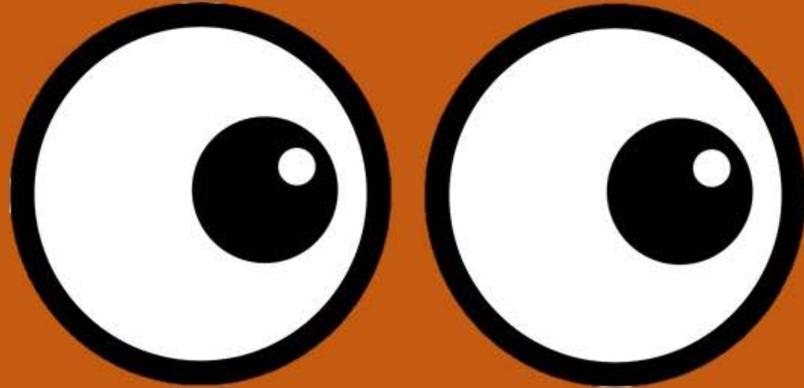


The Eyes of Housing are
Upon You



The Eyes of Housing are Upon You

What is affordable housing?

Who needs it?

What are the goals and benefits of affordable housing?

SCOTUS Ruling- Disparate Impact and Affirmatively Furthering Fair Housing

Consequences of not Affirmatively Furthering Fair Housing

Success Stories

What is affordable housing?

No more than 30 percent of income for housing, including utilities.

Goals

Health & Safety: Family stability and healthy child development

Environmental: Live-work-play-learn in close proximity to each other

Economic: Business recruitment

Benefits

Have an adequate supply of housing for the community's needs.

Ensure that all segments of the community have access to safe and healthy housing.

Reduce homelessness.

Family stability and healthy child development.

Reduce transportation costs and emissions when folks live close to where they work, learn, and play.

Workforce housing supply for Economic Development.

Who needs it?

City of Round Rock Employee Examples

Job Title	Hourly Rate	Person Household	Affordable Rent
Administrative Assistant	\$15.34	1	\$876
Building Inspector	\$17.24	2	\$1051
Crime Analyst	\$19.92	3	\$1214
Planner	\$21.99	4	\$1354

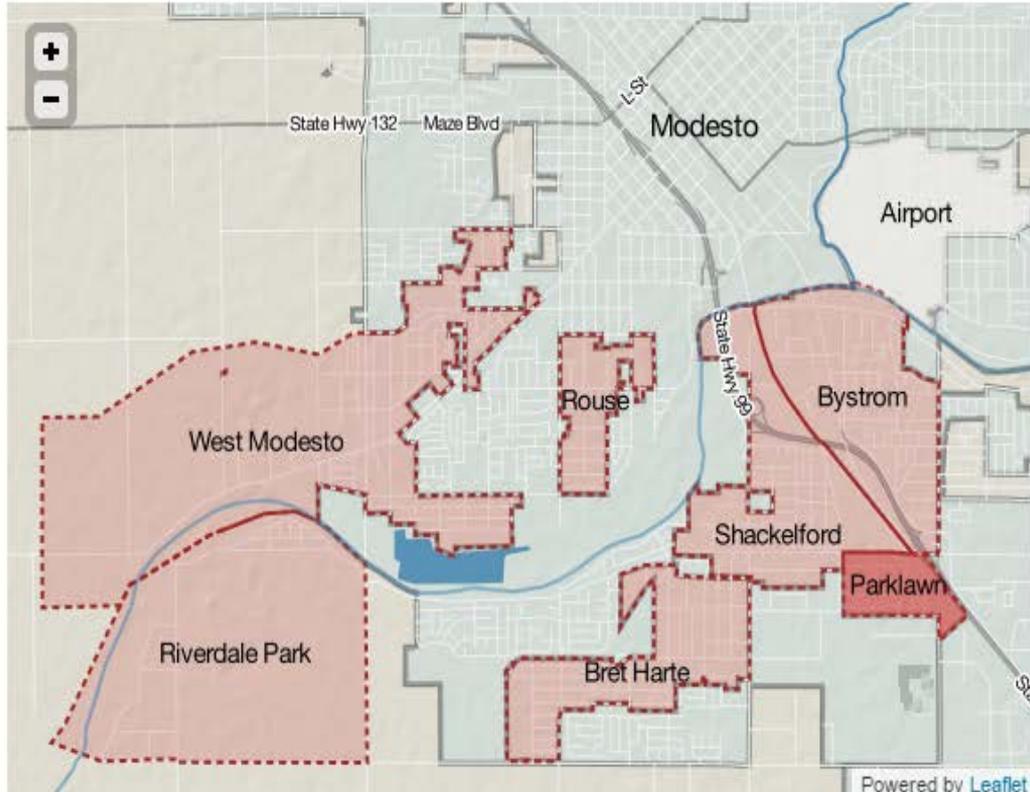
Affordable Housing ≠ Fair Housing

- FHA protects on the basis of race, color, national origin, religion, sex, and familial status
- Lack of affordable housing/location of affordable housing can be a fair housing issue, but;
- Housing discrimination and segregation affect people at all income levels.

Why do we care about fair housing?

- Where an American child is born is predictive of everything from educational and economic outcomes to life expectancy. **Zip code is destiny.**
- Disadvantage is concentrated in certain neighborhoods.
- Neighborhood poverty is multigenerational and perpetuates inequality. (Sharkey, *Stuck in Place*, 2013)
- Mobility has positive long-term effects on educational and economic outcomes (Chetty and Henderson, 2015)

Fair housing is not just housing



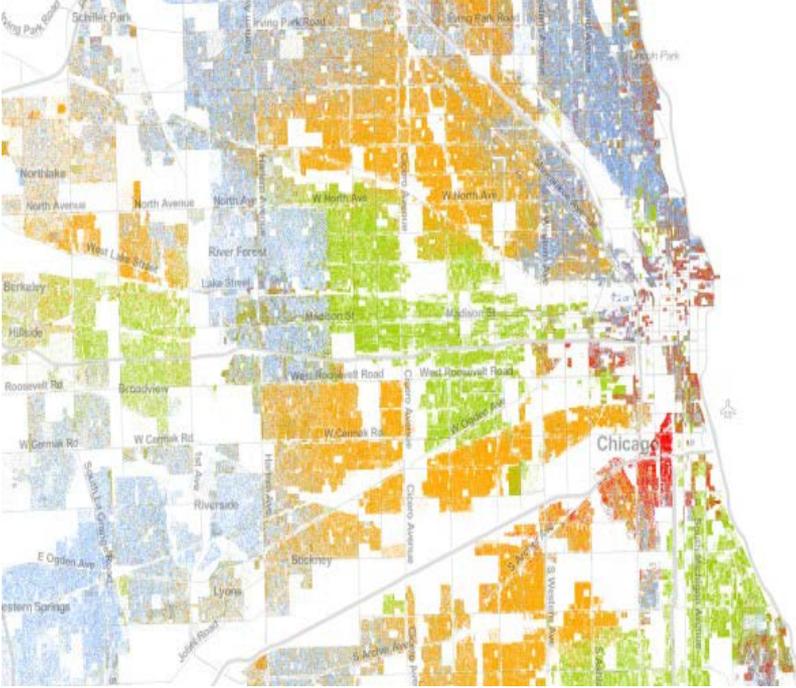
Parklawn

Parklawn is an unincorporated island near the cities of Modesto and Ceres, and it's one of at least four disenfranchised islands in Modesto. Residents rely on failing septic tanks, and although a city sewer line runs adjacent to the community, residents can't access it.

	Parklawn	Stanislaus County
Population	1,337	514,453
Hispanic or Latino	81.5%	41.9%
Median household income	\$32,902 <small>(Local survey reports much lower: \$18,000)</small>	\$51,094

How much does where you live matter?

City of Chicago Racial Dot Map



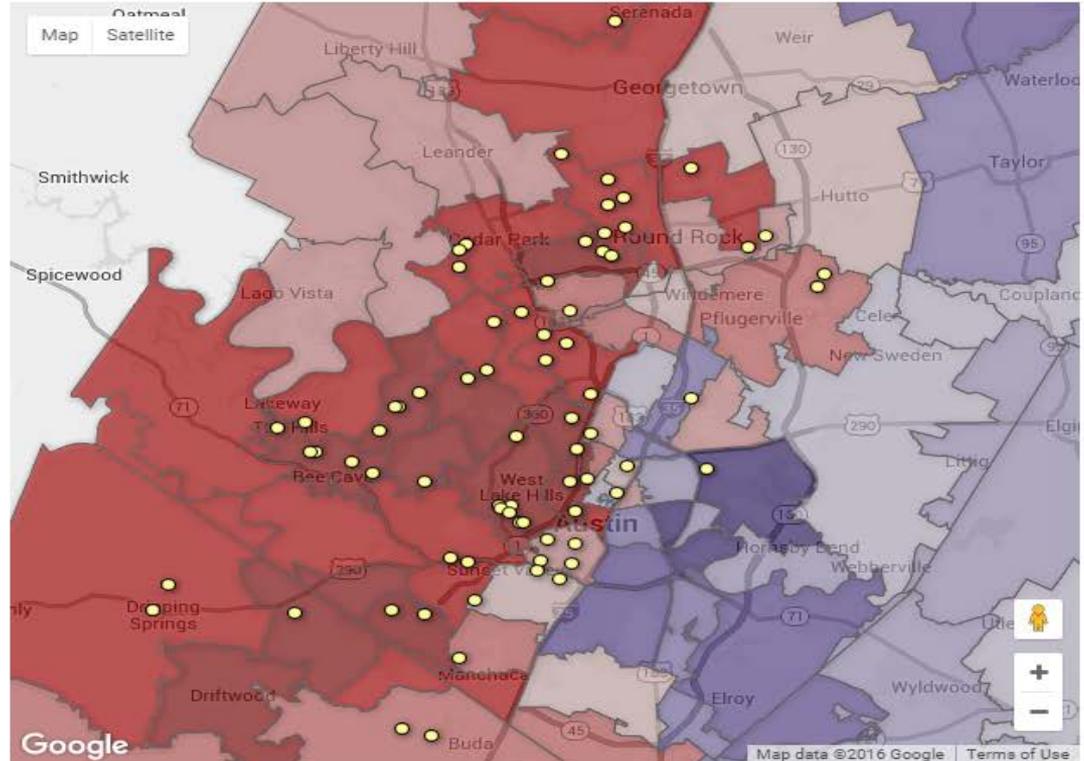
City of Chicago Life Expectancy Map



High-performing Schools in Austin

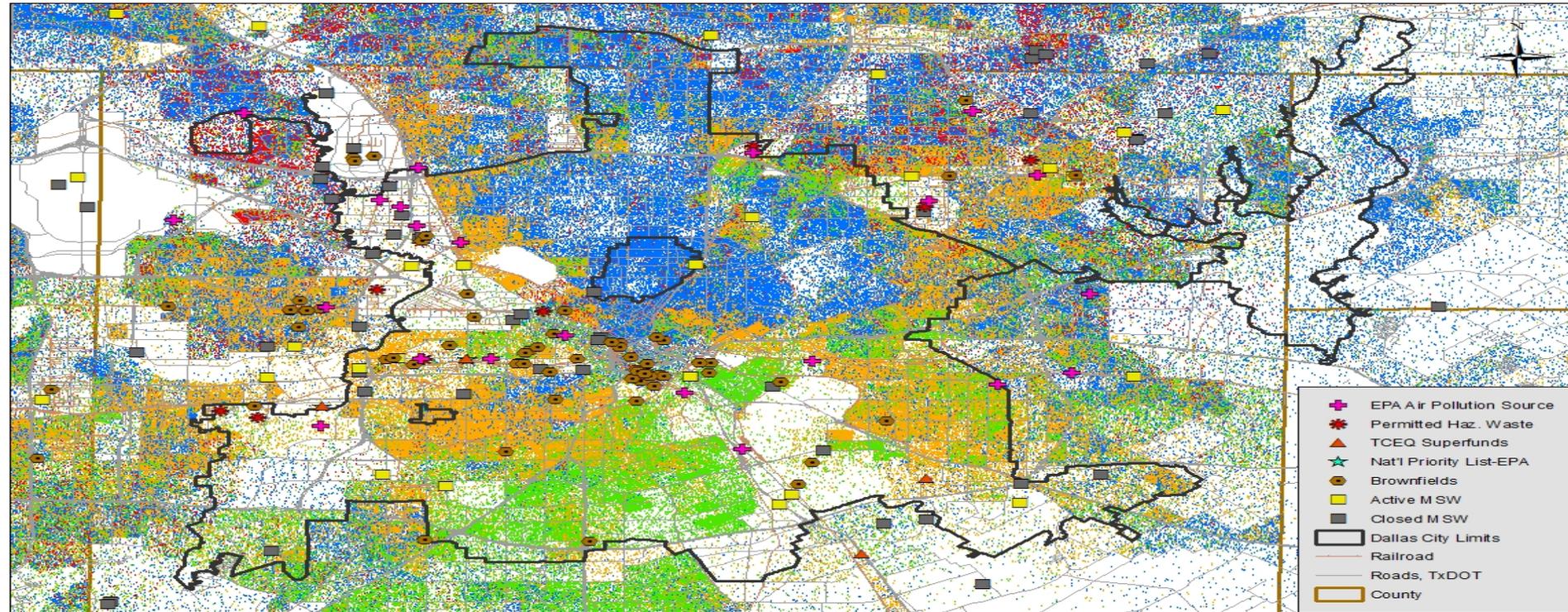
Education reinforcing income segregation

Of all the factors that predict financial success, none are more tightly linked than education. In Austin-area school districts, most of the schools rated "exemplary" in 2011 sat in the wealthier ZIP codes far west of I-35. These neighborhoods have very low percentages of economically disadvantaged students.



Source: Texas Education Agency, Charles Murray

Environmental Hazards in Dallas Texas



Environmental Hazards in Dallas, Texas

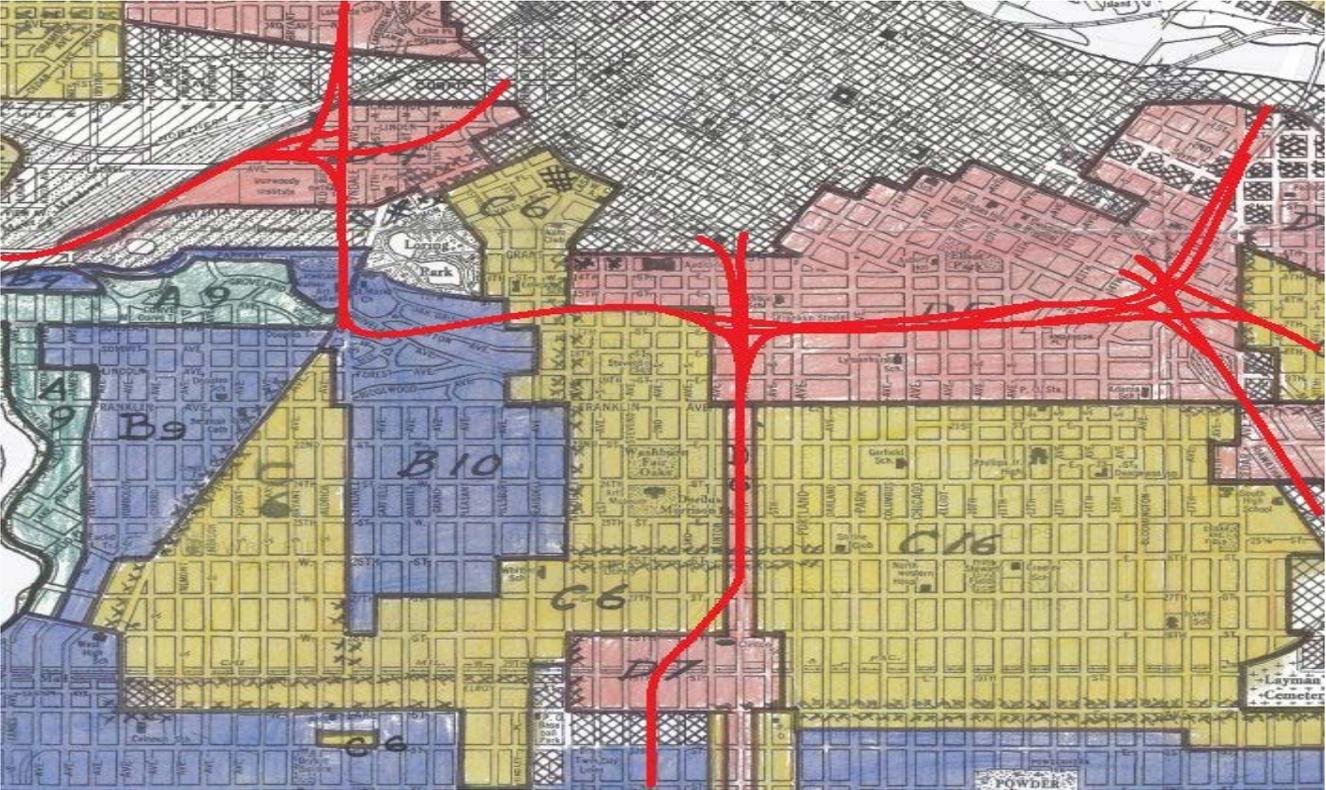
Source: EPA, TCEQ, TxDOT, TNRIIS, ACS 2009-2013



1 dot = 5 people



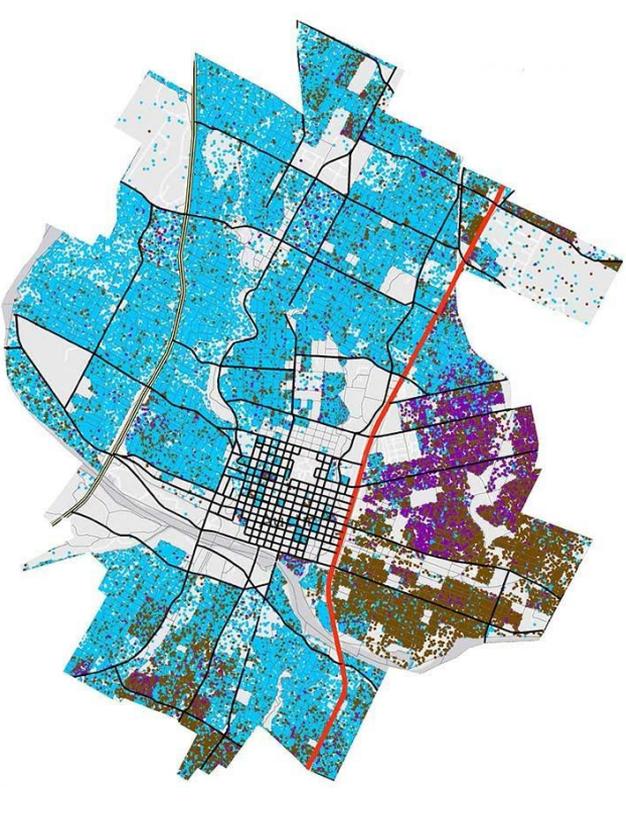
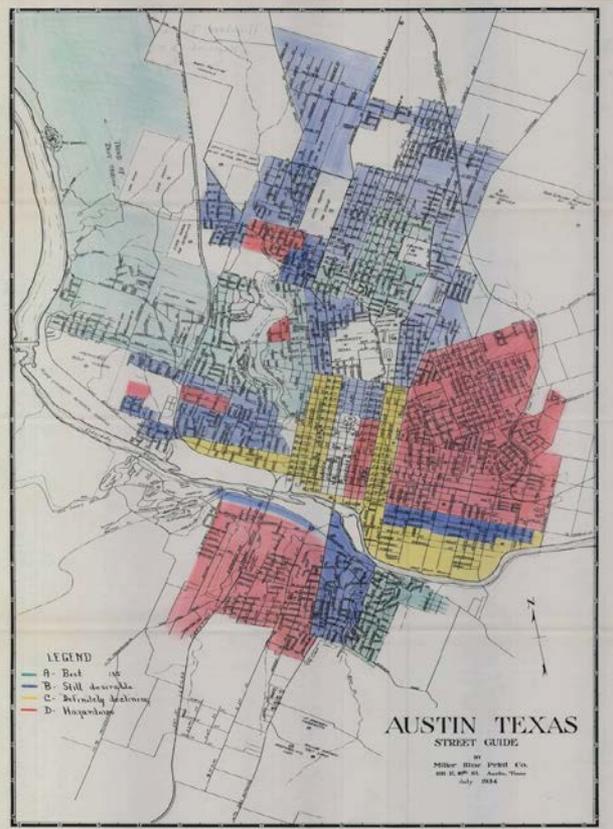
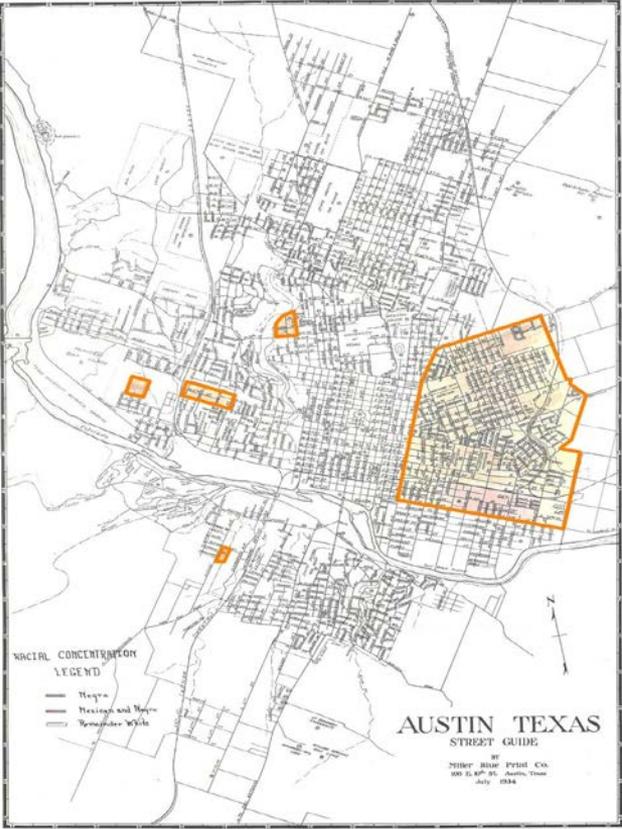
Infrastructure Redlining and Urban Renewal



Minneapolis, MN

(Will Stancil, UMN
Institute on Metropolitan
Opportunity)

Engineering Segregation



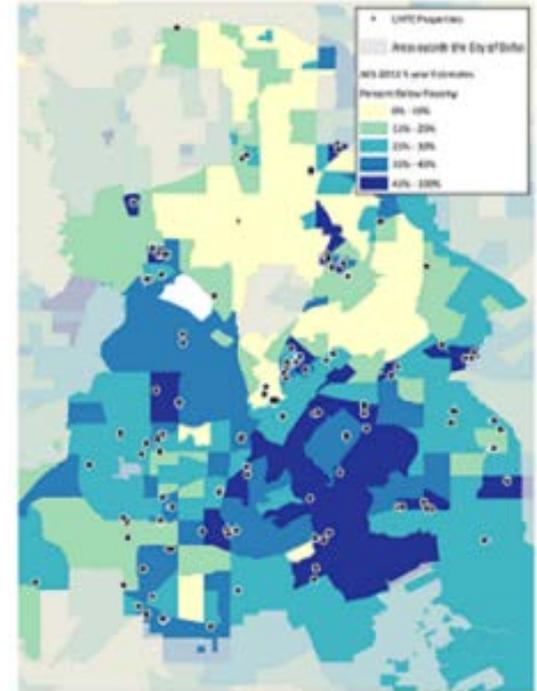
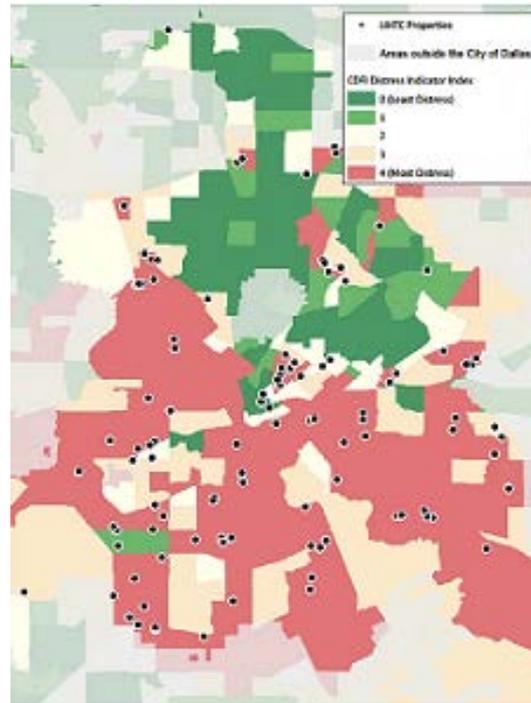
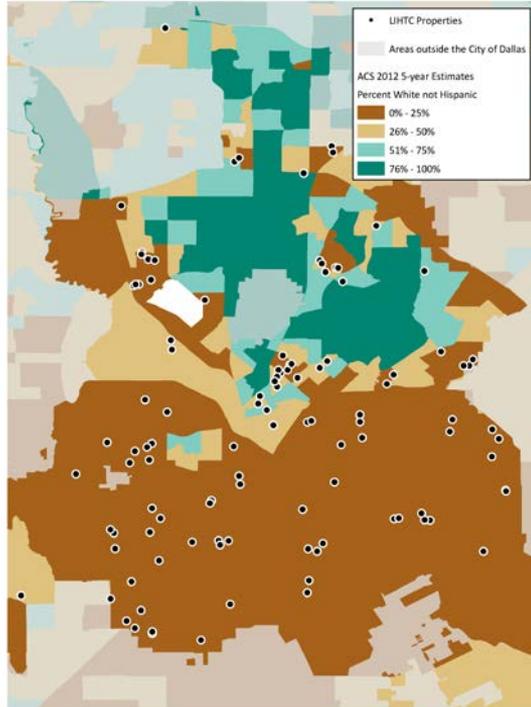
Disparate Impact

Facially neutral policies and practices that have a discriminatory effect, **even when there is no current intent to discriminate.**

Inclusive Communities Project v. Texas

- The Fair Housing Act (FHA) includes a disparate impact theory of liability: **there can be liability for racial discrimination without a showing of illegal intent.** (135 S.Ct. 2507 (2015))
- Confirmed 40 years of jurisprudence (11 federal appellate circuits had upheld DI liability)
- Court adopted the test laid out in HUD regulation (24 CFR §100.500)
- Case remanded to trial court for findings based on the new test.

LIHTC Properties in Dallas



ICP v. TDHCA (August 26, 2016)

District Court applied the new test on remand and found that ICP had not made a prima facie case of disparate impact. NOT a reversal of the Supreme Court case. Motion for reconsideration and a new trial denied October 4, 2016. Appeal still possible.

What should jurisdictions take away from ICP?

- **Not a green light to keep concentrating affordable housing in impacted high-poverty areas or ignore fair housing law.**
- Applied test to a specific set of facts: not a substantive ruling on QAP or housing siting decisions. Court pointed out examples of specific policies that could have DI.
- Disparate impact is not the only source of obligations to comply with fair housing and civil rights laws.

Affirmatively Furthering Fair Housing (AFFH)

Required by the Fair Housing Act since 1968.

“Affirmatively furthering fair housing means taking **meaningful actions, in addition to combating discrimination**, that **overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity** based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. **The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.**”

The New AFFH Regulation

- Final regulation published on July 16, 2015, in the Federal Register (80 Fed. Reg. 42271):
 - New **planning process**, the Assessment of Fair Housing (AFH).
 - **Jurisdictions decide what actions to take** in response to identified barriers.
 - AFH synchronized with Consolidated Planning process; Con Plan must reflect AFH-identified priorities.
 - Provides uniform national data and more specific guidance to HUD grantees.
 - HUD must review AFH submissions.
 - Clearer definition of what it means to AFFH: **increasing housing choice in high opportunity areas AND mitigating the effects of historical disinvestment on low-income communities of color.**

Assessment of Fair Housing:

- Identifies **fair housing issues**
 - Public participation plan with outreach to protected classes and marginalized communities
 - Quantitative and spatial analysis of HUD-provided AND local data and maps
- Identifies **contributing factors** that led, in whole or in part, to the existence of those issues
 - qualitative analysis of policies and practices, both governmental and private, that may be contributing factors
- **Proposes goals for overcoming fair housing issues and contributing factors.**

Data for AFFH Compliant Planning

AFFH requires analysis of:

- Patterns of Segregation
- Land use and zoning laws
- Location and type of affordable housing
- Public and private investment
- Lack of community revitalization strategies
- Transportation access
- Environmental hazards
- Location of jobs
- Location of proficient schools and school assignment policies
- Accessibility for persons with disabilities
- How to ensure that projects comply with federal, state, and other fair housing and civil rights obligations?

HUD AFFH Data and Mapping Tool <https://egis.hud.gov/affht/>

Enforcement Under the New Rule

- **No certification, no money.** Possibility of repayment. 42 U.S.C. §5304(b)(2)
- No private right of action for AFFH violations under the Fair Housing Act but litigation under the False Claims Act remains a possibility (Westchester)
- HUD must review and affirmatively accept the AFH: **If a program participant does not have an accepted AFH, HUD will disapprove a consolidated plan** (see 24 CFR 91.500) **or a PHA Plan** (see 24 CFR 903.23)
- HUD compliance reviews of grantees' AFFH activities in response to administrative complaints
- HUD's own compliance with AFFH can be challenged under the Administrative Procedure Act, which could have implications for grantees.

Other Civil Rights Laws

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 USC §2000d

ENFORCEMENT

- Administrative complaints
- Funding termination
- Department of Justice referral for legal action (intent or DI)
- Private right of action for intentional discrimination
- ***All programs receiving federal financial assistance, not just HUD.***

Section 504 of the Rehabilitation Act and Americans with Disabilities Act

AFFH Enforcement

Westchester, New York

Litigation brought under the False Claims Act: AFFH certifications were false because County did not consider race-based impediments to fair housing choice

Westchester settled with the plaintiff and HUD.

Texas

Administrative Complaint under the FHA over the proposed use of CDBG-DR funds.

2010 Conciliation Agreement.

New Jersey

Administrative Complaint under the FHA over CDBG-DR funds.

May 2014 Conciliation Agreement

AFFH Enforcement: Dallas

HUD investigation and finding Dallas in violation of Title VI of the Civil Rights Act, Section 504, and Section 109 of the Housing and Community Development Act, for a pattern of discouraging development of affordable housing in predominantly white areas of the city

November 2014 Conciliation Agreement:

- City will develop a plan to provide affordable and assisted housing in opportunity areas **and** improve conditions in distressed neighborhoods
- City will help develop a regional housing plan
- City will consider source of income discrimination protection (passed October 2016)

ICP v. HUD: alleging voucher program policies perpetuate segregation e.g. through FMR levels

Title VI and ADA Enforcement

San Francisco, California

- September 2009 Administrative Complaint to the Federal Transit Administration over Bay Area Rapid Transit's (BART) failure to conduct a disparate impact analysis of a proposed light-rail line to the airport
- FTA pulled \$70 million in American Recovery and Reinvestment Act funds from the project and required BART to implement a corrective action plan.

Corpus Christi, Texas

- Administrative Complaint to Federal Highway Administration over DOT funds for a new bridge. Built on long-term environmental justice claims by African-American and Hispanic neighborhoods over the concentration of refineries and chemical plants.
- DOJ and the FHWA made a Title VI finding of disparate racial impact against the state highway department for the construction of highways in a manner that resulted in the racial isolation of an existing African-American community.
- Voluntary Compliance Agreement:
- First of its kind voluntary buyout of the entire community at a level that allows relocation to HO areas and repairs to the homes of residents who do not want to relocate;
- Relocation of the public housing to high opportunity neighborhoods and the development of new affordable rental housing in higher opportunity neighborhoods.

Los Angeles, California

- *Independent Living Center v. City of Los Angeles*, lawsuit over City's use of federal funds to build housing that did not comply with the ADA and Section 504
- City will spend \$200 million over 10 years to improve accessibility

Liability of Public Officials

“The Supreme Court has long held, in a variety of circumstances, that a **governmental body may not escape liability under the Equal Protection Clause merely because its discriminatory action was taken in response to the desires of a majority of its citizens.**” *United States v. Yonkers Bd. of Educ. (Yonkers I)*, 832 F.2d 1181, 1224 (2d Cir. 1987); see also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“**Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.**”)” *MHANY Management, Inc., v. County of Nassau, et. al.*, 14-1634-cv (2d Cir., March 23, 2016)

Thank you

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