



BREAKING NEWS

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Court saves key tool to fight housing bias: Our view

The Editorial Board,

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Discrimination doesn't have to be intentional to violate fair housing laws.



(Photo: Eric Gay, AP)

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Where people grow up and live affects every aspect of their lives. It determines whether they contend with daily fear in a high-crime neighborhood or attend a decent school or have an opportunity to get a well-paying job.

Which is why the Supreme Court's decision Thursday, upholding a controversial legal tool to fight housing discrimination, will reverberate across the country for decades.

The tool allows residents, the Justice Department and civil rights groups to challenge policies and practices that have discriminatory consequences for minorities even if that is not their intent.

OPPOSING VIEW: 'Overbroad and unfair' liability

The legal theory, known as "disparate impact," has been at the heart of many cases that have forced changes in the way lenders, landlords, insurers, and city and state governments set housing policies, from criteria to get a mortgage to zoning and rental laws.

The Justice Department has won more than [\\$500 million in settlements](#) in disparate

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impact cases, where minorities suffered the sting of biased results, such as higher interest rates or fees. In another case brought by housing advocates, a federal judge invalidated a zoning ordinance passed by a parish outside New Orleans, which barred housing rentals to anyone who was not a "blood relative" of owners. The ordinance said nothing about race, but because the [area was 88% white](#), almost no one black could rent.

Banks and insurers that have found themselves on the wrong end of such lawsuits have long argued that the tool is unfair because it can target "race neutral" policies with statistics. And many civil rights groups feared that the Supreme Court would reject it.

But a 5-4 majority found that the results of policies, not only overt bias, are fair game in some circumstances under the Fair Housing Act of 1968.

Justice Anthony Kennedy, often a swing vote, joined with the court's four liberals to get to the heart of matter: Despite the 1968 housing act and a century-old Supreme Court ruling that intentional housing discrimination is unconstitutional, segregation's ["vestiges remain today](#), intertwined with the country's economic and social life."

Statistics bear this out.

In 2010, according to an [analysis of Census figures](#), high levels of black-white segregation persisted, especially in some large cities in the Northeast and Midwest. Suburbs are often segregated, too, says Brown University professor John Logan, who analyzed the data. Segregation spills over into everything from the quality of schools to police-community relations. It is not a coincidence that Ferguson, Mo., and Baltimore — two communities that erupted in violence this year after black men died at the hands of white police officers — are highly segregated.

As businesses and governments move to do away with overt bias, it gets more difficult to eliminate remaining policies that result in bias, perhaps unconsciously. In disparate-impact cases, challengers often must prove that there is a less discriminatory alternative, such as different mortgage qualifying criteria, that will elicit creditworthy applicants without bias. For businesses, this can be an opportunity to change policies and attract more customers in a lucrative, under-served market.

In fact, [17 states](#) and [21 cities and one county](#) — from Massachusetts to Arizona and Boston to Seattle — filed friend-of-the-court briefs supporting disparate-impact challenges. They argued that it helps combat systemic discrimination, even though they could one day become defendants in a case.

Thursday's decision involved a Texas state agency's use of federal tax credits to encourage low-income housing developments, which an advocacy group argued were disproportionately placed in low-income, black neighborhoods, intensifying

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segregation. While the ruling was a broad civil rights victory, Kennedy cautioned that not all disparate-impact challenges would succeed and placed some limits on the strategy.

After a half-century of concerted effort, the mission to end housing segregation is still in its infancy. Industries and local governments should put their energy into policies that don't result in bias, rather than fighting tools proven to get the job done.

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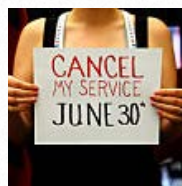
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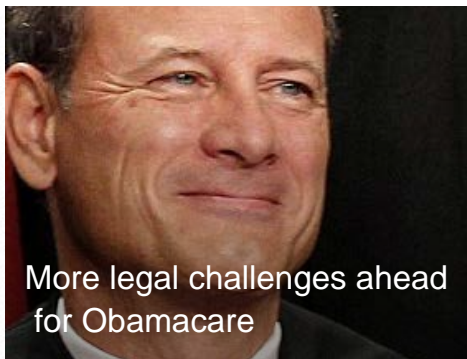


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