

Advisory Memorandum

To: The U.S. Commission on Civil Rights
From: Vermont Advisory Committee to the U.S. Commission on Civil Rights
Subject: Housing Discrimination in Vermont: A Handshake and a Smile

The Vermont Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public briefing on housing discrimination at the Vermont State House in Montpelier on August 10, 2015. The purpose of the briefing was to gather information and hear from government officials and advocates about the nature and extent of housing discrimination in Vermont and whether and how effectively the state is meeting its fair housing obligations. The Committee heard presentations from government officials, advocates, and private sector representatives. The agenda is provided in Appendix I.

The Committee decided to study housing discrimination after Vermont Legal Aid released a 2014 report documenting such discrimination. This report describes a large set of studies carried out by Vermont Legal Aid, which cumulatively led them to conclude that there is “preferential treatment toward [w]hite testers of U.S. origin without children and without an apparent disability.”¹

Briefly summarized, the issues and findings identified during the briefing include the following:

- Discrimination against people who are members of protected classes under state and federal law persists in Vermont;
- Today, this discrimination is more subtle, meaning some individuals do not realize they are being discriminated against;
- Complaints of discrimination on the basis of disability are the most frequently reported, followed by discrimination on the basis of familial status and receipt of public assistance;
- Discrimination may occur because landlords do not understand their legal obligations under federal and state fair housing laws; and
- Vermont has a shortage of affordable housing, especially accessible and affordable housing, and also lacks intermediate housing options for people who are ineligible for housing but cannot afford most middle-income apartments.

Background

Housing discrimination in the United States has taken many forms. For much of our history, outright racial zoning was a common practice and not illegal. Landowners and property managers routinely refused to rent or sell property on the basis of race, color, religion, and ethnicity. Restrictive covenants in deeds prohibited whites from selling their homes to persons of color. Zoning practices prevented persons of color from living in white neighborhoods. Housing discrimination was institutionalized by local and state governments and reinforced by federal policies. For example, the Federal Housing Administration openly encouraged the protection of

¹ Vermont Legal Aid, “Rental Discrimination Report: Housing Discrimination in Vermont Rental Markets,” Housing Discrimination Law Project, May 2014, <http://hrc.vermont.gov/sites/hrc/files/publications/Rental-Discrimination-Report-2014.pdf> (hereafter cited as Vermont Legal Aid, *Rental Discrimination Report*).

neighborhoods from the “infiltration of inharmonious racial groups” when appraising mortgages and supported restrictive covenants by refusing to insure homes in integrated neighborhoods.²

To address the problem of housing discrimination, Congress passed the Civil Rights Act of 1968, which protects people from discrimination on the basis of race, color, national origin, religion, sex, disability, and familial status in housing sales, rentals or financing.³ Known as the Fair Housing Act (FHA) and intended to serve as an extension of the Civil Rights Act of 1964, it was initially the subject of a contentious debate in Congress, but was passed quickly after the assassination of civil rights leader Martin Luther King, Jr. Since its passage, the law has been considered one of the greatest legislative achievements of the 1960s civil rights era.

The Vermont Fair Housing Act is the state equivalent of the FHA. Like the FHA, under the Vermont Fair Housing Act it is illegal for a housing provider to discriminate when selling or renting housing on the basis of race, color, national origin, sex, religion, and disability.⁴ The Vermont Fair Housing Act also extends its protection to discrimination on the basis of age, marital status, sexual orientation, gender identity, and the receipt of public assistance.⁵

In 2014, the Housing Discrimination Law Project of Vermont Legal Aid released a report on housing discrimination in Vermont.⁶ Using various testing methods, the report found that housing providers showed “preferential treatment toward white testers of U.S. origin without children and without an apparent disability.”⁷ The report also noted that “housing providers generally disfavor[ed] African American renters, renters of foreign origin, renters with children, and renters with disabilities.”⁸

This report served as the Committee’s primary documentation of housing discrimination in Vermont. The briefing on August 10, 2015, included a variety of additional perspectives on the problem from four panels of presenters, a list of which is found in Appendix II.

² Valerie Schneider, *In Defense of Disparate Impact: Urban Redevelopment and the Supreme Court’s Recent Interest in the Fair Housing Act*, 79 MO. L. REV. 539, 550 (2014) (quoting Karl Taeuber, *The Contemporary Context of Housing Discrimination*, 6 YALE L. & POL’Y REV. 339, 341 (1988)).

³ Civil Rights Act of 1968 tit. VIII, as amended, 42 U.S.C. §§ 3601-3631. Congress passed the Fair Housing Act to impose a comprehensive solution to housing discrimination based on race, color, sex, national origin, or religion. Prior to the passage of the Fair Housing Act, the Civil Rights Act of 1964 prohibited discrimination in employment and in federally-funded programs, and encouraged the desegregation of public schools. The Voting Rights Act of 1965 aimed to dismantle barriers to full participation in the political process.

⁴ VT. Stat. Tit. 9, § 4503 (2017).

⁵ *Id.*

⁶ *Rental Discrimination Report* at 5. Fair housing testing is a means of neutrally and objectively measuring whether individuals who are trying to obtain or maintain housing have been unlawfully discriminated against. Fair housing testing is a widely accepted and effective means of measuring the scope of housing discrimination in a given housing market; the U.S. Supreme Court has upheld the legitimacy of such testing. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-4 (1982). The tests used by the Housing Discrimination Law Project simulated housing transactions that compare landlords’ treatment of prospective tenants. The Housing Discrimination Law Project compares landlords’ treatment of “testers,” applicants who are representative of a protected class, to that of “control testers,” who are not representative of the protected class.

⁷ *Rental Discrimination* at 3.

⁸ *Ibid.*

Assertions and themes at the Montpelier Briefing

Discrimination by Protected Class

Race

Housing Discrimination Law Project has conducted fair housing testing since 2009. The results of these tests cover the full spectrum of the rental housing market in Vermont, from low income housing to high-end rentals. Marsha Curtis, Testing Coordinator of Housing Discrimination Law Project, explained that Housing Discrimination Law Project's testing indicated significant levels of discrimination against individuals protected under the FHA and those who receive public assistance.⁹ Housing Discrimination Law Project's testing showed landlords gave preferential treatment to white American renters without children.¹⁰

Housing Discrimination Law Project's tests revealed preferential treatment towards white American renters; 46 percent of tested landlords appeared to discriminate against individuals of Asian, Middle Eastern, Hispanic Latino or Eastern European descent¹¹. Housing Discrimination Law Project found discrimination against African Americans in 36 percent of its race and color-based tests.¹² Discrimination in the national origin and race-based tests tended to be very subtle, meaning that the landlords often treated these testers in a cordial manner, "with a handshake and a smile."¹³ This subtlety means that individuals who experience discrimination due to their national origin or race likely do not know that landlords are discriminating against them.

Karen Richards, Executive Director of the Vermont Human Rights Commission, stated that housing discrimination in Vermont is unique because Vermont is a white, rural state, which creates separate housing discrimination issues.¹⁴ She said the white, rural nature of Vermont creates issues that do not arise in more diverse urban areas. However, Vermont is slowly becoming more diverse – with communities of color increasing from under two percent to five percent from 1990 to 2010.¹⁵ There is also an increasing refugee and immigrant community.¹⁶ The population of people of color in Chittenden County has grown to upwards of 15 percent in the last 25 years, and more than 40 languages are currently spoken in Vermont schools.¹⁷ Ms.

⁹ Marsha Curtis, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 11 (hereinafter cited as *Montpelier Briefing Transcript*) ("Additionally, through the [Housing Discrimination Law Project's] experience in conducting fair housing testing, there is significant anecdotal evidence that many Vermonters face discrimination on the various Vermont-specific prohibited bases, particularly receipt of public assistance, primarily section 8 vouchers.").

¹⁰ *Rental Discrimination Report* at 3.

¹¹ *Ibid.*, 20.

¹² *Ibid.*

¹³ Curtis Testimony, *Montpelier Briefing Transcript*, p. 10.

¹⁴ Karen Richards, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 23.

¹⁵ Dale Azaria, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 69 ("But it's worth nothing that between 1990 and 2010 the number of non-White residents more than tripled from 1.5 percent to almost 5 percent of the state's total population.").

¹⁶ Richards Testimony, *Montpelier Briefing Transcript*, p. 24 ("Six thousand refugees have settled in the state during that time frame, mostly in Chittenden County . . .").

¹⁷ *Ibid.*, 23 ("The minority population in Chittenden County is now pushing upwards of 15 percent. There's more than 40 different languages and some would say up to 60 different languages being spoken in our schools.").

Richards suggested that discrimination in Vermont will continue to evolve as the state becomes more diverse due to immigration.¹⁸

The Champlain Area NAACP received 50 complaints regarding the availability of housing in the eleven months prior to the briefing.¹⁹ Most of these complaints concern issues faced by individuals of color with disabilities. The Champlain NAACP also works with senior citizens and individuals who file Section 8 applications who have a hard time finding affordable and accessible housing in the area.

Mary Brown-Guillory, President of the Champlain Area NAACP, said the NAACP has also received several complaints from renters who are in their twenties.²⁰ Most of these people are college students or graduates trying to set up homes in rental properties in the area so that they can either continue their education or start working in the area. Many of these young applicants are people of color who feel the need to use a false name so as not to be rejected by the landlord because of their foreign-sounding name. Applicants with “cultural,” non-Anglo-Saxon sounding names are sometimes rejected outright by landlords. Ms. Brown-Guillory said that for many of these applicants, “the first thing they are told [by the landlord] is that the apartment is no longer for rent.”²¹

Economic status

Marsha Curtis, Testing Coordinator at the Housing Discrimination Law Project, noted that some Vermonters face discrimination because they receive public assistance.²² Vermont statutes prohibit this type of discrimination,²³ but rental applicants encounter it during their housing search. Ms. Curtis further stated that testing and Legal Aid’s representation of clients have produced considerable anecdotal evidence of housing discrimination against people receiving public assistance or Section 8 vouchers.²⁴ However, without complaint-based and systemic investigation, it is difficult for victims of discrimination to bring successful claims. On the other hand, David DeAngelis, Section 8 Grants Administrator of the Brattleboro Housing Authority, testified that the Brattleboro Housing Authority, which administers Section 8 vouchers in that community, is not aware of any housing discrimination.²⁵

National origin

One of the most pressing issues facing refugees and immigrants in Vermont is the lack of access to decent and affordable housing.²⁶ Landlords in Vermont often deny refugee and immigrant

¹⁸ Ibid.

¹⁹ Mary Brown-Guillory, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 126.

²⁰ Ibid., 127.

²¹ Ibid., 127-28.

²² Curtis Testimony, *Montpelier Briefing Transcript*, p. 11.

²³ VT. Stat. Tit. 9, § 4503 (2017).

²⁴ Curtis Testimony, *Montpelier Briefing Transcript*, p. 11.

²⁵ David DeAngelis, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 96.

²⁶ Jacob Bogre, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 113 (“One of the most important issues facing newcomers is access to decent and affordable housing.”).

applicants solely on the basis of their national origin; those with criminal backgrounds are especially likely to be denied.²⁷

Refugees and immigrants must overcome several obstacles during their housing search. Jacob Bogre, Executive Director of the Association for Africans Living in Vermont, explained that these individuals often lack the ability to effectively communicate with landlords.²⁸ Moreover, landlords sometimes adhere to discriminatory stereotypes and deny applicants during the early stages of the application process solely on the basis of the applicants' accents.²⁹ Mr. Bogre testified that landlords often cite refugee and immigrant applicants' poor credit scores or previous landlord references as reasons to reject applicants, but Mr. Bogre suggested that these otherwise legitimate reasons are sometimes only excuses that allow landlords to avoid renting to and discriminate against refugees and immigrants.³⁰ Additionally, refugees' and immigrants' phone calls frequently go unanswered by landlords because landlords are skeptical of renting to people who speak with an accent.³¹

During the rental period, refugee and immigrant tenants often face excessive rent increases and their repair requests might not be taken seriously or might go unanswered.³² These hardships might result in the constructive eviction of these tenants. Rent might increase to the point that tenants can no longer afford their units, and unanswered repair requests can render the units uninhabitable.

In some cases, refugee and immigrant tenants are subject to arbitrary evictions. Ms. Plummer cited the example of Yusuke, a young African refugee who lived with his three brothers.³³ All four men paid rent on time and were quiet, clean, and respectful tenants in their building. Their landlord nonetheless served them with an eviction notice without cause during the middle of winter. Other African families who previously lived in Yusuke's apartment had also been evicted for no legitimate reason, indicating a pattern of national origin discrimination. The Housing Discrimination Law Project filed a case with the Human Rights Commission on their behalf. The landlord settled for monetary damages and was required to undergo fair housing education under the supervision of the Human Rights Commission.

During the lease termination process, refugee and immigrant tenants sometimes face unwarranted additional charges imposed by landlords. Mr. Bogre claimed that these tenants' security deposits "[are] always retained by the landlord."³⁴ Refugees also struggle to obtain references from previous landlords when trying to secure a new apartment.

Mr. Bogre addressed the issue of refugees and immigrants with criminal backgrounds who struggle to overcome institutional racism that prevents them from starting a new life. Mr. Bogre stated that "we have to seriously address these issues [that have] become a serious pattern" in Vermont.³⁵

²⁷ Ibid.

²⁸ Ibid., 114

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Rebecca Plummer, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 14.

³⁴ Bogre Testimony, *Montpelier Briefing Transcript*, pp. 114-15.

³⁵ Ibid., 118.

Disability

People with disabilities often face difficulties in finding accessible housing. Some are reluctant to file reasonable accommodation and service animal requests because they fear such requests will cause the landlord to either reject or evict them.

Ms. Plummer related the case of a woman named Claire, who is the single mother of two young children, one of whom is severely disabled.³⁶ Claire experienced major problems with the amenities in her apartment, but her complaints to the landlord went unanswered. Her landlord eventually made sexual comments and advances that Claire refused. This prompted the landlord to serve her with an eviction notice. The Housing Discrimination Law Project filed sex discrimination claims in state court.

Ms. Plummer also cited the case of John, who lived with his family in an apartment that prohibits pets.³⁷ John's son suffered from severe anxiety, and his doctor recommended that he get a dog to help him cope with his disability. The Housing Discrimination Law Project resolved the issue by notifying the landlord that he was legally obligated to allow a service animal accommodation. The Housing Discrimination Law Project also assisted John in the negotiation of ground rules concerning the accommodation.

Housing discrimination in Vermont is also affected by the state's rapidly aging population. Ms. Richards said Vermont's population is aging faster than other states, which means that Vermont has a particular need for accessible housing that accommodates disabilities of elderly tenants.³⁸

The Housing Discrimination Law Project performs accessibility audits to determine whether new apartment buildings comply with the Fair Housing Act's design and construction standards. Of the audits conducted, 80 percent demonstrated some level of noncompliance with FHA standards.³⁹ Discrimination based on disability is by far the most frequent basis for investigations by the Vermont Human Rights Commission, followed by familial status and public assistance.⁴⁰ In some cases, discrimination can be couched in terms of trying to be helpful, as when a potential tenant with a disability is told that it would be a hardship to live in a second-floor apartment.⁴¹

Accessibility of housing is not just an issue for newly developed properties. David Sagi, ADA Program Manager of the Vermont Department of Disabilities, Aging & Independent Living, explained that when a project is renovated, a certain percentage of those renovated units must be accessible under the U.S. Department of Housing and Urban Development (HUD) and state law.⁴² Accessible units can be sold to people without disabilities, meaning that fewer of these units are in fact available for people with disabilities than may have been projected or planned.

³⁶ Plummer Testimony, *Montpelier Briefing Transcript*, p. 15.

³⁷ *Ibid.*

³⁸ Richards Testimony, *Montpelier Briefing Transcript*, p. 24 ("And then the other thing that people don't talk about a lot is that the Vermont population is aging at a much faster rate than it is in other states. And the people who are older tend to . . . become disabled as well. And there's unique housing needs on those categories as well.")

³⁹ Vermont Legal Aid, Housing Discrimination Law Project, p. 3.

⁴⁰ Richards Testimony, *Montpelier Briefing Transcript*, p. 23

⁴¹ *Ibid.*, 28 ("[Landlords] usually couch it in terms of trying to be helpful and trying to protect you, well, I don't think you should be on the second floor with your disability.")

⁴² Sagi Testimony, *Montpelier Briefing Transcript*, p. 57.

Mr. Sagi clarified certain misconceptions concerning tenants with disabilities. He said landlords sometimes fail to perceive that one of their tenants has a disability.⁴³ For example, landlords generally do not understand that a person with a disability can be someone who lacks the strength to open a heavy door. Mr. Sagi consequently suggested that all new buildings should have doors that have power opening capabilities, and that remaining buildings be modified to meet this standard.⁴⁴

Private landlords are required to allow tenants to make reasonable accommodations to their units that would allow them equal enjoyment of their residence. The Vermont State Housing Authority manages a portfolio of apartments throughout the state to ensure that landlords adequately respond to tenants' modification requests. Cliff Bergh, Director of the Vermont State Housing Authority's Field Services, discussed the resources his office provides in assisting tenants in knowing their rights.⁴⁵ To this end, the Vermont State Housing Authority provides tenants with handbooks listing their rights for reasonable accommodation modifications.

Dale Azaria, General Counsel of the Vermont Department of Housing & Community Development, addressed the difficulties experienced by people with disabilities during their housing search. Persons with disabilities are twice as likely to live in poverty as persons without disabilities. In 2009, the Department of Housing & Community Development found that 22 percent of persons with a disability were living in poverty compared to 10 percent of persons without disabilities.⁴⁶ In response, the Department of Housing & Community Development doubled its efforts to ensure that publicly financed housing projects in Vermont comply with accessibility requirements.

Sarah Launderville, Executive Director of the Vermont Center for Independent Living observed that difficulties in finding accessible housing frequently prevent people with disabilities from fulfilling their desire to leave institutions, such as nursing homes or psychiatric facilities.⁴⁷ The Vermont Center for Independent Living has a home access program with over 60 individuals on the waiting list who are primarily in need of entrance and bathroom modifications. Accessible housing does not mean segregated housing; the Vermont Center for Independent Living seeks to provide housing that is not only accessible but also integrated with people who do not have disabilities.⁴⁸ This outcome would have the effect of providing equal opportunities for people with disabilities.

From January 1, 2013, through August 5, 2015, the Vermont Center for Independent Living received 89 complaint calls, 65 of which were from callers identifying themselves as people with disabilities and seeking the Vermont Center for Independent Living's assistance with eviction issues, landlord-tenant disagreements, landlord-tenant communications, and rent and other financial needs.⁴⁹ The most common complaints that the Vermont Center for Independent Living receives are reasonable accommodation and service animal requests.

⁴³ Ibid., 59 (“[L]andlords in general don’t understand if you have a disability.”).

⁴⁴ Ibid., 60.

⁴⁵ Bergh Testimony, *Montpelier Briefing Transcript*, p. 65-66.

⁴⁶ Azaria Testimony, *Montpelier Briefing Transcript*, p. 70.

⁴⁷ Sarah Launderville, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 116.

⁴⁸ Ibid., 125.

⁴⁹ Ibid., 117-18.

Ms. Launderville also addressed the issue of landlords making derogatory statements concerning laws that protect people with disabilities. She said that landlords often refer to such laws as “special” laws.⁵⁰ The Vermont Center for Independent Living strives to abolish this stigma and encourage landlords to understand the purpose of these laws, which is to ensure that people with disabilities have an equal opportunity to have suitable housing.

The Vermont Center for Independent Living has seen an increase in the number of homeless people who have disabilities. Homelessness cuts across all types of disabilities, meaning that it is experienced by dialysis patients, veterans, and mothers with children. The Vermont Center for Independent Living works to find more adequate housing for these individuals than the cars, tents, and sheds in which many of them currently live.

Family or marital status

The Housing Discrimination Law Project found discrimination against individuals with children in 45 percent of its tests.⁵¹ Discrimination in the familial and disability tests tended to be relatively overt, meaning that the landlords in these tests frequently made direct discriminatory statements to the testers.⁵²

Ms. Plummer cited a case in which a single woman who was a recovering alcoholic needed to find housing in order to regain custody of her three-year-old daughter.⁵³ While discussing a rental with a landlord she mentioned her daughter and was suddenly told the apartment was not available. The Housing Discrimination Law Project filed the woman’s complaint with the Department of Housing and Urban Development, which passed it on to the Vermont Human Rights Commission. The Vermont Human Rights Commission reached a settlement with the landlord. Although the landlord did not admit liability, as part of the settlement the landlord did agree to pay the security deposit and first month’s rent on the apartment as well as to engage in fair housing education and to advertise vacant apartments as available to tenants with children.

Religion

Certain applicants are also discriminated against because of their religious affiliation. Ms. Brown-Guillory gave the example of an individual of African descent who was rejected immediately upon disclosing that she was Muslim.⁵⁴

Housing affordability

There is a shortage of affordable housing in Vermont—a problem compounded by relatively low salaries.⁵⁵ According to Mr. Bergh, the Vermont State Housing Authority has observed significant barriers to fair housing for people who file for Section 8 housing assistance, which is available only for extremely low-income persons.⁵⁶ Section 8 voucher holders are located all over the state and are not concentrated in any one area.

⁵⁰ Ibid., 118-19.

⁵¹ *Rental Discrimination Report* at 3.

⁵² Curtis Testimony, *Montpelier Briefing Transcript*, p. 10.

⁵³ Plummer Testimony, *Montpelier Briefing Transcript*, pp. 16-17.

⁵⁴ Brown-Guillory Testimony, *Montpelier Briefing Transcript*, p. 131.

⁵⁵ Richards Testimony, *Montpelier Briefing Transcript*, p. 24.

⁵⁶ Bergh Testimony, *Montpelier Briefing Transcript*, p. 63-64.

Ms. Richards noted the extremely low vacancy rates, especially in Chittenden County.⁵⁷ Vermont's rent-to-salary ratio is also very high in comparison to other states.⁵⁸ In fact, rents are frequently higher than HUD vouchers will afford as part of its Fair Housing Choice Program. Those seeking housing can find cheaper rents in outlying rural areas of Vermont, but these areas often lack necessities such as transportation, infrastructure, and jobs. Ms. Richards warned that these factors will result in increased segregation in a region where cities are already segregated. The creation of more affordable housing would increase the mobility of people with low incomes, allowing them the same opportunities as individuals in higher income categories.

Ted Wimpey, Project Director of the Fair Housing Project of the Champlain Valley Office of Economic Opportunity, spoke favorably of a recent U.S. Supreme Court case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, and challenging zoning ordinances on the basis that they have a disparate impact on a protected class.⁵⁹ Mr. Wimpey asserted that enforcement of fair housing laws necessitates the allowance of such claims.⁶⁰ Without disparate impact claims, members of protected classes would effectively receive less protection under fair housing laws.

Mr. Wimpey addressed Affirmatively Furthering Fair Housing, a longstanding federal program initiative established under the aegis of the HUD Community Development Block Grant program in the 1970's.⁶¹ The Affirmatively Furthering Fair Housing requires federal housing authorities, state and local housing grant recipients, and landlords, to take steps to end housing discrimination and expand housing opportunities for members of protected classes.⁶² The Affirmatively Furthering Fair Housing focuses not just on the importance of affordable housing but also the importance of creating inclusive communities in Vermont. Vermonters with lower incomes are "scattered" to rural areas where they lack access to jobs, services, and resources that can only be found in larger cities.⁶³ Mr. Wimpey expressed the need to break down these barriers by altering municipal zoning and permitting practices.

Mr. Azaria stated that people of color in Vermont, who now make up almost five percent of the state's population, face significant obstacles to becoming renters and homeowners.⁶⁴ Between 2000 and 2010, median housing value in Vermont increased 43 percent while the average person's income declined by 3 percent.⁶⁵ People of color in Vermont are disproportionately impacted by this disparity because they tend to fall into lower income categories. Mr. Azaria noted that over 30 percent of Asian and black households in Vermont earn less than \$25,000 per year as compared to fewer than 20 percent of white households.⁶⁶ The result of this income gap

⁵⁷ Richards Testimony, *Montpelier Briefing Transcript*, p. 24.

⁵⁸ Ibid. ("[T]he rents that people are looking at in Vermont are often similar to what you pay in Massachusetts or Connecticut. But our salaries are about half of what people make down there.").

⁵⁹ Wimpey Testimony, *Montpelier Briefing Transcript*, p. 34; *See Texas Dep't of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2521-22 (2015) (looking at whether facially neutral tax credits violate the FHA through disparate impact, and stating "[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification. Suits targeting such practices reside at the heartland of disparate-impact liability.").

⁶⁰ Wimpey Testimony, *Montpelier Briefing Transcript*, p. 34.

⁶¹ Ibid., 36-37.

⁶² Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272, 42,277 (July 16, 2015) codified at 24 C.F.R. § 5.152.

⁶³ Wimpey Testimony, *Montpelier Briefing Transcript*, p. 37.

⁶⁴ Azaria Testimony, *Montpelier Briefing Transcript*, p. 69. Census data for Vermont is found at <https://www.census.gov/quickfacts/vt>

⁶⁵ Ibid., 71.

⁶⁶ Ibid., 69-70.

can be segregated housing, which, Ms. Richards observed, has already happened to some extent in parts of Burlington and Winooski.⁶⁷

People of color are essentially forced to find housing in cheaper, rural areas that may not provide the same opportunities that are available in an urban area where rent is more expensive. Mr. Azaria proposed the state and others should continue to promote financial literacy education, provide banking services for low-income people, and step up marketing and outreach efforts to increase awareness of affordable housing options.⁶⁸

Mr. DeAngelis said the Brattleboro Housing Authority commits 67 percent of its public housing to be accessible for elderly people and people with disabilities.⁶⁹ He also advised that the HUD-funded Section 8 Housing Choice Voucher Program does not necessarily result in segregation of people of color. Rather, he claimed the voucher program allows the participant considerable choice about where to live. The program includes 145 vouchers with approximately 80 different landlords, meaning that a participant can choose from any of these locations.⁷⁰

Mr. DeAngelis also highlighted the Shelter Plus Care program, which is administered by the housing authority. The program provides individualized case management to support approximately 23 homeless people in their housing search.⁷¹ The Program provides housing for individuals in need and has generally been well received by the area's landlords. Mr. DeAngelis described a grant program of the Vermont Agency of Human Services, which supports transitional housing for approximately a dozen families who received weekly case management as part of the program. The grants have been quite successful in helping families find permanent housing. More than 80 percent of families who participated in the program eventually procured some type of permanent housing.⁷²

Angela Zaikowski, Director of the Vermont Apartment Owners Association, described the economic pressures that landlords in Vermont experience. She explained that landlords' decisions are primarily driven by their need to maintain their rental property business.⁷³ To this end, landlords logically look for tenants who are likely to pay rent on time. Landlords are also averse to tenants who may eventually be evicted, because the eviction process in Vermont costs landlords significant time and money. Ms. Zaikowski further explained that these economic losses will likely be passed on, or "spread around" to the landlords' other tenants in the form of higher rents.⁷⁴

Ms. Zaikowski also stressed the importance of debunking myths that permeate public discourse in Vermont on the topic of landlord-tenant relations.⁷⁵ She denied the existence of a landlord "blacklist," or database of troublesome tenants. She did, however, concede that landlords freely share information with one another regarding previous tenants. Ms. Zaikowski explained this

⁶⁷ Richards Testimony, *Montpelier Briefing Transcript*, p. 25.

⁶⁸ Azaria Testimony, *Montpelier Briefing Transcript*, p. 71.

⁶⁹ DeAngelis Testimony, *Montpelier Briefing Transcript*, p. 90.

⁷⁰ *Ibid.*, 92.

⁷¹ *Ibid.*, 95.

⁷² *Ibid.*, 96 ("Eighty percent have gone on to remain in some type of permanent housing with either a private landlord, public housing, or by way of a Section 8 voucher.")

⁷³ Angela Zaikowski, testimony before the Vermont Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, Aug. 10, 2015, transcript, p. 84.

⁷⁴ *Ibid.*, 86.

⁷⁵ *Ibid.*

practice as being driven by landlords' economic incentive to find tenants who can pay rent. She also noted that because all court records in Vermont are public, landlords who do their due diligence could obtain access to tenants' previous rental and eviction history independently.

Ms. Launderville testified that we as a society need to change the way we see people who are incarcerated.⁷⁶ Most incarcerated people will eventually be released back into the community, but the policies related to housing these individuals are "definitely inadequate." According to Ms. Launderville, the solution lies not only in housing, but also employment, access to food, and full healthcare, including mental health services and education.

According to Ms. Brown-Guillory, another problem is individuals who earn too much to be considered low income but have less income than they need to afford middle-income housing. There is a big gap in available housing for individuals who fall within this earning level.⁷⁷ Many of them do not qualify for low-income housing but at the same time cannot afford most middle-income apartments. Housing is especially difficult to find for these people, because one of the first steps in the housing application process is typically to prove that you can afford to rent the apartment.

In response to a question regarding transportation, Mr. Richards stated that because Vermont is a rural state, transportation companies do not find it feasible to extend their services if so few people would use it.⁷⁸ Mr. Richards gave examples of other modes of transportation like Zipcar to solve this issue.

Training: Tenants, Landlords, Realtors

Ms. Plummer testified that many landlords discriminate out of ignorance of the law.⁷⁹ Landlords violate fair housing laws because they do not understand their legal responsibilities under these laws. She identified increased education for landlords as the solution to this problem and recommended that Vermont establish a statewide rental registry or licensure system that would facilitate fair housing outreach and education for landlords. Ms. Curtis suggested that this registry should include large-scale and small-scale residential landlords alike. Ms. Plummer recommended mandatory fair housing education should be provided to the housing providers in Vermont, landlords, property managers, and real estate agents.

Ms. Zaikowski echoed the testimony of other panelists concerning ignorance of the law.⁸⁰ She agreed that landlords are frequently unaware of their legal obligations under fair housing laws. To address this deficiency in information, Vermont Apartment Owners Association publishes educational articles in its newsletter, posts information on its website, and actively reaches out to landlords to increase their awareness of relevant laws.⁸¹ The Vermont Apartment Owners Association distributes information with the goal of informing landlords of their legal obligations and tenants of their rights. The Association strives to present this information without bias favoring either landlords or tenants.

⁷⁶ Launderville Testimony, *Montpelier Briefing Transcript*, p. 120.

⁷⁷ Brown-Guillory Testimony, *Montpelier Briefing Transcript*, p. 128.

⁷⁸ Richards Testimony, *Montpelier Briefing Transcript*, p. 44.

⁷⁹ Plummer Testimony, *Montpelier Briefing Transcript*, p. 39.

⁸⁰ Zaikowski Testimony, *Montpelier Briefing Transcript*, p. 87-88.

⁸¹ *Ibid.*, 83.

Mr. DeAngelis also addressed the issue of landlords' awareness of fair housing and anti-discrimination laws. According to Mr. DeAngelis, the Brattleboro landlords who are under contract with the housing authority have a proper understanding of fair housing and anti-discrimination laws.⁸² He did, however, acknowledge that landlords in Brattleboro could benefit from further education on reasonable accommodation and service animal laws.

Post-Briefing Update

Vermont, as part of its obligation to affirmatively further fair housing, last prepared its required Analysis of Impediments in 2017.⁸³ This 2017 update to the 200-page 2012 report found that forty-six Vermont fair housing complaints were filed with federal and state agencies between January 2013 and July 2016.⁸⁴ Over half of these complaints involved discrimination on the basis of disability, while the rest involved discrimination on the basis of familial status or presence of minor children, race, color, and sex.⁸⁵ In addition, 189 people called Legal Aid with a housing discrimination complaint with Vermont Legal Aid between March 2015 and November 2016.⁸⁶ The majority of these complaints, 68 percent, were related to disability discrimination; the remaining complaints involved discrimination on the basis of race, presence of minor children, national origin, sex, and religion.⁸⁷

The Analysis of Impediments report found that discrimination based on disability, familial status, and other protected categories continues to occur in Vermont.⁸⁸ The report also found that the supply of affordable housing, especially affordable and accessible housing, in Vermont is “inadequate.”⁸⁹

Conclusion

Based on the information gathered by this review, the Committee believes that housing discrimination likely persists in Vermont, in part because many landlords do not fully understand their legal obligations. It is also clear that the lack of affordable housing in the state makes it even harder for individuals of color and individuals with disabilities in Vermont, who are often also low-income, to find housing.

At the same time, the Committee's inquiry into housing discrimination has been impeded by its inability to independently investigate complaints. For that reason it is difficult for the Committee to complete a meaningful assessment of whether and the extent to which Vermont residents seeking housing are discriminated against on the basis of race, disability, color, national origin, sex, religion, familial status, age, marital status, sexual orientation, gender identity, and the receipt of public assistance.

⁸² DeAngelis Testimony, *Montpelier Briefing Transcript*, p. 94.

⁸³ State of Vermont, Agency of Commerce and Community Development, *Analysis of Impediments to Fair Housing Choice: State of Vermont 2017 Update*, <http://accd.vermont.gov/sites/accdnew/files/documents/Housing/Vermont%20AI%202017%20-%20FINAL.pdf> (hereafter cited as Vermont, *Impediments to Fair Housing*).

⁸⁴ *Impediments to Fair Housing* at 7.; See State of Vermont, Agency of Commerce and Community Development, *State of Vermont Analysis of Impediments to Fair Housing Choice*, 2012 <http://accd.vermont.gov/sites/accdnew/files/documents/H-Reports-2012AI.pdf>.

⁸⁵ *Impediments to Fair Housing* at 7.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, 2.

⁸⁹ *Ibid.*

Based on available literature and testimony at the briefing, the Committee acknowledges the persistence of housing discrimination in the state and its effect on Vermont residents of color and individuals with disabilities. The Committee notes that additional training and education for landlords and other housing professionals regarding their legal obligations under the FHA and the Vermont Fair Housing Act has the potential to reduce housing discrimination in Vermont. It may also be beneficial to expand efforts to inform tenants of their rights under these laws; in other states this has been accomplished through the use of flyers and bus advertisements that educate readers on types of prohibited discrimination.⁹⁰ The Committee also identified a need for a housing discrimination hotline that would allow both landlords and tenants to access information on what practices are discriminatory.

With this Advisory Memorandum, the Committee suspends its investigation regarding housing discrimination in Vermont, but will consider revisiting and reopening at a later date if there are changes in circumstances. The transcript of the briefing and other relevant Committee documents are available by contacting the Eastern Regional Office.

⁹⁰ For examples, see Appendix III.

Appendix I

Vermont Advisory Committee
U.S. Commission on Civil Rights

Vermont State House
Room 11
115 State Street
Montpelier, VT 05633

Monday, August 10, 2015
10:00 AM

Housing Issues in Vermont

AGENDA

Panel One(10 to 11:15)

- Marsha Curtis
Testing Coordinator
Vermont Legal Aid, Housing Discrimination Law Project
- Rebecca Plummer
Staff Attorney
Vermont Legal Aid, Housing Discrimination Law Project
- Karen Richards
Executive Director
Vermont Human Rights Commission
- Ted Wimpey
Project Director
Fair Housing Project, Champlain Valley Office of Economic Opportunity

Panel Two(11:25 to 12:25)

- Dale Azaria
General Counsel
Vermont Department of Housing & Community Development
- David Sagi
ADA Program Manager
AHS/Vermont Department of Disabilities, Aging & Independent Living
- Cliff Bergh
Director of Field Services
Vermont State Housing Authority

Panel Three(1:00 to 2:00)

- David DeAngelis
Section 8, Grants Administrator
Brattleboro Housing Authority
- Angela Zaikowski
Director
Vermont Apartment Owners Association

Panel Four (2:00 to 3:00)

- Jacob Bogre
Executive Director
Association for Africans Living in Vermont
- Mary Brown-Guillory
President
Champlain Area NAACP,
- Sarah Launderville
Executive Director
Vermont Center for Independent Living

Open Session

Appendix II

Panelist Summaries

Panel One

Marsha Curtis, Testing Coordinator, Vermont Legal Aid, Housing Discrimination Law Project. Ms. Curtis coordinates fair housing tests for the Housing Discrimination Law Project. The goal of the project is to educate landlords, tenants, and the community about fair housing laws. The Housing Discrimination Law Project also investigates allegations of housing discrimination, counsels individuals and groups about their rights under the fair housing laws, and provides legal representation to ensure the enforcement of these laws.

Rebecca Plummer, Staff Attorney, Vermont Legal Aid, Housing Discrimination Law Project. The Housing Discrimination Law Project represents individuals, families, and sometimes organizations in cases involving housing discrimination on any of the federally prohibited bases and on Vermont-specific bases if there is also a federally prohibited basis. The most common complaints received by the Housing Discrimination Law Project relate to disability and familial status, followed by race, national origin, and sex (usually sexual harassment).

Karen Richards, Executive Director, Vermont Human Rights Commission. The Vermont Human Rights Commission conducts investigations into alleged housing violations and resolves these violations where possible. Violations that go unresolved during the six-month statute of limitations may authorize the Vermont Human Rights Commission to file a lawsuit to further the public's interest in a discrimination-free society. The Vermont Human Rights Commission can also represent the aggrieved individual if that person has not otherwise procured legal representation. The Vermont Human Rights Commission's ultimate goal is to increase public awareness about housing discrimination and the damage it can cause to the general community.

Ted Wimpey, Project Director, Fair Housing Project, Champlain Valley Office of Economic Opportunity. The Fair Housing Project focuses on preventing system-level discrimination that has a disparate impact on people who are members of protected classes.

Panel Two

David Sagi, ADA Program Manager, Vermont Department of Disabilities, Aging & Independent Living. The Department's ADA Program addresses complaints related to Title II of the ADA, which refers to accessibility of programs, services, and activities in any state agency.

Cliff Bergh, Director of Field Services, Vermont State Housing Authority. The Vermont State Housing Authority provides Section 8 applicants with information on fair housing, including where to call if they believe they were the victims of discrimination by a landlord. The Vermont State Housing Authority primarily receives calls regarding reasonable accommodation violations and disability modifications.

Dale Azaria, General Counsel, Vermont Department of Housing & Community Development. The Department holds community meetings around the state to allow for extensive stakeholder input on the issue of fair housing. The Department also evaluates public- and private-sector housing policies and practices that impact fair housing.

Panel Three

David DeAngelis, Section 8 Grants Administrator, Brattleboro Housing Authority. The Brattleboro Housing Authority provides housing and housing rental assistance to qualified low-income individuals and families. It also administers the federally funded Shelter Plus Care program, as well as state-funded housing programs.

Angela Zaikowski, Director, Vermont Apartment Owners Association. The Vermont Apartment Owners Association is a state-wide trade association for landlords that prepares and distributes educational materials to landlords around the state.

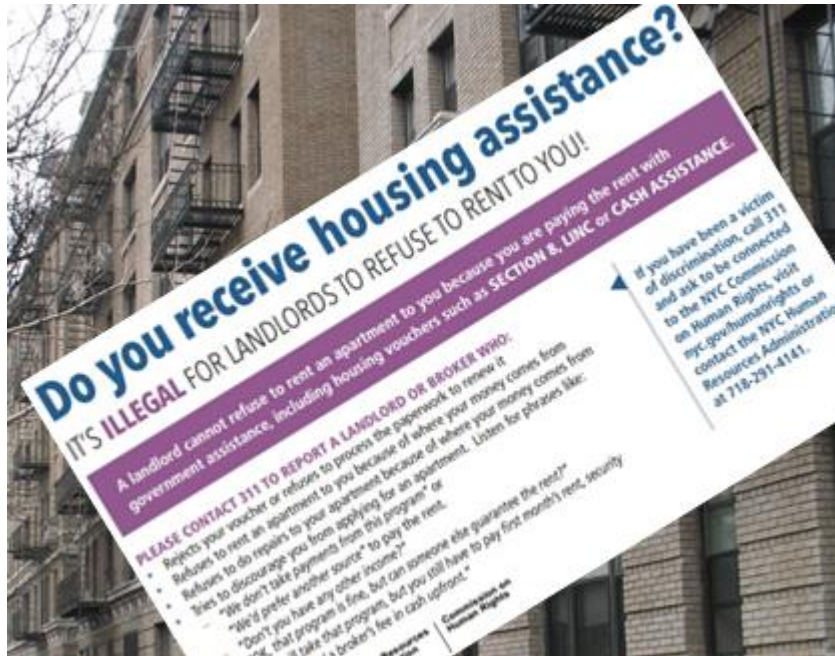
Panel Four

Jacob Bogre, Executive Director, Association for Africans Living in Vermont. The Association for Africans Living in Vermont provides services to newly arrived refugees and immigrants of all ethnic origins. It assists refugees during their housing search, rental period, and lease termination processes.

Sarah Launderville, Executive Director, Vermont Center for Independent Living. The Vermont Center for Independent Living is a statewide nonprofit organization that promotes the dignity, independence, and civil rights of people with disabilities ranging from physical or sensory to developmental or mental health issues. The Vermont Center for Independent Living provides peer advocacy counseling, technical assistance, and funding programs for home access modifications and assistive technology services.

Mary Brown-Guillory, President, Champlain Area NAACP. The Champlain Area NAACP is the first Vermont chapter of the national civil rights advocacy organization. In the area of housing discrimination, the Champlain Area NAACP assists people of color, many with disabilities, who file complaints related to the availability of housing in the region.

Examples of Efforts to Inform Tenants of Their Rights Relating to Housing Discrimination⁹¹



⁹¹ Jarrett Murphy, *City Has a Tool to Police Section 8 Discrimination*, CITYLIMITS.ORG (May 16, 2016), <https://citylimits.org/2016/05/16/city-has-a-tool-to-police-section-8-discrimination/>; *C.R. bus ads focus on gender identity, sexual orientation, race*, THE GAZETTE (July 14, 2016), <https://www.thegazette.com/subject/news/government/cr-bus-ads-focus-on-gender-identity-sexual-orientation-race-20160714>.