban Development establish reporting requirements for fair housing complaints and subsequent investigations.

4. The U.S. Commission on Civil Rights should recommend to the United States Congress that the fair housing laws should be amended to prevent unfair discrimination based on criminal history.

231 45 C.F.R. § 703.2.
5. The U.S. Commission on Civil Rights should recommend that Illinois and federal law be amended to prevent discrimination based on source of income, such as HUD Section 8 and other housing choice vouchers.

6. The U.S. Commission on Civil Rights should encourage Illinois local municipalities to review occupancy limits to ensure compliance with local, state, and federal law.

7. The U.S. Commission on Civil Rights should encourage partnerships between fair housing advocates and local/state agencies and the real estate private sector in order to foster enhanced communication related to fair housing.
This report is the work of the Illinois Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.