

**The National Commission on Fair Housing and Equal Opportunity
in Housing Hearing
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Written Testimony of the Fair Housing of the Dakotas

**Submitted by
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My name is Amy Nelson and I am the Executive Director of the Fair Housing of the Dakotas. I thank you for the opportunity to provide this testimony. The Fair Housing of the Dakotas (FHD) is a non-profit, grassroots organization serving North and South Dakota with an office located in Bismarck, ND. The mission of the Fair Housing of the Dakotas is to work to eliminate housing discrimination and to ensure equal housing opportunities for all.

The FHD began fighting housing discrimination in the State of North Dakota with its incorporation in 1995. In March, 2003, the FHD also began fighting housing discrimination in the South Dakota counties located east of the Missouri River, and beginning December, 2004, covered all of South Dakota. This expansion was the result of the number of phone calls we were receiving from South Dakotans and the lack of a fair housing organization there. In June, 2005, the organization's name was changed from the "North Dakota Fair Housing Council" to the "Fair Housing of the Dakotas" to reflect its project area of both North and South Dakota.

The States of North and South Dakota hold a population of 1,397,044 individuals according to the 2000 Census spread over some 147,817 square miles (an area slightly larger than the state of Montana). The Fair Housing of the Dakotas is only able to fund three full time staff to cover this large geographic area. There are only 18 cities with populations over 5,000 making both States extremely rural with long distances between major cities. As a result, a major portion of both State's residents would be classified as "underserved" populations and areas. Consequently, most of the FHD's housing discrimination allegations and filings focus on rental discrimination.

According to the 2000 Census, there are 212,436 people with disabilities in North and South Dakota largely due to high elderly populations. Both states are predominantly white; however, both states have seen strong growth in their non-white populations. The states are also home to twelve Native American reservations. Some of the poorest counties in the United States are the Indian reservations located in North and South Dakota. As a result, the largest minority concentration according to the Census is Native American at 6.7% of the total population (although it is estimated to be higher due to Native Americans being enrolled in a reservation but living and working in another area). Although these numbers may seem low, each State's minority categories increased from 20-45% from the 1990 Census while the White population remained fairly consistent. Estimates for the next Census suggest similar increases. The Dakotas are also home to three Air Force Bases which result in higher minority populations in those communities.

In the rural or underserved areas, victims of housing discrimination feel they have few options. They typically are reluctant to “make a fuss” and are concerned about losing the housing they currently have should they file complaints or complain about how they are being treated. Even though the law protects them in such cases, the chance of losing their housing is too great to chance when housing is so extremely limited. In the rural areas, tenants are often also dealing with substandard housing because of the lack of inspectors and often also older properties which are not accessible. With the high elderly populations in both North and South Dakota, people want to age in place and the vast majority do not want to go to a nursing home when they can remain independent. They need accessible housing as disabilities worsen or occur and need to have accommodations and modifications allowed for them. In addition, everyone knows everyone else. These rural areas and small towns are wonderful places to live and grow up but not when you have problems. Your housing provider may also be related to the local attorney or county commissioner or police officer. The system those in these rural areas must fight is so great without even considering economic factors.

North Dakota housing discrimination complaints must be filed with the North Dakota Department of Labor’s Division of Human Rights (NDDOL) which was deemed substantially equivalent by HUD in 2001 and/or in state/federal court. South Dakota housing discrimination complaints may be filed with HUD’s Denver, CO Office, the South Dakota Department of Labor’s Division of Human Rights, the Sioux Falls Human Relations Commission (Sioux Falls complaints only) and/or in state/federal court. However, none of these South Dakota agencies have been deemed substantially equivalent by HUD. As a result of funding and substantial equivalency, most FHD enforcement activities occur under the Federal Fair Housing Act (for South Dakota enforcement) or the North Dakota Housing Discrimination Act (for North Dakota enforcement), although clients are informed of other filing options available in each state.

Some of the impediments we face in affirmatively furthering fair housing are lack of adequate funding and the need for better support from the government and the courts in the enforcement of fair housing violations.

There are unique needs to covering such large areas. We spend a lot of time in our vehicle traveling to do outreach on fair housing, conducting trainings, recruiting volunteers, investigating allegations and meeting with clients on their rights. Airlines do not fly between cities. We must drive 3, 6 or even 8 hours one way to reach the corners of our territory. Our overhead costs are often much lower than metro areas due to lower costs of living but our travel costs may be much higher because of the distances which must be traveled. The Fair Housing of the Dakotas is one of only 39 non-profit fair housing organizations across the country to be awarded a HUD three year FHIP-Performance Based Grant. Currently, the Fair Housing of the Dakotas is the only FHIP PEI grantee in the entire HUD-Denver Region (states of Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming). Groups in Colorado and Wyoming have closed in recent years and a Montana group is attempting to restart after a

closure. All closures related to the lack of HUD funding. We are very appreciative of HUD funding but the FHD is forced to rely upon HUD FHIP funding to provide its services because of limited alternative resources for this work.

For instance, we receive limited funding through Community Development Block Grant programs and private foundations. The States of North and South Dakota have five entitlement communities with North Dakota having three (Bismarck, Fargo and Grand Forks) and South Dakota having two (Rapid City and Sioux Falls). We have consistently received for several years a small CDBG award from the City of Bismarck; however, this award has been decreasing over the years and is currently at \$4,500 per year. Although we are extremely appreciative of the receipt of any funds, the continuing decrease is of a concern because we know there are so many groups in need of funding in our community. In addition, these funds can only be used on educational activities. We have also over the years applied at various times for CDBG funds from the City of Fargo (North Dakota's largest city) and been awarded amounts around \$1,000-1,500 despite requesting larger amounts. Again, we are appreciative of any funds provided but these small amounts are almost not worth the valuable staff time and expense of applying. We have only been able to obtain funding from Grand Forks when working on Analysis of Impediments; however, AIs are extremely time consuming on a staff of our size. We had applied for CDBG funds from the City of Rapid City but were denied, likely due to our out of state office address. We have not applied to the City of Sioux Falls mainly because we are still attempting to build our numbers in that city and because they have an active Human Rights Commission which investigates housing discrimination complaints so funding seems unlikely. When you are an office of our size trying to cover such a large geographical area on limited funds, our time and resources are extremely limited. Is it worth the time and effort which could be spent on case work when the payoff is likely to be only \$1,000? Yet, that is better than nothing. This is a constant battle we must wage.

Additional funding sources in North and South Dakota are extremely limited. North and South Dakota have a very limited number of private foundations which fund non-profit organizations. The majority of the small number of foundations fund arts/humanities organizations and provide scholarships for college students. Foundations located in Minnesota prefer to fund within their state and if any funds are left over, they will then consider outside applications. According to a survey conducted by a National Non-Profit Agency, North and South Dakota rank 49th and 46th respectively in the number of private foundations. Because of such a low number of private foundations, it is extremely difficult for non-profits in North and South Dakota to have consistent funding and services independent of federal funding. The FHD; however, is constantly searching for foundations outside the Dakotas which may be able to provide assistance. Funding through the state legislatures is extremely unlikely. For several sessions the FHD battled a state private investigative commission and state legislators who sought to eliminate the FHD's ability to provide testing to uncover illegal acts of housing discrimination. The result of this legislation requires non-profit agencies who fight housing discrimination like the FHD to have federal or state contracts in place in order to conduct investigations. If we are ever not funded by HUD, we will lose our ability to

investigate allegations of housing discrimination. This impedes our ability to ever have resources in place that do not involve federal funding.

Another impediment is the lack of proper enforcement. The main types of housing discrimination allegations the FHD receives involve rental transactions involving people with disabilities, followed by families with children, gender discrimination and discrimination due to race/color/national origin. The cases involving people with disabilities focus mainly on reasonable accommodations issues followed by new design/construction cases.

We are reliant upon FHAP agency political appointments to ensure that the FHAP remains a strong enforcement mechanism. Although we have had a strong state FHAP agency in North Dakota with the last two commissioner appointments who have done a very good job enforcing fair housing, gaps occur when charged cases are referred to our state attorney general's office for enforcement. Although there are good attorneys in the attorney general's office in our state, these young, bright attorneys do not have the support they need to enforce violations. They do not receive adequate guidance in case prosecution and support through training. FHAP referred cases can be closed without a client's input, settled at ridiculous remedies, outright dismissed by judges because of lack of input by the agency or have no interest for enforcement which results in bad case law or judicial actions which are not challenged or properly reasoned. When emphasis is not placed upon discrimination cases, the result is a need by our organization to intervene on every single case to ensure they are adequately enforced. This can be extremely expensive for us. Our state is not unique to this problem of enforcement of charged cases. I am aware of other states with similar problems. Unfortunately, I am also aware that there is a monitoring gap for HUD of FHAP charged cases. HUD has oversight over the FHAP agencies but I have been informed that they do not have oversight over the state agencies a FHAP may refer a charged case to. This must be remedied.

We have also had concerns about the consistency of enforcement between HUD regions as well. We have occasionally had to file cases involving Minnesota border communities with HUD's Chicago Office but mainly file cases with HUD's Denver Office. Because we have filed in both regions, we have raised concerns about the inconsistency we have received in the complaint filing and investigative process between the two regions. We have seen the difficulty in just trying to get a complaint filed and how new design/construction cases remain pending for over four years. I have raised several of these concerns with my HUD Denver HUB Director and am hopeful that changes will continue to be made to make the process of eliminating housing discrimination more efficient and fair to all.

I point all this out to you to address the unique needs of fair housing organizations like mine serving large geographical areas. So, what is needed?

- More funding sources need to be available to fair housing organizations. The fair housing program at the federal level needs to be adequately funded. Studies have repeatedly shown that the lack of a fair housing organization in an area has a direct impact on the lack of

cases being filed. It is a disgrace that my organization is the only FHIP funded organization in our HUD region.

- Strong enforcement by federal and state agencies. A charged case should have all the enforcement power of the federal government behind it. HUD must be required to monitor FHAP charged cases when referred to other state agencies or departments to ensure they are properly enforced.
- Have strong funding mechanisms in place for Community Development Block Grants. Require that entitlement communities show they have provided funds to affirmatively further fair housing. If they do not, require they return the money. Us FHIP groups are funded with a requirement that a set amount of our funds be used on HUD staff training. If we do not use these funds, they must be returned. A similar requirement should apply to CDBG programs.
- Support fair housing organizations covering large geographical areas. The populations may be smaller and more spread out but that does not mean there is not a need. Rural states are still part of the United States of America and adequate resources need to be provided to enforce violations of the Fair Housing Act.

I very much thank you for this opportunity. Please let me know if you have any questions.