

FAIR HOUSING COMMISSION HEARING TESTIMONY  
DEMETRIA MCCAIN, INCLUSIVE COMMUNITIES PROJECT, INC.  
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Good afternoon Commissioners. I am Demetria McCain, Director of Advocacy & Education at the Inclusive Communities Project, a Dallas Area affordable fair housing organization that seeks to create and maintain racially and economically inclusive communities throughout the North Texas region. One of the programs that ICP operates is its Mobility Assistance Program, through which we daily come in contact with low-income Housing Choice Voucher participants who seek to find rental housing and use their vouchers in higher opportunity areas for the benefit of their children and themselves. It is the barriers faced by these families and other structural and systemic barriers to fair housing (gleaned from ICP attempts to incentivize affordable rental housing development in growing suburbs) that provide the context for my testimony.

Since your hearings began July 15<sup>th</sup>, you have heard from others who have well documented the history of housing discrimination and the segregated housing patterns that exist today because of that history and our failure to ameliorate the problem. Notably, Professor Roisman aptly pointed out the active role that the government has played in creating and perpetuating segregated housing patterns—patterns for which no fair housing testing is needed. A mere look at who lives where, in what and near what tells the story of housing segregation across too many of our Texas cities.

Today, I remind us that our country's call for fair housing did not begin in the 1968 with the passage of the Fair Housing Act. Over 100 years ago, the Civil Rights Act of 1866 amended the Constitution and declared that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell,

hold, and convey real and personal property”. This right plainly extends to low-income People of Color. My comments today focus on (1) how violation of this right has and continues to play out in Texas and (2) suggestion of how we must proceed with a boldness yet seen in our governmental housing policies.

### Background of Fair Housing in Texas

A look at the history of fair housing in Texas shows that Texas is not unlike other states throughout the country. Like the seminal *Gautreaux* public housing desegregation case of Chicago, the extent of racial segregation in Texas public housing has been illustrated through such cases as *Clients Council v. Pierce*; *Young v. Pierce*; *Walker v. HUD*; *NAACP v. Commerce Housing Authority*; *Ethridge v. Housing Authority of the City of Galveston*; and *Ripley Arnold Residents Association v. Fort Worth Housing Authority*. While plaintiffs have sought to enjoin local housing authorities from segregating, in some instances, HUD’s complicity as an overseeing agency has caused courts to find liability on part of the federal government.

HUD and local public housing authorities, usually doing the bidding of their local jurisdictions, have not been the only bad actors when it has come to concentrating and containing low-income People of Color. Municipalities have played their role as well and have done so beyond determining where public housing should be located. Local zoning and land use policies have succeeded in forbidding or limiting the development of affordable housing either in entire municipalities or anywhere outside of the older part of town where People of Color have historically been told to live. Such is the case in many areas of Collin County (just North of Dallas), the wealthiest and fastest growing county in the state. The intentional discriminatory “zoning out” of People of Color that the Court found had taken place by the Town of Sunnyvale,

an eastern suburb within Dallas County, took the form of a minimum 1-acre lot requirement for houses and a town-wide prohibition on multifamily housing.

State Administration of the Low Income Housing Tax Credit Program Perpetuates Segregation

The Low Income Housing Tax Credit Program, codified in the Internal Revenue Code, serves as the primary federal program through which new affordable housing gets built. This program is administered through state housing finance agencies and their annual Qualified Allocation Plan, known as the QAP. For the competitive tax credits, the QAP determines which developer applications meet baseline qualifications and which qualify for the maximum number of points in order to be awarded tax credits.

The State of Texas has admitted that its Tax Credit program perpetuates racial segregation in Dallas and other large urban areas, but it has done nothing to remedy this segregation. In fact, it has perpetuated the concentration of Tax Credit units in lower-income communities of color. This point is illustrated by the fact that over 60% of tax credit units, statewide, are in census tracts that are at least 50% People of Color. Only five states are more concentrated (CT, CA, NM, DC, HI). Additionally:

- Only 14.5% of the non-elderly Tax Credit units are in census tracts that are predominantly white [70-100% white]; and
- 48% (almost half) are in census tracts that are only 0-30% white..

The Dallas Metro Area [PMSA: primary metropolitan statistical area] is even more concentrated with over 65% of its tax credit units in census tracts that are at least 50% People of Color.

For the City of Dallas:

- Only 2.9% of the non-elderly Tax Credit units within the City of Dallas are in census tracts that are predominantly white [70-100% white]. [However, 19% of all renter-occupied units within the City are in census tracts that are 70-100% white.]
- 85% are in census tracts that are only 0-30% white [as opposed to 51% of all renter units].

For Dallas County:

- Only 2.8% of the non-elderly Tax Credit units are in census tracts that are predominantly white [70-100% white]. [However, 14% of all renter-occupied units are in census tracts that are 70-100% white.]
- 71% are in census tracts that are only 0-30% white [as opposed to 38% of all renter units].

In March of this year, the Inclusive Communities Project sued the Texas Department of Housing and Community Affairs for its administration of the Tax Credit Program, and litigation remains pending with hopes of a resolution that will cease and dismantle the current segregation that is occurring while affirmatively further fair housing in future administration of the program.

Internal Revenue Service's Lack of Oversight Opens the Door for Such Continued Segregation

In addition, the Internal Revenue Service has been an irresponsible steward of the Tax Credit program by failing to incorporate effective fair housing related requirements in its oversight of the way states administers the program—in spite of a Congressional mandate to do so. This abdication of responsibility by the IRS has allowed states to administer the program in ways that perpetuate segregation rather than affirmatively further fair housing as the Fair Housing Act requires. In March of this year, ICP petitioned the IRS to engage in rulemaking

that would address these serious fair housing issues in the LIHTC program. The Commission should, in its final report, demand that the IRS do so without further delay.

#### Reauthorization of the HOPE VI Program Cannot be a One Size Fits All National Policy

While the Tax Credit program serves as today's primary tool for new affordable housing, the federal HOPE VI program was created to demolish, revitalize, and deconcentrate public housing. Nationwide program success has been marginal at best with deconcentration dropping out of the conversation all together when local advocates have not spotlighted the need to affirmatively further fair housing through the program's administration.

While not a panacea for our racial segregation problems, the reauthorization of the HOPE VI program provides opportunity for us to remedy these problems and set up structures to avoid their reoccurrence. The amount of replacement housing that returns onsite, after demolition, is very much a local issue and one that should consider the likely race and ethnicity of current and potential residents along with the historical and current racial housing patterns of the region.

Within one city alone, the answer to how much replacement housing should return to the neighborhood versus be rebuilt in other areas can vary. Dallas serves as an example. HOPE VI funds were used by the Dallas Housing authority when it sought to effect one of the remedies in the *Walker v. HUD* consent decree. Its task was to demolish its veritable monuments to racial housing segregation and rid the city of the horrific conditions under which Black public housing residents were forced to live while creating decent affordable housing that was located in environmentally safe areas. The decision to rebuild some or any units onsite varied depending upon which of the 3 public housing structures were being demolished. Roseland Homes, in a gentrifying area, called for one solution, while a West Dallas project, isolated across the Trinity River in a heavy industrial area and near a lead smelter, called for another.

## Conclusion

While Congress was considering passage of the 1949 Housing Act, it refused to adopt Representative Vito Marcantonio's anti-segregation amendment that would have prohibited segregation in federally funded public housing. Sixty years later we should right this wrong in all our federally created low income housing programs by enactment of the following provision, or something similar – nothing less will do.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no applicant for or resident of federally created housing shall be required to accept a housing unit in a development or in a census tract in which his/her race/ethnicity predominates as a condition of receiving said federal low-income housing assistance, either as a temporary or permanent placement.*

*Sec. 2, And be it further enacted, That if an applicant/resident exercises his/her right under this provision then the administering agency shall, at the individual's election, provide all assistance necessary for that individual to obtain a desegregated housing opportunity, including a housing voucher, and counseling and supportive services. This provision shall be enforceable by the individual applicant for or recipient of such assistance.*

Thank you for your time.

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