

HOUSING DISCRIMINATION: FAIR HOUSING PRACTICES IN WYOMING



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

December 2024

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, the District of Columbia and the five U.S. Territories and Commonwealths. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They 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'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.

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Letter of Transmittal

U.S. Commission on Civil Rights

Dear Commissioners,

The Wyoming Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding housing discrimination and fair housing practices in Wyoming, as part of its responsibility to study and report on civil-rights issues in Wyoming. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on March 24, 2023; May 4, 2023; September 18, 2023; November 6, 2023; and May 1, 2024. The Committee also includes related testimony submitted in writing within the Committee's project timeline.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil-rights concerns regarding housing discrimination and fair housing practices in Wyoming. Specifically, the Committee sought to examine the extent to which Wyoming residents have fair and equal access to housing without regard to race, color, disability status, national origin, age, religion, sex (incl. gender identity and sexual orientation), and/or familial status. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil-rights mandate are left for another discussion.

Sincerely,

Wyoming Advisory Committee to the
U.S. Commission on Civil Rights

Wyoming Advisory Committee to the U.S. Commission on Civil Rights

James O'Brien, *Chair*, Teton Village

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Project Overview

On December 1, 2022, the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study of housing discrimination and fair housing practices in Wyoming. The focus of the Committee's inquiry was to examine federal, state, and local policies and practices related to the rental and sale of housing in Wyoming. From a civil rights perspective, the Committee sought to consider the extent to which Wyoming residents have fair and equal access to housing without regard to race, color, disability status, national origin, age, religion, sex (incl. gender identity and sexual orientation), and/or familial status.

As part of this inquiry the Committee heard testimony via videoconference held on March 24, 2023; May 4, 2023; September 18, 2023; November 6, 2023; and May 1, 2024.¹ The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing civil rights concerns related to housing discrimination and fair housing practices in Wyoming. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a majority of the committee members present at a meeting on October 2, 2024.²

¹ Briefing records and transcripts are available: <https://usccr.box.com/s/vxdqsmmv30xheqn9di9drhkym58dy91>.
Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, March 24, 2023, (web-based), Transcript (hereinafter cited as "*Transcript I*").
Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, May 4, 2023, (web-based), Transcript (hereinafter cited as "*Transcript II*").
Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, September 18, 2023, (web-based), Transcript (hereinafter cited as "*Transcript III*").
Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, November 6, 2023, (web-based), Transcript (hereinafter cited as "*Transcript IV*").
Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, May 1, 2024, (web-based), Transcript (hereinafter cited as "*Transcript V*").
Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, May 4, 2023, (web-based), PowerPoint (hereinafter cited as "*PowerPoint I*").

² See Appendix A for Committee Member Statements.

Background

Federal Fair Housing Act

The Fair Housing Act (FHA) of 1968, as amended, prohibits the discrimination in the sale, rental, and financing of housing based on race, color, religion, sex (incl. gender identity and sexual orientation)³, national origin, familial status, or disability.⁴ Specifically, the FHA covers discriminatory acts by direct providers of housing, such as landlords, real estate companies, municipalities, banks or other lending institutions, and homeowners insurance companies.⁵ The Department of Housing and Urban Development (HUD) and Department of Justice (DOJ) are jointly responsible for enforcing the federal FHA.⁶ HUD has primary enforcement authority of the FHA; specifically, individuals who allege housing discrimination may adjudicate their case administratively through HUD.⁷ The DOJ's Housing and Civil Enforcement Section also has the authority to enforce the FHA.⁸

Charged with “the authority and responsibility for interpreting and enforcing the FHA and with the power to make rules implementing the Act,” HUD has long interpreted the Fair Housing Act to “prohibit practices with an unjustified *discriminatory effect*, regardless of whether there was an intent to discriminate (emphasis added).”⁹ On February 15, 2013, HUD issued its final rule, *Implementation of the Fair Housing Act's Discriminatory Effects Standard*, thereby formalizing the longstanding interpretation of the FHA to include discriminatory effects liability and establishing a uniform standard of liability for facially neutral practices that may have a discriminatory effect.¹⁰ HUD defined:

[...A] “discriminatory effect” occurs where a facially neutral practice actually or predictably results in a discriminatory effect on a group of persons protected by the Act (that is, has a disparate impact), or on the community as a whole on the basis of a protected characteristic (perpetuation of segregation). Any facially neutral action, e.g., laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act and this rule.¹¹

³ Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 25, 2021); Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662 (Feb. 3, 2012).

⁴ Fair Housing Act (FHA) of 1968, as amended, 42 U.S.C. § 3601 et seq. (2024).

⁵ *Id.*

⁶ See U.S. Dep't of Justice, “The Fair Housing Act,” <https://www.justice.gov/crt/fair-housing-act-1> (June 22, 2023).

⁷ See *infra*, pp. 4-6, for further explanation of HUD's complaint/investigative process.

⁸ See U.S. Dep't of Justice, “Housing And Civil Enforcement Section Overview,” <https://www.justice.gov/crt/housing-and-civil-enforcement-section-overview> (Nov. 7, 2023).

⁹ Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (codified at 24 C.F.R. 100).

¹⁰ *Id.*; see 24 C.F.R. § 100.500 (2023).

¹¹ Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. at 11479. HUD's Office of General Counsel guidance on the “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” illustrates an example of a facially neutral housing policy disqualifying potential renters who have a criminal record as potentially having a discriminatory effect because African Americans and Hispanics are incarcerated at rates disproportionate to their share of the general population. U.S. Dep't of Hous. and Urban Dev., Opinion Letter on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016).

A practice or policy found to have a discriminatory effect may still be lawful if it has a “legally sufficient justification.”¹² On June 25th, 2015, the Supreme Court of the United States upheld HUD’s interpretation that claims of disparate-impact are cognizable under the federal FHA, regardless of whether there was disparate-treatment or discriminatory intent.¹³

Congress not only intended for the Fair Housing Act to prohibit acts of discrimination (or actions with discriminatory effects) in housing related activities and transactions, but also, to impose a duty to affirmatively further fair housing (AFFH).¹⁴ Section 3608(d) and (e)(5) of the Fair Housing Act imposes a broad mandate on the U.S. Secretary of Housing and Urban Development (HUD) to take proactive and meaningful action¹⁵ to “affirmatively further the policies” of fair housing.¹⁶ The statute does not elaborate on the requirements of the AFFH mandate, which has accorded each presidential administration to implement the AFFH mandate differently.¹⁷ Most recently, the Biden Administration proposed a final rule that “directs HUD to ensure that the agency and its program participants will proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination.”¹⁸

Department of Housing and Urban Development

HUD’s Office of Fair Housing and Equal Opportunity (FHEO) is the federal enforcement agency that administers and enforces the federal FHA and other civil rights laws.¹⁹ There are 10 FHEO regional offices across the nation that are responsible for investigating fair housing complaints, conducting compliance reviews, ensuring civil rights in HUD programs and managing fair housing grants. Within each region, there are HUD field offices that assist in administering HUD programs²⁰ and directing inquiries to the appropriate person.²¹

¹² Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. at 11463.

¹³ *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty Project*, 576 U.S. 519 (2015).

¹⁴ 42 U.S.C. § 3608(d); see U.S. Dep’t of Hous. and Urban Dev., “AFFH Fact Sheet: The Duty to Affirmatively Further Fair Housing,” <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf> (last accessed Oct. 23, 2024); see also *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 2005 (1972) (highlighting Senator Walter F. Mondale, co-sponsor of the Fair Housing Act, and his statement that the purpose of the FHA was to “replace the ghettos by ‘truly integrated and balanced living patterns’”).

¹⁵ According to HUD, Meaningful Actions means “significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.” U.S. Dep’t of Hous. and Urban Dev., “AFFH Fact Sheet,” <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf>.

¹⁶ 42 U.S.C. § 3608(d) & (e)(5); see David H. Carpenter, “The Fair Housing Act (FHA): A Legal Overview,” *Congressional Research Service*, pp. 14-16 (June 27, 2024), <https://crsreports.congress.gov/product/pdf/R/R48113/1>.

¹⁷ For an in-depth discussion related to how the Obama, Trump and Biden Administrations have implemented the AFFH mandate differently, see Carpenter, “The Fair Housing Act (FHA): A Legal Overview,” *Congressional Research Service*, pp. 14-16, <https://crsreports.congress.gov/product/pdf/R/R48113/1>.

¹⁸ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8516, 8531-32 (Feb. 9, 2023) (24 C.F.R. Parts 5, 91, 92, 93, 570, 574, 576, 903 and 983). According to HUD, in administering programs and activities relating to housing and community development, the federal government, HUD, and its recipients must determine who lacks access to opportunity and address any inequity among protected class groups, promote integration and reduce segregation, and transform racially or ethnically concentrated areas of poverty into areas of opportunity. U.S. Dep’t of Hous. and Urban Dev., “AFFH Fact Sheet,” <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf>.

¹⁹ Whiteside Testimony, *Transcript I*, p. 2.

²⁰ Programs include HUD’s insured housing programs, assisted housing programs, community development block grants, completion of categorical community development grant programs and comprehensive planning assistance programs.

²¹ U.S. Dep’t of Hous. and Urban Dev., Office of Administration Handbook, Departmental Organization Policies, Standards and Procedures (1105.1 REV-2), Chapter 1: Functions of Organizational Levels (July 25, 1980).

Specifically, HUD FHEO has three main branches: 1) intake branch, 2) enforcement branch, and 3) HUD program compliance branch.²²

The FHEO intake branch receives all complaints related to housing. A complaint that alleges differential treatment in housing is considered an “inquiry.”²³ The FHEO intake branch then determines whether HUD has jurisdiction over the inquiry.²⁴

The FHEO enforcement branch is responsible for investigating inquiries that are “jurisdictional,” or those that fall under the federal FHA, as well as enforcing the federal FHA.²⁵ Once an inquiry is determined to be jurisdictional, HUD is obligated to conduct an investigation and, simultaneously, attempt to resolve the complaint through alternative dispute resolution called “conciliation.”²⁶ If, after its investigation, HUD determines that there is reasonable cause to believe discrimination has occurred or a violation of the federal FHA has occurred, then HUD will issue a “charge of discrimination.”²⁷ After a charge of discrimination is issued, the case may be litigated before a federal court (in which DOJ would litigate on behalf of the complainant) or before an administrative law court (in which HUD would appear on behalf of the complainant).²⁸

HUD’s program compliance branch is responsible for ensuring recipients of federal financial assistance comply with their federal FHA and civil rights laws obligations.²⁹ The branch conducts periodic reviews within certain regions and are not based on any bona fide complainant. In 2018, HUD conducted three compliance reviews in Wyoming—one in each of the city of Casper, the city of Cheyenne, and the state of Wyoming, as a whole—and all three resulted in voluntary compliance agreements.³⁰

Part of HUD’s mission is to also administer housing grant programs, such as the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiative Program (FHIP).³¹ The FHAP is a grant program for state and/or local governments that HUD has certified as having “substantially equivalent” fair housing laws as the federal FHA.³² To be certified, the state or local government must apply for the FHAP grant. HUD then determines whether that state or local law provides the same substantial and procedural rights and remedies as the federal FHA. Once a “substantially equivalent” certification is made, HUD refers all housing complaints to the state or local government agency charged with enforcement authority and compensates that state or local agency

²² Whiteside Testimony, *Transcript I*, p. 4.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.* Conciliation is HUD’s form of alternative dispute resolution, not mediation. *See* Conciliation, 24 C.F.R. § 103.300 (1990). If the parties resolve their dispute through conciliation, HUD will not make a finding or determination that discrimination has occurred. Whiteside Testimony, *Transcript I*, pp. 15-16.

²⁷ *Ibid.*, p. 5.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*, p. 8.

³¹ *Ibid.*, p. 3; Fair Housing Assistance Program, 24 C.F.R. § 115.300 et seq. (2007); Fair Housing Initiative Program, 24 C.F.R. § 125.100 et seq. (1996).

³² Whiteside Testimony, *Transcript I*, p. 4; *see* Certification of Substantially Equivalent Agencies, 24 C.F.R. § 115.200 et seq. (2007).

for the investigation of the referred complaints.³³ The FHIP is a separate grant program for private organizations and non-profits that assist in promoting fair housing.³⁴

To date, HUD has not certified that Wyoming’s fair housing law is substantially equivalent to the federal FHA.³⁵ HUD also does not administer any FHAP grants to any Wyoming state or local government, nor FHIP grants to any Wyoming fair housing organization or non-profit.³⁶

Wyoming Fair Housing Act

The federal statutes, including the federal FHA, were not intended to preempt local fair housing ordinances. States are free to enact local fair housing laws. Many states mirror the federal FHA and some extend protections to additional protected groups.³⁷ In 2015, the Wyoming legislature passed the Wyoming Fair Housing Act (Wyoming FHA).³⁸ While the language of the Wyoming FHA is similar to that of the federal FHA,³⁹ the substantive rights protected under the Wyoming FHA have not yet been certified by HUD as being “substantially equivalent” to those of the federal FHA.⁴⁰ Specifically, it remains unclear whether the Wyoming FHA protects against discrimination based on sex, to include sexual orientation and gender identity.⁴¹ If Wyoming seeks FHAP funding from HUD, Wyoming must first certify that sex includes sexual orientation and gender identity.⁴²

Regardless of whether Wyoming decides to interpret “sex” to include sexual orientation and/or gender identity, HUD recognizes the right to be free from discrimination based on sex, including sexual orientation and gender identity.⁴³ Thus, Wyoming residents who have claims of discrimination based on sexual orientation or gender identity may still make a complaint through HUD.

³³ Whiteside Testimony, *Transcript I*, pp. 5-6.

³⁴ Whiteside Testimony, *Transcript I*, p. 3; see U.S. Dep’t of Hous. and Urban Dev., “Fair Housing Initiatives Program (FHIP)” https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHIP (last accessed Oct. 23, 2024).

³⁵ Whiteside Testimony, *Transcript I*, p. 3.

³⁶ *Ibid.*

³⁷ While several states have expanded their local fair housing laws, Wyoming has not. Other states have codified additional protections prohibiting discrimination based on marital status, source of income or receiving public assistance, sexual orientation, age, ancestry, and military service or other military-related status. Lesser-known protections include domestic partnership status, victim of domestic abuse, genetic information, and political affiliation. Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 30:3, Westlaw (database updated July 2024); see, e.g., *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162 n.4, (9th Cir. 2008) (en banc) (noting that the California fair housing law prohibits discrimination on the basis of various classifications beyond those covered by federal law, including “sexual orientation, marital status, ... ancestry, and source of income”); *White v. U.S. Dept. of Housing and Development*, 475 F.3d 898, 906 (7th Cir. 2007) (noting that rental discrimination based on marital status, while not covered by the Fair Housing Act, violates Illinois and Chicago law); *2922 Sherman Ave. Tenants’ Ass’n v. District of Columbia*, 444 F.3d 673, 685–86 (D.C. Cir. 2006) (upholding claim based on the District of Columbia Human Rights Act’s prohibition of “place of residence” discrimination and thereby rejecting defendant’s argument that this law is “functionally indistinguishable” from the federal Fair Housing Act); *Montana Fair Housing, Inc. v. City of Bozeman*, 854 F. Supp. 2d 832, 843–45 (D. Mont. 2012) (evaluating claims that defendant’s zoning ordinance not only violates the Fair Housing Act’s prohibition of disability discrimination, but also violates the Montana Human Rights Act, which “extends its prohibition to discrimination based on age and marital status as well as disability”).

³⁸ Wyoming Fair Housing Act, Wyo. Stat. Ann. § 40-26-101, 101-111 (West, Westlaw through 2024 Budget Sess. Of the Wyo. Leg.).

³⁹ Compare 42 U.S.C. § 3601 et seq., and Wyo. Stat. Ann. § 40-26-101 et seq.

⁴⁰ Whiteside Testimony, *Transcript I*, p. 5.

⁴¹ *Ibid.*

⁴² *Ibid.*, pp. 20, 24.

⁴³ Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662; see Exec. Order No. 13988, 86 Fed. Reg. 7023; *Bostock v. Clayton Cty., Ga.*, 590 U.S. 644 (2020).

Although Wyoming passed its state FHA in 2015, the enforcement authority of the Wyoming FHA has not yet been assigned to any state agency.⁴⁴ Wyoming residents seeking to make a complaint of discrimination are required to submit their complaint to the HUD's Denver Regional Office in the neighboring state of Colorado, rather than a local or state enforcement agency within Wyoming.⁴⁵

While the Wyoming Community Development Authority (WCDA) accepts housing discrimination complaints, WCDA refers all housing complaints to HUD's Denver regional office.⁴⁶ The WCDA is the allocating agency for the Low Income Housing Tax Credit (LIHTC) program governed by Section 42 of the Internal Revenue Code.⁴⁷ The WCDA is also the Participating Jurisdiction for the Home Investment Partnership Program, and the state grantee for the National Housing Trust Fund (NHTF) program.⁴⁸ Both programs are run by HUD. According to the WCDA, WCDA received \$3.185 million in LIHTC funds, \$3.5 million in Home Investment Partnership Program funds, and just over \$3 million in NHTF funds.⁴⁹ Through a competitive application process, WCDA allocates these federal funds to build and rehabilitate multifamily affordable housing throughout the State of Wyoming.⁵⁰ Between 2019 and 2023, WCDA placed 521 multifamily affordable housing units in service through the allocation of these federal funds.⁵¹ As of November 6, 2023, WCDA stated that 419 multifamily affordable housing units were being constructed, and an additional 128 units had been awarded but construction had not yet started.⁵²

HUD Charges of Discrimination in Wyoming

In the past five years, HUD reported receiving 89 inquiries alleging housing violations or discrimination originating out of Wyoming; in the past ten years, HUD received 203 inquiries—numbers that the FHEO Regional Director considers fairly low in proportion to Wyoming's population.⁵³ Of the 203 inquiries within the last ten years, 86 of them (or about 42 percent of all inquiries) were determined to be jurisdictional FHA complaints.⁵⁴ In comparison with the national average of about 12-15 percent of all inquiries being jurisdictional FHA complaints, the percentage of jurisdictional FHA complaints in Wyoming is considered by HUD as somewhat of an anomaly.⁵⁵

Of the 86 jurisdictional FHA complaints, three cases resulted in a charge of discrimination by HUD. In 2020, HUD issued a charge of discrimination against the owners and managers of an apartment complex located in Cheyenne, Wyoming after receiving and investigating a complaint

⁴⁴ Urbigit Testimony, *Transcript IV*, pp. 3-4.

⁴⁵ Whiteside Testimony, *Transcript I*, p. 6.

⁴⁶ Gray Testimony, *Transcript IV*, p. 13.

⁴⁷ *Ibid.*, pp. 8-9.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 9.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Whiteside Testimony, *Transcript I*, p. 4.

⁵⁴ *Ibid.*, p. 6.

⁵⁵ *Ibid.*

of housing discrimination based on familial status.⁵⁶ In this case, the apartment owners/managers issued new notices targeting children (i.e., implementing a curfew due to alleged complaints of unsupervised children).⁵⁷ The notices stated that breaking these new rules would result in lease violations and possibly evictions.⁵⁸ The HUD Charge of Discrimination specifically states that the apartment owners/managers violated subsection 804(a) and (b) of the FHA “by discriminating against Complainant based on familial status in the terms, conditions, or privileges of rental of their dwelling, by expressing limitations specifically targeting families with children.”⁵⁹ An election was made to federal court, where the case settled with damages awarded to the complainant.⁶⁰

In 2022, HUD issued two charges against a Homeowners Associations (HOA) in Jackson, Wyoming for discriminating against two residents based on disability discrimination under the FHA.⁶¹ HUD found that the HOA improperly imposed restrictions on two residents’ support animals (and later retaliated against the residents for filing a Fair Housing Act complaint).⁶² Specifically, HUD found that the HOA violated Section 804(c) of the FHA “when it published rules governing support animals that expressed a preference for residents without such animals and impermissibly sought to limit the owners of support animals from enjoying shared community resources.”⁶³ Additionally, the HOA violated subsection 804(f)(2) of the FHA “by discriminating in the terms and conditions of sale by constructively denying Complainants a reasonable accommodation to keep their support animals when they conditioned approval on requirements that are beyond what is allowable under the Act including imposing conditions on where, when, and how Complainants could take their support animals in the community.”⁶⁴

Lack of Affordable Housing in Wyoming

A significant underlying issue that experts suspect contributes to discriminatory housing practices is the shortage of affordable housing. For example, the HUD charges of discrimination discussed above were issued in Cheyenne and Teton County (Jackson, specifically)—regions that have the highest rates of unmet housing needs in Wyoming.⁶⁵ Specifically, Teton County has the highest rate of unmet housing needs at 28.9 percent and Cheyenne at 27.4 percent.⁶⁶ For example, there are over 1,300 households seeking housing through the Jackson and Teton County housing development programs.⁶⁷ In Teton County, more than half of the sheriff’s department employees, and more than a quarter of all the school district, hospital, police, fire and EMS employees must

⁵⁶ *Tralee Prairie View, LLC*, FHEO No. 08-18-6936-8 (U.S. Dep’t of Hous. and Urban Dev. Sept. 2020), <https://www.hud.gov/sites/dfiles/FHEO/images/20charWyoming.pdf>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Whiteside Testimony, *Transcript I*, p. 7.

⁶¹ *Spring Creek Homeowners Association*, FHEO No. 08-21-2236-8 (U.S. Dep’t of Hous. and Urban Dev. July 2022), https://www.hud.gov/sites/dfiles/FHEO/documents/Charge%20Spring%20Creek%20_7_12_22.pdf

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Gray Testimony, *Transcript IV*, p. 11.

⁶⁶ *Ibid.* In Cheyenne, there is a 98% overall occupancy rate across all of its rental housing. *Ibid.* Cheyenne is short 4,000 units, but developers are only able to develop about 250 units per year across the state. Birkle Testimony, *Transcript II*, p. 4.

⁶⁷ Gray Testimony, *Transcript IV*, p. 11.

commute from outside of Teton County because it lacks affordable housing options.⁶⁸ Lastly, many rental units developed as affordable housing under the Low-Income Housing Tax Credit (LIHTC) will no longer be required to remain affordable in a couple of years.⁶⁹

Shortage of affordable housing is not just an issue in Wyoming, but across the entire United States. Approximately 37 million households in the United States are considered “cost burdened.”⁷⁰ In Wyoming, the rate of cost burden is about 22 percent.⁷¹ About 20 percent of Wyoming’s homeowners and 40 percent of Wyoming’s renters are considered cost burdened.⁷² According to the National Low Income Housing Coalition (NLIHC), about 18,176 or 28 percent of Wyoming’s renter households are extremely low-income (ELI).⁷³ Moreover, there are only 13.5 percent of affordable homes available to ELI renters, representing a huge disparity in inventory versus the needs of Wyoming’s renter population.⁷⁴ According to NLIHC, Wyoming is experiencing a shortage of 8,866 rental homes that are affordable and available to ELI renters.⁷⁵ According to the 2024 Wyoming Housing Profile published by the NLIHC, of the 18,176 ELI renter households, 16 percent are disabled and 33 percent are seniors—suggesting that about half of ELI renters are vulnerable populations.⁷⁶

In 2017, the Wyoming Fair Housing Team published a Regional Assessment of Fair Housing and found a lack of available affordable units in Wyoming, as well as resistance to building additional affordable housing as a response to the shortage.⁷⁷ Specifically, the report analyzes a number of contributing factors to fair housing issues, including lack of availability of affordable units in a range of sizes, lack of access to housing for persons with disabilities, failure to make reasonable accommodations or modifications, and resistance to affordable housing production.⁷⁸

The Town of Jackson and Teton County provides an example of this resistance to affordable housing production potentially contributing to fair housing issues. The Town of Jackson and Teton County have restrictive zoning regulations and policies that ensures “there is no net increase in

⁶⁸ Ibid.

⁶⁹ Birkle Testimony, *Transcript II*, p. 13. These rental units were built in 1986 and were required to be affordable for 30 years. After the expiration of the 30 years, there will be no requirement that those homes remain affordable, and the units can be sold or raised to market rate.

⁷⁰ Wells Testimony, *Transcript II*, pp. 6-7. “Cost burdened” means a household spends more than 30 percent of its income on housing.

⁷¹ Gray Testimony, *Transcript IV*, p. 10. In Wyoming, the rate of “severe cost burden” is about 9 percent and 63 percent of ELI households are severely cost burdened. Ibid. Severely cost burdened households are more likely than other renters to sacrifice other necessities like healthy food and healthcare to pay the rent, and to experience unstable housing situations like evictions. National Low Income Housing Coalition (NLIHC), “2024 Wyoming Housing Profile,” *State Housing Profile*, June 13, 2024, https://nlihc.org/sites/default/files/SHP_WY.pdf.

⁷² Gray Testimony, *Transcript IV*, p. 10.

⁷³ NLIHC, “2024 Wyoming Housing Profile,” *State Housing Profile*, https://nlihc.org/sites/default/files/SHP_WY.pdf. ELI households are those whose incomes are at or below the poverty guideline or 30 percent of their area median income (AMI). See 42 USCA § 1437a(b)(2)(C) (2020).

⁷⁴ Gray Testimony, *Transcript IV*, p. 11.

⁷⁵ NLIHC, “2024 Wyoming Housing Profile,” *State Housing Profile*, https://nlihc.org/sites/default/files/SHP_WY.pdf.

⁷⁶ Ibid.

⁷⁷ Wyoming Fair Housing Team, *2017 State of Wyoming: Regional Assessment of Fair Housing*, prepared by Western Economic Services, LLC (Nov. 15, 2017) https://www.wyomingcda.com/wp-content/uploads/2018/03/WY_2017_AFH18.pdf.

⁷⁸ Ibid., p. 3.

overall development potential.”⁷⁹ Since 2002, Teton County has blocked several housing policies and/or development projects that had the potential to increase affordable housing in the area.⁸⁰ Recently, however, Teton County, Town of Jackson and the Housing Authority report that they are looking for opportunities to provide affordable housing. For example, in 2023, the three agencies purchased a five-acre parcel in Jackson for \$28 million to develop new affordable housing for the community.⁸¹ The agencies recently issued requests for proposals from developers and are in the final stages of selection.

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts who have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to use their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain an understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals who are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, racial and ethnic backgrounds, ages, and gender/gender identities, as well as a variety of background, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of the Committees’ responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and

⁷⁹ Teton County Planning & Building Department, Teton County Planning Commission, *Jackson | Teton County Comprehensive Plan* (Nov. 2, 2020), p. CV-2-6, <https://jacksontetonplan.com/DocumentCenter/View/1705/JacksonTeton-County-Comprehensive-Plan-Updated-November-2-2020?bidId=>; Wells Testimony, *Transcript II*, p. 8.

⁸⁰ Wells Testimony, *Transcript II*, p. 8. In 2002, the proposed New Neighborhood project, which would have created 1,500 small lot homes for local workers, was rejected. In 2005, the Teton County Board of Commissioners removed the Affordable Housing Plan Unit Development, an important tool to promote affordable housing, from their Land Development Regulations. In 2007, the proposed Teton Meadows project, which would have created 500 workforce housing units, was also rejected. In 2019, the proposed Hog Island project, which would have created 155 workforce housing homes, was also rejected. In 2021, the proposed Gil Family High School Road Housing project, which would have created 300 housing units, was also rejected. *Ibid.*

⁸¹ Rebecca Huntington, “Housing Authority Plans to Buy Virginian RV Park to Build Affordable Homes for Workforce,” *Jackson Hole News & Guide* (Apr. 25, 2023) https://www.jhnewsandguide.com/the_hole_scroll/housing-authority-plans-to-buy-virginian-rv-park-to-build-affordable-homes-for-workforce/article_3f7e78d7-66df-5adb-87a2-756fbaf5fe2f.html.

recommendations to report to the Commission. Drafts of the Committee’s report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,⁸² the Wyoming Advisory Committee submits the following findings to the Commission regarding housing discrimination and fair housing practices in Wyoming. This report seeks to highlight the most salient civil-rights themes as they emerged from the Committee’s inquiry. The complete meeting transcripts and written testimony received are accessible by a weblink in citation and at the end of the report for further reference.⁸³

Marginalized Groups Experience Housing Discrimination in Wyoming

Disability-based discrimination

1. Multiple speakers maintained that there is a significant problem in Wyoming relating to housing discrimination based on an individual’s disability or need for reasonable accommodations.⁸⁴
 - a. 72 percent of HUD’s jurisdictional complaints in the last 10 years were related to alleged disability-based discrimination or lack of reasonable accommodations.

⁸² 45 C.F.R. § 703.2 (2018).

⁸³ Link to relevant report materials: <https://uscr.box.com/s/vxdqsmmv30xheqn9di9drhkym58dy91>.

⁸⁴ Whiteside Testimony, *Transcript I*, pp. 7-9; Theriault Testimony, *Transcript II*, pp. 9-12; Gray Testimony, *Transcript IV*, pp. 9-10; Coombs Testimony, *Transcript III*, p. 4.

Majority of these disability-based discrimination complaints originated from Wyoming's most populous areas: Laramie, Albany, and Natrona County.⁸⁵

- b. Two of the three HUD charges of discrimination in Wyoming were charges of discrimination based on disability status; specifically, the denial of a reasonable accommodation such as a service animal.⁸⁶
 - c. According to WCDA, most of the complaints it received in the last five years had been related to disability and access to accessible housing.⁸⁷
2. Landlords may not be knowledgeable about the laws that prohibit disability-based discrimination. Specifically, landlords may not be educated on or sensitive to the various types of disabilities that exist, what acts might constitute disability-based discrimination, and/or when or what reasonable accommodations might be required.⁸⁸
 - a. For example, a speaker mentioned that, while they do not show visible signs of a disability, they have a nonapparent disability that qualifies them for certain reasonable accommodations.⁸⁹
 3. Disability-based discrimination is closely linked to source-of-income discrimination. Many individuals with a disability are considered low-income and rely on social services, such as Section 8 housing vouchers.⁹⁰
 - a. Several speakers shared experiences where some tenants with disabilities were unable to secure or maintain their rental housing because their landlords did not want to, or no longer wanted to, accept housing vouchers, which the tenants relied on.⁹¹

Race-based and national origin-based discrimination

1. Speakers and members of the public shared experiences about instances of overt race-based discrimination.⁹²

⁸⁵ Whiteside Testimony, *Transcript I*, pp. 7, 9.

⁸⁶ *Ibid.*, pp. 7-8.

⁸⁷ Gray Testimony, *Transcript IV*, p. 13.

⁸⁸ Theriault Testimony, *Transcript II*, p. 14; Coombs Testimony, *Transcript III*, p. 4.

⁸⁹ Coombs Testimony, *Transcript III*, p. 4. Ms. Coombs reported she was denied HUD funded housing because her nonapparent disability limited her to the first floor of the building and they awarded the ground floor unit to another person who had a visible disability (wheelchair) citing that that person had priority over her because they were in a wheelchair. *Ibid.*

⁹⁰ Theriault Testimony, *Transcript II*, p. 9, Coombs Testimony, *Transcript III*, p. 4.

⁹¹ *Ibid.*

⁹² Whiteside Testimony, *Transcript I*, pp. 7, 11; Groves Testimony, *Transcript III*, pp. 5-10. Ms. Groves provided public comment and reported that she had endured overt racism from other tenants while she resided in federally funded housing in Wyoming. For example, other residents verbally harassed her, took her mail, keyed her car, and damaged her Ring doorbell. On other occasions, the property maintenance staff entered her property without her permission.

- a. About 12 percent of HUD’s jurisdictional complaints in the last 10 years alleged race-based discrimination.⁹³
2. Racist housing policies throughout the history of the United States have led to a lack of housing equity over time.⁹⁴
 - a. Historically, real property covenants were used to explicitly exclude entire racial groups of people (i.e., African Americans) from purchasing or living in certain areas.⁹⁵
 - i. While ruled unenforceable by the U.S. Supreme Court, racist real property covenants still exist across the country—including Wyoming.⁹⁶
 - b. After the U.S. Supreme Court ruled that racist covenants were unenforceable, communities shifted to using restrictive land use regulations and restrictive zoning as alternative, legal means of exclusion.⁹⁷
 - c. Restrictive land use regulations and restrictive zoning can be used as covert forms of race-based discrimination veiled as harmless mechanisms to maintain property values or ensure that their neighborhoods remain homogenous (e.g., neighbors look the same, have the same views, and are of the same economic background).⁹⁸
 - d. Over time, restrictive land use regulations and zoning has increased Black segregation by reducing housing availability and affordability in white neighborhoods.⁹⁹
 3. Several speakers described instances of discrimination against tribal members, especially in border towns like Lander and Riverton.¹⁰⁰
 - a. While the actions and comments by landlords in these border towns may not be considered overtly racist or discriminatory, tribal members felt covertly discriminated against based on their race and/or nationality.¹⁰¹
 - b. Tribal members described the following instances:
 - i. The rental market in border towns is very limited and unaffordable. Many of the tribal members who can secure housing in border towns are only able

⁹³ Whiteside Testimony, *Transcript I*, p. 7.

⁹⁴ Birkle Testimony, *Transcript II*, p. 3; *see infra*, n.134-39 and corresponding text for further discussion on the history of racist housing policies.

⁹⁵ Wells Testimony, *Transcript II*, p. 6.

⁹⁶ Wells Testimony, *Transcript II*, pp. 3, 6.

⁹⁷ Birkle Testimony, *Transcript II*, p. 3; Wells Testimony, *Transcript II*, p. 6.

⁹⁸ *See infra*, n.157-72 and corresponding text for further discussion on restrictive land use regulations.

⁹⁹ Wells Testimony, *Transcript II*, p. 6.

¹⁰⁰ Gray Testimony, *Transcript IV*, p. 14; Washakie, *Transcript V*, pp. 3-6, 9.

¹⁰¹ Washakie Testimony, *Transcript V*, pp. 3-6, 9.

to afford it because they have Section 8 housing vouchers. Tribal members suspect and report that landlords often inflate the cost to rent their rental properties because they are guaranteed payment of a certain percentage of rent if tenants have Section 8 housing vouchers. Tribal members, thus, report that landlords in border towns favor renting to those with Section 8 housing vouchers.¹⁰²

- ii. On the other hand, if tribal members do not have a Section 8 housing voucher, landlords become highly selective and required potential tenants to meet more conditions prior to renting. For example, tribal members reported that once they revealed they did not have housing vouchers, landlords would require them to pass a credit check or provide a W-2.¹⁰³
 - iii. Tribal members report that many landlords in border towns are particularly concerned about the household size of potential tenants and cite overcrowding as potential reasons for denying the rental of a property. Tribal members further report that landlords often assume that additional tribal members not listed on the lease will eventually live in the home as well.¹⁰⁴
 - iv. Some tribal members were outright denied an application from some landlords once they knew they were a tribal member.¹⁰⁵
 - v. Tribal members also reported landlords dissuading them from renting their property by stating things like, “you would feel out of place here.”¹⁰⁶
- c. Lack of available housing for tribal members on reservations is pushing tribal members to seek housing options off reservations. Many tribal members are turned away, leaving many tribal members unable to find housing.¹⁰⁷
- i. The Eastern Shoshone Tribal Housing Authority (ESTHA) estimates about 82 to 100 families are considered homeless on the reservation. Overcrowding is a serious issue on the reservation, with three to four families living in one household.¹⁰⁸
- d. Tribal members also described difficulty securing a mortgage to purchase a home, even when they had the financial means to pay the mortgage.¹⁰⁹

¹⁰² Ibid., pp. 2,7.

¹⁰³ Ibid.

¹⁰⁴ Ibid., p. 3.

¹⁰⁵ Ibid., p. 6.

¹⁰⁶ Ibid., p. 9.

¹⁰⁷ Ibid., p. 2.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., pp. 7-8.

Sex-based discrimination

1. Several speakers noted that there have been reports of sex-based discrimination, including discrimination on the basis of sexual orientation and gender identity.¹¹⁰
 - a. About 9 percent of HUD's jurisdictional complaints in the last 10 years were of alleged sex, sexual orientation, or gender identity-based discrimination.¹¹¹
 - b. Of the various discrimination complaints that WCDA received (and were referred to HUD), sex-based discrimination was the second highest form of discrimination after disability-based discrimination.¹¹²

*Lack of accurate data related to discrimination*¹¹³

1. The data that HUD provided may be skewed due to several factors discussed below, such as the lack of information on how to report, fear of reporting, distance to the FHEO office, lack of local enforcement presence, etc.¹¹⁴
2. The number of jurisdictional complaints related to the protected classes listed above may be higher than what is currently reported.¹¹⁵

Barriers to Reporting Instances of Housing Discrimination

1. According to the Wyoming Realtors' survey, about 35 percent of respondents had witnessed housing discrimination. According to HUD, however, only about 203 inquiries originated from all of Wyoming in the last 10 years. The discrepancy between the two data sets may indicate that instances of alleged housing discrimination may be underreported.¹¹⁶ The following sections discuss the potential factors that may contribute to this underreporting.

Remoteness of the existing enforcement mechanism

1. Multiple speakers shared that individuals in Wyoming who may have experienced housing discrimination are reluctant to report the alleged discrimination because of the distance and remoteness of HUD's Region VIII Denver Office, which is currently the only mechanism for enforcing their rights against alleged housing discrimination.¹¹⁷

¹¹⁰ Whiteside Testimony, *Transcript I*, p. 20; Gray Testimony, *Transcript IV*, p. 13.

¹¹¹ Whiteside Testimony, *Transcript I*, pg. 20.

¹¹² Gray Testimony, *Transcript IV*, p. 13.

¹¹³ Whiteside Testimony, *Transcript I*, p. 13; Gray Testimony, *Transcript IV*, p. 14.

¹¹⁴ Whiteside Testimony, *Transcript I*, pp. 9, 13, 19.

¹¹⁵ *Ibid.*

¹¹⁶ Urbigkit Testimony, *Transcript IV*, p. 5.

¹¹⁷ Whiteside Testimony, *Transcript I*, p. 19; Theriault Testimony, *Transcript II*, g. 14; Urbigkit Testimony, *Transcript IV*, g. 5; Gray Testimony, *Transcript IV*, g. 14; Storer Testimony, *Transcript IV*, p. 18.

- a. While HUD maintains a field office in Casper, WY, and conducts education and outreach therefrom, there is no HUD FHEO officer located at the field office. Thus, all complaints of discrimination originating from Wyoming are referred to the HUD Region VIII Denver Office.¹¹⁸
- b. While there are state and local housing organizations in Wyoming that assist with securing housing, such as WCDA and Wyoming Realtors, these organizations do not accept nor investigate claims of discrimination; instead, the complaints are referred to HUD's Denver Region VIII Office.¹¹⁹
- c. Speakers also noted that there is a disconnect between Wyomingites and Denverites, and Wyomingites would prefer to resolve their housing issues within their own state.¹²⁰

Mistrust in the effectiveness in existing enforcement mechanisms

1. Individuals with complaints of discrimination are sometimes reluctant to report it because the enforcement agency is a federal agency rather than a state or local agency.¹²¹
2. A speaker noted that there is a perception that those with complaints of discrimination have an expectation that they may not receive the redress they hope for when engaging with a federal enforcement agency.¹²²

Fear of Retaliation

1. Multiple speakers shared that renters were reluctant to report instances of alleged housing discrimination in fear of retaliation by their landlord.¹²³
 - a. Retaliation by the landlord might include being evicted from their current housing or poor referrals by the landlord when applying for future rental housing.¹²⁴
 - b. Housing options for renters in Wyoming are extremely limited, which can increase competition between potential renters. Thus, renters are hyperaware of actions that could risk future potential rental housing. For example, a landlord that has been complained of might provide a damaging referral in the future or label the tenant a “problem tenant” in retaliation for that tenant’s complaint to HUD.¹²⁵

¹¹⁸ Whiteside Testimony, *Transcript I*, pp. 3, 5-6.

¹¹⁹ Whiteside Testimony, *Transcript I*, p. 6, Urbigkit, Gray Testimony, *Transcript IV*, p. 13.

¹²⁰ Theriault Testimony, *Transcript II*, p. 14.

¹²¹ Storer Testimony, *Transcript IV*, p. 18.

¹²² *Ibid.*

¹²³ Alexander Testimony, *Transcript I*, p. 18; Theriault Testimony, *Transcript II*, p. 11.

¹²⁴ *Ibid.*

¹²⁵ Alexander Testimony, *Transcript I*, p. 18.

2. Retaliation ranked second highest in terms of the percentage of jurisdictional cases HUD received from Wyoming; often, the retaliation was tied to another protected class.¹²⁶

Lack of Education or Information

1. Tenants may not be reporting instances of housing discrimination because they lack information on and education about the HUD complaint process (e.g., where, who, how).¹²⁷
 - a. This is especially true for individuals who have a disability, specifically, those who have a developmental or intellectual disability.¹²⁸
2. One speaker noted that HUD previously conducted educational outreach efforts within Wyoming, but HUD did not observe a significant increase in discrimination complaints.¹²⁹

Barriers to Enforcement of Fair Housing Laws

Lack of local housing enforcement agency

1. Multiple speakers shared that the lack of a state or local housing enforcement agency was a significant barrier to the enforcement of the federal and Wyoming fair housing laws.¹³⁰
 - a. The Governor of Wyoming has not yet assigned enforcement authority of the Wyoming Fair Housing Act to any state or local entity.¹³¹
 - b. Also, HUD has not certified that the Wyoming Fair Housing Act is “substantially equivalent” to the federal Fair Housing Act. HUD, therefore, has not assigned enforcement authority under HUD’s Fair Housing Assistance Program (FHAP) to any state or local housing organization.
2. Until there is a local housing enforcement authority, aggrieved tenants’ primary form of recourse in Wyoming is to file a legal complaint in court or an administrative complaint of discrimination to HUD.¹³²

¹²⁶ Whiteside Testimony, *Transcript I*, p. 7.

¹²⁷ Theriault Testimony, *Transcript II*, pp. 9-10, 14.

¹²⁸ *Ibid.*, p. 9. There have been instances where an individual with an intellectual disability under guardianship is not apprised of their housing rights by their guardian. *Ibid.*, p. 10.

¹²⁹ Whiteside Testimony, *Transcript I*, p. 7.

¹³⁰ Whiteside Testimony, *Transcript I*, p. 19; Alexander Testimony, *Transcript I*, p. 10; Theriault Testimony, *Transcript II*, pp. 10-11, 14; Urbigkit Testimony, *Transcript IV*, p. 3; Gray Testimony, *Transcript IV*, p. 14; Storer Testimony, *Transcript IV*, p. 18.

¹³¹ Urbigkit Testimony, *Transcript IV*, p. 4.

¹³² Alexander Testimony, *Transcript I*, p. 10.

Gaps in Federal Fair Housing Act

1. HUD does not have jurisdiction to enforce the Federal Fair Housing Act within the boundaries of the reservation.¹³³
2. A landlord of an owner-occupied building with no more than four units is exempt from the federal Fair Housing Act.¹³⁴

Housing Discrimination Related to Availability of Affordable Housing

History of America's affordable housing policies

1. The United States government's first influence on housing policy was the Homestead Act of 1862 (the "Homestead Act").¹³⁵ The Homestead Act encouraged westward expansion, settlement, and agricultural land development in the United States. Under the Homestead Act, eligible individuals could acquire ownership of up to 160 acres of land by living on, building a dwelling on, and farming the land for a period of five years.¹³⁶
2. After the stock market crashed in 1929, America experienced a mortgage crisis and about half of home mortgages were in default by 1933. In response, President Franklin D. Roosevelt created the Home Owners Loan Corporation and Federal Housing Administration to reduce bank foreclosures by helping homeowners refinance their existing loans.¹³⁷ These federal programs were, however, influenced by racist policies. The government mapped out districts that were good vs. bad investments. These maps indicated which neighborhoods were considered poor credit risks, as a consequence of African Americans living in (or near) those neighborhoods, by coloring the area red (the birth of "redline" districts). The federal government, therefore, refused to insure mortgages for many black families based on these maps, which further expanded the wealth divide and segregation.¹³⁸
3. The Serviceman's Readjustment Act of 1944, or the G.I. Bill, was created to provide assistance to returning servicemen of World War II, including low-interest mortgages. In practice, however, the Veterans Administration did not guarantee the loans and white-run financial institutions were allowed to discriminate between white and black servicemen. Relying on the redline maps, black servicemen were refused loans. This, again, further expanded the wealth divide between white and black communities and increased segregation.¹³⁹

¹³³ Whiteside Testimony, *Transcript I*, p. 13.

¹³⁴ Urbigkit Testimony, *Transcript IV*, p. 7.

¹³⁵ Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392 (1862).

¹³⁶ *Id.*; see Birkle Testimony, *Transcript II*, p. 2.

¹³⁷ Home Owners' Loan Corporation Act, Pub. L. No. 73-479, 48 Stat. 128 (1933); Federal Housing Administration Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934).

¹³⁸ Birkle Testimony, *Transcript II*, p. 2.

¹³⁹ Serviceman's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (1944); Birkle Testimony, *Transcript II*, pp. 2-3.

4. The above policies have led to a lack of investment and fewer services in predominantly black neighborhoods, and, eventually, these neighborhoods are deemed blighted and longtime residents displaced. Ultimately, this has led to housing inequity between whites and blacks (and other minorities) over time.¹⁴⁰

Shortage of affordable housing in Wyoming

1. Wyoming's owner-occupied home ownership rate is in excess of 70 percent, which means the rental market, in general, is significantly limited.¹⁴¹
2. Increased fair market rents means increased rental rates, less affordability, lower access to housing within their means, and higher household cost burdens.¹⁴²
 - a. HUD's Fair Market Rents increased by 10 percent across the nation, with Wyoming in the top 10 states with a 13 percent increase.¹⁴³
 - b. In Wyoming, the rate of cost burden is 22.2 percent, and the rate of severe cost burden is 9.2 percent.¹⁴⁴
 - c. In Wyoming, 20 percent of homeowners and 40 percent of renters are considered cost burdened.¹⁴⁵
 - d. 25 percent of Wyoming's renter population is extremely low-income, but only 13.5 percent of the affordable homes available to those renters—a large discrepancy between housing inventory vs. housing needs of the extremely low-income population.¹⁴⁶
3. Households that are cost burdened and severely cost burdened do not have equitable housing choices and are more likely to experience disparities and/or discrimination.¹⁴⁷
 - a. Lack of affordable housing is not just a housing issue; access to affordable housing also plays a significant role in social determinants.¹⁴⁸ For example, access to affordable housing has significant impacts on childhood cognitive achievement, mental health, psychological distress, and economic opportunities.¹⁴⁹

¹⁴⁰ Birkle Testimony, *Transcript II*, pp. 2-3.

¹⁴¹ Alexander Testimony, *Transcript I*, p. 18.

¹⁴² Gray Testimony, *Transcript IV*, p. 10.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ Wells Testimony, *Transcript II*, pp. 6-7.

¹⁴⁶ Gray Testimony, *Transcript IV*, p. 11.

¹⁴⁷ Birkle Testimony, *Transcript II*, pp. 2-3.

¹⁴⁸ *Ibid.*, p. 4.

¹⁴⁹ Wells Testimony, *Transcript II*, p. 7.

4. Wyoming receives the small state minimum amount in all federal housing programs, such as the LIHTC, HOME and NHTF programs, because Wyoming is considered a low population state. Low annual allocation of tax credits inhibits WCDA from utilizing all of the HUD funding resources to support the construction of affordable housing projects throughout the state.¹⁵⁰

Severe shortage of affordable housing for seniors and individuals with disabilities

1. Wyoming lacks sufficient affordable housing for seniors and individuals with disabilities.¹⁵¹
 - a. Many seniors and individuals with disabilities are either: over-cost burdened in their current housing situation, living with family or support services, or on waitlists waiting to get into safe, affordable housing.¹⁵²
2. In Wyoming, the disability rate for households residing in publicly supported housing units is over 30 percent.¹⁵³
3. Disability rates increase with age, so there is an expected need for additional accessible housing units in Wyoming in the future.¹⁵⁴
4. Newly built affordable housing units often lack elevators or lack a sufficient number of units that are ADA accessible to accommodate individuals with a disability.¹⁵⁵

Higher rates of unmet housing needs may correlate with higher rates of discriminatory practices

1. When affordable and accessible housing is scarce, competition between potential renters increases. Landlords can, therefore, be more selective with the type of tenant they choose to rent to. While the selectiveness of landlords may not have a discriminatory-intent, it may have a discriminatory-effect.¹⁵⁶
 - a. As an example, two of the HUD charges of discrimination occurred in regions that have the highest rates of unmet housing needs in Wyoming—Teton County and Cheyenne.¹⁵⁷

¹⁵⁰ Ibid., pp. 11-12.

¹⁵¹ Ibid., p. 10.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Birkle Testimony, *Transcript II*, pp. 9-10.

¹⁵⁵ Theriault Testimony, *Transcript II*, pp. 9-10.

¹⁵⁶ Theriault Testimony, *Transcript II*, p. 9; Gray Testimony, *Transcript IV*, pp. 11, 14; Storer Testimony, *Transcript IV*, pp. 17-18.

¹⁵⁷ Gray Testimony, *Transcript IV*, p. 11.

Restrictive Land Use Regulations and Zoning: Barriers to Affordable Housing and Tools of Exclusion

Restrictive land use regulations¹⁵⁸ and restrictive zoning¹⁵⁹ has significant and critical impacts on the availability, accessibility, and affordability of housing.¹⁶⁰

1. Restrictive land use regulations and restrictive zoning can have the effect of actively undercutting housing availability and, thus, affordability.¹⁶¹
 - a. There is an inverse relationship between free market housing supply and housing cost; the more homes that are available, the less housing costs.¹⁶²
 - b. Restrictive land use regulations and restrictive zoning are significant drivers of housing costs because they operate to limit the amount of housing supply in a given area. For example, the more neighborhoods that have restrictive zoning or regulations, the less housing supply that will be available. Thus, less homes that are available means less affordability.¹⁶³
2. Restrictive land use regulations and restrictive zoning can be used to limit the growth of available, accessible and affordable housing. This limitation can be used to block outside groups and protect current homeowners.¹⁶⁴
 - a. Existing homeowners continue to perpetuate the status quo (Nimbyism) and oppose density changes or changes in housing policy that would change their neighborhoods.¹⁶⁵

Restrictive land use regulations and zoning can be tools for exclusionary housing practices.¹⁶⁶

1. Restrictive land use regulations and restrictive zoning may have been created without discriminatory intent—to promote comprehensive planning, health, and community welfare.¹⁶⁷
 - a. For example, restrictive land use regulations were designed to prevent instances such as building a firework factory next to an elementary school.¹⁶⁸

¹⁵⁸ For reference, land use regulations are policies or regulations pertaining to the use of land (e.g., restrictions on a building's dollar value, height, and density). Wells Testimony, *Transcript II*, p. 5.

¹⁵⁹ Zoning is a classification of land parcels with similar land use regulations, such as industrial, commercial, single family residential or multi-family residential zones. *Ibid.*

¹⁶⁰ Gray Testimony, *Transcript IV*, p. 11; Wells Testimony, *Transcript II*, p. 5.

¹⁶¹ Wells Testimony, *Transcript II*, p. 7.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ Birkle Testimony, *Transcript II*, pp. 3-4; Wells Testimony, *Transcript II*, p. 5.

¹⁶⁶ Wells Testimony, *Transcript II*, p. 6.

¹⁶⁷ Wells Testimony, *Transcript II*, pp. 5-7; Birkle Testimony, *Transcript II*, pp. 3-4.

¹⁶⁸ Wells Testimony, *Transcript II*, p. 5.

2. Restrictive land use regulations and restrictive zoning may also have been used as an alternative exclusionary entry barrier to minority groups after the U.S. Supreme Court ruled real property covenants explicitly excluding people of color from purchasing and/or living in certain neighborhoods as unenforceable.¹⁶⁹
 - a. Some white communities seeking to exclude minorities from their neighborhoods turned to restrictive land use regulations and zoning as an alternative legal means of exclusion.¹⁷⁰
 - b. White communities justified that these restrictions supported their desire to maintain property values and have neighbors who looked like their family, were of the same economic bracket, and had similar views.¹⁷¹

3. Restrictive land use regulations and single-family zoning are now commonly used to limit the growth of available, accessible, higher density, and affordable housing to outside groups in order to protect current homeowners' lifestyles and property values.
 - a. The restrictive land use regulations and zoning can be used to prohibit "undesirable" crowded or urban style high density development, which essentially limits the number of affordable homes in wealthier and white communities. Effectively, these restrictions prevent minority families from entering higher-income and/or white neighborhoods via a legally permissible means.¹⁷²
 - b. For example, Teton County Housing Department's rules and regulations require a certain number of years of IRS tax filing in order to qualify for the homes in Jackson, which excludes a large portion of the population.¹⁷³

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (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.¹⁷⁴ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

¹⁶⁹ *Ibid.*, pp. 5-6; *see supra*, n.134-39 and corresponding text for discussion related to how racist real property covenants were used to explicitly exclude people of color in certain communities.

¹⁷⁰ Wells Testimony, *Transcript II*, p. 6; *Shelley v. Kraemer*, 334 U.S. 1 (1948).

¹⁷¹ Birkle Testimony, *Transcript II*, pp. 3-4; Wells Testimony, *Transcript II*, p. 5.

¹⁷² Wells, *PowerPoint II*, at slide 20.

¹⁷³ Wells Testimony, *Transcript II*, p. 19.

¹⁷⁴ 45 C.F.R. § 703.2 (2018).

1. The U.S. Commission on Civil Rights should send this report and issue a formal request to Congress and the President to:
 - a. *Pass legislation to increase the small state minimum calculations for tax credits allocated under the affordable housing programs, so that affordable housing initiatives in smaller states can be financially secure throughout their affordability period. Increasing the small state minimum calculations would be greatly beneficial for small states experiencing burgeoning populations and escalating property values, alongside fair market rent hikes.*¹⁷⁵
 - b. *Pass legislation that would require affordable housing projects to set aside a larger number of units for tenants with disabilities and seniors.*¹⁷⁶

2. The U.S. Commission on Civil Rights should send this report to and issue a formal request to the Department of Housing and Urban Development to:
 - a. *Educate landlords about what actions are considered discriminatory, especially actions related to disability-based discrimination. Particularly, educate landlords about visible vs. nonapparent disabilities, such as individuals with mental health disabilities.*¹⁷⁷
 - b. *Educate tenants about their fair housing rights and what to do if their rights may have been violated.*¹⁷⁸
 - c. *Issue guidelines for HUD funded housing that prevents landlords from retaliating and evicting tenants who file HUD complaints against their landlords.*¹⁷⁹
 - d. *Conduct additional compliance reviews under 24 CFR § 1.7(a)¹⁸⁰ of recipients of HUD funded housing within Wyoming. Specifically, the HUD funded housing in Riverton, Wyoming.*¹⁸¹

3. The U.S. Commission on Civil Rights should issue the following recommendation to the Wyoming Governor's Office to:
 - a. *Make affordable housing a priority throughout the state of Wyoming. Addressing the issue of housing accessibility and affordability may impact and reduce the number of fair housing violations and discriminatory practices in the state.*¹⁸²

¹⁷⁵ Gray Testimony, *Transcript IV*, pp. 11-12.

¹⁷⁶ Theriault Testimony, *Transcript II*, p. 17.

¹⁷⁷ *Ibid.*, p. 18.

¹⁷⁸ Urbigkit Testimony, *Transcript IV*, p. 7.

¹⁷⁹ Theriault Testimony, *Transcript II*, p. 11.

¹⁸⁰ See 24 CFR § 1.7(a) (1996).

¹⁸¹ See Groves Testimony, *Transcript III*, pp. 5-6.

¹⁸² Gray Testimony, *Transcript IV*, p. 12.

- b. *Assign enforcement authority under the Wyoming Fair Housing Act to the Wyoming Attorney General’s Office of Consumer Complaints Division.*
 - c. *The Wyoming Attorney General’s Office of Consumer Complaints Division should issue its interpretation that “sex” under the Wyoming Fair Housing Act includes sexual orientation and gender identity, and apply for enforcement authority and funding from HUD under its FHAP program.*¹⁸³
4. The U.S. Commission on Civil Rights should issue the following recommendation to the Wyoming State Legislature:
- a. *Make affordable housing a priority throughout the state of Wyoming. Addressing the issue around housing accessibility and affordability may impact and reduce the number of fair housing violations and discriminatory practices in the state.*¹⁸⁴
 - b. *Pass legislation that would create and maintain a Wyoming Housing Trust Fund with a focus on building and rehabilitating affordable housing throughout the state of Wyoming.*¹⁸⁵
 - c. *Pass a resolution that encourages the Wyoming Governor to assign enforcement authority under the Wyoming Fair Housing Act to the Wyoming Attorney General’s Office of Consumer Complaints Division.*¹⁸⁶
 - d. *Pass legislation that would enable communities to amend real property covenants to remove unenforceable racist and discriminatory language therefrom.*¹⁸⁷
 - e. *Pass a resolution that would encourage city councils to regularly review their housing policies for equity and to support changing or removing zoning density restrictions and to increase access to safe, affordable housing.*¹⁸⁸
5. The U.S. Commission on Civil Rights should issue the following recommendation to the counties and municipalities in Wyoming to:
- a. *Regularly review their housing policies for equity.*¹⁸⁹
 - b. *Support changing or removing zoning density restrictions and to increase access to safe, affordable housing.*¹⁹⁰

¹⁸³ Urbigkit Testimony, *Transcript IV*, p. 4; Storer Testimony, *Transcript IV*, p. 18.

¹⁸⁴ Gray Testimony, *Transcript IV*, p. 12.

¹⁸⁵ *Ibid.*

¹⁸⁶ Urbigkit Testimony, *Transcript IV*, p. 4; Storer Testimony, *Transcript IV*, p. 18.

¹⁸⁷ Birkle Testimony, *Transcript II*, p. 4.

¹⁸⁸ Birkle Testimony, *Transcript II*, p. 4.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

Appendix A: Committee Member Statement

Submitted by Virginia Arbery (October 21, 2024)

Please note that the below statement from Committee Member Virginia Arbery reflects only her personal views and not the official views or position of the Wyoming Advisory Committee or U.S. Commission on Civil Rights, which do not sanction or endorse Ms. Arbery's views. Nor has USCCR or the Minnesota Committee reviewed or otherwise edited Ms. Arbery below statement.

Introduction

In *Federalist 10*, James Madison writes ‘The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government.’ Before the founding, the revolutionary period was marked by the separated colonies objecting to the usurpation of their legislative authority by the King who had abolished their legislatures and distanced them from ready access by their constituents. My fundamental objection to this report is the absence of regard for these fundamental rights of property and of representation that fueled the subjects’ objection to British rule. Though the two rights to which I refer might sound remote, to my mind they are enduring, and reflection upon their importance accounts for what I find misguided in the October 2024 report: “Housing Discrimination: Fair Housing Practices in Wyoming.”

From these two core rights proceed my more detailed objections to both the project itself and its rationale and evidence. My objections include several other sub-points (and others that I leave unnoted in my dissent) each related to one of these core rights. Let me note, that despite the congenial and good faith effort of this committee and its guidance by federal appointees, I cannot assent to this report. First of all, one might question the existence of HUD on constitutional grounds (A cabinet level position, est. 1965, answerable to U. S. Committee on Housing and Urban Affairs in the U.S. Senate). Under Article One, Section 8 of the United States Constitution, there is no enumerated Congressional power over housing. In fact, *Federalist 17* specifies that the states retain the “domestic police of a State,” or what are simply called the “domestic police powers.” Hamilton continues that “The separate governments in a confederacy . . . will generally possess the confidence and good will of the people, and with so important a support will be able effectually to oppose all encroachments of the national government.” A

critical dimension of this provision for federalism is clearly to grant authority to those who are closest to the proper objects of government. Health, welfare, and education are by design under the purview of state governments so that the people can superintend the legislative choices made which affect them in their neighborhoods. Hamilton speaks of the principle of “propinquity,” a recognition that that which is closest to one is dear to one. This notion of “propinquity” reflects the older teaching of subsidiarity which is reflected in the new states’ objecting to rule by a distant British Parliament. (See also Thomas Jefferson’s “Summary View of the Rights of British America,” 1774.)

The Report

The report notes on page six the absence of “sexual orientation and gender identity” in the Wyoming Fair Housing Act’s “protections against discrimination based on sex.” I quote:

In 2015, the Wyoming legislature passed the Wyoming Fair Housing Act (Wyoming FHA).¹⁹¹ While the language of the Wyoming FHA is similar to that of the federal FHA,¹⁹² the substantive rights protected under the Wyoming FHA have not yet been certified by HUD as being “substantially equivalent” to those of the federal FHA.¹⁹³ Specifically, it remains unclear whether the Wyoming FHA protects against discrimination based on sex, to include sexual orientation and gender identity.¹⁹⁴ If Wyoming seeks FHAP funding from HUD, Wyoming must first certify that sex includes sexual orientation and gender identity.

Regardless of whether Wyoming decides to interpret “sex” to include sexual orientation and/or gender identity, HUD recognizes the right to be free from discrimination based on sex, including sexual orientation and gender identity, under the U.S. Supreme Court case *Bostock v. Clayton County, GA*.¹⁹⁵ Thus, Wyoming residents who have claims of discrimination based on sexual orientation or gender identity may still make a complaint through HUD.

This account by the WCCR is accurate, but the object desired by the Commission is a questionable intrusion into state's rights. The inclusion of the last two categories owes to a transference of the sense of the June 2020, Supreme Court case of *Bostock v. Clayton County* which made it "impossible to discriminate against a person being a homosexual or transgender without discriminating against that individual based on sex." The case had to do with an employee. In February 2021, the Office of General Counsel, concluded that FHA's sex discrimination provision was comparable and extended the interpretation of Title VII to likewise prohibit discrimination on the basis of gender identity or sexual orientation. This was in support of Executive Order 13988 issued by President Biden on January 20, 2021. Through this circuitous route, one determined at the highest administrative level—the executive--without the deliberative process of a legislative body representing the citizens, neither at the national nor state level, federal housing standards of protection were significantly altered. In these and so many other instances, do we not see the jeopardy posed to republican institutions rooted in representative government answerable to the people? The stroke of a pen and a federal attorney's own judgment changed the operative definition of sex for private renters and landowners in addition to housing funded through HUD. Among other things, one might object that the place of employment and the place one lives are different in kind, including many variables of consequence.

The draft's report's concern that federal funding is dependent on certifying that sex be inclusive of gender identity and sexual orientation is central to the whole endeavor of the WCCR. However, I understood from the testimony of the Denver head of HUD, that whether or not the Wyoming legislature amends its current FHA, the requirements of the FHA are enforceable in Wyoming. So be it. However, it might be argued that, given these fairly recent and non-legislatively redefined meaning of "sex," it would be better for the state to leave its law unchanged with its pristine and traditional meaning of the term and to decline federal money contingent on compliance. Therefore, I withhold my assent to this report. I do not think property owners who are protecting other communal interests, such as maintaining a family-oriented climate on their property, should be forced to rent to those who define sex according to these quite recent redefinitions.

I also do not think that the few number of cases of discrimination reported to the Denver office in the last ten years, 203, relatively few of which are related to sexual discrimination, warrants the creation of an enforcing FHA agency in this state, another recommendation of the WCCR's report. Denver is not that far. Wyomingites travel there frequently. To establish an enforcing agency in Wyoming would be just another burden on the taxpayers at a time when supporting schools and reducing property taxes are actually central to Wyoming citizens and are proper state concerns.

Let me add that one portion of the report suggests that there are far more cases related to discrimination based on disability, 72 % to be exact (p. 10, report). The suggestion is made on page 14 that there are many other discriminatory events that are never reported. One can claim that is the case. But in a report so tethered to data and testimony, it is hardly the case that the energy of a whole committee devoted to civil rights should focus on what is not able to be proved, but which is assumed to be the case. Such an insistence suggests a set of concerns or assumptions that drive the findings and the recommendations outside of the reality. Let me provide a minor example. Footnote 53 on page 8 states the following: "Severely cost burdened poor households are more likely than other renters to sacrifice other necessities like healthy food and healthcare to pay the rent, and to experience unstable housing situations like evictions." This is an assumption for which no evidence is provided. In fact, renters or occupants with such low incomes are likely to be on food stamps or other state subsidies.

My concern about undermining of property rights includes choosing the category of "equity" over that of "equal protection under the laws." Equity is a term that manipulates lack of diversity, such as racial heritage, in a community so as to highlight *perceived* discrimination irrespective of *intentionality*. On page 11, the report reads "Racist housing policies throughout the history of the United States have led to a lack of housing equity over time." In its recommendations, the WCCR report asks the United States Commission on Civil Rights to recommend that counties and municipalities in Wyoming review their housing policies for equity and to reevaluate density restrictions (Recommendation 5, p. 23). This is tantamount to asking a person to change his or her ancestral heritage. The kind of people who move into an area is often based on similarity to themselves (shared communal values, interest, etc.) and on opportunities to thrive economically. Many other factors, historical and organic, might enter into the range of diversity. It seems

simplistic to insist on a standard of proportionality of race, religion, or economic status when the conditions that might attract others into a community are just not there. Is the report asking communities to plan their housing policies to suit a non-existent population or to change the space and expanse of property ownership that attracted people into the area in the first place—in short, to artificially plan a community that will destroy its character?

I would like to conclude with questioning one proviso of the FHA as administered by HUD that seems to me to be a violation of the oldest standards of common law, English law, and the history of jurisprudence. By law, HUD has the power to interpret FHA and to make rules to implement it. Included under this authority is the power to prohibit practices regardless of their intent. (See: <https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation>.) From the Federal Register, I cite the following:

In order to make clear that the Fair Housing Act violations illustrated in part 100 may be proven through evidence of intentional discrimination or discriminatory effects, as the evidence permits, and that any potential discriminatory effects violation must be assessed pursuant to the standards set forth in § 100.500, the final rule amends paragraph (b) of § 100.5 to add at the end the following sentence: “The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, *even if not motivated by discriminatory intent* [emphasis mine], consistent with the standards outlined in § 100.500.

What kind of law is this where intentionality is beside the point? The heavy hand of the administrative state clearly undermines the relation between doer and act, between agent and choice. If intentionality bears no weight, if “discriminatory effect” and other artificial categories, such as “disparate impact” condemn property owners and communities, then HUD and its practices violate the underlying principles of a free society: property rights and representative government.

With all due respect to my Wyoming fellow citizens who have agreed to this report, and with appreciation to the many who contributed their testimonies, I nonetheless decline to join them.

Virginia L. Arbery

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