

HOUSING AND THE LAW: LESSON 7: HANDOUT 1: SUMMARY OF CASE**TEXAS DEPT. OF HOUSING V. INCLUSIVE COMMUNITIES PROJECT,
INC.¹****Summary****Background and Facts of the Case**

The federal government gives state agencies **low-income housing tax credits** that they then give to real estate developers. These credits provide tax incentives to build affordable housing for low-income residents. Congress allows states to develop their own plans in making guidelines for who receives the credits. These guidelines have to have public housing waiting lists. The real estate developer must also talk about how their building will benefit or “revitalize” a community. Federal law favors giving tax credits to real estate developers who want to build in low-income areas.



In Texas, the Texas Department of Housing and Community Affairs gives out tax credits. State law makes real estate developers apply for tax credits. Their application is scored by a point system. This point system gives more points to projects that are not too expensive. The law also considers how much money possible tenants will make and whether or not housing will be built in neighborhoods with good schools.

The Inclusive Communities Project (ICP)

The Inclusive Communities Project, Inc. (ICP), is a non-profit corporation that helps low-income families in finding affordable housing. In 2008, the ICP sued the Texas Department of Housing in **district court**. The ICP claimed that the Department was **liable** for **disparate impact**. They claimed that the Department caused segregation because it provided too many credits for housing in largely Black inner-city neighborhoods rather than in white suburban areas. The ICP believes that the Department should change its criteria so that it will build more affordable housing in the suburbs.



The district court decided that the ICP made a **prima facie** case of disparate impact, which means that they concluded there was harm done based on first impression. The ICP also brought statistics, or numbers, to show that the Department had developed more low-

¹ Adapted from <https://www.law.cornell.edu/supremecourt/text/13-1371#writing-13-1371> OPINION 3

income housing units in predominantly Black areas. The court also found that 92% of tax credit units in Dallas were in areas with a ratio of less than 50% white residents.

The district court asked the Department to prove that it had not caused disparate impact. It held that the **defendant**, which was the Department, had to show that there were no other “less discriminatory alternatives” in order to advance their interests in providing affordable housing. The court found that the Department could not prove this, so it ruled in favor of the ICP.

In its **remedial order**, the district court ruled that the Department must create additional criteria that determined which developers receive tax credits. It specifically awarded points for units built in neighborhoods with good schools and disqualified sites that were located in areas with high crime or hazardous conditions, such as being next to a landfill. The order did not offer the use of **racial quotas** to achieve these goals.

The Department appealed this decision from the district court. Meanwhile, the U.S. Department of Housing and Urban Development (HUD) made the call to interpret the Federal Housing Act (FHA) as being able to address disparate-impact liability. Under this regulation, the **plaintiff** must show that the defendant’s action caused discrimination. Once discrimination is established, the defendant must prove that its actions were necessary with no other alternative option to achieve its goals. In this case, goals would include the development of affordable housing for families with low-income.

The Court of Appeals for the Fifth Circuit agreed with the district court and held that disparate-impact claims were recognized, or **cognizable**, under the FHA. However, it claimed that the district court should not have made the Department prove there were no less-discriminatory options for distributing housing tax credits. Instead, the district court should reexamine the statistical evidence provided by the ICP. Perhaps federal law made it difficult for the Department to make a different choice in the way it distributed tax credits. If that were the case, there is no disparate-impact liability.

The Department filed a petition for a **writ of certiorari** on the question of whether disparate-impact claims are cognizable under the FHA. The case went to the Supreme Court.

Legal Issue/Question for the Supreme Court

Was it appropriate for the district court to use the Fair Housing Act (FHA) to decide whether or not there was disparate-impact liability?

Ruling and Reasoning

In a majority 5-4 opinion, the Court ruled that the language of the Fair Housing Act (FHA) focused on consequences of actions rather than intent, meaning that it covered disparate-impact claims. Disparate-impact liability is consistent with the FHA’s goals of preventing discrimination in housing practices. However, plaintiffs must present a strong case that the consequences of an actor’s actions *caused* discrimination. Racial differences across neighborhoods with low-income housing is not enough to prove that this was a direct consequence of an action.²

² See <https://www.oyez.org/cases/2014/13-1371>