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High Court to Hear Arguments Tomorrow on Whether FHA Covers Disparate-Impact Claims

(Texas Dept. of Housing & Cmty. Affairs v. The Inclusive Communities Proj.)

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WASHINGTON, DC—Tomorrow, Wednesday, January 21, 2015, at 10 a.m., the U.S. Supreme Court will hear oral argument in a Fair Housing Act (FHA) case, *Texas Dep’t of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* The case addresses an important unresolved legal issue: are disparate-impact claims cognizable under the Fair Housing Act? WLF Chief Counsel Richard Samp will be available following oral argument to discuss the case and to assess whether the arguments pointed to a likely resolution.

Washington Legal Foundation filed a brief in the case, urging the Court to rule that the FHA, adopted by Congress in 1988, prohibits *intentional* housing discrimination only. The U.S. Department of Housing and Urban Development (HUD) recently adopted regulations asserting that the FHA also prohibits housing-related actions that, although facially neutral, have a disparate impact on protected groups. WLF argued that HUD’s interpretation is not entitled to deference because it is inconsistent with the statutory language.

This case marks the third time in the past three years the Supreme Court has agreed to decide the proper scope of the FHA. On the two prior occasions, the parties settled their disputes before the Court could issue a decision.

Ahead of oral argument, WLF issued the following statement by Chief Counsel Richard Samp: “As with all statutes, judges ought to base construction of the FHA on the ordinary meaning of the text Congress adopted. The statute’s ban on discrimination ‘because of’ race indicates the FHA is directed against intentional housing discrimination only and does not apply when certain groups feel the effects of neutral policies more strongly. A ruling that the FHA encompasses disparate-impact claims would severely disrupt routine business operations in numerous housing-related industries, including the insurance and residential mortgage-lending businesses.”

WLF is a national public interest law firm and policy center that regularly litigates in regulatory cases to ensure that federal agencies do not exceed the statutory limits imposed by Congress.

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