

Proactive Fair Housing in Chicago

Options for City Policymakers

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MISSION STATEMENT

The Paul Douglas Institute is a student-run, public policy think tank based at the University of Chicago. Inspired by the life and work of professor and Senator Paul H. Douglas, we channel public policy interest on campus into solution-orientated research projects that allow students to make an impact on the legislative process. To this end, we use a multidisciplinary approach to produce rigorous, data-driven social science research that is innovative, practical, and free from political affiliation. We often work with legislators and civic organizations, and welcome both research commissions and partnerships.

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I. Executive Summary

Despite progress towards fair housing in Chicago over the past 50 years, housing discrimination remains a challenge across the city. Additionally, since the 2015 HUD rule Affirmatively Furthering Fair Housing, the goals of fair housing programs are broader and more ambitious.¹ In order to limit ongoing discrimination and meet higher federal standards, the City of Chicago should consider the following courses of action:

Strengthening housing protected classes in line with other major US cities by:

- Explicitly protecting Housing Choice Voucher (Section 8) holders
- Adding a separate and explicit reasonable accommodations provision
- Adding protections against discrimination based on alienage or citizenship
- Expanding terminology around and creating examples of “gender identity discrimination”

Addressing discriminatory homeseeking by:

- Prohibiting agents from accepting the instructions of a client who asks for assistance in a search that avoids a protected class
- Broadening the category of advertising materials which must not contain discriminatory content, including online postings

Protecting against changes in federal fair housing policy by:

- Incorporating Obama-era disparate impact burden-sharing standards in local law
- Seeking local-level accountability for housing-related algorithm use

This paper describes the above approaches in detail, offering background on the issues prompting the suggestions and presenting relevant legal context. A case study involving discriminatory outcomes related to Airbnb is also presented to demonstrate the potential effectiveness of the suggested approaches in a challenging regulatory situation. Finally, this paper covers limitations to both the suggested approaches and to countering housing discrimination more generally.

With a return to Obama-era fair housing policies during the Biden administration likely, some of the proposed approaches may appear unnecessary.² However, the prospect of future administrations rolling back some or all of these fair housing protections demonstrates the necessity of robust city-level counters to the problem. This paper ultimately argues that local fair housing policies can create “housing sanctuary cities”, offering protections which go beyond or even indirectly oppose federal policy.

¹ Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272 (July 16, 2015) (to be codified at 24 C.F.R. pt. s 5, 91, 92, 570, 574, 576, and 903).

² Biden, Joseph Robinette, Jr. Memorandum, "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies," January 26, 2021. Presidential Actions.

II. Fair Housing Act Background

The Fair Housing Act (FHA) was first introduced to Congress in 1966 to prevent housing discrimination. However, it failed to pass despite the support of several prominent senators, civil rights leaders like Martin Luther King Jr., and organizations like the National Association for the Advancement of Colored People (NAACP).³ Senator Everett Dickerson (D, IL) worked out a compromise deal with liberal Republicans that reduced the coverage and enforcement measures in the FHA. Following that compromise, as well as the Kerner Commission's report on urban riots, which "identified segregation as a leading cause of racial tensions and Black poverty" and the assassination of Dr. King, Congress passed the FHA in 1968.⁴ President Lyndon Johnson signed the FHA into law on April 11, 1968 as Title VIII of the Civil Rights Act of 1968.

The FHA makes it illegal to discriminate against a person in the financing, sale, or rental of a property based on that person's membership in a protected class.⁵ The FHA specifically prohibits the refusal to sell to, rent to, negotiate with, or finance any person on the basis of race, color, gender, familial status, national origin, religion, or disability. The original act did not include family status or disability as protected classes, but the 1988 Fair Housing Amendments Act extended coverage to people with disabilities and families with children.⁶

The Department of Housing and Urban Development (HUD) enforces the FHA. The 1968 act gave HUD limited power. When a person reported an incident of housing discrimination, HUD could only investigate the complaint and seek conciliation between the complainant and the accused. If no settlement could be reached, all the complainant could do was file a private lawsuit.⁷ The 1988 amendment changed the enforcement mechanism substantially, giving HUD 100 days to investigate a complaint. While they investigate, HUD must lead conciliation efforts:

If those are not successful, and HUD finds "reasonable cause" to believe a violation has occurred, it must issue a formal charge of discrimination. Upon issuance of a formal charge, the complainant and respondent each have 20 days to elect to have the claim adjudicated in court. If neither party so elects, the case is heard in an APA hearing before a HUD administrative law judge [ALJ].... The ALJ has the authority to award compensatory damages and injunctive relief.... If either party elects to "remove" the case to court, the case is litigated by the Department of Justice, and the

³ "Fair Housing Act | United States [1968]". 2020. *Encyclopedia Britannica*. Accessed March 25 2020. <https://www.britannica.com/topic/Fair-Housing-Act>.

⁴ Douglas S. Massey. "The Legacy of the 1968 Fair Housing Act," *Social Forum*, June 2015.

⁵ Carpenter, David Hatcher, and Library of Congress. Congressional Research Service. *Fair Housing Act: Legal Overview*. [Washington, District of Columbia]: Congressional Research Service, 2008.

⁶ "Understanding the Fair Housing Amendments Act." *United Spinal Association*. Accessed March 30 2020. https://www.unitedspinal.org/pdf/fair_housing_amendment.pdf.

⁷ Samantha Friedman and Michael Schill. "The Fair Housing Amendments Act of 1988: The First Decade," *Cityscape* 4, Num. 3 (1999): 58.

complainant may intervene. As in the administrative forum, injunctive relief and compensatory damages are available, but instead of civil money penalties, punitive damages may be awarded. A jury trial is also available.⁸

The procedure established in 1988 still stands. HUD refers cases to state or local agencies if the locality has a law in place deemed substantially equivalent to the FHA.⁹

Chicago area laws reinforce and expand the protections of the FHA. Chicago has its own law against housing discrimination, the Chicago Fair Housing Ordinance (CFHO, the Ordinance). The housing sections of the Illinois Human Rights Act (IHRA) and Chicago Human Rights Ordinance (CHRO) also govern housing in Chicago. These laws are all comparable in coverage to the FHA. The CFHO is enforced by the Chicago Commission on Human Rights (CCHR), which has “a broad mandate to investigate, mediate, and adjudicate complaints of housing discrimination in Chicago based on at least one of the 14 “protected classes””.¹⁰ The Chicago Department of Housing also provides support for fair housing.¹¹ Cook County laws also apply to housing in Chicago. The recent Cook County Just Housing Ordinance makes it illegal to “1. Prohibit housing discrimination based on an individual’s covered criminal history; and 2. Require landlords to perform an individualized assessment of an otherwise qualified individual’s criminal conviction history prior to denying them and application for housing.”¹² More details of Chicago-area protections will be given in the sections which follow.

III. Protected Classes

Background

The Ordinance and the FHA cover several protected classes. A protected class is “a group of people with a common characteristic who are legally protected from... discrimination on the basis of that characteristic.”¹³ The Ordinance and the FHA offer people who fall within one of the laws’ protected classes legal recourse and defense against discrimination in housing. The protected classes covered by the FHA are race, color, gender, familial status, national origin, religion, or disability. The Ordinance includes all of the protected classes in the FHA and adds several more: “state laws can give more

⁸ "Enforcement Procedures Under The Fair Housing Act | Administrative Conference Of The United States". 2020. *Acus.Gov*. Accessed March 30 2020. <https://www.acus.gov/recommendation/enforcement-procedures-under-fair-housing-act>.

⁹ "Fair Housing Assistance Program (FHAP)." HUD.GOV. Accessed December 31, 2020. https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP#:~:text=A%20state%20or%20local%20agency,to%20the%20Fair%20Housing%20Act.

¹⁰ City of Chicago. "Fair Housing." Commission on Human Relations. Accessed December 31, 2020. https://www.chicago.gov/city/en/depts/chr/supp_info/FairHousing.html.

¹¹ "Fair Housing", Commission on Human Relations.

¹² "Just Housing Amendment To The Human Rights Ordinance". 2020. *Cookcountyil.Gov*. Accessed May 8 2020. <https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance>.

¹³ 2020. *Content.Next.Westlaw.Com*. Accessed March 25 2020. [https://content.next.westlaw.com/5-501-5857?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://content.next.westlaw.com/5-501-5857?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

protections than federal laws, they cannot give fewer protections than federal laws.”¹⁴ The Ordinance also extends to sex, age, ancestry, sexual orientation, marital status, parental status, military discharge status, and source of income.¹⁵ The following sections will describe fair housing issues in Chicago and offer options for adjusting the Ordinance to address them.

Source of Income

Issue

Recent news reports highlight ongoing housing discrimination against holders of Section 8 Housing Choice Vouchers (HCV) in Chicago.¹⁶ An HCV “allows low-income families to rent quality housing in the private market via federal funds provided by the U.S. Department of Housing and Urban Development.”¹⁷ A 2018 report by the Chicago Lawyers Committee for Civil Rights found that HCV holders were discriminated against in 49% of cases.¹⁸ This has hindered the ability of voucher holders to move into high opportunity areas, defined by the Illinois Housing Development Authority as “communities with low poverty, high access to jobs and low concentrations of existing affordable rental housing”.¹⁹ Chicago public radio station WBEZ reports 8,500 voucher holders live in the three largest majority Black neighborhoods, compared with only 2,357 in all of the majority white communities combined. In the past decade, the number of voucher holders in majority white neighborhoods has decreased by 25%.²⁰

Much of the issue stems from landlords who are, or claim to be, unaware that Section 8 falls under source of income protection. The Chicago Lawyers Committee for Civil Rights says, “Many housing providers continue to erroneously believe they have a choice whether to accept applications from tenants with vouchers.”²¹ Others couch HCV discrimination in concerns about the long wait time required to process the application of an HCV renter. That is what Latonya English, an HCV recipient, experienced when she tried to move to an opportunity area. After Latonya told the broker for an apartment in Belmont Gardens she was an HCV holder, the broker responded the landlord would not

¹⁴ "Protected Classes Under Anti-Discrimination Laws". 2015. Legalmatch Law Library. Accessed May 8 2020. <https://www.legalmatch.com/law-library/article/protected-classes-under-anti-discrimination-laws.html>.

¹⁵ <https://www.chicago.gov/content/dam/city/depts/cchr/AdjSupportingInfo/AdjFORMS/OrdinanceBookletNewHeading2011.pdf>

¹⁶ Abello, Oscar Perry. *Next City*, “Discrimination Still a Challenge to Mobility for Voucher Holders,” February 26, 2018. <https://nextcity.org/daily/entry/discrimination-still-a-challenge-to-mobility-for-voucher-holders>

¹⁷ “Housing Choice Voucher (HCV) Program,” Chicago Housing Authority. <https://www.thecha.org/residents/housing-choice-voucher-hcv-program>

¹⁸ “Fair Housing Testing Project for the Chicago Commission on Human Relations,” Chicago Lawyers Committee for Civil Rights, 2017-2018. https://www.chicago.gov/content/dam/city/depts/cchr/supp_info/FairHousingReportAUG2018.pdf

¹⁹ “Opportunity Areas.” Illinois Housing Development Authority. Accessed December 31, 2020. <https://www.ihda.org/developers/market-research/opportunity-areas/>.

²⁰ Moore, Natalie. “Section 8 Housing Grows in Chicago’s Black Neighborhoods,” *NPR*, May 2nd, 2019. <https://www.npr.org/local/309/2019/05/02/719466709/section-8-housing-grows-in-chicago-s-Black-neighborhoods>

²¹ “We Don’t Rent to Section 8: How Latonya English Fought to Leave East Garfield Park,” The Chicago Lawyers Committee for Civil Rights, December 20, 2016. <https://www.clccrul.org/blog/2017/3/1/example-blog-4>.

have interest because “delays due to inspections and additional costs and bad credit of the applicants which makes her think that they will not take care of the unit.”²²

Legal Context

The CFHO prohibits discriminating against people on the grounds of their source of income. For example, it is illegal “To refuse to sell, lease or rent any real estate for residential purposes within the City of Chicago because of the...source of income of the proposed buyer or renter.”²³ Chicago’s source of income protection in the Fair Housing Ordinance has long been interpreted to include protection for people using a Housing Choice Voucher. The Illinois Appellate Court found in *Godinez v. Sullivan-Lackey* that Section 8 was a legitimate source of income for the purposes of fair housing protection. The Chicago Municipal Code does not make explicit that source of income includes the use of Section 8 Housing Choice Vouchers.²⁴ However, the City of Chicago Commission on Human Relations released a memo explaining that Section 8 was considered a source of income under the Fair Housing Ordinance.²⁵

Options

Chicago could explicitly include HCV holders under the source of income protection in the CFHO. Clarifying the issue would not provide legal remedy or change how cases of discrimination are handled, as the legal standard already covers HCV. Rather, by making explicit that Section 8 is included under source of income, the city could potentially limit landlords who do not think they are obligated to consider people regardless of their use of Housing Choice Vouchers. By making it explicit that HCVs are protected under source of income, the city could also encourage more people to come forward with source of income discrimination complaints. New York City includes Section 8 under its definition of source of income in its fair housing law. The New York City Administrative Code says, “The term “lawful source of income” includes income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers.”²⁶ Chicago could adopt similar language in its Fair Housing Ordinance to make explicit and codify protection against discrimination towards people using a Section 8 Housing Choice Voucher, rather than rely on court precedent and interpretive documents from City authorities.

Disability

Issue

Each year since 1993, complaints invoking disability protections have been the most or second-most common fair housing complaint to HUD.²⁷ This is in large part due to the broad protections that the

²² “We Don’t Rent to Section 8”: How Latonya English Fought to Leave East Garfield Park,” The Chicago Lawyers Committee for Civil Rights, December 20, 2016. <https://www.clccrul.org/blog/2017/3/1/example-blog-4>.

²³ Section 5-8-030-G, Chicago Municipal Code.

²⁴ Appellate Court of Illinois, First District, Fifth Division, “GODINEZ v. SULLIVAN-LACKEY.”

²⁵ “Section 8 Vouchers and Source of Income Discrimination,” The City of Chicago Commission on Civil Rights.

²⁶ The New York City Administrative Code, Title 8-102.

²⁷ Pratt, Sara, Carla Herbig, Diane Levy, Julie Fenderson, and Margery Austin Turner. *Against Persons*

FHA has granted persons with disabilities, which include not only the same anti-discriminatory protections as other named classes (eg: race, gender, religion), but also the right to receive reasonable accommodations and modifications that afford equal use of premises or dwelling.²⁸ While these anti-discriminatory protections are strong, the FHA is working with a potentially outdated and limiting definition of disability. Therefore, while those that qualify as disabled receive strong defenses against discrimination, many people who for other purposes are considered disabled are excluded entirely from the protections of the FHA.

Legal Context

Until 2008, the ADA and FHA had nearly identical definitions for a disabled person. Like the current FHA, the ADA had a restrictive conception of disability. With requirements for a disability to “substantially” limit “major life activities” with little subsequent clarification, courts interpreted the definition quite strictly.^{29,30,31} Notably, in *Sutton v. United Air Lines Inc.*, Justice Ginsburg described the ADA not reaching “legions of people with correctable disabilities”.³² Meanwhile, Justice O’Connor, who delivered the court’s opinion in several major ADA cases (*Toyota vs. Williams*, *Sutton v. United Air Lines Inc.*, *Murphy v. United Parcel Service, Inc.*) described the law as what happens when “sponsors are so eager to get something passed” that they act carelessly, as well as “One of those [acts] that did leave uncertainties as to what Congress had in mind”.^{33,34,35} Perhaps the loudest criticism was that the ADA (and the FHA by proxy) left little room for protection of those who had mitigable or correctable disabilities.³⁶ However, shortcomings went beyond this, as those who could still perform most major life activities with their disability had limited protection, and it was unclear how strongly those with less obvious physical impairments and those with mental disabilities were protected.³⁷ As a result, the ADA ended up defining only a very small class of Americans as truly “disabled”, leaving millions unprotected.³⁸ While the ADA Amendments Act fixed these definitional issues, the FHA uses the unchanged restrictive definition to define disability, leaving many disabled persons without protection.^{39,40}

With Disabilities. Washington, DC: Urban Institute, 2005.

²⁸ 42 U.S.C. 3601-3615 – Fair Housing Act.

²⁹ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

³⁰ *Sutton v. United Air Lines* - 527 U.S. 471, 119 S. Ct. 2139 (1999)

³¹ *Toyota Motor Mfg., Ky. v. Williams* - 534 U.S. 184, 122 S. Ct. 681 (2002)

³² *Sutton v. United Air Lines* - 527 U.S. 471, 119 S. Ct. 2139 (1999)

³³ *Toyota Motor Mfg., Ky. v. Williams* - 534 U.S. 184, 122 S. Ct. 681 (2002)

³⁴ *Murphy v. United Parcel Service*, 527 U.S. 516 (1999).

³⁵ Lane, C. (2002). O’Connor criticizes disabilities law as too vague. *The Washington Post*, A02.

³⁶ *Sutton v. United Air Lines* - 527 U.S. 471, 119 S. Ct. 2139 (1999)

³⁷ Long, A. (2003). State Anti-Discrimination Law as a Model for Amending the Americans with Disabilities Act. *U. Pitt. L. Rev.*, 65, 597.

³⁸ *Sutton v. United Air Lines* - 527 U.S. 471, 119 S. Ct. 2139 (1999)

³⁹ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

⁴⁰ 42 U.S.C. 3601-3615 – Fair Housing Act.

Work by legal scholars suggests that states and municipalities could fill in this definitional gap.⁴¹ This approach has been successful in several non-federal codes, including in the New York Human Rights Law.⁴² In the Chicago Code of Ordinances, disability is given a broader definition, based on physical and mental characteristics rather than the stringent federal activities-based requirements.^{43,44} This means that the many disabled persons left out of the FHA still receive protection under Chicago Code. Unfortunately, these Chicago protections do not apply as broadly, leaving limitations in both codes—the federal code has robust application but limited definition of disabled persons, while the Chicago code has an inclusive definition but limited application. Most significantly, the Chicago code lacks the explicit guarantee of reasonable accommodations that exists in comparable statutes, instead stating it would be unlawful discrimination to:

“Make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in the furnishing of, or access to, any facilities..., privileges, furnishings, or services rendered in connection with the use or occupancy therewith, predicated upon the...disability... of the prospective or actual buyer or tenant thereof. Provided, however, that the access provision in this subsection does not mandate modifications, accommodations, or other actions not also required by the Federal Fair Housing Amendments Act and its regulations.”^{45,46,47}

The descriptor “distinction” already has the potential to run afoul of reasonable accommodations or modifications guarantees, as accommodations/modifications are conditions or privileges made with distinction to a person’s abilities. Further, a provision of “access” is nowhere near the FHA’s strong guarantees of reasonable accommodations and modifications.⁴⁸ However, even if a robust reasonable accommodations and modifications provision existed, the provision that Chicago requirements cannot go past federal law could potentially be limiting. Take the case of a person with correctable disabilities: if the FHA does not recognize this person as disabled, then the FHA would not require accommodations, and therefore it is possible that the Chicago Code could not require accommodations either.

Options

Adding a separate and explicit reasonable accommodations provision to the Chicago Code, such as what is already present in the Fair Housing Act, could help fix these issues. This would give disabled residents of Chicago a code with both inclusive definition and robust application, providing full

⁴¹ Long, A. (2003). State Anti-Discrimination Law as a Model for Amending the Americans with Disabilities Act. U. Pitt. L. Rev., 65, 597.

⁴² 15 NY Exec. Code 290 – 301

⁴³ Chicago Code of Ordinances 2-160-20

⁴⁴ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

⁴⁵ 42 U.S.C. 3601-3615 – Fair Housing Act.

⁴⁶ 15 NY Exec. Code 290 – 301

⁴⁷ Chicago Code of Ordinances 5-8-030a

⁴⁸ 42 U.S.C. 3601-3615 – Fair Housing Act.

protection of the disabled. Additionally, removing the provision that the code “not mandate modifications, accommodations, or other actions not also required by the Federal Fair Housing Amendments Act and its regulations” would ensure application even when a disabled person does not qualify under the Fair Housing Act’s limited definition.

Although a much smaller issue, the third prong of the Chicago definition for disability, “the perception of such a characteristic by the person complained against”, creates a more restrictive definition of this third “perception”-based prong.⁴⁹ In this wording, only the perception of the potential discriminator matters. Federally, the third prong’s wording is “being regarded as having” such a characteristic, and in the New York Human Rights Law the third prong is “a condition regarded by others as such an impairment”, and either of these more inclusive definitions could potentially increase the coverage of disabled persons.^{50,51} Therefore, a simple change from “by the person complained against” to “by others” would make the CFHO more inclusive. This inclusivity would better match disability protections with the lived experience of disability, which is constituted not by the individual opinion of a prospective landlord but by broader social perception of potential disability.

Citizenship and Immigration Status

Issue

Citizenship and immigration status are increasingly common causes of housing discrimination across the United States. Anecdotal evidence shows landlords using the threat of immigration status verification as means to ignore renter complaints, intimidate renters, and even force them out of housing entirely.⁵² Since the 2016 U.S. presidential election, such discrimination has become more frequent, with some landlords threatening to report renters to U.S. Immigration and Customs Enforcement (ICE). However, discrimination on the basis of citizenship and immigration status has occurred for years, since well before the 2016 election.

Legal Context

Federal immigration laws designed to rely on private enforcement are partially responsible for some landlords’ attempts to determine the immigration status of their renters. Federal law threatens criminal penalties for landlords who harbor undocumented immigrants. The courts have generally held that simply providing housing does not constitute harboring. However, housing laws in some jurisdictions have defined harboring undocumented immigrants unambiguously, punishing landlords for failing to verify that all of their tenants are legal residents.⁵³ Recognizing these issues, in August 2019 Illinois

⁴⁹ Chicago Code of Ordinances 2-160-20

⁵⁰ Long, A. (2003). State Anti-Discrimination Law as a Model for Amending the Americans with Disabilities Act. U. Pitt. L. Rev., 65, 597.

⁵¹ 15 NY Exec. Code 290 – 301

⁵² Capps, Kriston. "In California, Landlords Threaten Immigrant Tenants with Deportations." Bloomberg CityLab. Last modified April 5, 2017. Accessed January 5, 2021. <https://www.bloomberg.com/news/articles/2017-04-05/california-landlords-threaten-immigrant-tenants-with-deportations>.

⁵³ Huyen Pham, The Private Enforcement of Immigration Laws, 96 Geo. L.J. 777 (2008). Available at: <https://scholarship.law.tamu.edu/facscholar/91>

passed the Immigrant Tenant Protection Act which prevents landlords from evicting tenants based on the tenants' citizenship status.⁵⁴ However, the possibility of citizenship discrimination in searching for and obtaining housing remains across the State of Illinois, as evidenced by numerous reports of prejudice and discrimination across the housing market in the Chicago area.⁵⁵ These reports continue despite Chicago's status as a "sanctuary city" and the City Council's passing of the Welcoming City Ordinance.⁵⁶

The courts are mixed in their interpretation of the legality of discrimination based on citizenship and immigration status. The Fair Housing Act and many state and municipal fair housing and human rights ordinances protect against discrimination based on race, color, and national origin.⁵⁷ Title 42 Section 1981 of the U.S. Code offers equal right to contract to all persons within the jurisdiction of the United States.⁵⁸ Responding to the concern over discriminatory municipal policies, in *Lozano v. City of Hazleton*, 724 F.3d 297 the court held that municipal prohibitions "which attempted to preclude aliens from renting housing within the city constituted an impermissible regulation of immigration and were field preempted because they intruded on the regulation of residency and presence of aliens in the United States and the occupied field of alien harboring".⁵⁹ Despite these laws and holdings, inconsistent interpretations of the legality of citizenship and immigration status discrimination led municipalities to enact their own protections. In *Recalde v. Bae Cleaners, Inc.*, 20 Misc. 3d 827, owners of a rent-stabilized building in New York City (NYC) refused to accept a tenant's rent based on his questionable immigration status.⁶⁰ The court ruled in favor of the plaintiff tenant, holding that the tenant would likely be successful in proving improper termination. The court's decision relied on explicit language in the NYC housing code prohibiting housing discrimination based on alienage or citizenship status.

Options

While Federal law and the courts have variously protected discrimination based on citizenship and immigration status, explicit protections such as those in NYC's "alienage or citizenships status" protected class offer a compelling direction for further protection in Chicago. Precedent as described above ensures that the NYC law does not violate the harboring provisions of Federal immigration law. Per the New York City Administrative Code, "Except as otherwise expressly provided, when used in this chapter, the following terms have the following meanings... The term "alienage or

⁵⁴ Sfondes, Tina. "Pritzker Dubs New Law Barring Evictions Based on Citizenship Part of 'Firewall' against Trump's 'Climate of Fear.'" Chicago Sun-Times. Last modified August 21, 2019.

<https://chicago.suntimes.com/politics/2019/8/21/20827081/>

pritzker-signs-law-barring-evictions-citizenship-undocumented-immigrants-firewall-trump-fear.

⁵⁵ King, Elizabeth. "Defending Immigrants When Their Landlords Use ICE against Them." In These Times. Last modified September 25, 2019.

⁵⁶ Chapter 2-173 "Welcoming City Ordinance", Chicago Municipal Code.

⁵⁷ "HOUSING DISCRIMINATION UNDER THE FAIR HOUSING ACT." HUD.gov. Accessed April 8, 2021.

[https://www.hud.gov/program_offices/fair_housing_equal_opp/](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#_The_Fair_Housing)

[fair_housing_act_overview#_The_Fair_Housing](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#_The_Fair_Housing).

⁵⁸ 42 USC 1981: "Equal rights under the law", Chapter 21 Subchapter I § 1981.

⁵⁹ *Lozano v. City of Hazleton*, 724 F.3d 297.

⁶⁰ *Recalde v. Bae Cleaners, Inc.*, 20 Misc. 3d 827.

citizenship status" means: 1. The citizenship of any person, or 2. The immigration status of any person who is not a citizen or national of the United States.”⁶¹

“Alienage or citizenship status” defined in this way is one of the classes protected by the various sections of NYC’s Title 8 (Civil Rights). Used effectively by the court in *Recalde v. Bae Cleaners, Inc.*, this class consists in all individuals whose alienage or citizenship status may make them targets for discrimination. Including “alienage or citizenship status” at every enumeration of protected classes in the Chicago Fair Housing Ordinance and defining it in a manner similar to NYC would increase protections against housing discrimination in Chicago. Further considerations for the Chicago code include adding a clause to the definition of “alienage or citizenship status” specifying exceptions to the prohibition in order to protect against interference with the terms of a lease.

Gender Identity

Issue

In the United States, transgender and gender non-conforming people experience a disproportionate amount of housing discrimination. The U.S. Trans Survey, a 2015 survey of over 27,000 transgender people, found that 23 percent had experienced some form of housing discrimination, such as being denied a home or apartment because of their gender identity.⁶² A separate study from Suffolk University Law School indicates that number is a conservative estimate.⁶³ Other studies show that transgender and gender non-conforming people are more likely to be quoted for higher rental prices, less likely to be offered financial incentives to rent apartments, shown fewer areas when viewing homes, and less likely to be asked their name upon being met face to face.⁶⁴ In 2019, the Department of Housing and Urban Development (HUD), rolled back protections for homeless transgender people in shelters, indicating the Trump administration’s unwillingness to enforce general anti-discrimination provisions for transgender and gender non-conforming people.

Legal Context

There are good reasons to believe that transgender people are vulnerable to housing discrimination in the city of Chicago, especially given previous federal rollbacks and national data, despite a lack of formally filed complaints. Discrimination against transgender and gender non-conforming people is often hard to track, often hard to file (in New York City, for instance, victims of housing discrimination can call 311 and tell their story to the Human Rights Commission, but in order to pursue legal actions, the complainant has to come in to the office in Manhattan), and often coded

⁶¹ New York City Administrative Code, Title 8, Chapter 1, § 8-102.

⁶² James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

⁶³ Langowski, Jamie and Berman, William and Holloway, Regina and McGinn, Cameron, *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market* (2017). *Yale Journal of Law and Feminism*, Vol. 29, p. 321, 2018, Suffolk University Law School Research Paper No. 17-9, Available at SSRN: <https://ssrn.com/abstract=2941810>

⁶⁴ James, Letitia. "Attorney General James Fights Transgender Discrimination." News release. November 26, 2019. <https://ag.ny.gov/press-release/2019/attorney-general-james-fights-transgender-discrimination>.

(brokers will suddenly run out of open apartments, landlords will say they don't accept Section 8 vouchers or other housing assistance, transgender applicants are identified as "prostitutes" and "risks," according to one report).⁶⁵ On top of all these things, looking at the CCHR complaints filed about other forms of discrimination, discrimination against transgender people is nonexistent in recent years. Given national data, and case data (in for example New York City, which is demographically similar to Chicago), the more obvious answer would be that those suits are not made because transgender and gender non-conforming individuals are at risk of outing themselves on the public record.

Options

A potential solution, based on the New York City Human Rights model, is creating an expanded terminology — and examples — for what constitutes "gender identity discrimination." The New York City Human Rights Model cites "refusal to use correct pronouns" as one example, for instance, and creates guidelines for "sexual harassment as gender identity discrimination," which is something that queer and transgender people experience disproportionate rates of. As above, transgender and gender non-conforming individuals are less likely to receive quotes/financial incentives/be taken seriously in housing bids, so guidelines codifying what a person is owed in the rental process would be one way of tightening protection against discrimination without involving transgender/LGBTQ+ identities. Creating guidelines for minute and coded offenses that do not out people but can still be sustained by the CCHR would be one major goal, especially since the suits that were validated were ones that cited many small, trackable offenses. Other important methods involve creating more community-aggregated sources of discrimination data, so that transgender people trust the groups they are reporting to. "Community-based service providers are in the best position to track and compile discrimination cases, because victims trust them and are more likely to come forward," as the NYC's Public Advocate report stated.⁶⁶

IV. Homeseeking

Background

Much attention in fair housing advocacy and policy development has been given to supply-side housing discrimination, where homeseekers or residents are treated on an unfair basis. Redlining, steering, landlord abuses, unfair lending, intimidation, and racial advertisements loom large as some of the primary supply-side discriminatory actions that the Fair Housing Act (FHA) and fair housing advocates aim to prevent.^{67,68} But unfortunately this focus has left an entire side of every housing

⁶⁵ James, Letitia. "Attorney General James Fights Transgender Discrimination." News release. November 26, 2019. <https://ag.ny.gov/press-release/2019/attorney-general-james-fights-transgender-discrimination>.

⁶⁶ Misra, Tanvi. "How to End Housing Discrimination Against Transgender People." Bloomberg CityLab. Last modified March 31, 2017. <https://www.bloomberg.com/news/articles/2017-03-31/ending-housing-discrimination-against-transgender-people>.

⁶⁷ Massey, Douglas S. "The Legacy of the 1968 Fair Housing Act." In *Sociological Forum*, vol. 30, pp. 571-588. 2015.

⁶⁸ Sheffield, Jonathan J. "At Forty-Five Years Old the Obligation to Affirmatively Further Fair Housing Gets a Face-Lift, but Will It Integrate America's Cities." *U. Fla. JL & Pub. Pol'y* 25 (2014): 51.

transaction relatively free from oversight or liability—the homeseekers themselves can conduct discriminatory searches and exclude entire classes with only ambiguous prohibitions. On the grounds that discriminatory homeseeking is innocuous or hard to control, the FHA and state and local fair housing laws leave discriminatory homeseeking as a legal gray area.^{69,70}

Discriminatory homeseeking is not an innocuous act, as beyond making it harder for certain classes to sell or rent out homes, discriminatory homeseeking cements and widens housing inequality, most prominently strengthening geographic disparities along racial and ethnic lines.⁷¹ With white homeseekers overwhelmingly excluding nonwhite areas from their search, discriminatory homeseeking is actually an incredibly strong force against integration.^{72,73} Further, discriminatory homeseeking is only getting worse, as the expanding online real estate market has made discriminatory searches easier than ever, while the real-estate industry continues to enable rather than prevent segregating actions.^{74,75,76}

However, preventing and prohibiting discriminatory homeseeking is a thorny issue, with powerful autonomy concerns preventing direct interventions. Professor Lee Fennell grapples with how to tackle discriminatory homeseeking extensively in “Searching for Fair Housing”, noting that the autonomy concerns are serious. As Fennell describes, regulating a homeseeker's actual decision-making process would be incredibly difficult. Choosing a home is rightly regarded as an incredibly complex and personal decision and expecting a government to judge each person’s final choice would not only be impractical, but also so intrusive that such a policy would be legally shaky and politically unpalatable. Therefore, Fennell suggests that because a homeseeker’s final decision may be unreachable, the earlier and public aspects of a homeseeker’s search would be the best area for regulation. Raising costs of a discriminatory search, and thereby preventing seekers from categorically excluding a specific class would be especially effective—a search environment can be regulated and doing so would force seekers to engage with a more diverse field and evaluate sellers/landlords on an individual, not categorical, basis. Fennell proposes several ways to control this search environment, mainly by pursuing public advertisements and statements, or regulating assistive services such as real estate professionals and the internet.⁷⁷ Because the real estate industry has historically proven capable of being a dangerously segregating agent, and the internet has already been the site of many modern-day

⁶⁹ Fennell, L. A. (2017). Searching for Fair Housing. *BUL Rev.*, 97, 349.

⁷⁰ Julian, E. K. (1996, October 2). [Letter to Jill D. Levine, Esq.]; Julian, E. K. (1996, November). [Letter to Jill D. Levine, Esq.]; Pennick, A. E. (1996, November 8). [Letter to Elizabeth K. Julian]; Julian, E. K. (1996, December 3). [Letter to Aurie Pennick]; All retrieved from <https://perma.cc/8PCE-4D9U>

⁷¹ See Massey, “The Legacy”

⁷² Krysan, Maria. "Does race matter in the search for housing? An exploratory study of search strategies, experiences, and locations." *Social Science Research* 37, no. 2 (2008): 581-603.

⁷³ Krysan, M., Couper, M. P., Farley, R., & Forman, T. A. (2009). Does race matter in neighborhood preferences? Results from a video experiment. *American journal of sociology*, 115(2), 527-559.

⁷⁴ Boeing, Geoff. "Online rental housing market representation and the digital reproduction of urban inequality." *Environment and Planning A: Economy and Space* 52, no. 2 (2020): 449-468.

⁷⁵ Choi, A., Herbert, K., & Winslow, O. (2019, November 17). Long Island divided. *Newsday*.

⁷⁶ Department of Justice Office of Public Affairs. (2009, February 18). *Justice Department obtains \$120,000 settlement in discrimination lawsuit among Chicago area realtors* [Press release].

⁷⁷ Fennell, L. A. (2017). Searching for Fair Housing. *BUL Rev.*, 97, 349.

fair housing fights, these both are promising and controllable realms through which to attack homeseeking, as will be described below.^{78,79,80}

Real Estate Practices

Issue

While mostly prohibited by the Fair Housing Act (FHA), racial steering and discrimination are still pervasive among real estate agents. In a revealing undercover 2019 investigation of the Long Island real estate market, Asian testers reported unequal treatment 19% of the time, Hispanic testers 39% of the time, and Black testers 49% of the time.⁸¹ These disparities in treatment included setting different requirements for clients to qualify to receive service (8% of the time), discriminatory steering towards or away from neighborhoods (24% of the time), or providing on average 50% more listings to white than Black homeseekers.⁸² These issues are not just limited to Long Island or racial lines, with cases of real estate agents discriminating against protected classes across the country. These include instances of unlawful discrimination based on source of income, flagrant discrimination against members of the LGBTQ community (who are unprotected by the FHA), and numerous real estate services discriminating in Chicago on racial and other lines.^{83,84,85,86,87}

Many of these acts are clear violations of the FHA and Chicago's Fair Housing Ordinance and therefore require stronger enforcement, education, awareness, and reporting more than any legal changes. However, a key loophole in the law does exist—a real estate agent can potentially say they were acting for an explicitly discriminatory client as an affirmative defense, clearing both them and their client of liability.^{88,89,90} Since this enters into the realm of a discriminatory homeseeker, the FHA and housing law has traditionally ignored this issue. However, this potential defense is well-known and abused among real estate agents, including in one high-profile federal case where a Chicago real estate agent told his white client “I don’t care if you are a bigot. If we go to an area and you don’t like it, just let me know. I can’t be a bigot but you can be one”.⁹¹ Unfortunately, with ambiguous guidance

⁷⁸ See Massey, “The Legacy”; Choi et al., “Long Island”

⁷⁹ Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666, 672 (7th Cir. 2008)

⁸⁰ Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1164-72 (9th Cir. 2008) (en banc)

⁸¹ 42 U.S.C. § 3601 to 3615 – Fair Housing Act

⁸² Choi, A., Herbert, K., & Winslow, O. (2019, November 17). Long Island divided. *Newsday*.

⁸³ Long, J. (2019, October 3). St. Louis woman wrongly denied apartment because of Section 8 voucher. *5 on Your Side*.

⁸⁴ Wang, A. B. (2018, May 26). Refusing to sell homes to gay people is okay, GOP congressman says. Realtors disagree. *Washington Post*.

⁸⁵ Koeske, Z. (2019, December 5). Orland Park landlord allegedly engaged in racially discriminatory rental practices: Lawsuit. *Chicago Tribune*.

⁸⁶ Department of Justice Office of Public Affairs. (2009, February 18). *Justice Department obtains \$120,000 settlement in discrimination lawsuit among Chicago area realtors* [Press release].

⁸⁷ Radio personality sues realty company for housing discrimination. (2012, January 10). *CBS Chicago*.

⁸⁸ Chicago Code of Ordinances 5-8-010 to 140.

⁸⁹ Applied Real Estate Analysis, Inc. (2016, February). *Analysis of impediments to fair housing choice*.

⁹⁰ Fennell, L. A. (2017). Searching for Fair Housing. *BUL Rev.*, 97, 349.

⁹¹ Radio personality sues realty company for housing discrimination. (2012, January 10). *CBS Chicago*.

from HUD and little legal precedent, the real estate agent may have been correct in making this statement.^{92,93,94,95,96}

Legal Context

Given a fair reading of the existing case law and federal guidance, it would seem that this loophole is well supported. The primary case addressing this issue, *Village of Bellwood v. Dwivedi* (1990), states that the FHA “does not require a broker to endeavor to make his customers better people”, and allows brokers to withhold “[racial] information requested by those customers”, all while “not impos[ing] liability for failing to promote integration... [or] for failing to coordinate individual integrative acts that have an aggregate resegregative effect”.⁹⁷ Six years later, HUD issued a rather ambiguous series of letters, first stating that a real estate agent could steer and discriminate if told to by the client.⁹⁸ This was followed with a letter that these actions were ethical and questionable behavior, and then after significant pushback, HUD retracted both of its letters, promising guidance that still hasn’t been given.^{99,100,101}

Meanwhile, some housing advocates and legal scholars, notably Professor Lee Fennell in “Searching for Fair Housing”, argue that a real estate agent acting under the discriminatory instructions of a client may still be liable.¹⁰² Fennell and others have pointed at Section 1982 of the Civil Rights Act of 1866 as potential protection against housing discrimination and even homeseeking: “All 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”.^{103,104,105} This section, protecting rights to “lease” and “convey” certainly does seem to prohibit discriminatory homeseeking, and the text has been interpreted to apply to more discriminatory actors and protected racial classes than even the FHA.^{106,107} But unfortunately, the section has limited use—beyond the statute exclusively protecting against racial and ethnic discrimination, it only protects very direct and explicit forms of discrimination in transactions, and doesn’t address the broad, systemic, and sometimes indirect discriminatory actions that the FHA was designed to prohibit, including the real estate industry and neighborhood preferences.¹⁰⁸

⁹² See Fennel, Searching

⁹³ Julian, E. K. (1996, October 2). [Letter to Jill D. Levine, Esq.]. Retrieved from <https://perma.cc/8PCE-4D9U>

⁹⁴ Julian, E. K. (1996, November). [Letter to Jill D. Levine, Esq.]. Retrieved from <https://perma.cc/8PCE-4D9U>

⁹⁵ Pennick, A. E. (1996, November 8). [Letter to Elizabeth K. Julian]. Retrieved from <https://perma.cc/8PCE-4D9U>

⁹⁶ Julian, E. K. (1996, December 3). [Letter to Aurie Pennick]. Retrieved from <https://perma.cc/8PCE-4D9U>

⁹⁷ *Vill. of Bellwood v. Dwivedi*, 895 F.2d 1521, 1530 (7th Cir. 1990)

⁹⁸ See Julian, Oct. 2 1996

⁹⁹ See Julian, Nov. 1996

¹⁰⁰ See Pennick, Nov. 8

¹⁰¹ See Julian, Dec. 3

¹⁰² See Fennel, Searching, Pennick, Nov. 8

¹⁰³ See Fennel, Searching

¹⁰⁴ *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969)

¹⁰⁵ 42 U.S.C. § 1982 Civil Rights Act of 1866

¹⁰⁶ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968)

¹⁰⁷ *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987)

¹⁰⁸ See *Sullivan v. Little Hunting* (1969), *Jones v. Mayer* (1968), Fair Housing Act

However, when it comes to homeseeking, the FHA is somewhat ambiguous. Fennell and others point out that homeseekers' discriminatory statements to real estate agents may be against FHA's 3604(c), which states that it is a discriminatory action:

“To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.”^{109,110}

However, this section ends up being difficult to use for homeseeking, even without stretching it to apply to statements from a realtor. Some argue that the section itself can be rarely used and others directly refute its applicability to homeseekers.^{111,112} Meanwhile, some cases bring up First Amendment concerns with 3604(c), and even HUD in 1994 stated that advertisements from homeseekers could state discriminatory information without violating the FHA. Alternatively, Fennell and housing advocates also point to other sections, especially section 3605(a), which regulates real estate transactions more specifically, but only when an agent discriminates in “making available such a transaction”, which has again made its application to this loophole difficult.^{113,114,115,116} Since the Chicago Code borrows largely similar language, this hole in the law likely remains at the Chicago municipal level.

Options

As this is such a complicated legal issue few solutions have been proposed, so any options presented are largely speculative. However, a simple solution to this issue would be giving Chicago's 5-8-030 a version of FHA section 3605(a):

“It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.”^{117,118}

¹⁰⁹ See Fennell, Searching, Julian, Nov. 1996, Pennick, Nov. 8 1996 Julian, Dec. 3

¹¹⁰ See Fair Housing Act

¹¹¹ Schwemm, R. G. (2001). Discriminatory Housing Statements and 3604 (c): A New Look at the Fair Housing Act's Most Intriguing Provision. *Fordham Urb. LJ*, 29, 187.

¹¹² Seicshnaydre, S. E. (2014). The Fair Housing Choice Myth. *J. Affordable Hous. & Cmty. Dev. L.*, 23, 149.

¹¹³ United States v. Northside Realty Assocs., Inc., 474 F.2d 1164, 1169-71 (5th Cir. 1973)

¹¹⁴ Diaz, N. (1996, October 2). [Letter to Rene Milam]. Retrieved from <https://perma.cc/2QE4-FEWS>

¹¹⁵ See Fennell, Searching; Julian, Nov. 1996; Pennick, Nov. 8 1996; Julian, Dec. 3 1996

¹¹⁶ See Fair Housing Act

¹¹⁷ See Chicago Code

¹¹⁸ See Fair Housing Act

To close the exception protecting real estate agents with discriminatory clients, perhaps an adequate solution would be adding a line prohibiting agents from accepting the instructions of a client that asks for assistance in a search that avoids a protected class.

Apps and Websites

Issue

Over the last 25 years, as the internet has greatly expanded and websites and apps provide assistance in searching for homes, homeseeking is increasingly being conducted online. On sites such as Craigslist, Facebook, and many others, posters are able to make explicitly discriminatory homeseeking requests or searches. The FHA has had a mixed record as preventing these actions. This is largely because such discriminatory searches are not necessarily illegal, and while homeseeking advertisements were relatively uncommon before the advent of the internet, now there are entire unregulated sites and apps devoted to helping homeseekers through their housing search. For these reasons, the fair housing laws of the 1960s and 1980s are ill-equipped to fight 21st-century methods of discrimination.

Legal Context

The robust free speech protections of Section 230 of the Communications Decency Act (CDA) make the internet a uniquely challenging place to pursue fair housing in general, let alone homeseeking.¹¹⁹ This act explicitly states that a provider is never held as the publisher or speaker of a statement made by another content provider, clearing the internet service of liability in many cases. This was recently seen in the context of fair housing in *Chi. Lawyers' Comm. for Civil Rights Under Law Inc. v. Craigslist, Inc* (2008), in which Craigslist was absolved of responsibility for explicitly racial real estate and rental listings on its site.¹²⁰

Meanwhile, the FHA's section regarding public statements and advertisements, Section 3604(c), is itself difficult to apply to discriminatory homeseeking.¹²¹ 3604(c) can often run afoul of the First Amendment and may not even apply to homeseeking advertisements (see Real Estate—Legal Context section above). Therefore, in this legal landscape, a homeseeker searching online is not necessarily liable for discriminatory statements. A hopeful ruling, *Fair Hous. Council of San Fernando Valley v. Roommates.com*, did successfully use 3604(c) to prosecute the creator of a discriminatory roommate listing service.¹²² This ruling does suggest that 3604(c), and its Chicago Code equivalent, 5-8-30E, could apply to the online sphere. However, since this case was not an issue on the homeseeking side, it did not do much to determine if 3604(c) can prohibit discriminatory homeseeking advertisements and searches.

¹¹⁹ Communications Decency Act, Section 230.

¹²⁰ *Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.* - 519 F.3d 666 (7th Cir. 2008).

¹²¹ Fair Housing Act, Section 3604(c).

¹²² *Fair Hous. Council v. Roommate.com, LLC* - 666 F.3d 1216 (9th Cir. 2012).

Options

Due to the rapid development of internet-based tools, regulations supporting fair housing on the internet have little precedent. Nonetheless, adding homeseeking and perhaps an explicit mention of online postings to Chicago Code’s 5-8-30B could greatly improve coverage of online fair housing. As it stands, this current section describes that it is an unlawful discriminatory practice:

“To publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, sign or other writing of any kind relating to the sale, rental or leasing of any residential real property within the City of Chicago which will indicate or express any limitation or discrimination in the sale, rental or leasing of such residential real estate, predicated upon the race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military status or source of income of any prospective buyer, lessee or renter of such property.”¹²³

The addition of a more general term, like the word “statement” in the FHA’s 3604(c), could improve the reach of the Chicago Code to the online sphere, as it did in the Roommates.com case. Adding to “sale, rental, or leasing” with words to the effect “any limitation or discrimination in the scope of a search for real estate or housing predicated upon the [protected classes] of any prospective landlord or seller of such property” could meanwhile add the necessary prohibition against discriminatory homeseeking advertisements. The addition of “online posting” to the list of prohibited media could also be useful in solidifying this section’s reach online, although, given the Roommates.com case, this may be unnecessary. Adopting a section similar to FHA’s 3605 could tackle assisted search generally (as discussed in the Real Estate section), and an expansion from “engaging in real-estate related transactions” to “facilitating and engaging” in this proposed section could cover sites and apps that allow explicitly discriminatory search.

Disparate Impact Rule

Issue

In 2013 the HUD published a rule detailing burdens of proof for disparate impact discriminatory effect claims.¹²⁴ The rule describes a three step burden-shifting process: the plaintiff must prove that the challenged practice caused a discriminatory effect; the defendant must then prove that the challenged practice is necessary to help achieve the defendant’s legitimate interests; and finally the plaintiff may prove that the defendant’s legitimate interests could be achieved through a less discriminatory practice.¹²⁵ However, HUD approved a rule which fundamentally changes the burdens

¹²³ Chicago Code, Section 5-8-30B.

¹²⁴ Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (to be codified at 24 C.F.R. pt. 100).

¹²⁵ Robert G. Schwemm & Calvin Bradford, Proving Disparate Impact in Fair Housing Cases After Inclusive Communities, 19 N.Y.U. J. Legis. & Pub. Pol'y 685 (2016).

of proof in a disparate impact case.¹²⁶ Under the rule, the burden of proof shifts substantially to the plaintiff, requiring them to prove five elements:

1. The policy or practice in question is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective
2. A robust causal link exists between the policy or practice and a disparate impact on members of a protected class
3. The policy or practice has an adverse effect on members of a protected class
4. The statistical disparity is material and caused by the policy or practice, not chance
5. The plaintiff's alleged injury is directly caused by the policy or practice

The defendant in turn may offer evidence that the policy in question serves a valid interest. Finally, the plaintiff may demonstrate that another policy can serve the defendant's valid interests with equal effectiveness and similar or lesser cost. One of the largest changes regards algorithms used in the housing market to automate some decisions. Under the proposed rule, a company using a third-party algorithm would not be responsible for the algorithm's effects.¹²⁷ New defenses are also provided for defendants.

Legal Context

In *Hunting v. Huntington Branch, NAACP*, 488 U.S. 15, the court ruled that the plaintiffs had to demonstrate that the action or rule in question had a disparate impact.¹²⁸ Then, the burden of proof would shift to the defendant, who would have to prove that there were legitimate reasons for taking the action and there were no less discriminatory alternatives. This standard is consistent with current Federal Law.¹²⁹ The most important recent case applying disparate impact standards to fair housing law is *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507. In that case, the court ruled that "disparate-impact claims held cognizable under Fair Housing Act", confirming decades of federal appellate court precedent.¹³⁰ As a result of the *Inclusive Communities* decision, for housing discrimination cases the following disparate impact standard could be used: "In contrast to a disparate-treatment case, where a plaintiff must establish that the defendant had a discriminatory intent or motive, a plaintiff bringing a disparate-impact claim challenges practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale." The *Inclusive Communities* standard closely matched the 2013 HUD rule and was interpreted similarly. Despite the similarities, the *Inclusive Communities* decision offered grounds to "unleash a wide variety of legal challenges to housing-limiting policies of landlords, municipalities, mortgage lenders, and

¹²⁶ HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed. Reg. 60288 (Sep. 24, 2020) (to be codified at 24 C.F.R. pt. 100).

¹²⁷ Capps, Kriston. "A HUD Housing Rule Worries Civil Rights Advocates." Bloomberg CityLab. Last modified August 16, 2019. <https://www.citylab.com/equity/2019/08/fair-housing-act-hud-disparate-impact-discrimination-lenders/595972/>.

¹²⁸ *Huntington v. Huntington Branch, NAACP*, 488 U.S. 15, 109 S. Ct. 276, 102 L. Ed. 2d 180, 1988 U.S. LEXIS 4941, 57 U.S.L.W. 3331 (Supreme Court of the United States November 7, 1988, Decided).

¹²⁹ § 100.500 Discriminatory effect prohibited., 24 CFR 100.500 (This document is current through the March 25, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.).

¹³⁰ *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 192 L. Ed. 2d 514, 2015 U.S. LEXIS 4249, 83 U.S.L.W. 4555, 25 Fla. L. Weekly Fed. S 441 (Supreme Court of the United States June 25, 2015, Decided).

others that disproportionately harm FHA-protected classes.”¹³¹ However, in 2019 HUD claimed that a new rule was needed to “provide more appropriate guidance on what constitutes unlawful disparate impact to better reflect the Supreme Court’s 2015 ruling” in *Inclusive Communities*, leading to the issues discussed in the preceding section. The new rule was designed to address the requirements for robust causality described in *Inclusive Communities*. However, many courts and HUD itself prior to 2017 agreed that HUD’s existing rule met the *Inclusive Communities* requirements.¹³²

Options

The ultimate solutions to the challenges created by the proposed HUD rule are Federal. Only with revised HUD guidance can the disparate impact burden of proof standards be returned to their 2013 status. However, municipalities and states could creatively design legislation to mitigate the effects of the proposed Federal rule. In particular, laws could be designed which make companies responsible for any discriminatory effects from algorithms they use, irrespective of the algorithms’ origin with the company or with a third party. Another possible legislative strategy involves instructing local fair housing enforcement agencies to follow a process similar to the 2013 burden-shifting HUD rule in assessing disparate impact-type claims. Explicitly counteracting Federal policies on a local level is a well-known tactic, as seen through “sanctuary city” initiatives. Applying similar tactics to counter HUD’s proposed rule would allow cities to better minimize discriminatory impacts in the event of the HUD rule’s adoption. In the event of a judicial challenge, the appellate courts’ previous relative unity around 2013-type disparate impact standards and the pre-2019 interpretations of *Inclusive Communities* would help protect local legislation.

Discriminatory Algorithms

Issue

A variety of businesses involved in the housing process use computer algorithms to assist their operations. These algorithms can be benign, but in a variety of instances across the country decisions made by agents in the housing process based on algorithm information have led to discriminatory outcomes.¹³³ A Connecticut federal district court ruled in March 2019 that a company which screens tenants via data collection and mining could be held liable for discrimination under the Fair Housing Act.¹³⁴ The court held that the company’s screening algorithm evaluated certain criminal records (such as arrest records) so as to disparately impact tenants of protected race, disability status, and national origin. In a more general case, researchers at the University of California at Berkeley found evidence that home and refinancing lenders’ algorithms discriminated against borrowers of color and rejected

¹³¹ Robert G. Schwemm & Calvin Bradford, Proving Disparate Impact in Fair Housing Cases After *Inclusive Communities*, 19 N.Y.U. J. Legis. & Pub. Pol’y 685 (2016).

¹³² Robert G. Schwemm, Fair Housing Litigation After *Inclusive Communities*: What’s New and What’s Not, 115 Colum. L. Rev. Sidebar 106 (2015), https://live-columbia-law-review.pantheon.io/Fair_Schwemm.

¹³³ Augustine, Lindsay, Cathy Cloud, Sherill Frost-Brown, Debby Goldberg, Lisa Rice, Jorge Soto, and Morgan Williams. 2019 Fair Housing Trends Report. N.p.: National Fair Housing Alliance, 2019.

¹³⁴ Conn. Fair Hous. Ctr. v. Corelogic Rental Prop. Sols., LLC, 369 F. Supp. 3d 362

millions of creditworthy applicants.¹³⁵ Additionally, many algorithms which may not be inherently discriminatory still use “dirty data” which contains systemic biases, leading the algorithms themselves to produce discriminatory outcomes.¹³⁶ The obviously discriminatory effects caused by some algorithms used in the housing process suggest the necessity for more effective regulation.

Legal Context

Legal scholars have long been aware of the challenge to fair housing posed by discriminatory algorithms. In “Searching for Fair Housing”, Professor Lee Fennell describes how algorithms ostensibly aimed at replicating homeseekers’ current neighborhood composition could serve to entrench current trends of segregation and discrimination. Fennell identifies a unique challenge posed by such algorithms to current fair housing laws. According to Fennell:

“If racial or other protected-class data about the housing consumer herself were used as part of the algorithm that determined which homes she was likely to prefer, legal prohibitions on steering would plainly kick in—just as a real estate agent may not make such predictions herself based on her client’s race.” [Note 63]¹³⁷

When algorithms do not contain explicit protected class data, they are not accountable to existing fair housing regulations in most cases. At best, victims of discrimination can hope that court interpretations of disparate impact standards provide sufficient situational protection, though this hope is not always met by the courts.¹³⁸ Fennell ultimately suggests “A less discriminatory approach might permit matching only on factors other than racial composition, or adding some degree of randomization as to race and closely correlated factors”. Other academic approaches include James A. Allen’s, which suggests that transparency and disclosure in algorithm design and use may help mitigate the possibility for discriminatory outcomes.¹³⁹ Ultimately, Allen proposes a form of fairness auditing which would allow algorithms to be vetted for their potential harms. Both Fennell and Allen recognize and respond to legitimate concerns in algorithmic operations, and both point to the difficulties of applying existing Fair Housing legislation to them.

Options

An overall concern in dealing with algorithms is the trade-off between regulation and business efficiency, with particular regard to the high pace of innovation in digital design. Any regulatory

¹³⁵ Bartlett, Robert, Adair Morse, Richard Stanton, and Nancy Wallace. *Consumer-Lending Discrimination in the FinTech Era*. NBER Working Paper Series, no. w25943. Cambridge, Mass: National Bureau of Economic Research, 2019.

¹³⁶ Augustine, Lindsay, Cathy Cloud, Sherill Frost-Brown, Debby Goldberg, Lisa Rice, Jorge Soto, and Morgan Williams. 2019 Fair Housing Trends Report. N.p.: National Fair Housing Alliance, 2019.

¹³⁷ Fennell, Lee Anne, *Searching for Fair Housing* (April 12, 2017). 97 *Boston University Law Review* 349 (2017), U of Chicago, Public Law Working Paper No. 575, Kreisman Working Papers Series in Housing Law and Policy No. 34, Available at SSRN: <https://ssrn.com/abstract=2762026>

¹³⁸ *Isaac v. Norwest Mortg.*, 2002 U.S. Dist. LEXIS 9354

¹³⁹ James A. Allen, *The Color of Algorithms: An Analysis and Proposed Research Agenda for Detering Algorithmic Redlining*, 46 *Fordham Urb. L.J.* 219 (2019). Available at: <https://ir.lawnet.fordham.edu/ulj/vol46/iss2/1>

solution to algorithmic discrimination must account for business' interests in protecting proprietary algorithms and developing new algorithms to meet genuine business needs. One Federal solution which could be adapted on the local level is the proposed Algorithmic Accountability Act of 2019 (AAA).¹⁴⁰ Similar in some respects to Allen's argument, the AAA requires companies to both study and fix computer algorithms which could lead to discriminatory decisions. However, the AAA uses the wide-ranging powers of the FTC to compel companies to follow its mandates, making it hard for state and local governments to pass similar legislation without such an agency.

V. Case Study: Airbnb Discriminatory Algorithms

The rapid expansion of sharing economy rental platforms in Chicago creates new fair housing challenges which this paper's suggestions could help address. Airbnb is the most prominent of these platforms, with hundreds of rental properties in Chicago. As private homes offered for temporary stay, Airbnb's occupy a unique and often less regulated position within the housing landscape. Despite their growing numbers, Airbnb properties are not listed accommodations under the FHA, making it possible for Airbnb's to "exclude customers seeking access to public accommodations."¹⁴¹ Airbnb itself acknowledges this, stating that only in some cases will FHA familial status provisions apply because not all Airbnb stays establish a "dwelling".¹⁴²

The inapplicability of the FHA is particularly problematic given the long history of discrimination associated with Airbnb. As a second generation sharing economy platform, Airbnb relies on interactions between non-anonymous owners and customers.¹⁴³ In practice, this has led to significant discrimination based on a variety of protected class memberships, most notably race.¹⁴⁴ Airbnb recognizes this problem, but their efforts to address it have been slow and often compound existing patterns of discrimination.¹⁴⁵ A Chicago Tribune study found that prospective Airbnb customers are open to potential disability discrimination from some hosts who either fail to understand the nature

¹⁴⁰ Algorithmic Accountability Act of 2019, H.R. 2231, 116th Cong., 1st. (as referred to House Committee, Apr. 11, 2019).

¹⁴¹ Diamond Smith, *Renting Diversity: Airbnb as the Modern Form of Housing Discrimination*, 67 DePaul L. Rev. (2018)

¹⁴² Airbnb. *Is placing restrictions based on a guest's age or familial status prohibited by law?* Last modified 2021. Accessed April 9, 2021. <https://www.airbnb.com/help/article/1620/is-placing-restrictions-based-on-a-guests-age-or-familial-status-prohibited-by-law>.

¹⁴³ Diamond Smith, *Renting Diversity: Airbnb as the Modern Form of Housing Discrimination*, 67 DePaul L. Rev. (2018)

¹⁴⁴ Cui, Ruomeng and Li, Jun and Zhang, Dennis, *Reducing Discrimination with Reviews in the Sharing Economy: Evidence from Field Experiments on Airbnb* (December 8, 2016). *Management Science*, Available at SSRN: <https://ssrn.com/abstract=2882982> or <http://dx.doi.org/10.2139/ssrn.2882982> and Edelman, Benjamin, Michael Luca, and Dan Svirsky. 2017. "Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment." *American Economic Journal: Applied Economics*, 9 (2): 1-22.

¹⁴⁵ Hempel, Jessi. "Airbnb's Slow-Moving Mission to Win Over African Americans." *Wired*. Last modified July 26, 2018. <https://www.wired.com/story/airbnbs-slow-moving-mission-to-win-over-african-americans/>.

of the accommodations necessary or who are actively opposed to accommodating disabled customers.¹⁴⁶

However, the greatest fair housing challenge posed by Airbnb in cities is secondary to the process of rental. As Diamond Smith argues in “Renting Diversity: Airbnb as the Modern Form of Housing Discrimination” (2018), Airbnb and other similar sharing economy platforms contribute to housing discrimination by opening communities to the effects of gentrification and removing housing stock from the long-term rental market.¹⁴⁷ Protecting against the harmful effects of Airbnb and other similar sharing economy tools should therefore be a key priority in affirmatively furthering fair housing. With the FHA inapplicable, attempts to regulate the sharing economy in the fair housing context must fall to the city and state level. There is local precedent for this move. The City of Chicago has been willing to consider Airbnb more stringently than many other cities, with a Sharing Housing Ordinance providing some regulation of sharing economy properties.¹⁴⁸

Many of the strategies outlined in our paper would be unable to address Airbnb’s unique challenges to fair housing. It remains unlikely that the individual instances of discrimination within Airbnb owner-customer relationships could be mitigated by more stringent protected class standards. Likewise, given that Airbnb and other similar platforms are not covered under the FHA, disparate impact suits on FHA grounds are not practical (indeed, the Communications Decency Act further exempts Airbnb listings from such suits).¹⁴⁹ Without substantive revisions or reinterpretations of existing Federal legislation, Airbnb discrimination remains difficult to diminish in court.¹⁵⁰

However, the homeseeking and algorithmic aspects of our paper do offer strategies to limit the detrimental impact of Airbnb on fair housing in Chicago on the whole. A few Airbnb listings in a neighborhood may lead to beneficial business activity, but if a community becomes overwhelmed by Airbnb listings then the harms of gentrification become increasingly apparent.¹⁵¹ Structuring the Airbnb choice environment could be crucial to spreading the impact of Airbnb properties across Chicago’s neighborhoods. According to their website, Airbnb search options are ordered based in part

¹⁴⁶ Ameri, Mason, and Douglas L. Kruse. "Study Shows How Airbnb Hosts Discriminate Against Guests with Disabilities as Sharing Economy Remains in ADA Gray Area." Chicago Tribune. Last modified May 12, 2020. <https://www.chicagotribune.com/travel/travel-news/sns-airbnb-hosts-discriminate-ada-gray-area-20200512-jiqffnxuh5bsrftpi4r2fjip5i-story.html>.

¹⁴⁷ Diamond Smith, *Renting Diversity: Airbnb as the Modern Form of Housing Discrimination*, 67 DePaul L. Rev. (2018)

¹⁴⁸ "Shared Housing and Accommodations Licensing." City of Chicago. Last modified 2021. Accessed April 9, 2021. https://www.chicago.gov/city/en/depts/bacp/supp_info/sharedhousingandaccommodationslicensing.html.

¹⁴⁹ Todisco, Michael. "Share and Share Alike?" Stanford Law Review. Last modified March 2015. <https://www.stanfordlawreview.org/online/share-and-share-alike/>.

¹⁵⁰ Jefferson-Jones, Jamila, Shut Out of Airbnb: A Proposal for Remediating Housing Discrimination in the Modern Sharing Economy (April 28, 2016). Fordham Urban Law Journal, Vol. XLIII, 2016, Available at SSRN: <https://ssrn.com/abstract=2772078>

¹⁵¹ Diamond Smith, *Renting Diversity: Airbnb as the Modern Form of Housing Discrimination*, 67 DePaul L. Rev. (2018)

on “Guest needs... including where they’re searching from, their previous trips”.¹⁵² The search result algorithm could have potentially biased results based on the characteristics of searchers, just as Fennell predicts with homeseeking algorithms. By preventing Airbnb search algorithms from considering certain features of potential customers, a more open search environment could be created. A localized version of the Algorithmic Accountability Act would also help create better community outcomes despite Airbnb presence. Airbnb would be required to review its algorithms for discriminatory effects, ultimately resulting in the potential for revision to a less discriminatory alternative. Given the widespread harms of some sharing economy platforms to fair housing, the “discriminatory effects” of Airbnb algorithms could be extended to include excessive concentration in a single area of the city.

In practice, home seeking and algorithmic approaches could have considerable positive effects in Chicago. Concentrated Airbnb development increases neighborhood investment significantly in the city while decreasing available housing.¹⁵³ This investment often does not go to members of the community, instead disproportionately flowing to outside developers and owners.¹⁵⁴ In Chicago, Airbnb listings are accumulating in West Side neighborhoods previously relatively unimpacted by tourist lodging.¹⁵⁵ This trend is ongoing despite the Chicago fees and taxes on Airbnb-type sharing economy services, which actually appear to have legitimized Airbnb renting in the city.¹⁵⁶ An algorithm and homeseeking based approach as detailed above would begin by identifying and removing factors in a prospective Airbnb customer’s location or background data which make West Side neighborhood listings appear higher on the search result list of rental options. Simultaneously, Airbnb would need to evaluate its own algorithms to ensure that customers were not incentivized to flood West Side neighborhoods and that owners in these neighborhoods were not prioritized over other owners across the city. In this way, an excessive concentration of Airbnb listings in West Side neighborhoods could be partially mitigated, leading to fairer housing outcomes for the communities involved.

VI. Limitations

For a number of reasons, identifying individual instances of housing discrimination and diagnosing solutions for them is a complex project. Often, certain marginalized groups that might face discrimination while trying to seek housing find their options limited when they look for avenues to report such discrimination, some inherent to one’s sociopolitical position, and others related to blind spots within existing systems of accountability. This section will describe a few of the challenges in tracking housing discrimination across protected classes.

¹⁵² "What Factors Determine How My Listing Shows in Search Results?" Airbnb. Last modified 2021. Accessed April 9, 2021. <https://www.airbnb.com/help/article/39/what-factors-determine-how-my-listing-shows-in-search-results>.

¹⁵³ Xu, Minhong, and Yilan Xu. "Airbnb and Private Investment in Chicago Neighborhoods." Working paper, n.d.

¹⁵⁴ Diamond Smith, Renting Diversity: Airbnb as the Modern Form of Housing Discrimination, 67 DePaul L. Rev. (2018)

¹⁵⁵ Romain, Michael. "On the West Side, Airbnb is Rising." Austin Weekly News. Last modified April 10, 2018. <https://www.austinweeklynews.com/2018/04/10/on-the-west-side-airbnb-is-rising/>.

¹⁵⁶ Romain, Michael. "On the West Side, Airbnb is Rising." Austin Weekly News. Last modified April 10, 2018. <https://www.austinweeklynews.com/2018/04/10/on-the-west-side-airbnb-is-rising/>.

In searching for anecdotal accounts of housing discrimination on a citywide level — as well as official complaints — we faced the problem of undocumented immigrants and transgender/gender non-conforming individuals potentially not wanting to “out” themselves on an official record. Even though there are explicit citywide guidelines establishing both as protected classes, federal rollbacks in the past few years make being either undocumented or trans a fraught issue when seeking housing. Both, for instance, face increasingly restrictive (and even retrograde) guidelines from HUD that might make these groups wary about being public about their statuses. In the case of undocumented immigrants, for instance, HUD proposed a rule last year targeting 25,000 families, intending to strip them of federal housing age based on their “mixed citizenship” statuses.¹⁵⁷

Because groups have reasons to be reserved about outing themselves, it is difficult to find individualized accounts of what discrimination might look like through public channels meant to correct discrimination. In Chicago, for instance, discrimination would be reported to the Chicago Council for Human Rights for review, but no judgments were made for reported gender identity discrimination or citizenship status discrimination in the past few years.¹⁵⁸ Looking at data from other cities, like New York City, we also know that discrimination is subtle and hard to track, and therefore, hard to enforce. The New York City guidelines give incredibly specific examples for what gender identity discrimination might entail, including misgendering, and requiring a person’s medical records as a condition of tenancy.¹⁵⁹ Our determinations for when discrimination might occur for these protected classes, and what codifiable solutions would be advisable, are accrued from national surveys, and use other cities’ anti-discrimination laws to fill in gaps that might exist in Chicago’s.

The limitations in gathering data on certain forms of discrimination mirror the challenge of enforcement. Even with the more robust protections specified in this paper, some instances of discrimination will be almost impossible to identify and target. We believe that tighter laws with more rigorous anti-discrimination provisions are almost always better than the alternative, but we recognize their limitations. In order for the remedies in this paper to be most effective, communication and community engagement will be essential. Future projects should also focus on gathering perspectives from those searching for housing across Chicago. Through an accumulation of personal testimony and survey results, a more nuanced and helpful picture of discrimination in Chicago can be built. That knowledge will enable the recommendations in this paper to achieve greater effectiveness.

¹⁵⁷ Fessler, Pam. "Proposed Rule Could Evict 55,000 Children From Subsidized Housing." NPR. Last modified May 10, 2019. <https://www.npr.org/2019/05/10/722173775/proposed-rule-could-evict-55-000-children-from-subsidized-housing>.

¹⁵⁸ "Decisions & Precedents in Discrimination Cases." City of Chicago. Last modified 2021. Accessed April 9, 2021. https://www.chicago.gov/city/en/depts/cchr/supp_info/precedential_decisions.html.

¹⁵⁹ New York City Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23)

VII. Conclusions

As described above, fair housing remains an aspiration rather than a reality in Chicago and around the United States. In the time since this paper was started, a global pandemic and intense civil rights protests have only strengthened the case for bold, decisive action by policymakers across the country. Now more than ever, it is time for policymakers to take an increasingly proactive approach to fair housing. This paper argues for a combination of small regulatory changes and larger paradigm-shifting legislative strategies. While we strongly encourage each recommendation to be considered for adoption, we recognize the political and pragmatic limitations that face policymakers. But this program for reform does not live or die on the strength of every proposal working together. Nor are this paper's recommendations complete, especially given the evolution of the world and of the literature. Rather, we expect that each component that is adopted will yield unique benefits. Policies not mentioned here may be highly effective in combination with our recommendations. If nothing else, this paper should suggest policymakers reconsider both the boilerplate protections enshrined in existing fair housing law and the legal frameworks through which we consider fair housing.

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