Lee Celano / Reuters

Updated on June 25, 2015, at 10:34 a.m.

The Supreme Court ruled on Thursday that policies that segregate minorities in poor neighborhoods, even if they do so unintentionally, violate the Fair Housing Act. In a 5-4 decision, the court ruled that so-called "disparate-impact claims"—claims that challenge practices that adversely affect minorities—can be brought under the Fair Housing Act. However, the court warned against remedies that impose outright racial quotas, a sign that disparate-impact claims must be brought cautiously.

In writing the majority opinion, Justice Kennedy acknowledged that the disparate-impact standard has worked to combat systemic discrimination. "Much progress remains to be made in our Nation's continuing struggle against racial isolation," Kennedy wrote. "In striving to achieve our 'historic commitment to creating an integrated society,' we must remain wary of policies that reduce homeowners to nothing more than their race. But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse. The FHA must play an important part in avoiding the Kerner Commission's grim prophecy that 'our Nation is moving toward two societies, one black, one white—separate but equal.'"

The following piece, written before the decision was handed down, explains how the case came to be, and what was at stake.

A week after Martin Luther King, Jr. was assassinated in 1968, President Lyndon B. Johnson signed the Fair Housing Act into law. Its goal was to prevent housing discrimination on the basis of race, color, religion, sex, or national origin, and it gave the Department of Housing and Urban Development the legal tools to try and remedy decades of housing segregation.

This month the Supreme Court will decide whether to scrap parts of that law. Housing advocates from across the country wait, nervous, every Monday (and sometimes Thursday) when the court releases opinions. The case, Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, colloquially known as Inclusive Communities, has many of these advocates worried that a court that has rolled back many protections of the civil rights era will go even further this time.

“This case is a core civil rights issue, and it's the court’s only really race case this term,” said Janai Nelson, the associate director-counsel of the NAACP Legal Defense and Education Fund, in a conference call with reporters last month. “It comes at a time when race and the consequences of policies and laws that have direct racial implications are unfolding in very disturbing ways on our many screens and with distressing regularity.”

RELATED STORY

[How Housing Policy Is Failing America's Poor]

The case came about when the Inclusive Communities Project, a Dallas non-profit that tries to promote racial and socioeconomic integration, sued the Texas Department of Housing and Community Affairs in 2008 over the way the department allocated housing tax credits. HUD's Low-Income-Housing Tax Credit, which is distributed by states, enables developers to build affordable housing without losing money. In Texas and other states, the state housing agency chooses which projects will receive the credits through a formula called the Qualified Allocation Plan (QAP), which gives some projects more points than others. States publish their QAPs every year, and some give priority to projects that are located in high-opportunity areas, others seek projects that invest in distressed neighborhoods, while others prioritize projects that target extremely low-income individuals. The projects with the most points receive the tax credits, and are thus able to move forward.

The Inclusive Communities Project argues that the way Texas distributed the points in Dallas between 1995 and 2009 led minorities to be segregated in poor areas of Dallas. That's because, Inclusive Communities argues, in 1994 Texas stopped prioritizing the goal of desegregation when it chose which projects received tax credits. Between 1995 and 2009, the state did not award

tax credits for any family units in predominantly white census tracts, and instead gave tax credits to locations "marked by the same ghetto conditions that the FHA was passed to remedy," the lawsuit states.

"The impacted racial ghetto, with its segregated overcrowded living conditions, inherently unequal schools, unemployment and underemployment, appalling mortality and health statistics, inevitably gives rise to hopelessness, bitterness, and yes, even open rebelling of those imprisoned within its confines," Senator Walter Mondale, a sponsor of the FHA, said in 1968. "Forced ghetto housing, which amounts to the confinement of minority group Americans to 'ghetto jails' condemns to failure every single program designed to relieve the fantastic pressures on our cities."

President Lyndon B. Johnson signs the Fair Housing Act into law in 1968. (AP)

Of course, Dallas had its reasons for awarding the tax credits the way it did. While some states award tax credits to developments in so-called "high-opportunity" neighborhoods, others prioritize high-poverty neighborhoods, which are often in need of investment and, some argue, could be improved with updated housing stock. Congress even added an incentive in 1989 that allowed developers to claim 30 percent more tax credits if they located projects in high-poverty areas.

But building more low-income developments in high-poverty neighborhoods perpetuates class segregation, and Inclusive Communities argues it also perpetuates racial segregation. Nationally, there are 3,800 census tracts where more than 40 percent of the population is below the poverty line—70 percent of those are also predominantly minority. Though Texas might not have been intentionally discriminating against minorities in the allocation of its tax credits, its policies still had a "disparate impact" on minorities by segregating them in high-poverty areas, Inclusive Communities argues.

The Supreme Court case centers on whether Texas had to be discriminating against minorities on purpose to be found unlawful. After all, it's difficult to prove that anyone had the intention to discriminate. It's much easier to prove that an action had a discriminatory effect—and the evidence is clear that the policies did segregate families in Texas. If the court rules that disparate-impact claims cannot be brought in Fair Housing Act challenges, it would essentially defang the FHA, housing advocates say.

A house in Sunnyvale, Texas, which until 2000 prohibited the construction of any apartment buildings (Jerry W. Hoefer / AP)

“To suddenly remove what is the core protection of this Fair Housing Act would fundamentally dismantle the very architecture of Civil Rights laws, and would put an end to, and possibly reverse, the gains that were built over the last half century,” said Dennis Parker, the director of the Racial Justice Program at the ACLU.

Tellingly, two similar cases that were making their way to the Supreme Court were settled shortly before oral arguments because civil-rights advocates were worried they would lose before a conservative Roberts court. And both a district court and an appellate court ruled in favor of the Inclusive Communities Project, which makes the Supreme Court’s decision to take the case especially concerning to advocates.

The oral arguments in January gave little indication as to how the Supreme Court might rule. The court’s liberal justices asked whether reversing disparate-impact claims was really in line with what Congress was trying to do when it passed the FHA and amended it since then. Federal courts had once universally agreed that lawsuits based on disparate-impact claims could proceed: In 1988, Congress amended the act to create three exceptions to disparate-impact liability while leaving the rest of the law unchanged, which the Court may interpret as implying that Congress wanted disparate-impact to stand. Even conservative Justice Antonin Scalia seemed to side with Inclusive Communities on that issue.

“Doesn’t that kill your case?” he asked Texas Solicitor General Scott Keller. “I mean, when we look at a provision of a law, we look at the entire provision of a law, including later amendments. We try to make sense of the law as a whole.”

But Chief Justice Roberts also wondered how to determine whether a disparate impact is actually a bad impact. Using tax credits to build housing in a low-income area could be considered good because it revitalizes a community, while using them to promote integration could also be considered positive. Which benefits minorities more, he asked, and who decides this? I’ve written beforeabout how children from low-income minority families who had the opportunity to move to majority white suburbs often did better in school and careers than their peers who stayed in the cities. Requiring at least some tax credit properties to be in high-opportunity areas is one way to

achieve this, and it creates even more housing opportunities for families who want to have access to amenities they otherwise would not in the cities, said John Henneberger, a fair housing advocate in Texas.

Low-income people who have Section 8 vouchers often can't find housing outside of poor areas—especially in places like Texas, where, last month, the legislaturepassed a bill that prohibits municipalities from enacting so-called "Source of Income" laws, which force landlords accept Section 8 vouchers (the legislature passed this bill after Austin prohibited Source of Income discrimination). In contrast, tax-credit-supported developers must accept vouchers.

"If you want people of color who are low-income to be able to have an opportunity to live in a suburban community, you have to get a tax-credit development out there," Henneberger told me.

Eric Gay / AP

More developers have built tax-credit developments in the suburbs in the wake of the 2012 district-court decision in favor of Inclusive Communities. The court ordered Texas to propose modifications to the QAP, and the state did so. The new formula gave more points to developers that built in high-opportunity areas.

But the state of Texas changed its QAP again and now requires both a city to put in its own money for tax-credit developments, as well as a formal resolution of support from the city's governing body. That's made it much more difficult to get projects built in wealthier areas, Betsy Julian, president of the Inclusive Communities Project, told me.

"The requirement to get the resolution of support has really had a chilling effect on cities," she told me. "We're hearing that it's political suicide to formally offer a resolution of support."

If the Supreme Court rules against Inclusive Communities, tax-credit developments could become yet even harder to build in nicer neighborhoods. There's support in Texas's conservative legislature for changing the QAP again if the district court's ruling is reversed.

There are certainly housing advocates who argue that this won't be the end of the world. It's possible to build very nice tax-credit developments in impoverished areas, and improve those areas by doing so. But calling the

Section 8 program "Housing Choice" vouchers seems disingenuous if families really have no choice about where they're going to live.