



# **2022–2027 AI (Analysis of Impediments)**

## **Planning Implications for Housing and Community Development in Idaho**

- What Cities and Counties Need To Know: Overview
- AI Executive Summary
- Best Practices
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# What Cities and Counties Need to Know: An Overview



Spanish-language listening session; Idaho Rural Partnership Community Review. photo credit, IHFA

## Fair housing compliance: local government considerations

**Why should you read this?** Idaho cities and counties struggle to provide essential services to growing populations in the face of limited budgets. The last thing any community or county needs is litigation stemming from a *fair housing\** or *false claims\*\** complaint. This overview should get you thinking about increased compliance with federal laws, thereby reducing costly liability (see *Legal implications and liability* below). Non-compliance can also make your jurisdiction (and local housing and service providers) ineligible to receive federal housing and community development funds.

**Note.** *This document is not a substitute for expert legal guidance.*

**\*What is Fair Housing?** The Fair Housing Act (aka [Title VIII of the Civil Rights Act of 1968](#)) guarantees *the right of all people to be free from discrimination in the rental, sale or financing of housing*. In other words, it gives *everyone the right to live where we choose and can afford, regardless of our association with a protected class.* ‡

The Fair Housing Act (FHA) covers everyone, since we all belong to one or more ‘protected class’—regardless of politics, origin or beliefs. ‡Protected class refers to populations characterized by *race, national origin, sex, color, religion, familial status and/or disability* (70% of Americans will experience some form of disability in our lives).

**\*\*False Claims** The [False Claims Act](#) (FCA), 31 U.S.C. §§ 3729 – 3733—is a federal statute created in 1863 to address Civil War defense contractor fraud. A modern-day False Claims settlement arose from *U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester Co.* In brief, when a recipient of federal funds (i.e., Community Development Block Grant or HOME funds) receives or distributes those funds, they do so on condition that they will ‘affirmatively further fair housing,’ taking ‘meaningful actions’ to address discrimination. An accurate *Analysis of Impediments* is required to affirm the barriers to fair housing and the actions needed to overcome those barriers.

The intent of the original FCA provided that ‘...any person who knowingly submitted false claims to the government was liable for double the government’s damages plus a penalty of \$2,000 for each false claim.’ Subsequent amendments now make violators liable for *treble damages*, in addition to a penalty indexed to inflation.

See more under ‘**Sample Case Law.**’

**What is an Analysis of Impediments?** The [2022–2027 Analysis of Impediments \(AI\)](#) examines policies and practices among Idaho’s cities, counties and housing industry to determine potential barriers to fair and equal access to housing for all Idahoans. This process was coordinated by the Idaho Housing and Finance Association (IHFA) and the Department of Commerce (Commerce) and conducted by [Root Policy Research](#). The goals of this process are to provide practical strategies that increase compliance with fair housing law, reduce discrimination and liability, identify land-use, planning or zoning policies that limit access to housing choice, and pursue equitable distribution of resources to serve all constituents and cultivate economic opportunity.

All recipients of federal funds should review the [Analysis of Impediments](#).

**What is an impediment?** According to HUD, impediments to fair housing choice are:

- Actions, omissions, or decisions *taken because of* race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choices.

*Example.* Idaho does not recognize *familial status* as a protected class. This eliminates Idaho’s control over enforcement and access to funding, although familial status is still covered under federal law.

- Actions, omissions, or decisions *that have the effect of* restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin. This is sometimes referred to as *disparate treatment* or *disparate impact*. Disparate—or adverse—impact generally refers to unintentional discrimination, whereas disparate—or adverse—treatment is intentional.

*Example.* Applying a rule or requirement only to families with children could be considered *disparate treatment*.

*Example.* Administering the a *facially neutral* rule or requirement to all applicants may have a *disparate impact* on families with children.

- *Action or inaction* that constitutes or contributes to a ‘*denial of housing.*’ Denial of housing is a broad category and can include anything that *has the effect of* withholding or providing different information to people on the basis of a protected class. It can include arbitrary lease violations, lending terms, or eviction policies. This may include *subjective zoning laws* or *arbitrary permitting practices* and *NIMBY opposition* that limit otherwise conforming housing types or price points for diverse household income levels and needs. These practices directly or indirectly concentrate poverty and limit housing choice.

While *poverty* is not a protected class *per se*, members of protected classes (people with disabilities, women, families with children, minority races, religions, etc.) are significantly more likely to live in poverty. As a result, limiting or segregating affordable housing choices in low-income neighborhoods and areas of disinvestment *have the effect of* denying housing for households associated with those protected classes.

**Affirmatively Furthering Fair Housing (AFFH).** Beyond basic education and outreach, any recipient of federal funds related to housing and urban development must document actions that ‘affirmatively further fair housing’ in your jurisdiction. You must:

1. Conduct an analysis to identify impediments to fair housing choice within the jurisdiction (if required), and take specific actions that promote fair housing choice.
2. Take appropriate actions to overcome the effects of any impediments identified through the analysis,
3. Maintain records reflecting the analysis and actions taken in this regard.

**Prohibitions vs Meaningful Actions.** Statutory provisions of the Fair Housing Act (FHA) and Affirmatively Furthering Fair Housing (AFFH) are different obligations:

- FHA focuses on what is **prohibited** (e.g., “otherwise make unavailable or deny” housing)
- AFFH **requires** that recipients of federal funds take **meaningful actions** to address segregation and related barriers limiting members of a protected class.

**AFFH Tool.** In late 2022, HUD released the Affirmatively Furthering Fair Housing Data and Mapping Tool (AFFH-T) Video Series. According to HUD, the tool “...provides guidance to fair housing professionals about how the AFFH-T and other local data sources can be used to analyze local conditions as part of a fair housing analysis and planning process. *See more under ‘Tools and Resources.’*”

**Why it matters.** Noncompliance is painful and costly for everyone. Everyone in America has the right to live where we choose and can afford. When this choice is denied due to intentional or unintentional discrimination, it limits access to employment, quality education and essential services. Discrimination also undermines healthy community and economic development by limiting diversity and reducing productivity. Finally, discrimination costs taxpayers, housing professionals and service providers money when complaints are filed, regardless of basis. This money is better spent providing essential services and infrastructure or on more affordable housing choices for everyone.

**Who should consult the AI?** The AI examines all aspects of housing: rental, sale, marketing and lending; planning, zoning, and land-use policy; and other decisions affecting the location and type of housing constructed in Idaho. Clearly, everyone involved in Idaho’s housing industry should be familiar with fair housing rights and responsibilities. Beyond this, we strongly encourage the following groups to obtain a full copy of the 2011 AI and understand its impact on their decisions and liability:

- *Elected officials.* County commissioners, city councils, mayors and legislators.
- *Policy makers.* Those contributing to or implementing government policy.
- *Legal Counsel.* City, county and state attorneys, as well as those representing housing and service providers. Fair housing law is very specialized and case law is always evolving; it is critical that attorneys for these groups understand the need for up-to-date and extensive knowledge to identify and address potential liability.
- *City, County, Special Districts, and non-profit staff.* Those involved in receiving, distributing, or otherwise administering federal funds originating from HUD and used to support housing or community development activities (including emergency shelter and transitional housing).
- *Housing professionals.* This includes lenders, REALTORS®, property managers, housing authorities, building officials, public housing authorities and landlords.

## Legal implications and liability

**Legal Expertise.** Many attorneys specialize in fields like environmental, corporate or family law. Civil Rights defense law is another specialty area. Standard legal approaches may not anticipate or protect against a Fair Housing complaint. Where client behavior or policy is alleged to result in *'disparate treatment'* or *'disparate impact'*\* on one or more protected classes defined by the Fair Housing Act can lead to liability. An otherwise *facially neutral* action or policy—applied equally to all persons—may appear to have an unintended but *disparate* or unequal impact on members of a protected class and lead to a complaint.

Fair Housing law is complex and dynamic; expert civil rights defense counsel is essential to determining liability and reviewing complaints before any action is taken. Once a complaint is filed—whatever its basis—legal and administrative fees start to add up.

**\*Disparate Impact Case Law.** In June of 2015, the Supreme Court affirmed in [Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.](#) that—despite 'good-faith efforts' to provide quality affordable housing for all residents—an organization or entity can still be found non-compliant if actions or omissions *'have the effect of discriminating'* against one or more protected classes under the Fair Housing Act. The court, however, set a high burden of proof to demonstrate a 'pattern and practice' of not just disparate treatment, but measurable impact involving a defined protected class.

Other court decisions have further defined who has standing to file complaints under the Fair Housing Act, also known as an *aggrieved person*. In *United States: Developers Attack "NIMBYism" - Using the Fair Housing Act as a Sword* (Mondaq, 2003), courts have established that an aggrieved person includes:

*"...any person who...claims to have been injured by a discriminatory housing practice," including "corporations, partnerships and associations." 42 USC §§3602(i)(1) and 3602 (d). The Act, therefore, not only protects the rights of minorities and families with children, but also protects the rights of real estate owners, developers and managers to build and operate affordable housing, even if the owners are primarily motivated by profit."*

Our ultimate aim is encourage Idaho cities and counties to take proactive steps to review and remedy potential barriers and reduce unintended violations and exposure before injuries or complaints occur.

For more information and an overview of legal requirements for local government and planning professionals, see [NIMBY Equity and Liability: Why Planners Need to Understand Fair Housing Law](#), from the 2022 APA Idaho Chapter Conference, 'One Idaho For All.' Watch the session video [here](#) (Courtesy, [APA Idaho Chapter](#)).

## 2022–2027 Analysis of Impediments

The [2022-2027 Analysis of Impediments](#) consists of several components, from an overview of demographic shifts and population diversity to housing market supply and demand, and access to economic opportunity. The document also features findings based on stakeholder and expert perspectives, a review of regulatory issues, and the main focus: an assessment of fair housing compliance and impediments, and a Fair Housing Action Plan to address barriers.

The study is conducted every five years by jurisdictions receiving either ‘entitlement’ funds (for cities over a certain population size that received direct HUD funding) or ‘non-entitlement’ funds, often state-level entities that administer HUD programs to the ‘balance of state.’ In Idaho’s case, the balance of state is served by the Idaho Housing and Finance Association (for housing programs) and Idaho Commerce (for Community Development Block Grant or CDBG funds).

**Note.** *Any recipient or administrator of federal funds should review the 2022 AI to understand compliance measures required as a condition of funding.*

**From the Executive Summary.** “This study examines barriers to housing choice in the State of Idaho. This study is a joint effort between the Idaho Housing and Finance Association (IHFA) and Idaho Commerce (Commerce). The study was conducted to:

- Identify the state’s greatest housing needs and how these have changed during the past five years;
- Illustrate the role of housing choice and diversity in Idaho’s overall economic and employment health;
- Pinpoint the resident groups with the greatest housing needs;
- Identify private sector actions and public sector regulations that interfere with housing choice; and
- Understand how housing choice affects residents’ access to economic opportunity and state and local economic development.”

Below are key impediments and corresponding broad action items identified in the document.

**Impediment No. 1:** Many Idaho workers earn low wages that have failed to keep pace with housing cost increases and some residents remain unemployed despite a strong labor market. These residents face persistent cost burden.

**Action item No. 1:** Address workers’ and residents’ housing needs through incentives, funding, and technical assistance.

**Impediment No. 2:** Housing needs persist—and disproportionately affect persons with disabilities and racial and ethnic minority households.

**Action item No. 2a:** Reduce disparities in housing needs among persons with disabilities and racial and ethnic minority households.

**Action item No. 2b:** Increase the number of accessible and visitable housing units and accessible neighborhoods for persons with disabilities.

**Impediment No. 3:** Idaho’s regulatory stance on laws affecting affordable housing does not actively facilitate housing production.

**Action item No. 3:** Support legislative efforts to expand housing choice.

**Impediment No. 4:** Knowledge of fair housing laws and rights could be improved to facilitate housing choice.

**Action item No. 4:** Continue fair housing education and outreach and further local governments' adoption of AFFH principles.

## Data Dashboard

At the request from IHFA and Commerce, Root Policy Research created an online, data-driven report featuring key indicators related to housing choice in three areas:

- demographics,
- housing market, and
- economic indicators

The following geographies are included for comparative purposes:

**Study area:** State of Idaho

**Subareas:** all counties in Idaho

**Surrounding geographies:** Montana, Oregon, Washington, Utah, and Wyoming

**Comparison geography:** United States of America

**The Analysis of Impediments includes a companion Data Dashboard containing valuable information on Idaho's Demographics, Housing Market and Economic Indicators. Visit: [reports.mysidewalk.com/209b1e773e](https://reports.mysidewalk.com/209b1e773e)**

As datasets and resources are available, the Dashboard will be updated to reflect changes.

## Best Practices for Communities

**Public awareness.** Among other things, the recent AI recommends that cities and counties raise awareness of fair housing rights and responsibilities among staff, elected officials, housing professionals and the general public. This can be as simple as posting a link to available fair housing materials on official web sites, displaying posters and brochures with a referral to additional fair housing information, and/or creating opportunities for local stakeholders to participate in education and outreach activities. These are good first steps, and must be followed up with additional actions, some of which are referenced here and in the current AI.

IHFA and Commerce make several resources available to cities and counties at no cost. These include the 2011 Fair Housing Campaign poster, video and radio public service announcements (PSAs), and a dedicated web site at [www.fairhousingforum.org](http://www.fairhousingforum.org). The campaign is a partnership with the 2-1-1 Idaho Care Line, which provides information

and referral for any caller with a fair housing question. Idaho's seven entitlement communities (Coeur d'Alene, Lewiston, Nampa, Meridian, Boise, Pocatello and Idaho Falls) are also a good source of information on local public awareness strategies.

**Visitability in Single-Family Residential Subdivisions.** Another recommendation of the AI would expand market opportunities for Idaho homebuilders and reduce Idaho's Medicaid liability by encouraging more single-family homes accessible to Baby Boomers and their parents. The AI suggests adopting voluntary single-family design and construction practices that follow minimal access guidelines found in the International Building Code (IBC) or Visitability guidelines detailed at [Visitability.org](http://Visitability.org).

In practice, this adds significant value to most homes without adding additional costs, and makes them attractive to a much wider customer base. It also creates an accessible residence that (by some estimates) can save the State of Idaho between \$23,882 and \$60,873 per resident/recipient in annual Medicaid costs for home- and community-based care over the institutional care required when accessible housing is unavailable.

See more at: [\*Inclusive Design Gets Customers in the Door\*](#)

Economic Development Implications. With an aging population, more local accessible housing also means family members who are aging or temporarily/permanently disabled can live at home longer. Most rural communities lack quality care facilities, so when mobility decreases, individuals leave rural Idaho for regional population centers. Over time, these resources can make a difference in local economies. Communities with accessible housing attract and retain retirees and their families—along with their incomes and skills—and create local jobs for home health professionals.

Examples of ordinances addressing access are found in the Arvada, Colorado, Municipal Code, (Chapter 18, Article XIV, 'Visitability') and the Pima County, Arizona, [\*Inclusive Home Design Ordinance\*](#) (both are based on the American National Standards Institute's publication A117.1, 'Accessible and Usable Buildings and Facilities', published by the International Code Council). Pima County's authority to adopt these types of building standards was upheld in *Washburn v. Pima County*, 81 P.3d 1030 (Az. Ct. Ap. 2003).

The Pima County ordinance simply requires that new homes in the unincorporated county around Tucson be built with at least one entrance with no step, and doors at least 32 inches wide. It also requires:

- Lever door handles;
- Reinforced walls in ground-floor bathrooms so it's easy for an occupant to install grab bars;
- Switches no higher than 48 inches; and
- Hallways 36 inches wide throughout the main floor.

The Pima County ordinance was the first to require a zero-step entry in new single-family homes.

## Moving forward

Idaho is in a strong position to consider bolstering its approach to housing policy with an eye toward narrowing disparities in needs and promoting access to economic opportunity. This is because:

- The state is in a sound position economically;
- The infusion of federal funding presents a unique opportunity to invest in and leverage innovative and effective housing solutions;
- There is a growing recognition that housing challenges impair long term economic growth; and
- Needs are at a more manageable level with the state's overall decline in poverty.

### Historic Context: County land-use, zoning impediments identified in the 2011 Analysis of Impediments

The ability of private real estate markets to meet affordable housing needs is strongly affected by zoning, subdivision, and land development regulations adopted by local governments. Local regulations that are intentionally or unintentionally exclusionary can offset the impact of affordable housing subsidies or increase the amount of subsidies necessary for the market to meet affordable housing needs.

County land use regulations that attempt to promote housing choice should include as many of the following tools as is consistent with the county's future development plans. While it is not necessary that each county code include all of these types of provisions, including more of them will further reduce barriers to housing choice.

The recommendations below support a range of housing choice and price, essential to compliance with fair housing law. Housing that is affordable at different income levels also represents a *perpetual wage subsidy* for local employers. The resulting housing assets become part of a community's permanent infrastructure and represent a recruitment and retention tool for employees and employers alike.

*Purpose statement.* The code should reflect the county's purpose to provide housing choice for its residents and to comply with applicable federal and state law regarding housing choice.

*Small lots.* At least one zone district (or overlay district or permit system) that allows small lots for single-family detached housing in some locations. While the appropriate minimum lot size will vary with the character of the county, a zone allowing minimum lot sizes in the 3,000-6,000 square foot range would be appropriate for more urbanized areas of many counties. In addition, lot width requirements should be reasonable and consistent with minimum lot sizes; while some codes require minimum lot widths of 70 feet or more, small homes can be constructed on lots as narrow as 40 feet (or even less). Minimum lot size requirements are the type of regulation most responsible for increasing housing costs.

*Multifamily parcels.* At least one zone district (or overlay district or permit system) that allows the construction of multifamily housing, and mapping enough land into this district to allow a reasonable chance that some multifamily housing will be developed. In many rural counties, these mapped areas may be close to incorporated or urbanized areas. Maximum heights should be reasonable and consistent with the maximum density permitted; avoid mapping areas for multifamily densities and then imposing height restrictions that prohibit efficient development at those densities. Failure to provide opportunities for multifamily development has been identified as one of the four leading regulatory causes of increased housing costs.

*Manufactured homes.* Manufactured housing meeting HUD safety standards should be allowed somewhere (per the federal Manufactured Housing Act of 1974). While restricting these homes to manufactured home parks is common, the better practice is to allow them in at least one residential zone where the size and configuration matches the scale and character of the area.

*Minimum house sizes.* The zoning and subdivision regulations should not establish minimum house or dwelling unit sizes (beyond those in the building code). Minimum house size requirements have also been identified as a significant cause of increased housing prices in those communities where they are in place.

*Group housing.* The code should clarify that housing for groups protected by the Fair Housing Act Amendments of 1988 are treated as residential uses, and should generally allow those group housing uses in at least one residential district. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking. Failure to provide for these uses in the code could subject the county to a developer's request for "reasonable accommodation" under the Act, and failure to provide "reasonable accommodation" could be a violation of federal law. In light of the aging of the American population, the code should also provide areas where congregate care, nursing home, and assisted living facilities may be constructed.

*Accessory Dwelling Units.* The code should allow accessory dwelling units in at least one zone district—either as an additional unit within an existing home structure or in an accessory building on the same lot. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking.

*Mixed Use.* In order to promote affordability, housing should be allowed near businesses that employ workers, particularly moderate- and lower-income employees. To do that the code should permit residential units in at least one commercial zone district or should map some lands for multifamily development in close proximity to commercial districts.

*Lower parking standards.* Although the traditional standard of two parking spaces per dwelling unit may be reasonable for many areas of a county, a lower standard can and generally should be used for affordable housing, multifamily housing, group housing and special needs housing.

*Flexibility on nonconforming structures.* Although zoning codes generally require that nonconforming structures damaged or destroyed through fire or natural causes can only be rebuilt in compliance with the zoning code, an increasing number of codes are exempting affordable housing from this requirement. Often the most affordable housing in a community is located on lots that are too small or narrow for the district where they are located, or in multifamily buildings that have too many units for the district where they are located. If forced to replat with larger lots or to reduce density following a disaster, those affordable units may be lost, and allowing rebuilding with the same number of units as before may be the most efficient way to preserve these units in the housing stock.

*Incentives.* In order to encourage the development of affordable housing, the code should recognize the difficult economics involved and should offer incentives. Common incentives include smaller lots, increased density in multifamily areas, reduced parking requirements, or waivers or reductions of application fees or development impact fees. Some communities provide additional incentives for housing that is restricted for occupancy at lower percentages of the Area Median Income (AMI).

For example, developments restricted for households earning less than 50 percent of AMI could receive more generous incentives than those for households earning less than 80 percent of AMI. While zoning and subdivision incentives alone are often not enough to make development for lower levels of AMI economically feasible, they can be part of a broader package of incentives (i.e., including financial incentives or land contributions) that make those projects feasible. Any incentives offered should be updated as new housing studies are completed and new information about specific affordable housing needs is obtained.

*Growth management exemptions.* Most communities that operate a growth management system exempt affordable housing or allow it to compete for a separate pool of development rights in order to encourage this type of housing.

### **Downtown retail: where access and commerce meet**

The Ramp Up Idaho project started as a conversation among Idaho Rural Partnership community and economic development professionals who noted that **barriers to access = barriers to commerce**. Many rural communities lack a unified approach to accessibility; although many resources are available to fund improvements, few businesses or local governments know where to start.



Ramp Up Idaho aims to change this through outreach, building partnerships and connecting businesses, chambers and communities with available resources and accurate information. By getting various stakeholders to talk about planned downtown projects early enough to leverage investments and existing capacity to remove barriers in more cost effective ways.

Current demographic projections mean Idaho communities need to take access seriously if we want to recruit and retain population and economic vitality. If folks can't get in the door, they aren't customers.

Visit [www.rampupidaho.org](http://www.rampupidaho.org) or [www.facebook.com/RampUpIdaho](https://www.facebook.com/RampUpIdaho) to learn more.

### **Summary**

The above information and examples represent a starting point for local and regional discussions; it is critical that every Idaho city and county conduct an internal review of policies and procedures that could expose government officials and taxpayers to liability. Ignorance of the law or good intentions are not a defense if you are found in violation, and complaints—even those without a clear basis—require a diversion of scarce resources to review and defend. Since fair housing law is very specialized, it may be worthwhile for cities and counties to pool resources with other jurisdictions to seek expert civil rights counsel that can help all involved move toward compliance and resolve complaints more effectively.

Direct questions or comments to: [ICDBG@community.idaho.gov](mailto:ICDBG@community.idaho.gov) or [hirc@ihfa.org](mailto:hirc@ihfa.org).

## Tools and Resources

**Idaho Data Dashboard.** *Interactive component: Idaho Data Dashboard.* Data elements collected for the 2022-2027 Analysis of Impediments can be easily accessed online:

<https://reports.mysidewalk.com/209b1e773e>

The Data Dashboard presents key indicators related to housing choice in three sections including demographics, housing market, and economic indicators—with peer state comparisons for select variables.

*Data and Fair Housing Planning: Affirmatively Furthering Fair Housing Data and Mapping Tool Video Series.* This video series includes trainings on the following topics:

- [\*Introduction to the AFFH-T\*](#)
- [\*How to Use the AFFH-T for Fair Housing Planning\*](#)
- [\*How to Find and Use Local Data in Fair Housing Planning\*](#)

HUD's Fair Housing Planning Guide <http://www.hud.gov/offices/fheo/images/fhpg.pdf>

Idaho Fair Housing Forum [www.fairhousingforum.org](http://www.fairhousingforum.org) (general information on fair housing issues; see 'Resources and Links' after reading and agreeing to the Waiver of Liability.)

2-1-1 Idaho Care Line [www.211.idaho.gov](http://www.211.idaho.gov) (Information and referral for fair housing questions)

## Sample Case Law

**Aggrieved Person.** In the first fair housing case to go before the Supreme Court, the Justices affirmed that a plaintiff need not be a member of a protected class to be an "aggrieved person" under the broad interpretation of the FHA. *Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 209-10 (1972)* The court found that two white residents of an apartment complex had standing to challenge patterns of discrimination against black applicants in violation of the Civil Rights Act of 1968. According to the decision, all persons enjoy the right to be free from the adverse consequences of racial discrimination and accepted the plaintiffs' claim that they were injured in being deprived of the right to live in an integrated community, were deprived of business opportunities, and 'suffered from the stigma of living in a white ghetto.'

**NIMBYism.** The Supreme Court has also found that developers have standing as 'aggrieved persons' to file *Village of Arlington Heights v. Metropolitan Housing Development Corporation (S. Ct. 1977)*. The Court upheld the developer's standing to challenge a city's adverse decision blocking the development of a residential development featuring rent subsidies. Likewise, the Court established that 'discrimination' against protected classes 'need not be the exclusive or predominant reason for the locality's action,' but that '...the plaintiff need only establish that the discrimination was "a motivating factor" in the local government's decision' to deny a permit [that would otherwise .

**Disparate Impact.** In 2015 the Supreme Court heard *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project (ICP), Inc. et al.*, which centered on the following question: "Does the Fair Housing Act allow ICP to bring a disparate impact claim alleging the Department caused continued segregation housing patterns by allocating too many tax credits to housing in predominately black inner-city areas and too few to predominately white suburban neighborhoods?" The case alleged

that TDHCA's discretion in the allocation of Low Income Housing Tax Credits (LIHTC) perpetuated racial segregation in violation of the Fair Housing Act.

The court ruled that while disparate impact is implied under the Fair Housing, the burden was on the complainant to show a pattern and practice or actions that went beyond disparate *treatment to disparate impact*. A subsequent ruling on 8/26/16 by the U.S. District Court in Dallas, Texas dismissed The Inclusive Communities Project's (ICP) disparate impact case against The Texas Department of Housing and Community Affairs (TDHCA). From [www.cohnreznick.com](http://www.cohnreznick.com):

"In order to establish a prima facie case, ICP has to identify a policy that is creating barriers to fair housing and show that the policy is causing the statistical disparity. The court decision details the many ways that ICP's arguments failed to meet this standard. The court concluded that ICP failed to make a prima facie case and thus the disparate impact case against TDHCA was dismissed. To review in detail, refer to the [published memorandum opinion](#).

Although in this case it could not be proven that practices caused a discriminatory effect, it is important to remember the principles of Fair Housing still apply and must be adhered to in all cases under the law."

**Denial of Housing.** In *Alamar Ranch LLC v. Boise County*, a 2010 court ruling involving a residential treatment facility resulted in a \$5.4 million judgment (not counting legal costs) against Boise County, Idaho. County officials believed they were following standard procedures when reviewing the project application, responding to public testimony from constituents and ultimately granting permits. The complaint stemmed from a comment made by a county official in a public meeting, which indicated bias based on a protected class. Ultimately, the plaintiff's legal team persuaded the court that the net effect of the process constituted discrimination based on disability. Many feel the outcome might have been different with a more complete understanding of fair housing law at the outset. In November, 2011, [Judge Lynn Winmill](#) ordered Boise County to levy a tax on its property owners to repay the estimated \$5.4M resulting from the court case.

**False Claims.** In *U.S. ex. rel. Anti-discrimination Center v. Westchester County*, a U.S. District Court confirmed that local government eligibility for Federal Community Development Block Grant Funds requires certification that the city or county is in compliance with the Federal Fair Housing Act. This landmark case resulted in a \$53 million dollar judgment against Westchester County under the [\\*False Claims Act](#); the court found county policies and practices had the effect of segregating protected classes through a pattern of housing investment that concentrated minorities in certain portions of the county. The Plaintiff successfully argued that the county *falsely claimed* to be 'affirmatively furthering fair housing' in order to administer federal funds for housing and community development.