



## ***Upholding Equal Opportunity***

*Suggestions for talking about* Mount Holly v. Mount Holly Gardens Citizens in Action, Inc.

The case of *Mount Holly v. Mount Holly Gardens Citizens in Action*, which was scheduled for oral argument on December 4, 2013, has been settled by the parties. However, the question posed by the case – whether the Fair Housing Act prohibits the full range of discriminatory obstacles to housing, or only those that a court finds to be motivated by subjective discriminatory intent – is likely to be an ongoing point of contention. Over the Act’s 45-year history, lower courts and the Department of Housing and Urban Development have consistently held that it outlaws both intentionally discriminatory acts and policies or practices that have an unnecessary or unjustified “disparate impact,” based on certain covered characteristics—race, color, religion, sex, disability, familial status, or national origin.

The parties—a New Jersey township and residents of a minority community that the township largely demolished to develop much more expensive housing—have chosen to settle the matter for the benefit of all. This memo offers recommendations for communicating about underlying issues as well as the benefits of the resolution of the case. The memo is intended for use by supporters of a full and robust reading of the Fair Housing Act that includes disparate impact claims.

### Specific Talking Points on the Settlement

- The settlement resolves the matter in a way that benefits the town and all of its residents:
  - that unifies the parties;
  - that makes clear that Gardens residents, like everyone in the town, are valued members of the community;
  - that advances the town’s goals for redevelopment and greater economic prosperity;
  - that expands housing opportunities for everyone.
- This settlement upholds fair housing and the basic American values of equal opportunity that benefit everyone in our nation.
- Re disparate impact: It’s common sense that arbitrary and unnecessary barriers to equal housing opportunity should be set aside in favor of approaches that serve all people fairly. This has been established law for decades, and it was recently reaffirmed by the Department of Housing and Urban Development. That continues to be the case in light of this settlement

## Framing and Narrative

We believe the resolution of this case should be framed in terms of America’s interest in protecting equal opportunity and freedom from discrimination for everyone, a responsibility that benefits all of us and is shared by cities and states around the country. We should describe as commonsense the notion that all forms of avoidable housing discrimination should be set aside to allow more fair and effective solutions. For example, “policies that serve no important purpose, yet discriminate in practice, should fail under the Fair Housing Act.” Where appropriate, we should discuss the continuing need for the disparate impact standard by making visible the structural and institutional barriers to fair housing, like zoning ordinances that prohibit the building of smaller homes or apartments that working people can afford, which in many places excludes most people of color.

We recommend breaking the stereotype of minority communities as inherently “blighted” by lifting up a positive image of Mount Holly Gardens, the community at issue in this case. In their

Supreme Court brief, Gardens residents described their neighborhood as a “close-knit” and “cohesive community ... with unusually high rates of minority home-ownership.”<sup>1</sup>

Opponents of fair housing laws have already begun to portray the settlement of the case inaccurately as an attempt to “buy” a better resolution of the case than could have been achieved in court. Rather than repeating or “mythbusting” that flawed argument, we should tell our affirmative story.

*For example:*

- ▶ “This case was about the obligation of cities and towns to protect equal opportunity in housing. That includes avoiding unnecessary policies that discriminate in practice, as well as those that are intentionally discriminatory. Mount Holly did the right thing by devising a resolution that works for all.”
- ▶ “The resolution of this case will benefit *all* residents of the township as well as protecting fair housing principles core to the intent of the Fair Housing Act.”
- ▶ “Settlement in this case reinforces the well-established understanding that the Fair Housing Act prohibits discrimination in practice, as well as discrimination by design. That’s been the law for over 45 years, and we’re confident that it will remain the law.”  
*Note: Opponents will similarly describe the disparate impact standard as affirmative action (which it is not), as well as “racial bean counting” and closet “quotas.” With the public and the media, it is important to avoid arguing within that frame, but rather, to use our own frame of a resolution that protects fair housing and equal opportunity for all.*
- ▶ “If a policy unnecessarily impacts people of a particular racial or ethnic group, or families with children, for example, it’s common sense that it should be set aside in favor of one that accomplishes the same goal fairly, effectively, and without discrimination. That’s been the law for over forty years, and it’s appropriate that it will continue to be the law.”
- ▶ “Governments have a responsibility to ensure equal opportunity and freedom from discrimination for everyone. That requires watching how different policies play out on the ground. When a city or town has evidence that a particular policy (such as the proposed redevelopment plan) is likely to be discriminatory, it has a responsibility to reexamine or abandon that process and find one that’s fair and effective.”

## Facts of the Case:

*Q: What happened to start the case?*

*A:* The case involves a redevelopment plan for a cohesive Mount Holly neighborhood (“the Gardens”), containing the only predominately minority population in the Township. The redevelopment plan would have demolished the neighborhood to build new dwellings that few of the current residents would have been able to afford, thus excluding most of the town’s minority residents. For this reason, the Gardens’ current residents sued, arguing that the redevelopment plan violated the Fair Housing Act. The district court dismissed this argument, and the court of appeals reversed the lower court’s ruling, holding that the residents had established that they would experience an unlawful “disparate impact” under the redevelopment plan.

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<sup>1</sup> [www.sblog.s3.amazonaws.com/wp-content/uploads/2012/09/11-1507-MtHolly-USSCT-Petition-BIO-Final.pdf](http://www.sblog.s3.amazonaws.com/wp-content/uploads/2012/09/11-1507-MtHolly-USSCT-Petition-BIO-Final.pdf) at pp. 1-3

*Q: What is the significance of the Fair Housing Act today?*

A: The Fair Housing Act represents our national commitment to equal opportunity for all. The Act is critical because, despite the progress that our country's made, discrimination and segregation still persists in many communities around the nation. Those harms hold us back as a nation, and they prevent millions of Americans from accessing housing. That, in turn, often worsens their access to quality education, employment, public services, and a healthy environment, among other opportunities. Congress recognized this when it passed the Fair Housing Act, and has since reaffirmed this determination. Today, the Fair Housing Act continues to protect Americans of all races, religions, abilities, and families from discrimination and segregation in housing.

*Q: Why is disparate impact liability such an important part of the Fair Housing Act?*

A: The Fair Housing Act recognizes that actions that have the consequence of perpetuating exclusion and unequal access to housing can be just as harmful to society as intentionally discriminatory acts.

*Q: Won't this settlement rob the Court and the nation of the chance to consider what the Fair Housing Act says in this situation?*

A: Settling cases through mutual agreement of the parties is an established and effective way of resolving legal disputes. The Supreme Court's role, as required by the U.S. Constitution, is to take up only active controversies. When the parties come to an agreement, as they were able to do here, there's no case to be decided. That's how our legal system has always operated, and, in this case as in many others, it serves the interests of justice.

The meaning of the Fair Housing Act, and its coverage of all unjustified barriers to fair housing, are clear and well-established over more than four decades. In fact, the U.S. Department of Housing and Urban Development just reaffirmed that through federal regulations. So the law is clear, and it continues to protect the rights of all Americans throughout our nation.

*Q: What are the terms of the settlement?*

A: The terms of the settlement include the construction of 44 new emerging market homes on an expedited schedule within Mount Holly Gardens. 20 of these 44 houses will be provided to current residents of the Gardens in exchange for allowing the redevelopment of their existing homes, at no adverse economic consequence to them. Existing residents will have the right to remain in their community pending the development of the new homes, and seven households that have chosen to relocate out of the neighborhood will be compensated. The remainder the of Gardens development will move forward, creating additional new homes as well as commercial and retail development that will provide significant economic benefits to Mount Holly Township.

*Q: What is the impact of the settlement?*

A: The disparate impact standard continues to be an important tool in the effort to combat housing discrimination.

*Q: Who paid for the settlement?*

A: TRF Development Partners, Inc., a Philadelphia-based leader in neighborhood revitalization and supporter of community development in New Jersey for decades, will develop the 44 new homes in Mount Holly.

*Q: Does the settlement involve quotas?*

A: No, the parties have agreed to protect current residents of the Gardens from a redevelopment plan that would have effectively destroyed the Township's only predominately minority neighborhood. In terms of the Fair Housing Act, the decision of the Court of Appeals remains the law in the Third Circuit, and it is consistent with how every court of appeals has interpreted the Act.

*Q: Isn't this just an example of rich interests buying the outcome of a case?*

A: This is an example of two opposing parties who were able to work out their differences and settle a case in a way that benefits everyone. That's how the system is supposed to work.

*Q: Aren't these fair housing cases settling because civil rights groups are afraid the Court will strike down that part of the Fair Housing Act?*

A: This was a lawsuit between residents of Mount Holly Gardens and the town, and those two groups came together to resolve the matter in a way that benefits everyone.

## See Also:

- [Toppling Barriers to Opportunity: Talking About HUD's Disparate Impact Regulations](#)
- [Respondents brief in \*Mount Holly\*](#)
- [Opportunity Agenda, PRRAC, et al. amicus brief](#)
- [Vision, Values, and Voice: The Opportunity Agenda's Communications Toolkit](#)
- [Ten Lessons for Talking About Race](#)

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