



Fair Housing & Fair Lending Project Annual Report 2010

Introduction

The following is a summary of the work of Fair Housing and Fair Lending Project for the calendar year 2010.

The Project has had busy and productive year. The highlight was the successful settlement of *Mississippi Chapter of the NAACP, et al. v. HUD (D.D.C)* which resulted in a new housing assistance plan for low and moderate income households and renters who had been victims of hurricane Katrina but had been left out of previous recovery plans. This settlement culminates five years of work on the Gulf Coast in response to Hurricane Katrina by the Lawyers' Committee and addresses the continued unmet housing needs of thousands of low income households and renters in Mississippi. Great success was also achieved in the first full year of operation of the Loan Modification Scam Prevention Network (LMSPN), which was created by the Project in 2009 and grew into an independent and fully staffed initiative of the Lawyers' Committee in 2010. The Project also devoted much of its resources to other active cases on its litigation docket and participated in the filing of seven amicus curiae briefs addressing important fair housing and fair lending issues. Finally, the Project was one of the leaders on several important fair housing policy issues and consumer protection issues in areas where minority borrowers were disproportionately harmed.

Hurricane Katrina Work

When Hurricane Katrina hit the Gulf Coast in August 2005, it quickly became apparent that the devastating impact of the storm fell disproportionately on low income and minority households especially in Louisiana and Mississippi. Within two weeks of the storm, Lawyers' Committee staff attorneys were on the ground in Mississippi helping clients, and shortly after that established the *Disaster Survivors Legal Assistance Initiative*. Through this *Initiative*, the Lawyers' Committee has emerged as the leading national civil rights organization in providing legal assistance to victims of the storm. The impact that the storm had on low income homeowners and renters in Louisiana and Mississippi resulted in the focus of the *Initiative* centering on the critical fair housing and affordable housing needs of low income and minority households and renters.

During the last five years, the Fair Housing Project and the Community Development Project have taken the lead in this *Initiative* and in August 2010 the Fair Housing Project released a report on its efforts in Mississippi and Louisiana after Hurricane Katrina entitled “Five Years of Commitment: Providing Legal Assistance in the Gulf Post Katrina.” The report summarizes and reflects on our fair housing and affordable housing work on the *Initiative*. It can be found at:

www.lawyerscommittee.org/admin/site/documents/files/Katrina-Report-August-2-2010-version.pdf.

One of the most important actions taken during the *Initiative* was the filing of *Mississippi State Conference NAACP v. U.S. Department of Housing and Urban Development* in 2008. The case challenged HUD’s 2008 approval of Mississippi’s plan to redirect \$570 million of Hurricane Katrina disaster recovery funds from housing programs to a massive expansion of the Port of Gulfport, an expansion unrelated to damage caused by the hurricane. In a major victory for the Project and the *Initiative*, a settlement of this case was reached in November 2010. It was announced at a November 15, 2010 press conference in Gulfport, Mississippi by HUD Secretary, Shaun Donovan, Governor Haley Barbour and Reilly Morse of our affiliate and long-time partner in this endeavor, the Mississippi Center for Justice. The agreement provides a new housing recovery program which reallocates over \$132 million in disaster recovery funds to the continued unmet housing needs of low-income households and renters on the coast. Despite the fact that over five years have passed since Hurricane Katrina battered the Mississippi Gulf Coast, low- and moderate income and predominantly minority residents of the region continue to suffer as a result of the lack of assistance from the Mississippi housing recovery plans and the lack of adequate affordable housing. Implementation of this new plan began in mid-November and by December 29, 2010 over 9,700 persons, approximately two-thirds of whom are African-American, had applied for assistance from the recovery program, confirming the severe unmet needs of this population over five years after Hurricane Katrina. Thousands more are expected to submit claims before the claims period ends on January 31, 2011.

This victory culminated five years of dedicated work by the Project in assisting Hurricane Katrina victims in Mississippi and Louisiana. But, it does not end this important work. The Project is fully engaged in monitoring the implementation of the plan and will provide legal assistance where needed. In addition, at the conclusion of the “Five Years of Commitment” report is a summary of the continuing needs of hurricane victims and a reaffirmation of the Lawyers’ Committee’s steadfast commitment to supporting and assisting low income communities and communities of color in their ongoing fight for their rights, particularly their right to adequate housing. Indeed, for 2011, the Fair Housing and Community Development Projects have prioritized continued work on the *Disaster Survivors Legal Assistance Initiative*.

The Loan Modification Scam Prevention Network

In 2010, the Project continued to dedicate a significant amount of its resources to the Loan Modification Scam Prevention Network. This Network was conceived of and started by the Fair Housing and Fair Lending Project in 2009 to combat the second wave of the foreclosure crisis: the scamming of

households already facing default or foreclosure that seek assistance in modifying their mortgage. The foreclosure crisis has disproportionately impacted minority households and mortgage rescue scam activities often target minority communities for their fraudulent activities.

In 2010, the Network grew in both stature and size and is now leading a national effort to support and strengthen enforcement activities against loan modification scammers. By the beginning of 2010, four new attorneys, two support staff and two student interns had been hired and assigned solely to this initiative. As a result, it became a separate project at the Lawyers' Committee that is overseen by the Legal Mobilization Project. The Loan Modification Scam Prevention Network Initiative is issuing its own report of activities for 2010, as they are too lengthy to be included here. As the Initiative grew, the Fair Housing and Fair Lending Project continued to play a crucial role in its work in 2010, especially on enforcement- and litigation-related activities.

Major accomplishments of the Network include (1) building a national, web-based database, which consolidates homeowner complaints about alleged scams from a variety of sources, including the 1-888-995-HOPE hotline, portals on partner websites, and intakes from local organizations; (2) the formation of scores of partnerships, primarily with federal, state and local law enforcement, including the Federal Financial Fraud Task Force, to provide access to the database and analysis of the information on the database; (3) the launching of the www.PreventLoanScams.org website on February 17, 2010, a site which contains a wealth of information on the issue of loan modification scams and hosts an online complaint form for scam victims; (4) outreach at numerous foreclosure related events throughout the country, including work with fair housing organizations in Toledo, Ohio and Richmond, Virginia to provide information and training related to loan modification scamming; and (5) formation of local legal committees made up of law firms providing pro bono assistance in Northern California, Southern California, New York, the District of Columbia, Florida and Texas.

The Network has become nationally known and was recently recognized for its work in a December New York Times article.¹ Emphasis will shift towards developing a robust enforcement program in 2011, which will be led by the Fair Housing Project. Already, an investigation of a potential case is underway in San Jose, California.

Litigation

During 2010, a considerable amount of the Project's time and resources were devoted to ongoing litigation in two important exclusionary zoning cases on Long Island, and to the implementation of a consent decree in a case attacking discriminatory residency preferences for recipients of federal housing assistance. In addition, the Project participated as *amicus curiae* in seven cases raising important fair housing issues.

¹ To view the NYT article, please click [here](#).

In *MHANY, et al., v. County of Nassau, Inc., et al.*, 05-CV-02301 (E.D.N.Y),² the Project represents plaintiffs who are challenging a 2004 zoning decision by the Village of Garden City, a decision which Nassau County supported, which discriminatorily rejected a zoning proposed by the Village's own consultant. The rejected zoning proposal would have permitted the development of affordable housing. After rejecting this proposal, Garden City instead adopted a zoning plan which made development of affordable housing virtually impossible, thus making housing unavailable on the basis of race in violation of the Fair Housing Act. Progress in the case was delayed in 2010 by two events: (1) the recusal of the district judge in March 2010, leaving undecided a pending a motion for summary judgment fully briefed and argued in 2009; and (2) the disbandment of ACORN, the original plaintiff in the case. Almost all of the litigation activity during the year involved representing a new non-profit group, the New York Communities for Change, Inc., (NYCC) in their intervention in the case. Our motion to intervene was granted by the new judge in June 2010 and the rest of the year was devoted to discovery activity related to this new plaintiff. A new schedule requires the filing of motions for summary judgment by March 2011.

In our long running case against the Town of Huntington, *Fair Housing in Huntington Committee, et al. v. Town of Huntington, et al.*, CV-02-2787 (E.D.N.Y.), developments were disappointing. In this case, which was first brought in 2002, plaintiffs were alleging race and familial status discrimination in violation of the Fair Housing Act as a result of the Town's rejection of a proposal in 2000 for the development of a 122 unit housing project of affordable two and three bedrooms, instead restricting the project to one bedroom or studio units. In March 2010, the plaintiffs moved for a preliminary injunction after the Town approved a site plan for the project. For nearly five years, the district court had moved extremely slowly in this case, but, in July 2010, with the preliminary injunction motion pending, the court granted a motion to dismiss the case which had been pending since 2006 on statute of limitations grounds. Plaintiffs then filed a motion to amend the complaint adding allegations of more recent actions of the Town similar to the earlier decision. In November 2010 the district court denied that motion, effectively ending the case. However, in denying the motion to amend the district court stated that the amended complaint did state a timely cause of action that could be pursued in an independent action. We are now preparing a new complaint. In addition, we are preparing a separate administrative complaint to be filed with HUD alleging that the Town has failed to affirmatively further fair housing as required by the Fair Housing Act.

In 2009, the Project obtained a favorable consent decree in *Vargas, et al. v. Town of Smithtown* (E.D.N.Y.) which, in addition to awarding \$200,000 in attorneys' fees and costs to the Lawyers' Committee and its pro bono counsel, Sullivan and Cromwell, provided \$725,000 in damages for the class of minorities who had been discriminatorily denied Section 8 housing vouchers because of a residency preference policy adopted by the Town. During 2010, we worked with the claims administrator in identifying members of the class who were eligible for receiving damages and in setting up financial counseling for those so identified. We expect to distribute the funds to eligible class members in 2011.

² Renamed from *ACORN, et al., v. County of Nassau, Inc., et al.*, 05-CV-02301 (E.D.N.Y) after ACORN disbanded in December 2009.

Cases in which the Project participated as *amicus curiae* are as follows:

- *NAACP v. City of Kyle, Texas*: In October of 2009, we joined an amicus brief which argued that the district court applied an erroneous standard for determining whether the a zoning decision of the Town violated the Fair Housing Act pursuant to a disparate impact standard. This is an especially crucial fair housing issue presently, especially in cases challenging discriminatory lending practices. On November 11, 2010 the Fifth Circuit Court of Appeals affirmed the district court decision on the basis that the plaintiffs lacked standing, but did not reach the disparate impact issue.
- *Lozano v. City of Hazleton*: On September 9, 2010 the Third Circuit Court of Appeals affirmed a 2007 district court decision which had struck down two local anti-immigration ordinances enacted in Hazleton, Pennsylvania. The ordinances would have punished landlords renting to illegal immigrants and employers hiring undocumented workers, ultimately forcing local immigrants out of town. We had collaborated with many other prominent civil rights groups on an *amicus* brief filed in 2008 supporting the position of those challenging the ordinances. The Court's decision in this case is especially important, as similar local ordinances have been passed up across the nation. This pattern of anti-immigration legislation recently garnered national attention when Arizona enacted SB 1070, which was found by a federal court to unconstitutionally interfere with the federal government's exclusive responsibility to enforce the nation's immigration laws. The basis of the decision in this case – that such state ordinances are pre-empted by federal immigration law – is the same as reached recently by the district court in the Arizona case.
- *Equal Rights Center v. Post Properties*: On July 13, 2010 we and five other major civil rights organizations filed an amicus brief in the D.C. Circuit Court of Appeals. The Plaintiff in this case, a local fair housing organization, alleged that multi-family rental facilities built and operated by the defendants discriminated on the basis of disability in their failure to meet the design and construction access requirements of the Fair Housing Act. The district court dismissed the complaint on grounds that the fair housing organization lacked standing, contrary to well-established case law established by a 1982 Supreme Court decision. On appeal, we supported plaintiffs. This is an especially important fair housing issue, as fair housing groups are regularly plaintiffs in fair housing cases.
- *Hutchinson v. Patrick*: On June 2, the Fair Housing Project joined twenty national and local New England legal service and public interest organizations in the filing of an *amicus curiae* brief with the U.S. Court of Appeals for the First Circuit which is hearing the case *en banc*. At issue in this case is the very important question – especially for non-profit organizations that enforce civil rights laws, like the Lawyers' Committee – of whether forms of settling cases other than through judgment on the merits or a consent decree can result in establishing plaintiffs as the prevailing party for purposes of recovering attorneys' fees.

- *Edwards v. Hopkins*: This case concerned a property management firm that refused to accept the plaintiff's Section 8 housing choice voucher. Though the Fair Housing Act does not prohibit discrimination on the basis of source of income, the Minnesota Human Rights Act does and the plaintiff filed suit in Minnesota state court challenging the firm's policy. The district court had determined that although the defendants refused to rent to the plaintiff because of his status as a Section 8 recipient, their action did not violate the state law because it was motivated by a business decision not to participate in the program and not by bias against the voucher holder himself. In the past, the Project had participated in similar cases in Connecticut and Maryland and, in October 2009, it filed an *amicus curiae* brief on behalf of the Lawyers' Committee, the National Fair Housing Alliance, and the Washington Lawyers' Committee for Civil Rights and Urban Affairs. However, contrary to decisions in the Connecticut and Maryland cases, the Minnesota appellate court affirmed the lower court ruling on June 1, 2010.
- *Ojo v. Farmers Group, Inc., et al.*, (9th Cir.): On February 5, 2010 the Project filed an *amicus* brief with the U.S. Court of Appeals for the Ninth Circuit on behalf of the National Fair Housing Alliance and three local fair housing organizations in Texas. The case was a class action fair housing case against a property insurance company and alleged that the use of credit scores in setting the price of the property insurance had a disparate impact on minorities, in violation of the Fair Housing Act. The district court dismissed the complaint on the grounds that it was reverse-preempted by the McCarran-Ferguson Act. In 2009, a Ninth Circuit panel reversed that ruling in a 2-1 decision, holding that proper analysis of the claim and Texas insurance law demonstrates that state insurance law is not impaired and, thus, the federal claim should not be pre-empted.

The Ninth Circuit then decided to hear the case *en banc* and specifically raised the important fair housing issue of whether the Act's ban on racial discrimination applied to homeowner insurance underwriting practices. Our *amicus* brief focused its argument on this issue, asserting that the Act applies to discriminatory practices of homeowner insurers in providing property insurance and providing valuable historical background on the role of homeowners' insurance discrimination in restraining housing opportunity for people of color. On April 9, the *en banc* Ninth Circuit issued a decision that agreed, holding that the Act covers discrimination in the provision of property insurance, an important victory for fair housing advocates.

- *Fair Housing Council of San Fernando Valley v. Roommates.com*. (9th Cir.): On March 22, 2010 the Project filed an *amicus* brief in this case on behalf of the Lawyers' Committee, the National Fair Housing Alliance, and several California-based fair housing organizations. The case concerns discriminatory advertisements on a roommate matching website. The defendant claimed immunity under the Communications Decency Act (CDA). In an earlier appeal, in which we also participated as *amicus*, the Ninth Circuit ruled in a 2008 decision that the CDA did not provide Roommate.com immunity from liability under the Fair Housing Act when providers of interactive

computer services play a role in shaping the user-generated content through required fields that solicit information about potentially discriminatory preferences.

On remand, the district court granted summary judgment to the plaintiffs in the case. The defendant appealed that judgment, asserting that the plaintiff fair housing organizations lacked standing to bring the action and claiming that the Fair Housing Act's prohibition on discriminatory advertisements did not apply to housing information services. In our March 22nd *amicus* brief, we argued that the plaintiffs have standing and that the defendants are liable under the Act. In particular, the brief highlighted the importance of deterring discriminatory housing advertisements in online venues at a time when more and more households find about housing opportunities through such resources, as well as the pivotal role that private fair housing organizations play in enforcing the Act.

Policy

Throughout 2010, the Project was consistently engaged with national fair housing and consumer protection coalitions, members of the Obama Administration and Congressional staff in advocating for several policy initiatives regarding important fair housing and fair lending protections. The most significant of the policy initiatives were the following:

- *Amending the Fair Housing Act*: Beginning in March 2010, the House Judiciary Committee's Subcommittee on the Constitution, Civil Rights & Civil Liberties held a series of hearings examining the Fair Housing Act. The Project worked closely with Committee staff and at the first hearing on March 11, Barbara Arnwine testified to the House Judiciary Committee's Subcommittee about current fair housing issues and challenges. Ms. Arnwine also offered several suggestions for improving the Act, drawing mainly from the National Commission on Fair Housing and Equal Opportunity's December 2008 report, "The Future of Fair Housing." The Project was one of four national civil rights groups that created this National Commission to mark the 40th anniversary of the passage of the Fair Housing Act and played a central role in drafting the Commission's report. In addition, Ms. Arnwine testified about the newly formed Loan Modification Scam Prevention Network.

Thereafter, working with the Fair Housing Task Force of the Leadership Conference on Civil Rights, the Project formulated recommendations to Judiciary Committee staff for a series of amendments to the Fair Housing Act. Legislation calling for a series of amendments to the Act was introduced on December 8, 2010.

- *Dodd-Frank Wall Street Reform and Consumer Protection Act*: For much of 2010, the Project worked with the Americans for Financial Reform (AFFR), a large coalition of consumers' rights, labor union and civil rights organizations, which strongly advocated for the creation of an independent consumer protection agency. The Lawyers' Committee's special interest in this bill

was the strengthening of the enforcement of the Equal Credit Opportunity Act (ECOA) through the creation of a new and independent consumer protection agency. Before this legislation, enforcement authority for the ECOA was spread between several independent bank regulatory agencies that have all but ignored fair lending enforcement under the ECOA. The Project strongly supported the enactment of legislation authorizing the creation of the Consumer Financial Protection Agency and the Project's support and efforts played a crucial role in the bill's content and passage.

On July 21, 2010 Congress passed and the President signed the most important consumer protection legislation in 50 years. The most important provisions in the bill for purposes of the Project's work are: (1) the creation of a Consumer Financial Protection Bureau in the Department of Treasury; (2) the prohibitions of many lending practices that were a central cause of the subprime lending crisis, which fell disproportionately on minorities and was a major factor in the ongoing foreclosure crisis which continues to the present; and (3) broad provisions changing the pre-emption rules which have grown up in the last six years, crippling vigorous consumer protection and fair lending enforcement by states.

- *Advocating for Improved Enforcement of the Fair Housing Act's Requirement that Recipients of Federal Financial Assistance Affirmatively Further Fair Housing:* Throughout 2010, the Project worked with several fair housing organizations to support and advocate for improved enforcement of the important requirement in Section 808(e)(5) of the Fair Housing Act requiring HUD and recipients of federal housing assistance to affirmatively further fair housing. The Project signed on to a series of letters supporting HUD programs that promoted this requirement, as well as several letters advocating that this requirement be included in other programs or legislation.

Other Project activities related to this issue included: (1) participation in a July 15 meeting, at the invitation of HUD's Assistant Secretary for Fair Housing, to discuss a formal regulation addressing Section 808 that HUD is considering; (2) advocating for full enforcement of the precedent-setting consent decree concerning the duty to affirmatively further fair housing in a case against Westchester County, New York, including a meeting with the Court-appointed monitor; and (3) assisting the Community Development Project in the drafting the "affirmatively furthering fair housing" portion of a handbook being prepared for the Greater New Orleans Fair Housing Action Center and the City of New Orleans Planning Commission.

- *Advocating for the Disparate Impact Standard of Proof for Violations of the Fair Housing Act:* On July 23, Project Director Joe Rich participated on a panel at HUD's Annual Conference, which was held in New Orleans during the week of July 19-23. Mr. Rich discussed the disparate impact standard of proof under the Fair Housing Act and its importance in fair lending and exclusionary zoning cases. Mr. Rich also made a presentation at a conference sponsored by the National Consumer Law Center on September 20 entitled "The Color of Credit," at which he traced the history of the disparate impact standard of proof in fair housing cases and its importance in

pending cases challenging the discriminatory impact of the banking industry's policies permitting and encouraging the discretionary pricing of loans.

Staff

In 2010, the Fair Housing & Fair Lending Project has been staffed by Project Director Joe Rich and a series of fellows who worked with the Project during various parts of the year. Abby Shafroth was the Lindsay Fellow through October 2010 and split her time between the Fair Housing and Employment Projects. Gini Martin was a law firm fellow through July 2010 and split her time between the Fair Housing and Fair Lending, Community Development, and Environmental Justice Projects. Starting in September 2010, Izukanne Emeagwali is the new law firm fellow for the 2010-2011 year and is working for the Fair Housing Project and on enforcement matters for the Loan Modification Scam Prevention Network team. Finally, Becca Eden began a five month fellowship sponsored by her law school, American University, in September and is splitting her time between the Fair Housing Project and Employment Project. Legal support has been provided by Legal Assistant Michelle Newman, who split her time between the Fair Housing and Fair Lending, Community Development, and Environmental Justice Projects.