



## **DISPARATE-IMPACT CLAIMS RULED JUSTIFIABLE UNDER FAIR HOUSING LAWS**

**The United States Supreme Court has validated the use of the disparate impact theory of liability in fair housing discrimination cases.** The long-awaited opinion was issued on June 25, 2015. The case, Texas Department of Housing and Community Affairs vs. Inclusive Communities Project, held the impact or unintended consequences of policies and practices on protected classes can be considered discrimination under fair housing statutes. Although the Court cautioned disparate impact liability must be limited so businesses can continue to make practical business choices, apartment community policies, rules or practices could continue to be targets for discrimination claims based on disparate impact.

### **Background:**

A practice or policy is considered to have a discriminatory effect when it results in a dissimilar or unequal effect on a protected class of citizens.

The Supreme Court's ruling confirmed several lower appellate court rulings upholding disparate impact discrimination and the steps involved in proving a disparate impact case. The ruling also left intact HUD's recent guidelines for the three step approach to proving a disparate impact case (some experts suggest the reason HUD issued the guidelines in the first place was to beat the Court to the punch, and make sure the Court deferred to HUD's wishes).

The Court, in its 5 to 4 decision, noted there should be limits to pleading and proving such claims under the federal Fair Housing Act, in order to protect potential defendants against abusive disparate-impact claims. The Court said,

“..disparate impact liability must be limited so employers and other regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system. And before rejecting a business justification-or, in the case of a government entity, an analogous public interest- a court must determine that a plaintiff has shown that there is an available alternative practice that has less disparate impact and serves ....legitimate needs.”

Governmental or private policies cannot be construed to have disparate impact unless they are artificial, arbitrary, and unnecessary barriers. The Court said:

*“Courts should avoid interpreting disparate impact liability to be so expansive as to inject racial considerations into every housing decision,”*

The party bringing such a case, the court noted, must show “robust causality” of discrimination as a result of a policy.

### **What it means for our members:**

It remains to be seen whether this ruling will discourage specious challenges to apartment practices or procedures by those claiming discriminatory effects. But if an apartment community accused of disparate impact discrimination can show their policy, rule or practice has a legitimate business reason that cannot be achieved any other way, they could escape liability.

Some experts suggest the Supreme Court ruling will encourage disparate impact claims. Rental owners are encouraged to scrutinize their policies, tailor them as narrowly as possible to their business concerns, and be prepared to substantiate their policy decisions.