

Civil Rights and Housing

Karen Heidel, Charles Yow, David Splaingard, Amanda Ringer

Civil Rights Act of 1964

The vast majority of the civil rights legislation now in place was passed to remedy the overwhelming racial discrimination that was present in many parts of the country. A major cause of this discrimination stemmed from the Jim Crow laws, which were enacted to keep whites and African Americans separate. These laws limited African Americans' right to free travel, and they were only allowed to eat at restaurants or stay at hotels that had "For Colored" signs posted. They were also forced to ride in separate train cars, use separate restroom facilities, and use separate drinking fountains. In attempt to cure the injustice and humiliation that African Americans faced as a result of this type of segregation, laws were finally enacted in the 1960's to prevent discrimination on the basis of race.

A combination of several different factors led the United States government to begin passing laws to end racial discrimination. First, Congress had begun to recognize that segregation and discrimination were a nationwide problem, and were not just limited to certain states or local areas. Another factor was the criticism that the United States received from the international community because dark skinned leaders from other countries who came to visit the United States were discriminated against, and this was bad for foreign relations. Perhaps the biggest factor that encouraged Congress to enact anti-discrimination laws was the civil rights movement, where blacks and whites joined together to demand equality for all races and an end to segregation and discrimination against African Americans.

Although discrimination against African Americans is not as visible today as it was in the past, African Americans still face discrimination as a result of past racial segregation. Because some groups of people, like African Americans, were historically subject to more discrimination than others, the legislature calls them “protected classes” and makes laws to prevent them from being subjected to further discrimination. To prevent this type of discrimination and provide remedies for people who are discriminated against, there are several laws that can be used to fight continued discrimination. The Equal Protection Clause of the United States Constitution prevents states or their political subdivisions from intentionally discriminating against protected classes in the use of public facilities. The Civil Rights Act of 1964 can be used to challenge discrimination and segregation in public accommodations, and § 1981 gives persons of all races the same right to be free from discrimination in making contracts, both public and private.

The goal of Title II of the Civil Rights Act of 1964 was to prevent segregation of the races in public places. Because of separation of powers in the United States government, Congress must have a provision in the United States Constitution that allows them to pass a law that applies to the states. Congress used its power under the Commerce Clause of the United States Constitution to pass the Civil Rights Act of 1964.

Before this law was passed, African Americans were not permitted to frequent the same hotels, restaurants, swimming pools, or other public areas as whites used. To end this type of segregation, this act prohibits any type of discrimination in a place of “public accommodation” on the basis of “race, color, religion, or national origin.” This means that places that are open to the public, such as inns, hotels, restaurants, cafeterias, movie

theatres, concert halls, stadiums, and sports arenas cannot discriminate against people, or refuse to let them in, because of the color of their skin, where they go to church, or what country they are from. This act applies to public places, but not private, so in order to prevent as much discrimination as possible, the Supreme Court tries to include as many places as possible under the definition of a “public accommodation” when deciding cases.

One of the main issues with the Civil Rights Act is that it can conflict with other rights in the Constitution. For instance, the First Amendment gives Americans the right to “freedom of association”, which means that the government cannot force people to associate with certain kinds of people if they don’t want to. Because the Civil Rights Act forces certain establishments to be open to everyone, this can be at odds with people’s right to not associate with certain people. To help preserve the right to “freedom of association,” Congress provided a “private establishment” exemption to the Civil Rights Act. This means that if a place qualifies as a “private club” and is not open to the public, then the Act does not apply to them.

An example of an organization that the Supreme Court considered a “private club” was the Boy Scouts of America. In the case *Welsh v. Boy Scouts of America*, the Boy Scouts refused to let a boy join the organization because he would not affirm his belief in God. The Boy Scouts said that the purpose of their organization was to help boys of all races to mature personally, to help others, and fulfill their duty to God, and because the boy could not affirm his belief in God, his membership would not go along with the goals of the organization. The Supreme Court agreed, and held that because a main goal of the organization was to serve God, and the Boy Scouts had a history of

following this purpose, they could deny membership to anyone who did not fit within these standards.

The government wants to prevent as much discrimination as possible, so the Supreme Court will look very closely at an organization to determine if it is really a “private club”. To determine if a place can be designated a “private club,” the Court looks at several factors. Among them are how selective the group is in choosing its’ members; the group’s history; the number of non-members who use the group’s facilities; the purpose of the organization, and whether it is for profit or not. Clubs cannot use the exemption as an excuse to discriminate against a certain group of people. If an organization calls itself a “private club” just to deny membership to people of a certain race, this will not be allowed. For example, country clubs that denied membership on the basis of race were prohibited from continuing to do so. The Supreme Court said that they did not fall under the “private clubs” exemption because they used public areas, such as lakes and parks. Other country clubs were not permitted to fit within the “private clubs” exemption when the only criteria they used to determine membership was race.

While Title II of the Civil Rights Act prevents people from being discriminated against because of their race or religion, it does not prevent discrimination against people because of their gender. This means that places of public accommodation and certain organizations can still discriminate against people because of their gender.

The federal government has set forth these rules to establish a minimum standard of civil rights, but the states are free to pass their own laws that are stricter against discrimination, provided they do not violate any other rights granted under the Constitution. For instance, in New York, the Human Rights Law prohibits organizations

in that state from discriminating against people on the basis of race religion, country of origin OR gender.

Questions

These are mainly meant to be open ended questions to allow open discussion of the issues and suggestions as to how our society could be improved.

1. Based on the situation where you live, do you think the government has done enough to prevent discrimination? What else do you think needs to be done to fight discrimination even further? (Students can identify locations or other areas of public accommodation that are used equally by several races, as well as locations that are still “segregated” although there are no laws mandating the segregation. They can also discuss reasons they may think this is so. Do they think there will ever be total integration in places where different races are still mainly separate? Students can brainstorm to come up with new laws to help further eliminate segregation, as well as offer other suggestions aside from enacting new laws that can end segregation.)
2. Look back at the factors the Court uses to determine whether an organization is a “private club”. Do you think all these things need to be considered for a club to be private? Why can’t an organization just say they are a “private club” and pick and choose who they will let be a member? (The Supreme Court sets forth factors to qualify an organization as a private club to prevent widespread segregation from

being perpetuated by people forming private clubs just to exclude others. Students can offer suggestions as to what types of organizations should be allowed to have selective membership policies and which should be open to all.)

3. Do you think there are any other reasons people are discriminated against besides those listed in Title II of the Civil Rights Act? Do you think there needs to be more laws to protect them from discrimination? Why or why not? Give an example. (People can be discriminated against for any number of reasons, but there are a limited number of characteristics that the government prohibits discrimination in. Examples of characteristics that the government does not specifically prohibit discrimination in are hair color, height, weight, eye color, etc. “Protected classes” generally have been historically discriminated against and they need protection from the government to remedy past and prevent further discrimination. Students can list characteristics that cause people to be discriminated against and offer suggestions as to the type of laws that can be used to protect them, if they need protection at all.)

Low Cost Housing

Ask the students to start by taking a minute to think about where they live. If you live in a town or city, chances are that you live around other buildings like the one you live in.

Now think about where things in your town are. Things are probably grouped together in some way. Businesses are around other businesses. Houses are located in certain areas.

Apartments or rental houses may be close together. There might be a part of town that is mostly factory or industrial area. If you live in the county, things may be very different. You might live next to a business, or a church, or a farm. This is because of something called “zoning”. “Zoning” is where a city government says what kind of businesses or housing may be located in certain places. They can also say that certain kinds of housing or businesses cannot exist within the city. Areas in the county don’t have zoning. Zoning exists for many different reasons. What are some reasons that you can think of for having housing and businesses in groups? (Let students discuss this question. They may mention property values, keeping noise and pollution away from residential areas, helping people find their way around the city.) Then, ask students how zoning could hurt people or be unfair (They may bring up that people should not be told what to do with their own property, city could say there can’t be certain kinds of housing in which low income residents live, businesses could be excluded.) Bring up exemption 3607(B)(1) – The court has said that zoning can be used for health and safety concerns. Ask the students if this helps with any of the problems they brought up (Some businesses, like auto repair shops and farms, could pose health hazards to others)

[Ask students if they think that people should be excluded from a city based on how much money they have. They will, no doubt, answer no. Ask them if they think that cities would ever do this, and point out some of the ways that they do, such as not allowing apartment buildings or mobile homes within a city. Students can probably think of examples of this in the towns where they live.]

The United States Supreme Court has said that cities cannot use zoning in a way that discriminates against economically disadvantaged people. In the case of *NAACP v*

Township of Mount Laurel, people wanted to build some low-cost housing in a city where they had zoning restrictions against most housing that would be available to poor people. The city said that they could not. When it heard the case, the court found that “a developing municipality may not, by a system of land use regulation, make it physically and economically impossible to provide low and moderate income housing in the municipality”. They said that it would be against the law to use zoning to discriminate against economically disadvantaged people by pushing them out of the city with the zoning law. Ask the students if they think the court was fair. (Some will say that they were because people should not be discriminated against, others will say the city has a right to decide how land is used.)

Title VII protects people from being discriminated against in housing situations. Unlike the Fair Housing Act, it does not require a showing of intention to discriminate, just that the law has the same effect of discriminating. In the case of *NAACP v The Town of Huntington*, a private group wanted to build low-cost housing, and they were not given permission by the city because of the zoning restrictions. The court found that some zoning restrictions can be illegal if they have a disparate impact on certain groups, such as people who don't earn much money, and that many of these people are in groups that have been discriminated against in the past, such as racial minorities. A “disparate impact” means that the regulations affect and hurt these people much more than other people. It doesn't matter if the city intended to discriminate against these people. The mayor doesn't have to come out and say “I don't like poor people, and I don't want them living in my city” But if the regulation has the same effect as saying that, then it can be held unconstitutional. To show a disparate impact, the plaintiffs, the people bringing the

case to court, have to tell the court what the regulation was and then show them how this was unfair to certain groups of people. Ask the students how they think that this might be shown. (They may bring up showing statistics, taking court to the community and letting them see it, having courts review the records of the lawmakers showing how the law came about) The most common way that plaintiffs show the court this is to tell them about what happened after the law. The defendants, the city, would then have the opportunity to tell the court the reasons they made the law. They would try to show that there was a “compelling state interest” – something that is really important to the city and the people who live there. Then, the court decides if this regulation had a disparate impact, if the city had a good reason or not for making the rule, and whether or not the law can stand.

Discussion Questions

We have talked about two cases brought by the National Association for the Advancement of Colored People, a group that is normally associated with the concerns of African-Americans. However, they point out in the case that numerous people, not just racial minorities, are affected by zoning. Do you think this can be a racial issue? Is this more of an economic issue? (Student discussion might include rates of poverty among minority groups and how this would create a “disparate impact.” They may further point out that when the municipal authorities realize that a disproportionate number of members of a minority group are impoverished, that they can write a racially neutral statute that has the effect of removing the minority group from certain areas of the

city. It could also be mentioned that sometime governing authorities are less interested in removing a minority group and more interested in removing all people, regardless of their race, who have lower economic means. This “class-ism” is thought by some to be replacing racism in some contexts.

Do you think there are still places where zoning discriminates against poor people, even with these laws in place to protect them? Do you know of any examples of this? (The town of Madison, Mississippi, north of Jackson, is a great example, as they have no apartments or mobile homes, and are a predominately white and middle class city, compared to the rest of Madison County, which is predominately African-American and economically disadvantaged, and the nearby city of Jackson. Encourage students to think about the towns in which they live and give examples of how zoning does or does not create areas of town which separate African-Americans and whites, or middle-class and impoverished people.)

Fair Housing Act

History

Racial discrimination was not confined to areas of public accommodation. On the contrary, the United States was a nation plagued by the vicious effects of racism in all corners of society. One area of particular concern was the presence of racism in housing. A national report from 1968 found that the United States was “moving toward two societies, one black, one white – separate and unequal.”¹

¹ Report of the National Advisory Commission on Civil Disorders (the Kerner Commission Report).

The intentional segregation of African-Americans by whites was partially created by the discriminatory practices of individual landlords and sellers. Essentially, such individuals were either openly or secretly refusing to rent or sell their properties to African-American applicants. Furthermore local governments were contributing to racial segregation through prejudiced zoning plans. For example, a town council might decide to only permit the construction of apartment complexes within one small section of town. The effect of such a zoning plan would be to force all apartment residents, who typically earn less income than homeowners, to live in that small section of town. Since African-Americans were also widely discriminated against in employment because of their race, meaning that they had little access to high-paying jobs, the overall impact of the zoning plan would be to segregate African-Americans and whites in the areas of town in which they lived.

Basics

In 1968, in response to this atmosphere of housing discrimination, Congress passed the Fair Housing Act. The Fair Housing Act is a federal law that seeks to end housing discrimination in the United States. While it was mainly created to address racial discrimination in housing, the law also prohibits housing discrimination based upon the religion, sex, handicap, color, national origin (the country in which you were born), or familial status of a housing applicant. In advertising for the rental or sale of a housing property, it is illegal under the Fair Housing Act for the renter or seller to exhibit any type of “preference, limitation, or discrimination” based upon one or more of the illegal considerations (*listed below*).

Illegal considerations under the Fair Housing Act of 1968:

- (1) race
 - (2) religion
 - (3) sex
 - (4) handicap
 - (5) color
 - (6) national origin
 - (7) familial status
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How Is Housing Discrimination Proved?

There are two basic forms of housing discrimination: **intentional discrimination** (“disparate [or unequal] treatment” cases) and **unintentional discrimination** (“disparate [or unequal] impact” cases). **Intentional discrimination** would exist if a landlord stated in an advertising flyer:

“**APARTMENT FOR RENT** – Catholics need **NOT** apply.”

Obviously, this would amount to clear religious discrimination in violation of the Fair Housing Act. Of course, most landlords and sellers would never engage in such explicit discrimination. However, the Fair Housing Act may also be violated if **unintentional discrimination** exists. With unintentional discrimination, the overall **effect** of conduct by a landlord, seller, or town council is discriminatory. For instance, a zoning law passed by the City of Adams which permits only mansion-sized homes to be constructed within the City will clearly have a discriminatory effect on poor and middle-class families. If a far greater percentage of poor and middle-class families in the City of Adams are of one particular race, then a **discriminatory effect** exists and the Fair Housing Act is violated.

In order to prove **intentional discrimination**,² an individual must show that they were in a “**protected class**.” To be considered within a “protected class,” a person must show that they are protected by the Fair Housing Act’s ban on illegal considerations (*listed on page 2*). Furthermore, the individual must show that they applied for and were denied a housing opportunity (either rental or ownership). If the housing applicant can show both of these things, then the burden shifts to the landlord, seller, or town council. They must prove that they had a **good, non-discriminatory reason** for rejecting the housing applicant, or they will be deemed guilty of violating the Fair Housing Act. A good, non-discriminatory reason for rejecting a housing applicant would exist if a background check revealed that the applicant had a history of criminal convictions or had left town without paying rent on previous occasions. If the landlord, seller, or town council responds with a good, non-discriminatory reason for rejecting the housing applicant, then the only remaining way for the housing applicant to prove intentional discrimination is to prove “**pretext**.” “Pretext” exists when the landlord, seller, or town council’s good, non-discriminatory reason was **made up** in order to cover their true, discriminatory reason. For instance, a landlord who rejected the rental application of a Chinese man, claiming his criminal history was a good, non-discriminatory reason for not renting to him would not be violating the Fair Housing Act. However, if the landlord then accepted the rental application of a white man with a similar criminal history, the Chinese man may allege that the landlord’s decision was “pretextual” in violation of the Fair Housing Act.

² The test for proving intentional discrimination comes from *Soules v. U.S. Department of Housing and Urban Development*, 967 F.2d 817 (2nd Cir. 1992).

Test for intentional discrimination:

Housing applicant – must prove: Landlord, Seller, or Town Council – must prove:
(1) they were within a “**protected class**” under the Fair Housing Act
AND
(2) they applied for, and were denied, a housing opportunity

the burden shifts

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Good, non-discriminatory reason

the burden shifts

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Pretext

In order to prove **unintentional discrimination**, the housing applicant has to show that the conduct of the landlord, seller, or town council had a **discriminatory effect**. For example, in *United States v. City of Black Jack*³ the Court found that a zoning law created by the City which prohibited all construction of new apartment-type housing had a discriminatory effect. As discussed earlier, apartment-type housing is generally occupied by low and middle-income families. A law which does not allow the construction of apartment-type housing has a discriminatory effect on low- and middle-income families, because without apartment-type housing they generally cannot afford to

³ 508 F.2d 1179 (8th Cir. 1974).

live in the City. Since that zoning law was found to have a much harsher impact on African-American families, the Court believed a discriminatory effect was present. If a discriminatory effect is proved by the housing applicant, then the landlord, seller, or town council can only avoid a Fair Housing Act violation by proving that their actions served an **important interest**. For instance, the City of Black Jack would have to show that apartment-type housing was unreasonably dangerous to the health and safety of the individuals renting the apartments. Obviously, that is a very difficult argument to make and the Court in the *City of Black Jack* case found the zoning law to constitute unintentional discrimination.

*Test for **unintentional discrimination**:*

Housing applicant – **must prove**: Landlord, Seller, or Town Council – **must prove**:
Discriminatory effect

the burden shifts

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Actions served an **important interest**

What Protections Does the Fair Housing Act Provide?

When the Fair Housing Act is violated, through intentional or unintentional discrimination, a variety of remedies are available to the housing applicant. Most commonly, the housing applicant may recover some form of “**compensatory damages**.” Compensatory damages are intended to cover the amount of actual loss suffered by the housing applicant because of the discrimination. However, in particularly bad situations of intentional discrimination, the housing applicant may also recover “**punitive damages**.” Punitive damages are intended to go beyond the actual losses suffered by the housing applicant and **punish** the landlord, seller, or town council for their intentional

discrimination. For example, the Court in *United States v. Big D Enterprises*⁴ found that an apartment owner who specifically instructed his staff not to rent to African-Americans owed considerable punitive damages to the housing applicants who were discriminated against.⁵

When Does the Fair Housing Act Not Apply?

The Fair Housing Act applies in most situations, so the exceptions are very limited. The law itself states that it will not apply in two basic situations: (1) when a house that will be occupied by only one family, and is not advertised, is rented or sold and (2) when an apartment or townhouse that will be occupied by no more than four families, one of whom is the owner, is rented. In these narrow situations, there are no discrimination restrictions on the landlord or seller. However, in *City of Edmonds v. Oxford House*⁶ the United States Supreme Court found that a zoning plan designed to “preserve the family character of a neighborhood” was not protected under the Fair Housing Act.

In total, the purpose of the Fair Housing Act is to prohibit housing discrimination related to illegal considerations (*listed on page 2*). To ensure that this policy is obeyed, the exceptions to the Fair Housing Act are sharply limited.

Discussion Questions

(1) Why was the Fair Housing Act created?

Answer: *The Fair Housing Act was originally created as a response to widespread racial discrimination in housing against African-Americans by both individual landlords and sellers, and local governments (See page 1 “History” section). However, the coverage of the Act also extends to protect against any form of discrimination based upon one of the listed illegal considerations (listed on page 2).*

⁴ 184 F.3d 924 (8th Cir. 1999).

⁵ *Id.* (the punitive damages awarded were 100 times greater than the compensatory damages).

⁶ 514 U.S. 725 (1995).

(2)What is the difference between intentional and unintentional discrimination? How do you prove each?

Answer: *The difference between intentional and unintentional discrimination is that intentional discrimination requires explicit unequal treatment, while unintentional discrimination requires only an unequal effect (even in the absence of intentional unequal treatment). The method for proving intentional discrimination is outlined in the chart on page 4; the method for proving unintentional discrimination is outlined in the chart on page 5.*

(3)Does housing discrimination still occur in the United States? If “yes,” do you think it typically takes the form of intentional discrimination or unintentional discrimination?

Answer: *This question is intended to engage the students in the present realities of the issue. Housing discrimination unquestionably still occurs today. However, the form that it takes is probably more secretive than it was before the Fair Housing Act existed. Discuss with the students whether they have personally experience, or know of people who have experienced, housing discrimination.*

Shelter for the Homeless

The United States Constitution recognizes that Americans have a great number of rights. These rights including the right to say what you want, the right not to have the government enter and search your home without cause and the right to be free from torture to name just a few of the rights. Over the past two hundred years, the U.S. Supreme Court has also created rights that were not originally envisioned by the writers of the Constitution, such as the right of parent’s to raise their children in the way they see fit, among others.

At present, the Constitutional does not specifically mention a right to shelter for any one and the Supreme Court has not recognized a general right for Americans to have a place to live. In 1972 the Supreme Court in Lindsey v. Normet addressed this issue. The court determined that while it is important to have “decent, safe and sanitary housing” the Constitution does not “provide judicial remedies for every social and economic ill.” Essentially what the Court in Lindsey meant was that there is no right to

life being fair. Although the court has recognized the importance of quality housing, the court places a great emphasis on the rights of individual property owners to use their property the way they want to than on the ability of individuals to live on property that they are not paying for.

Lawyers and community activists supporting the rights of the poor to housing argue that people who become homeless are deprived of their Due Process Rights because they are treated differently by the government than people who have homes. People who are homeless do not have an address to get a driver's license, do not have an address for enrolling in school, and do not have a home address to register to vote. Activists argue that there should be a right to housing because voting is a fundamental right as is education which is denied to the homeless simple because they do not have an address. Although the Supreme Court has not yet accepted this logic the possibility remains that they could accept this reasoning in the future.

Although there is no federal right to housing for homeless people, some states have laws that provide a right to housing for homeless people. Connecticut has one of the most specific laws providing homeless people with a right to housing. In *Hilton v. City of New Haven*, a Connecticut Superior Court determined that each town in the state must provide housing for poor people. In New Hampshire, the state has passed laws to prevent people from becoming homeless by requiring cities to pay the utility bills of the poor.

Because the federal government has not taken steps to develop a right to housing for all Americans, state government have begun to take steps to address this important issue.

Discussion Questions

1. Should every human being have the right to have a roof over their head so that they don't have to sleep in the street in a cardboard box or under an overpass?

Why or Why not?

SAMPLE ANSWER 1: Yes, every person as a human being has the right to a basic level of human dignity, which includes the opportunity to have some sort of shelter so that they do not have to suffer the indignity of living on the street with no basic level of privacy or sanitation.

SAMPLE ANSWER 2: No, there is no right to shelter. What separates man from the animals is our ability to work and build wealth. If a person does not work, he should not be allowed to get a free home at the expense of other members of society.

2. The United States is a rich country compared to the rest of the world. Why, in a country with great wealth doesn't every American have the right not to be homeless?

SAMPLE ANSWER 1: America is a capitalist country that values individual rights. Although most Americans genuinely care for the poor, most wealthy people and large corporations are unwilling to share their immense wealth with the poor. Wealthy corporations make donations to Congress and state legislatures that have prevented laws from being passed that are designed to help the poor have the adequate housing that most Americans support.

SAMPLE ANSWER 2: America is a capitalist country that values individual rights. Each American has the right to work as hard as they want to be as

successful as they want. If a person is unsuccessful, that is his problem. The rest of society should not be required to pay their money to support other people. America is a capitalist country that values individual rights. Although America is a rich country compared to the rest of the world, Americans prefer to help out the poor through individual donations to charities rather than by paying taxes to the government to support the poor.

3. Is it better to have an amendment to the U.S. Constitution providing a right to housing for the poor than it is to have each state create a right under state law or their state constitutions?

SAMPLE ANSWER 1: A constitutional amendment providing a right to housing is the best option because all Americans deserve the right to have housing no matter what state in the country they live in. Housing is such a fundamental right that it must be a right included in the Constitution. If it is a Constitutional right, states must modify their budgets to provide for their poor citizens. If individual states create a right to housing that does not exist in each state, poor people will move to live in the state with the free housing damaging that state's economy and preventing other states from creating a right to housing.

SAMPLE ANSWER 2: State laws and state constitutional amendments are the best option because there is no single American culture. People in each state have different values and different beliefs. If the people in one state want to provide housing for the poor people living in their state that should be their

right. It should also be the right of people in states that do not want to support the poor to be able to exercise that right as they see fit.