

Background on the *Mount Holly* Disparate Impact case

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Massachusetts Attorney General Coakley filed a brief yesterday in *Mount Holly v. Mount Holly Gardens Citizens in Action*, a case from New Jersey coming out of the Third Circuit. The case considers whether housing policies that have a disproportionate impact on racial minorities and women violate the anti-discrimination provision of the federal Fair Housing Act. It will be argued on December 4, 2013.

Background. The Town of Mount Holly is defending a plan to demolish and redevelop a rundown neighborhood against claims that it discriminates because it disproportionately affects African-American and Latino residents.

The Attorney General's Brief. Attorney General Coakley, on behalf of the Commonwealth and 11 other states, urges the Supreme Court to recognize disparate impact claims as an important tool to eliminate discrimination that perpetuates residential segregation and ensure that all persons have equal access to housing. Coakley's brief argues that individuals and businesses involved in the renting or selling of homes and other real estate transactions must be held accountable for the discriminatory effects of their policies.

Disparate Impact Claims. Discrimination can occur in the absence of intent. A disparate impact claim may be pursued when a policy that appears to be objective or neutral leads to results that disproportionately affect a protected group. For example, cases involving subprime lenders challenged facially neutral policies that caused African-American and Hispanic borrowers to pay more for their loans than comparable white borrowers. Disparate impact claims are distinguished from more direct forms of discrimination provable through a disparate *treatment* claim.

Disparate impact claims under the FHA help address critical issues such as predatory lending and discrimination against domestic violence victims, as well as other real estate and banking transactions.

Argument for Allowing Disparate Impact Claims. The respondent, a citizens group of affected residents of Mount Holly, argues that the FHA does support a disparate impact claim. The respondent is not alone in its argument-- all 11 Federal Circuit Courts recognize disparate impact claims. Also, HUD recently promulgated a rule officially articulating the standards for considering a disparate impact claim -- a practice it has recognized for 40 years.

Argument Against Allowing Disparate Impact Claims. The Township of Mount Holly, as a petitioner, argues that the FHA only protects against disparate treatment -- explicit or direct discrimination -- and not disparate impact. The petitioners rely on a plain language interpretation of the FHA and argue that the statutory text of the FHA prohibits only purposeful discrimination.

Additional Filings. You can find all the [additional filings here](#).