



## CT FAIR HOUSING CENTER

### **The National Commission on Fair Housing and Equal Opportunity in Housing Hearing**

**September 22, 2008 – Boston, MA**

#### **Testimony of Erin Kemple**

#### **THE ROLE OF FAIR HOUSING ENFORCEMENT IN ENSURING DIVERSE COMMUNITIES**

My name is Erin Kemple and I am the Executive Director of the Connecticut Fair Housing Center. Thank you for giving me the opportunity to speak here today.

The Connecticut Fair Housing Center (“the Center”) is a statewide fair housing organization dedicated to ensuring that all people, and principally those with scarce financial resources, have equal access to housing opportunities in Connecticut. The Center provides its clients with the legal services necessary to assert their civil rights in housing discrimination cases. Because Connecticut’s low-income residents are disproportionately affected by discriminatory housing practices – in fact 97% of those served by the Center have incomes at or below 125% of the federal poverty level – the Center is particularly attuned to the importance of assisting Connecticut’s low-income residents.<sup>1</sup>

The Center was founded in 1994 by a group of community leaders, legal services attorneys, civil rights advocates, and others concerned about housing discrimination in Connecticut. With a principal focus on removing barriers to full housing choice for Connecticut’s low-income residents, the Center (1) provides legal assistance to victims of housing discrimination and other unfair housing practices, (2) offers education and outreach to potential victims and housing providers, and (3) promotes community involvement in and resource development for fair housing issues.

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<sup>1</sup> The term “low-income” refers to households with incomes at or below 125% of federal poverty levels.

221 Main Street, Hartford, CT 06106  
Phone (860) 247-4400 • Fax (860) 247-4236

**Toll Free (888) 247 4401**

900 Chapel Street, 10th Floor, New Haven, CT 06510-2865  
Phone (203) 772-3247 • Fax (203) 562-7107

Today, I am here to address the important role enforcement plays in creating and preserving diverse communities.

Enforcement of the fair housing laws plays a variety of roles in ensuring the diversity of the nation's neighborhoods. My testimony will focus first on the enforcement work of the Connecticut Fair Housing Center and then on the work being done by others around the country.

Because the Center is known as a resource on fair housing issues throughout the state, the organization has been involved in several important efforts to ensure that the victims of housing discrimination are protected even if they are not represented by the Center. First, the Center was instrumental in organizing three *amicus curiae* briefs filed with the Connecticut Supreme Court and the Connecticut Appeals Court. All involved issues that significantly impact the rights of Connecticut residents to obtain the housing of their choice in the community of their choice. In the first, *Commission on Human Rights & Opportunities v. Sullivan*, a large Connecticut landlord challenged the application of Connecticut's lawful source of income protections to tenants with housing subsidies. Through the efforts of the Center, two *amicus* briefs were filed with 15 local and national organizations signing on. The briefs pointed out the importance of housing subsidies in assisting low income households in moving to neighborhoods with access to jobs and good schools. In a decision handed down in January 2008, the Connecticut Supreme Court rejected the defendant's challenge and reaffirmed an earlier decision that the state's anti-discrimination laws apply to housing subsidies thus preserving this important tool in housing integration.<sup>2</sup> The third brief organized by the Center focused on the appeal of a state Superior Court decision which prohibited housing discrimination complainant's from intervening in court cases brought on their behalf by the Commission on Human Rights and Opportunities (the CHRO).<sup>3</sup> There, a disabled woman sought to intervene in a Superior Court case after her landlord removed the case to Superior Court. The *amicus* organized by the Center points out to the Court the importance of having the victim's voice heard in cases involving their rights. That case is still awaiting a decision.

Second, the Center's attorneys have challenged illegal practices that affect large numbers of people. For example, when the CHRO demanded copies of medical records from tenants alleging disability discrimination, the Center challenged the practice and the CHRO backed down. Similarly, when I began work at the Center in 2003, the average damage award given by hearing officers in housing discrimination cases was \$5,000. By bringing in compelling evidence of the effects of housing discrimination on those who experience it as well as by bringing a significant number of cases in state and federal court, the Center is now receiving more than double that figure when settling cases or going to hearing at the CHRO. Receiving larger damage awards not only fulfills the purpose of the fair housing laws, but also has a deterrent effect on others who violate the law.

Third, when faced with illegal policies undertaken by several entities at once, the Center has moved quickly to block the practices from taking effect. For example, when several cities and towns moved to exclude sober houses from their neighborhoods, the Center began challenging the actions of the cities and towns by representing the homes. The Center's advocacy has resulted in several towns rescinding cease and desist orders thus keeping the men and women in recovery housed. Recently, the Center settled one such case for \$350,000 in

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<sup>2</sup>*Commission on Human Rights & Opportunities v. Sullivan Associates*, 250 Conn. 763, 739 A.2d 238 (1999) (*Sullivan I*);

<sup>3</sup> *Commission On Human Rights And Opportunities v. Litchfield Housing Authority, et al.*, Connecticut Appeals Court (Docket No.: A.C. 29269 2008).

compensatory damages and attorneys' fees.<sup>4</sup> In every case, the Center was able to preserve the right of people in recovery to live in a family setting fully integrated into the community.

Fourth, the Center has recently brought two cases against insurance companies whose policies violate the fair housing laws. In one, owners of a sober house received a notice that their residential liability policy was cancelled because the property was being used to house people in recovery from drug and alcohol addiction. The Center not only challenged the policy cancellation, but also challenged the insurance company's practice of writing only commercial insurance policies for sober houses.<sup>5</sup> In the second case, the Center is challenging a company's refusal to write residential insurance policies for properties where tenants with housing subsidies reside.<sup>6</sup> Again the Center is seeking not only a residential insurance policy for our client, but also to ensure that the company's underwriting guidelines are applied without violating the fair housing laws. By preserving the rights of these housing providers to obtain good insurance policies at competitive rates, the Center is removing the incentive for all landlords to discriminate against people with disabilities and those receiving a lawful source of income.

In addition to its work on behalf of the victims of housing discrimination, the Center has also spearheaded several unique initiatives designed to ensure that the fair housing implications of state and local policies and practices are addressed. During the past year, the Center worked with the State of Connecticut's Department of Economic and Community Development (DECD) to ensure that Connecticut's Small Cities Community Development Block Grant (CDBG) program as well as other federally supported housing "affirmatively furthered fair housing" as required by federal regulations.<sup>7</sup> The Small Cities CDBG program is one of the largest sources of funding for housing development and rehabilitation for Connecticut's small cities and towns. These same communities are among the least integrated in Connecticut. By having one of its attorneys meet with DECD staff regularly, the Center was able to have significant input into the criteria used to determine if the cities and towns already receiving funding were complying with their fair housing obligations.

Before the State put out its notice of Small Cities CDBG funding availability, DECD staff and one of the Center's attorneys revised the fair housing application questions to determine if the town had previously complied with its obligations to affirmatively further fair housing as well as whether the applications comply with the fair housing requirements of the federal law. All of these efforts are designed to ensure that even Connecticut's smallest cities and towns affirmatively market their housing to people of color and are committed to diversifying their citizenry.

The Center's work has also focused on ensuring that Connecticut's communities with large numbers of homeowners are diverse. The Center has been conducting systemic testing of the homesales market which reveals frequent instances of steering of people of color to communities of color and steering Caucasians to communities that are majority white. In addition, the Center worked to ensure that Connecticut's homebuyers of color are not disproportionately steered to the sub-prime lending market or victimized by predatory loans. The Center applied for and received one of only seven fellowships given by the National Legal Aid and Defender's Association in 2006 to work on discrimination in the lending market. As a result of that grant, the Center has a full-time attorney focused solely on discrimination in the sub-prime market.

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<sup>4</sup> *Turning Point Foundation, et. al. v. John DeStefano, et al.*, 3:05-CV-895 (D.Conn.) Press release attached.

<sup>5</sup> *Clement et al. v. Merrimack Mut. Fire Ins.*, 3:07-CV-1832 (D.Conn.)

<sup>6</sup> *Francia v. Mt. Vernon Fire Insurance*, CV-08-0432039 (Sup. Ct. Conn.)

<sup>7</sup> 24 CFR §91.225.

Unfortunately, during the course of that grant, the Center discovered that the tools available to assist the victims of predatory lending, whether they were white, black or brown, were woefully inadequate. To remedy this, the Center brought forward and testified about legislation designed to reform the Center's sub-prime lending laws during the 2008 Connecticut legislative session. Because the Center had been leading an anti-predatory lending task force for four years, Connecticut legislators sought the organization's input on proposed changes and compromises to the bill that was originally proposed. As a result, Connecticut now has one of the strongest sub-prime lending laws in the country. In addition, the Center has been working with Connecticut's Judicial Department and local housing counseling agencies to ensure that borrowers in foreclosure have access to court appointed mediators and the tools necessary to renegotiate their loans into more affordable mortgages.

Finally, the Center is at the forefront of efforts to determine how to create opportunities for integration from the sub-prime loan disaster. In an editorial published in the *Hartford Courant* on September 10, 2008, Erin Boggs of the Center argues that Connecticut should follow the lead of the city of Baltimore and determine where high and moderate opportunities for integration exist among neighborhoods with foreclosed properties. Ms. Boggs suggests the state should buy or rehabilitate housing in these neighborhoods for resale to people of color thus providing for greater integration in the State's most highly segregated neighborhoods.<sup>8</sup> The Center has recently commissioned a study of Connecticut's neighborhoods in order to move forward with this work.

Of course, efforts to integrate and preserve diversity in Connecticut's neighborhoods have not been limited to the work of the Center. The Connecticut Civil Liberties Union under legal director Philip Tegeler was instrumental in challenging many illegal housing practices in the state. A neighborhood group represented by CCLU attorneys objected to the allocation of low income housing tax credits to build low-income housing in highly impacted neighborhoods in Hartford, a city that is majority minority. State law requires that all housing agencies must "affirmatively promote fair housing choice and racial and economic integration in all programs."<sup>9</sup> By building in areas with high concentrations of people living in poverty, the CCLU argued, the state promoted segregation and not integration. While that challenge was ultimately rejected on other grounds by the Connecticut Supreme Court, the effort has resulted in a greater awareness of the fair housing laws and increased efforts to use the low income housing tax credit program to integrate all of Connecticut's cities and towns.<sup>10</sup> It goes without saying that the CCLU's landmark case, *Sheff v. O'Neill*,<sup>11</sup> spotlighted the role housing segregation plays in school segregation. Finally, the largest fair housing settlement in Connecticut's history was brought by a private attorney working with the Fair Housing Association of Connecticut, another private fair housing organization in Connecticut. The case challenged the Bridgeport Housing Authority's refusal to grant reasonable accommodations requests to disabled tenants and resulted in a settlement of \$760,000 to compensate the victims of the Housing Authority's illegal practices.

While I just spent considerable time outlining the enforcement work that is happening in Connecticut, much of the work done here builds on successes from other parts of the country. Other fair housing organizations have fought insurance companies' illegal discriminatory underwriting policies thus giving the Center insight into which practices to challenge and the

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<sup>8</sup> "Slump Offers Affordable Housing Opportunity," *Hartford Courant*, September 10, 2008. Copy attached.

<sup>9</sup> Con.Gen.Stat. §8-37cc(b).

<sup>10</sup> *Asylum Hill Problem Solving Revitalization Ass'n. et al v. King et al.*, 277 Conn. 238, 890 A.2d 522 (2006)

<sup>11</sup> 238 Conn. 1, 678 A.2d 1267 (1996)

types of remedies to pursue.<sup>12</sup> The Center's work with DECD and the Small Cities CDBG program mirrors the lawsuit recently brought to challenge the way Westchester County has distributed its Community Development Block Grants.<sup>13</sup> The Center's efforts to prevent predatory lending in Connecticut are similar to private enforcement efforts in Baltimore seeking to hold liable the lending companies who blighted many of that city's urban neighborhoods with predatory lending.<sup>14</sup> In addition, the Center began investigating design and construction cases after learning that other fair housing centers uncovered egregious violations of the FHA's accessibility standards.<sup>15</sup> Of course the recent case of *Kennedy et al. v. City of Zanesville* where the plaintiffs were awarded more than \$11 million in compensation for the racially motivated refusal to provide public water to the town's African-American citizens is without equal any place in the country.<sup>16</sup> All of these efforts ensure that the nation's neighborhoods are integrated.

Unfortunately, not all private fair housing agencies can provide the broad array of enforcement tools outlined here in part because not all such agencies have attorneys on staff or private attorneys to assist the victims of housing discrimination. In the administrative process, a complainant often faces a housing provider with more power and more money as well as legal counsel who can more persuasively present the landlord's case. Incorrect decisions, decisions unsupported by evidence, or inadequate monetary judgments cannot be challenged because the complainant and the private fair housing agency do not have the ability to appeal these decisions to court. Even when attorneys in the private bar agree to represent the victims of housing discrimination, representation can be limited by cost and the fair housing experience of the attorney involved. In addition, private attorneys are reluctant to take cases where there may be important legal issues at stake but where the chance of prevailing is in doubt or where the amount of money to be recovered is small.

The result is that many of the nation's smaller cities, towns, and rural areas are without effective enforcement of the fair housing laws. I have spoken with colleagues who have prevailed at an administrative hearing only to have that decision appealed to court by the housing provider. The complainant is then at the mercy of an assistant attorney general or other state attorney whose interest in presenting a fair housing case may be limited by the prominence and political clout of the housing provider or the attorney's caseload.

Several fair housing organizations have been horrified when, after appealing a reasonable cause decision to court, the housing provider counterclaims against the complainant and the state attorney refuses to represent the complainant on the counterclaim. The complainant is then faced with paying a private lawyer to represent her in the counterclaim or appearing on the counterclaim *pro se*. Both alternatives discourage complainants from going forward. Fair housing organizations around the country have difficulty recruiting attorneys from their local bar to assist in these cases. Too often the private attorneys have a direct conflict because they have represented the landlord in a closing or other legal matter or a situational conflict where they do not want to go after landlords who are the source of other legal business.

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<sup>12</sup> *Nevels, et al. v. Western World Insurance Co., Inc.*, C.A. No. 04-1024Z (U.S. District Court, W.D. Washington)(Case challenging insurance underwriting policy that charged higher premiums to group homes);

<sup>13</sup> *US ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, NY*, 1:06-cv-02860-DLC (S.D.NY)

<sup>14</sup> *Mayor and City Council of Baltimore, et al. v. Wells Fargo, et al.*, 1:08-cv-0062, Baltimore Div. of the District of Baltimore.

<sup>15</sup> *Equal Rights Center v. Avalonbay Communities*, 8:05-cv-26265 (S.D. NY)

<sup>16</sup> 2:03-cv-01047, S.D. Ohio (2008)

If adequate funding was available, I believe most fair housing organizations would be able to perform the enforcement and policy work undertaken by the Center. The problem is money. The Fair Housing Initiatives Program funded by HUD permits agencies to get up to \$275,000 per year in funding. This covers some fair housing testing, some administrative costs and rarely, the costs of an attorney. Even if a fair housing agency is able to contract with an attorney in private practice for assistance, the specialized knowledge and commitment to fair housing that is necessary to do these cases is lacking. Unfortunately, there is little private support for enforcement work. The Center is fortunate to receive funding from the State of Connecticut but that grant is in danger now that the State is projecting a \$146 million deficit for 2009. In addition, many private foundations are reluctant to support staff involved in litigation. Even some federal programs such as the money made available as part of the recently passed Homeownership Preservation Act prohibit the use of such funds for direct legal representation. As you have already heard from Ms. Catherine Cloud of the National Fair Housing Alliance, adequate funding for private fair housing organizations is essential to ensuring that the nation's fair housing laws are enforced.

Thank you for your time and attention. I would be happy to answer any questions.