

Case

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third effort in as many years by the current justices to consider the intent and reach of the housing act. The other two cases were withdrawn or settled in deals reached before oral arguments, as fair housing advocates feared they would lose before the Roberts Court.

“It is unusual for the Court to agree to hear a case when the law is clearly settled. It’s even more unusual to agree to hear the issue three years in a row,” said Ian Haney López, a University of California, Berkeley law professor.

The Texas case involves a nonprofit organization that works to promote integrated communities and the Texas state housing authority. The nonprofit, Inclusive Communities, showed that nearly all the affordable

equally. Texas appealed the ruling, raising the stakes when it decided to challenge whether the Fair Housing Act allowed such “disparate impact” rulings at all.

For many, the Supreme Court’s persistence signals a determination to install intentional discrimination alone as the standard for such cases. The Roberts Court is considered by a host of scholars and others to be the most conservative since the 1930s, and so such an outcome would be consistent with its more narrow interpretations of laws governing voting rights and school segregation.

Elizabeth Julian, president of the Inclusive Communities Project and the former Assistant Secretary of Fair Housing and

The case concerns whether the Fair Housing Act, which sought to end the longstanding segregation of America’s neighborhoods, should be read to only bar intentional discrimination

housing tax credits approved by the Texas housing agency had been assigned to Dallas’ black neighborhoods and almost none of it to white neighborhoods. A federal judge did not find intentional discrimination on the part of Texas officials, but held that the outcome unacceptably increased housing segregation and that the housing agency could have taken steps to ensure that affordable housing units were allotted more

Equal Opportunity at HUD, is among those who are worried.

“Reversing essentially four decades of case law would send a message that is very concerning,” Julian said.

A few generations ago, most housing discrimination was overt. Banks openly refused to lend to black homebuyers. Public housing officials used to announce that certain developments were for white residents,



PHOTO BY JERRY FOSTER

others for Latinos. But the nature of housing segregation has evolved over the years, and the fight against it has had to change as well. Today, banks may well charge higher loan rates in certain communities, but they can also insist it has nothing to do with those neighborhoods being black or Latino. Local planning boards can concede that most affordable housing efforts have been placed in black neighborhoods, but maintain that it was not by malicious design.

The theory of disparate impact, then, has often been the only tool to address ongoing housing discrimination. Landlords or lenders who implement policies or practices that disproportionately impact racial minorities can be found in violation of civil rights law if they cannot justify those practices – even if no one can show they acted out of racial animus.

The U.S. Department of Justice has used disparate impact to win record settlements from banks that charged higher rates to black and Latino borrowers with similar credit histories as white borrowers, but could not justify the practice.

A fair housing group used disparate impact to topple a “blood relative” ordinance passed by nearly all-white St. Bernard’s Parish in the wake of Hurricane Katrina. The ordinance barred homeowners from renting to anyone who was not kin. Civil rights lawyers were convinced officials passed this law to keep out black renters, but could not prove racist motivations. But when St. Bernard’s Parish could not come up with a plausible justification for the ordinance, a court struck it down.

This tool, for the first time, is in real jeopardy.

The Supreme Court has been weakening many civil rights protections for decades. The Rehnquist Court, for instance, was known for getting the courts out of the business of addressing racial inequities. But the

Roberts Court has gone a critical step further, severely curbing efforts undertaken by Congress and the executive branch to address our nation’s long history of discrimination.

In 2007, the Roberts Court came down against two school districts that were trying to maintain gains in integration. In 2009, the court ended the attempts of New Haven, Conn., officials to ensure that the city’s promotion practices were fair after no black firemen passed a promotion exam, saying the efforts discriminated against white firefighters. In 2013, it held that a key provision of the Voting Rights Act intended to address the disenfranchisement of black voters had expired. And last year, it upheld Michigan voter-approved ban on affirmative action.

“The Supreme Court is newly aggressive in the area of race,” said Haney López. It is targeting efforts by other branches of society to remedy segregation and is striking them down.”

Strikingly, if it ultimately rules against Inclusive Communities, in under a decade the Roberts Court will have limited pivotal protections in each of the three landmark civil rights laws passed in the 1960s: the 1964 Civil Rights Act, the 1965 Voting Rights Act and the 1968 Fair Housing Act.

The Court’s aggressive tack has been welcomed by conservative groups, who believe the 14th Amendment of the Constitution, intended to ensure former slaves equality under the law, requires strict legal colorblindness.

The Pacific Legal Foundation, an advocacy organization that promotes individual rights, has long looked forward to a showdown over the Fair Housing Act. It filed an amicus brief in support of the Texas housing agency.

The Supreme Court has until June 30 to rule on this case. Keep up with developments on Twitter under #KeepHousingFair.

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