More than Just Race: Proliferation of Protected Groups and the Increasing Influence of the Act

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The Fair Housing Act of 1968

- Kerner Commission warned that the nation was “moving toward two societies, one black, one white—separate and unequal.”
  - Key findings focused on segregated living patterns.

- Martin Luther King, Jr. was assassinated, followed by riots in the capital and across the country.

- Congress passed legislation prohibiting housing discrimination based on race, color, national origin, and religion.
The Many Forms of Sex Discrimination

- ECOA was enacted in 1973 – originally limited to sex discrimination in credit transactions.
  - Congressional hearings revealed blatant sex stereotypes.

- Sex was added as a protected classification under the Fair Housing Act as part of the 1974 Housing and Community Development Act.

- Early cases focused on gender stereotypes, *e.g.* safety, motherhood.
Sex Discrimination cont’d

- Sex Harassment
  - Borrowed from Title VII case law

    - *Shellhammer v. Lewallen*, 770 F.2d 167 (6th Cir. 1985) – sex harassment

- Courts now recognize sex, race, religion, disability, and national origin harassment

- Private fair housing groups received almost 1,700 complaints of harassment from 2012 to 2014

- 2016 HUD Rule, 24 C.F.R. § 100.600
Sex Discrimination cont’d

- Sexual Orientation
  - Again borrowing from Title VII
  - *Smith v. Avanti*
  - Equality Act

- Maternity Leave Lending Discrimination
  - HUD received 150 complaints between 2010 and May 2017
  - Frequent terms – applicant has to return to work in order to close, bank will not consider income earned on leave or liquid assets
Sex Discrimination cont’d

- Domestic Violence
  - 85% of domestic violence survivors are women; women of color are overrepresented in this group
  - Domestic violence survivors face pervasive housing discrimination

- Chronic Nuisance Ordinances
  - *Briggs v. Borough of Norristown*
Familial Status

- Familial status classification was added in 1988, with an expansive definition:
  - One or more individuals under 18 who live with a parent or person with legal custody, the designee of such parent or other person with legal custody; includes people who are pregnant and who are in the process of securing legal custody of an individual under the age of 18.

- Congress recognized that private housing providers were using familial status restrictions as a proxy for race discrimination.
  - *Tolliver v. Amici*
Familial Status cont’d

• Today 11% of all administrative complaints are familial status claims, ahead of sex, national origin, and color.

• Types of challenges:
  ▪ Discriminatory rules
  ▪ Occupancy limits
  ▪ Nexus of familial status and sexual orientation
    • Challenging stereotypes about what constitutes a family (*Smith v. Avanti*)
Religion

- Successful challenges to exclusion and differential treatment
  - LeBlanc-Sternberg v. Fletcher

- Unsuccessful cases seeking to reinforce an existing preference or to recognize a right to be segregated
  - Hack v. President and Fellows of Yale College

- Post September 11, 2011
  - Increased reports of housing discrimination against Muslims
Disability

- **Fair Housing Amendments Act of 1988**
  - Intended as a “clear pronouncement of a national commitment to end the necessary exclusion of persons with handicaps from the American mainstream.”

- Since 2001, disability discrimination complaints have outnumbered all other types of administrative complaints.
Disability cont’d

- Zoning and land use
  - *Pac. Shores Props. v. City of Newport Beach*

- Lending and insurance
Disability cont’d

- Independent living and integration
  - *Pac. Shores Props.* v. *City of Newport Beach*
  - *Groome Resources, Ltd. L.L.C.* v. *Parish of Jefferson*

- Reasonable accommodations

- HUD conciliation with Housing Authority of the County of Contra Cost and Vallejo Housing Authority – extension of time to search for housing that would accept Housing Choice Voucher.
Design and construction

- *NFHA v. A.G. Spanos Construction* – standing to sue over violations in 123 complexes in 16 states including buildings completed 15 years before complaint filed.

- *Sec’y of HUD v. Epcon Cmtys., Inc.*

- *Equal Rights Ctr. v. Equity Residential*