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*Feature Article***Finding Common Ground: Exploring Whether Gentrification and Public Housing Can Co-Exist**

Adrien Fernandez

Chicago has had a long and sordid history with racial discrimination in public housing.¹ In June 2015, the United States Supreme Court held that people could now bring discrimination claims for housing by establishing a discriminatory effect, instead of intentional discrimination.² This distinction is so crucial because now a discrimination claim can be cognizable in court because the outcome was discriminatory, even if the intent was not.³ This seemed like a major victory for public housing advocates in Chicago because desegregation of public housing could be facilitated by court cases where discriminatory effect was the claim.⁴

However, there is a movement looming in the background that could threaten the successful desegregation of public housing.⁵ Gentrification, the buying and renovation of communities in dilapidated urban neighborhoods by upper- or middle-income individuals, works its way into neighborhoods under the guise of renovation but with the result of higher costs of living and the dispersal of the residents who made up the unique cultural fabric of the area.⁶ The question then becomes can disparate impact claims make a difference in the racial desegregation of public housing due to the whitewashing effect of gentrification on Chicago's neighborhoods? Or will public housing be rele-

¹ *The Gautreaux Lawsuit*, BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST, <http://www.bpichicago.org/programs/housing-community-development/public-housing/gautreaux-lawsuit>. (last visited Oct. 11, 2015).

² *Tex. Dep't of Housing & Cmty. Affairs et al. v. Inclusive Cmty. Project, Inc., et al.*, 576 U.S. 1, 23 (2015).

³ Daniel Fisher, *Disparate-Impact Theory Finally Gets Its Test At Supreme Court*, FORBES, Jan. 21, 2015, <http://www.forbes.com/sites/danielfisher/2015/01/21/disparate-impact-at-supreme-court/>.

⁴ Ariane de Vogue, *Court Upholds Key Tool to Combat Housing Discrimination*, CNN, June 25, 2015, <http://www.cnn.com/2015/06/23/politics/fair-housing-act-texas-supreme-court>.

⁵ Emily Badger, *Supreme Court Upholds a Key Tool Fighting Discrimination in the Housing Market*, THE WASHINGTON POST, June 25, 2015, <http://www.washingtonpost.com/news/wonkblog/wp/2015/06/25/supreme-court-upholds-a-key-tool-fighting-discrimination-in-the-housing-market>.

⁶ Susie An, *In 'Up-and-Coming' Area, What's the Tipping Point for Gentrification?*, WBEZ, Dec. 16, 2014, <http://www.wbez.org/news/up-and-coming-area-whats-tipping-point-gentrification-111236>.

gated to predominantly African-American neighborhoods, as it always has been, due to the effect that gentrification has on residents of public housing?⁷

DISCRIMINATION IN CHICAGO PUBLIC HOUSING PRIOR TO *TEXAS DEPARTMENT OF HOUSING*

Beginning in 1966 with the filing of *Gautreaux et al. v. Chicago Housing Authority*, Chicago was placed on the map as one of the worst cities in the United States for intentional discriminatory practices in public housing.⁸ The U.S. Supreme Court held that the Chicago Housing Authority (CHA) and the U.S. Department of Housing and Urban Development (HUD) allocated more than 10,000 public housing units in secluded African-American neighborhoods in violation of the U.S. Constitution and the Civil Rights Act of 1964.⁹ To remedy the discrimination, the Court issued a judgment order prohibiting CHA from building new public housing units in areas of Chicago that were majority African-American.¹⁰ Although this judgment order was issued in 1969, public housing in Chicago is still plagued with problems of alleged racial discrimination.¹¹

On June 25, 2015, nearly 50 years after *Gautreaux*, the U.S. Supreme Court issued a judgment in *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc., et al.* (*Texas Department of Housing*).¹² Here, Inclusive Communities Project, Inc. brought a disparate-impact claim under the Fair Housing Act of 1968 (FHA) alleging that the Texas Department of Housing and Community Affairs gave too many tax credits to housing in predominantly black areas thus creating segregated public housing.¹³ The Court held that claims pertaining to discriminatory effect, or disparate impact claims, are cognizable.¹⁴

In 2015, allowing for disparate impact claims in discrimination cases is a crucial advancement because intentional discrimination is harder and harder to

⁷ *The Gautreaux Lawsuit*, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *The Gautreaux Lawsuit*, *supra* note 1.

¹¹ *Id.*

¹² de Vogue, *supra* note 4.

¹³ *Tex. Dep't of Housing & Cmty. Affairs*, 576 U.S. at 2-3.

¹⁴ *Id.* at 23.

prove.¹⁵ Housing advocates were thrilled with the decision because a weapon had been affirmed in combating discriminatory practices in housing.¹⁶

GOVERNMENT'S RESPONSE TO *TEXAS DEPARTMENT OF HOUSING*

Two weeks after the Supreme Court issued its decision, Julián Castro, the Secretary of HUD, went to the former site of Chicago's Stateway Gardens, a since-demolished public housing community, to announce HUD's new rules.¹⁷

The aim of these rules is to further the original goal of the FHA: to create and foster diverse communities.¹⁸ Prior to *Texas Department of Housing*, HUD struggled with remedying patterns of segregation amongst public housing.¹⁹ The new rule will require cities to submit statistics detailing segregation in fair housing communities.²⁰ Once segregation has been recorded, the cities will need to detail a plan on what they propose to do.²¹ Every five years, the cities will be mandated to hold meetings within the community where public opinions can be heard on housing plans.²²

HUD's newly required statistics will be particularly useful in conjunction with the Court's decision in *Texas Department of Housing*. Because disparate impact involves discriminatory effect that can appear neutral on its face, courts often rely on statistics in analyzing whether discrimination is actually occurring in the case at hand.²³ Now each region will be required to keep the very statistics that could help prove a case of disparate impact discrimination.²⁴

¹⁵ de Vogue, *supra* note 4.

¹⁶ *Id.*

¹⁷ Associated Press, *Housing Segregation Targeted in New Federal Rules*, CHICAGO REAL ESTATE DAILY, July 8, 2015, <http://www.chicagobusiness.com/realestate/20150708/CRED0701/150709862/housing-segregation-targeted-in-new-federal-rules>.

¹⁸ Alana Semuels, *Can Better Data Help Solve America's Housing Problems?*, THE ATLANTIC, July 8, 2015, <http://www.theatlantic.com/business/archive/2015/07/new-hud-rules-fair-housing/397997>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Donna Kimura, *Supreme Court Affirms Disparate Impact in Fair Housing*, Affordable Housing Finance (June 25, 2015), http://www.housingfinance.com/policy-legislation/supreme-court-affirms-disparate-impact-in-fair-housing_o. (last visited Oct 11, 2015).

²⁴ Semuels, *supra* note 18.

GENTRIFICATION AND ITS IMPACT ON PUBLIC HOUSING

Although the *Texas Department of Housing* case provides residents with a new cause of action against discrimination, gentrification could threaten any positive effect of this ruling, particularly in Chicago, where gentrification has been thriving. Gentrification has been present in Chicago since the 1970s, when white residents, who once fled to the suburbs, began to migrate back to the city.²⁵ However, it was not until the 1990s that gentrification began to consume Chicago's culturally diverse neighborhoods at a seemingly unstoppable pace.²⁶

Gentrification occurs when people, usually white and affluent, go into communities with low-income housing and rehabilitate the units.²⁷ With restored housing comes new restaurants and shops selling items outside the price-range of the families who have lived in the area for decades.²⁸ There comes a point where the families that once made up the culture of the area can no longer afford to live there and are forced to move out while wealthier, and typically white, families move in.²⁹

Finding a solution to this problem is difficult, because there is an almost indescribable line between renovating a community and gentrifying a community.³⁰ The struggle here lies in recognizing when gentrification is taking place and how to immunize the effects on already-existing public housing in that area.³¹

Dicta in *Texas Department of Housing* fails to alleviate the fear that gentrification, masked as renovation, can sneak into public housing communities and displace the long time residents with the raising costs of other living factors. This dicta states, "it would be paradoxical to construe the Fair Housing Act to impose onerous costs on actors who encourage revitalizing dilapidated housing in our Nation's cities merely because some other priority might seem preferable."³² This statement seems to shield renovators from falling under the dispa-

²⁵ Colleen DeBaise, *It's Hard to Tell Today, but Lincoln Park Once Was An . . .*, Chicago Tribune (Jan. 20, 1998), http://articles.chicagotribune.com/1998-01-20/news/9901070103_1_neighborhood-lincoln-park-zoo-coffeehouses/2; *Gentrification*, Dictionary.Com, <http://dictionary.reference.com/browse/gentrification>. (last visited Oct. 11, 2015)

²⁶ DeBaise, *supra* note 25.

²⁷ An, *supra* note 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Tex. Dep't of Housing & Cmty. Affairs*, 576 U.S. at 19.

rate-impact claims umbrella. If this protection becomes a reality, a gentrifier, acting under the guise of a renovator, may be able to seek the same protection against a discrimination claim and escape liability.³³

Another problem in indentifying a solution to gentrification is the unique character that gentrification takes on in each city.³⁴ Frank Avellone, an attorney with Chicago's Lawyers' Committee for Better Housing, recognizes that gentrification manifests itself in a different way in each city that it exists.³⁵ Thus, gentrification is an even more difficult beast to tackle because there is no one-size-fits all solution. What works for Boston might not be successful in Chicago and so on.³⁶ Despite all of these problems, there is hope that low-income housing, including public housing, and gentrification can co-exist if members of the community are pro-active and define the relationship for themselves instead of giving all of the power to the gentrifiers.³⁷

Albany Park, a historically Hispanic neighborhood in Chicago, was plagued with gentrification to the point that rent became too high and people were forced to move.³⁸ To combat the effects of gut-rehabbed apartments and the high cost of living that comes with them, community organizers created a community land trust.³⁹ The land trust allows residents to stay in the community at a rent price they can afford.⁴⁰ It is encouraging that other aspects of gentrification, such as higher food prices and displaced jobs, have yet to drive out residents.⁴¹

The Albany Park model suggests that when housing is affordable, other factors of gentrification won't force residents out in the immediate future.⁴² Therefore, it could be possible for public housing to thrive while gentrification changes the landscape around the buildings.⁴³

³³ An, *supra* note 6.

³⁴ Interview with Frank Avellone, Attorney, Lawyer's Committee for Better Housing (Oct. 5, 2015).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Odette Yousef, *Rents May be Going Up, but Residents Say They're Not Going Anywhere*, WBEZ, Dec. 19, 2014, <http://www.wbez.org/news/rents-may-be-going-residents-say-theyre-not-going-anywhere-111269>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

Although the Albany Park model makes a positive relationship between gentrification and public housing seem possible, a study done in New York City seems to suggest otherwise.⁴⁴ The study concluded that just the mere existence of gentrification causes fear in public housing residents that the rising cost of living would lead the New York City Housing Authority to privatize the housing in the areas most effected by gentrification.⁴⁵ The tangible effects of gentrification on public housing residents included the closing of Laundromats and delis that once made the area so affordable to the residents.⁴⁶

Based on the reports from Albany Park and New York City, a critical component in the relationship between public housing and gentrification seems to be the level of involvement by public housing residents themselves. According to the study done in New York City, gentrification can impose a mentality that public housing residents are outsiders to their very own neighborhood when gentrifiers take over the space.⁴⁷ However, the Albany Park model suggests that this mentality can be overcome when public housing residents establish their place in a gentrified neighborhood via their own actions.⁴⁸

CONCLUSION

Cognizable disparate impact claims against racial discrimination in public housing cases seemed like a major victory that public housing in Chicago needed in order to combat its long history of discriminatory practices.⁴⁹ However, the case that recognized disparate impact claims, *Texas Housing Authority*, contained potentially dangerous dicta that draws attention to an opposing force in the battle of desegregating public housing.⁵⁰

Gentrification, an aggressive cousin of reform, affects public housing residents by not only closing what once made their neighborhoods so affordable, such as corner delis, but by also deeply impacting the mentality of residents as they begin to view themselves as outsiders to the new, and often white, crowd

⁴⁴ James Brasuell, *Survey: Residents of Public Housing Don't See the Benefits of Gentrification*, PLANETIZEN, Oct. 21, 2015, <http://www.planetizen.com/node/81766/survey-residents-public-housing-dont-see-benefits-gentrification>.

⁴⁵ Samuel Dastrup *et al.*, *The Effects of Neighborhood Change on New York City Housing Authority Residents*, NYC CENTER FOR ECONOMIC OPPORTUNITY, May 21, 2015, http://www.nyc.gov/html/ceo/downloads/pdf/nns_15.pdf.

⁴⁶ *Id.*

⁴⁷ Brasuell, *supra* note 44.

⁴⁸ Yousef, *supra* note 38.

⁴⁹ de Vogue, *supra* note 4.

⁵⁰ *Tex. Dep't of Housing & Cmty. Affairs*, 576 U.S. at 19.

that moves in as neighborhoods gentrify.⁵¹ While gentrification seems to be an unstoppable force, the Albany Park model does indicate that if public housing residents claim their roles in areas going through gentrification, it is possible to survive, at least for a short time, in a gentrified neighborhood.⁵²

⁵¹ Dastrup, *supra* note 45.

⁵² Yousef, *supra* note 38.