

A Remark on the Jurisdiction of the Fair Housing Act over Racial Discrimination in Housing Platforms

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Abstract

This paper critically examines the jurisdiction of the Fair Housing Act in addressing racial discrimination within housing platforms. The study explores the Act's jurisdiction, its scope, applicability, and interpretations, analyzing legal precedents and controversies. The paper engages with critiques and debates surrounding the Act, considering limitations in addressing discrimination and proposed amendments. It assesses the implications for future enforcement, addressing emerging challenges and offering potential reforms and policy recommendations.

Keywords: Fair Housing Act, racial discrimination, housing platforms, jurisdiction, legal precedents

1. Racial Discrimination in Housing Platforms

1.1 Instances and Patterns of Discrimination

Instances of racial discrimination within housing platforms have persisted despite legal provisions aimed at preventing such practices. Various forms of discriminatory behaviors have been documented, including the unequal treatment of individuals based on their racial background during the housing search and application processes.

Unequal Treatment in Housing Listings: Discrimination can manifest in the form of biased language or preferences in housing advertisements. Certain listings may subtly or explicitly favor or disfavor individuals based on their race, perpetuating stereotypes and reinforcing discriminatory practices.

Differential Application Processing: Instances have been reported where housing platforms or landlords may subject applicants to different

screening processes or standards based on their race. This can result in unequal opportunities and hinder fair access to housing for marginalized racial groups.

1.2 Legal Challenges and Controversies

Efforts to combat racial discrimination in housing platforms have encountered legal challenges and controversies, reflecting the complex nature of addressing systemic issues. Some key points include:

Proving Discrimination: Legal proceedings often require individuals to prove that discrimination has occurred, which can be challenging due to the subtle nature of many discriminatory acts. The burden of proof and the need to establish discriminatory intent can pose obstacles to justice.

Emerging Technologies: The use of algorithms and automated systems in housing platforms introduces new challenges. While these

technologies aim to streamline processes, they may inadvertently perpetuate biases present in historical data, leading to unintentional discriminatory outcomes.

Intersectional Discrimination: Discrimination in housing platforms is not always solely based on race but may intersect with other factors such as gender, socioeconomic status, or disability. Addressing intersectional discrimination poses additional legal challenges as laws may need to evolve to consider multifaceted forms of bias.

2. Jurisdiction of the Fair Housing Act

2.1 Scope and Applicability

The scope and applicability of the Fair Housing Act (FHA) are pivotal aspects in understanding how it addresses racial discrimination in housing platforms. The FHA, enacted in 1968, aims to eliminate discriminatory housing practices and promote fair housing opportunities. Its scope extends to various aspects of the housing market, encompassing both public and private entities involved in the sale, rental, or financing of housing.

Private and Public Entities: The FHA applies to a wide range of housing-related actors, including landlords, property managers, real estate agents, and mortgage lenders. It covers both public and private housing providers, ensuring that discrimination is prohibited across various sectors of the housing market.

Protected Classes: While the FHA protects individuals from discrimination based on race, it also extends its coverage to other protected classes, including color, religion, national origin, gender, familial status, and disability. This broad coverage is designed to address discrimination on multiple fronts and create a more inclusive housing environment.

2.2 Interpretations and Legal Precedents

Interpretations of the FHA and legal precedents play a crucial role in shaping how the Act is applied to cases of racial discrimination in housing platforms. Courts and legal authorities have established key principles through various decisions and rulings:

Disparate Impact Theory: The concept of disparate impact recognizes that even seemingly neutral policies or practices may disproportionately affect protected classes, leading to discriminatory outcomes. Courts have acknowledged the applicability of the disparate impact theory in FHA cases, allowing challenges

to practices that may have discriminatory effects.

Affirmative Duties: Courts have recognized that the FHA imposes an affirmative duty on housing providers to actively work against discriminatory practices. This may involve taking proactive measures to prevent discrimination, address biased housing policies, and promote inclusivity in housing practices.

Application to Online Platforms: With the increasing prevalence of online housing platforms, there have been debates about the applicability of the FHA to these digital spaces. Legal interpretations have considered the Act's relevance in addressing discriminatory practices in online housing listings and transactions.

3. Critiques and Debates

3.1 Limitations in Addressing Discrimination

The Fair Housing Act (FHA), despite its significance in combating housing discrimination, has faced critiques and debates regarding its limitations in addressing certain forms of bias. Understanding these limitations is crucial for evaluating the effectiveness of the Act and identifying areas for potential improvement.

Subtle Forms of Discrimination: Critics argue that the FHA might not effectively address subtle or implicit forms of discrimination in housing. While overt acts of bias are explicitly prohibited, more covert practices that indirectly disadvantage certain groups may go unnoticed. This includes practices that may disproportionately affect specific racial or ethnic communities without explicit discriminatory intent.

Challenges in Enforcement: Enforcement of the FHA has been a point of contention. Some argue that the mechanisms in place for investigating and addressing complaints may be insufficient. Enforcement agencies may face resource constraints, leading to delays and challenges in pursuing cases effectively. This limitation could result in a perception that discriminatory practices go unchecked.

3.2 Proposed Amendments and Alternatives

In response to identified limitations and critiques, there have been debates on proposed amendments to the Fair Housing Act and alternative approaches to strengthen its ability to address housing discrimination.

Expansion of Protected Classes: Some advocates propose expanding the protected classes under the FHA to include additional characteristics such as sexual orientation and gender identity. Recognizing the intersectionality of discrimination and protecting a broader range of individuals is seen as a way to enhance the Act's relevance to contemporary challenges.

Stricter Enforcement Mechanisms: Calls for stricter enforcement mechanisms involve enhancing the resources allocated to agencies responsible for enforcing the FHA. This includes increased funding, staffing, and training to ensure more efficient and timely responses to discrimination complaints. Strengthening enforcement mechanisms can contribute to a more effective deterrent against discriminatory practices.

Community Empowerment: Another alternative approach involves empowering communities to actively combat housing discrimination. This may include community education initiatives, the establishment of local task forces, and partnerships between advocacy groups and housing providers to promote awareness and inclusivity.

Technological Solutions: Given the prevalence of online housing platforms, there are discussions about integrating technological solutions to identify and prevent discriminatory practices. This may involve developing algorithms that detect patterns of bias in housing listings and transactions, creating a more proactive approach to combating discrimination in the digital space.

4. Implications for Future Enforcement

4.1 Emerging Issues and Challenges

The landscape of housing and discrimination is dynamic, presenting emerging issues and challenges that have implications for the future enforcement of the Fair Housing Act (FHA). Identifying and understanding these challenges is essential for adapting enforcement strategies to effectively address evolving forms of discrimination.

Digital Discrimination: One of the emerging challenges is the manifestation of discrimination in online housing platforms. As technology plays an increasingly central role in the housing market, issues such as algorithmic bias, online redlining, and discriminatory practices in digital spaces have surfaced. Ensuring that the FHA is equipped to address these new challenges is

critical for maintaining its relevance.

Intersectionality: The intersectionality of discrimination—where individuals may face bias based on multiple factors such as race, gender, and socioeconomic status—poses challenges for the FHA. Enforcement agencies need to navigate complex cases where discrimination is multifaceted, requiring a nuanced and comprehensive approach.

Housing Affordability: The issue of housing affordability intersects with discrimination, particularly for marginalized communities. Future enforcement efforts may need to consider the broader economic context and how discriminatory practices contribute to disparities in access to affordable housing.

4.2 Potential Reforms and Policy Recommendations

In light of emerging challenges, there are potential reforms and policy recommendations that can enhance the efficacy of the FHA in addressing discrimination in housing.

Enhanced Training and Sensitization: Providing enhanced training for housing providers, landlords, and enforcement agencies can improve awareness and sensitivity to discriminatory practices. This includes training on recognizing implicit bias, understanding diverse perspectives, and fostering inclusive housing practices.

Community Engagement: Actively involving communities in the enforcement process can lead to more effective outcomes. Establishing community-driven initiatives, feedback mechanisms, and partnerships with local organizations can create a collaborative approach to identifying and addressing discrimination.

Regular Review and Updating: Given the evolving nature of discrimination and housing markets, a commitment to regular review and updating of the FHA is crucial. This involves assessing the effectiveness of existing provisions, identifying gaps, and adapting the Act to address emerging challenges proactively.

Incorporating Technology Solutions: Embracing technological advancements to enhance enforcement capabilities is essential. This includes leveraging data analytics, artificial intelligence, and machine learning to identify patterns of discrimination in both traditional and online housing markets.

Strengthening Legal Protections: Exploring

avenues to strengthen legal protections against discrimination, such as considering amendments to the FHA or the introduction of complementary legislation, can contribute to a more robust framework for combating bias in housing.

As the FHA navigates the complexities of the modern housing landscape, these potential reforms and policy recommendations can guide future enforcement efforts. By proactively addressing emerging challenges and adapting to societal shifts, the FHA can continue to play a pivotal role in promoting fair housing practices and combating discrimination in all its forms.

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