

Housing Discrimination Complaint

Metropolitan Interfaith Council on Affordable Housing, *et al.* v. State of Minnesota, *et al.*

1. Complainants

Metropolitan Interfaith Council on Affordable Housing (“MICAH”)
c/o Suzanne Watlov Phillips, Executive Director
463 Maria Avenue
Saint Paul, MN 55106

City of Brooklyn Park
c/o Jamie Verbrugge, City Manager
5200 85th Avenue N.
Brooklyn Park, MN 55443

City of Brooklyn Center
c/o Curt Boganey, City Manager
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

City of Richfield
Steve Devich, City Manager
6700 Portland Avenue
Richfield, MN 55423

Representing the Complainants:

Michael Allen (Lead Counsel)
Relman, Dane & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036-2456
Telephone: 202/728-1888
FAX: 202/728-0848
E-mail: mallen@relmanlaw.com

Myron Orfield (Local Counsel)
4019 Sheridan Avenue South
Minneapolis, MN 55410
(612) 961-5090

2. Other aggrieved parties

Also aggrieved are residents of the Twin Cities region who—because of their race, color, or national origin—have been subjected to discrimination because of Respondents’ administration of housing and community development programs.

3. The following is alleged to have occurred or is about to occur:

Respondents have adopted, maintained, and enforced policies and practices with respect to land use and housing programs that have the purpose and effect of limiting the development of affordable housing in high-opportunity, majority-white communities and steering such units to low-opportunity, high-poverty communities, furthering racial and ethnic segregation in the Twin Cities region of Minnesota.

4. Cause of the alleged violations:

The alleged violations occurred because of race, color, and national origin.

5. Address and location of the property in question (or if no property is involved, the county and state where the discrimination occurred):

The alleged violations occurred in the Twin Cities region, which consists of the entitlement communities of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties and the Cities of Minneapolis and Saint Paul.

6. Respondents:

State of Minnesota
c/o Lori Swanson
1400 Bremer Tower
445 Minnesota Street
Saint Paul, MN 55101

Minnesota Housing Finance Agency
c/o Mary Tingerthal, Commissioner
400 Sibley Street, Suite 300
Saint Paul MN 55101

The Metropolitan Council of the Twin Cities
c/o Susan Haigh, Chair
390 Robert Street
Saint Paul, MN 55101

7. The violations alleged:

a. Complainants are, respectively, a faith-based regional non-profit organization which seeks to promote fair housing within its service area by combating illegal housing discrimination and by creating and maintaining racially and economically integrated housing patterns, and three inner-ring municipalities, each of which has been injured by Respondents' policies and practices with respect to land use and housing programs. These policies and practices have had the purpose and effect of limiting the development of affordable housing in high-opportunity,

majority-white communities and steering such units to low-opportunity, high-poverty communities, furthering racial and ethnic segregation in the Twin Cities region. Because of the strong correlation between poverty and minority racial and ethnic status in the Twin Cities region, people of color are significantly more likely to be renters, and significantly more likely to need affordable rental housing, as compared to the population of the Twin Cities region generally. As a consequence, Respondents' policies and practices—which have incentivized development of affordable housing in racially-concentrated, low-opportunity areas—have injured Complainants by diminishing the opportunities of their members, constituents and citizens to live in stable, integrated neighborhoods; by undermining the ability of public schools to remain integrated; by depriving the municipal Complainants of tax revenues necessary to institute more balanced living patterns and provide essential services to their residents; and by frustrating the mission of MICAH and requiring it to divert its resources to address the results of Respondents' discrimination.

The mission of **Metropolitan Interfaith Council on Affordable Housing (MICAH)** is to mobilize congregations and people of all faiths to ensure that everyone without exception has a decent, safe, accessible and affordable housing anywhere in the metropolitan areas they choose to live. Its 75 member congregations and supporting organizations represent a wide array of faith perspectives—Christian, Jewish, and Muslim—which believe that God intends for all people to have a safe, decent, accessible and affordable home and to have access to greater opportunity through access to excellent schools, safe communities, affordable and accessible health care and services, dependable transportation, and livable incomes that allow them to support their families and civil rights respected and protected. MICAH and its member congregations and supporting organizations carry out this mission by educating congregations and communities about the need for affordable housing and by promoting public policies to increase the production and preservation of affordable housing. MICAH's affordable-housing mission extends throughout the metropolitan area, not just in low-income, high-minority neighborhoods where affordable housing has traditionally been located.

The **City of Brooklyn Park** has a population of approximately 77,800, and is undergoing rapid racial and economic transition, much more quickly than the metropolitan region in the aggregate. The nonwhite or Hispanic share of population has grown from 41.7 percent in 2007 to 50.6 percent in 2012, while the share of families under the poverty line increased from 8.4 percent to 11.3 percent in the time span. The share of rental units has increased from 25.2 percent to 30.8 percent. In 1997, students in the city's public schools were 28.8 percent nonwhite or Hispanic; this figure increased over 30 percent to 59.1 by 2007, and is still growing, having reached 79.3 percent in the 2014 school year. Simultaneously, the number of students receiving free or reduced price lunches has spiked: from 27.3 percent in 1997 to 65.1 percent in 2014.

The **City of Brooklyn Center** has a population of approximately 30,100. The city is also transitioning towards greater segregation and poverty. In the five years between 2007 and 2012, the nonwhite or Hispanic share of the population has grown from 49.1 percent to 58.6 percent. This shift has been accompanied by rapid increase in poverty, as the share of families under the poverty line has grown from 8.3 percent to 18.1 percent. The city has also seen a marked increase in rental units as a percentage of occupied housing, from 33.1 percent to 39.2 percent. Nonwhite or Hispanic students constituted 38.2 percent of the city's public school attendees in

1997, 62.9 percent by 2007, and 79.2 percent by 2014. Poverty has also increased in the schools: 41.7 percent of students qualified for free or reduced price lunches in 1997, compared to 74.8 percent today.

The **City of Richfield** has a population of approximately 35,200. It is also experiencing demographic transition and greater poverty. Its nonwhite and Hispanic population has been growing very rapidly, from 31.6 percent in 2007 to 41.6 percent by 2012. The share of families living under the poverty line has increased over the same period, from 6.9 percent in 2007 to 10.6 in 2012. This has been accompanied by an increase in rental units as a proportion of occupied housing, from 34.4 percent to 37.7 percent. These trends have been exacerbated in the city's schools. In 1997, 25.9 percent of students were nonwhite or Hispanic; by the most recent school year, that figure had grown to 69.5 percent. Simultaneously, the students receiving free or reduced price lunches grew from 24.4 percent to 56.2 percent.

b. Respondents are recipients of federal housing and community development funds, and therefore have obligations pursuant to Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974 and the Fair Housing Act to refrain from discrimination on the basis of race, color and national origin. By virtue of receipt of such funds (detailed below), each also has an obligation to take affirmative steps to overcome impediments to fair housing choice. Collectively, these are known as Respondents' "Federal Civil Rights Obligations."

1. Respondent **State of Minnesota** (the "State") received \$23,972,153 from the U.S. Department of Housing and Urban Development ("HUD") in 2012 and \$18,466,542 from HUD in 2013. Major sources of funds include Community Development Block Grants and the Emergency Solutions Grant Program. In addition, the State annually receives an allocation of federal Low Income Housing Tax Credits ("LIHTC").

As relevant to this complaint, the State:

- Designated Respondent Minnesota Housing Finance Agency ("Minnesota Housing") as the primary LIHTC apportionment agency and has permitted Minnesota Housing to allocate 62% of all LIHTC to the Twin Cities region.
- Designated Minneapolis Community Planning & Economic Development as the LIHTC Suballocator for the City of Minneapolis and Saint Paul Planning and Economic Development as the LIHTC Suballocator for the City of Saint Paul. The State's policy is to give these Suballocators disproportionate amounts of LIHTC, and allows them to receive additional tax credits from the state's "nonprofit set-aside," which allows some LIHTC projects in Minneapolis and Saint Paul to be dually eligible for tax credits from the Minnesota Housing and Suballocator pools.

- Created the Respondent Metropolitan Council (“Met Council”) and authorized it to determine the amount of federal LIHTC to be assigned to the Minneapolis and Saint Paul Suballocators, thereby giving the Met Council substantial discretionary power over LIHTC allocation. As a consequence of the Met Council’s distribution plan, those two central cities receive yearly shares far in excess of their proportion of regional population. LIHTC units in Minneapolis and Saint Paul are overwhelmingly more likely to be located in racially segregated, low-income neighborhoods than LIHTC units in other Minnesotan municipalities.
- Empowered the Met Council to withhold state and federal funds to local governments in the Twin Cities region that fail to meet affordable housing goals or that maintain exclusionary zoning communities. Minn. Stat. § 473.172; Minn. Stat. § 473.173; Met Council Housing Development Guide Chapter, Policy 39 at p. 45 (1985). Notwithstanding this mandate, the State has refused to require the Met Council to carry out its obligations.
- Failed, in the 2011 Minnesota Analysis of Impediments to Fair Housing Choice (for Plan Years 2012-2016)¹, to identify any of the actions above as impediments to fair housing choice, and failed to take appropriate actions to overcome such impediments, as required by federal law.

Despite its annual certification of compliance with Federal Civil Rights Obligations, the State’s actions and inactions outlined above, have the purpose and effect of concentrating affordable housing units in low-opportunity neighborhoods in the Cities of Minneapolis and Saint Paul and in certain inner-ring suburbs, such as Brooklyn Park, Brooklyn Center and Richfield. Under the Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. § 5301 *et seq.*, and its implementing regulations, the Secretary has the authority to make grants “only if” grantees make certain submissions and certifications. 42 U.S.C. § 5304(b)(2); 24 C.F.R. §§ 91.325(a)(1), 570.601(a)(2).

2. Respondent **Metropolitan Council** (“Met Council”) received \$58,300,363 from HUD in 2012 and \$57,705,185 from HUD in 2013. Major sources of funds include the Section 8 Housing Choice Vouchers, the Shelter + Care Program, and the Sustainable Communities Regional Planning Program. The Met Council is a “public corporation and political subdivision of the state.” Minn. Stat. §473.123 (1). Under the Metropolitan Land Use Planning Act, the Met Council has the obligation and authority to set fair share housing goals and require communities to eliminate exclusionary zoning. Minn. Stat. § 473.859 (2), (4). It also has the power to withhold state and federal funds to local governments in the Twin Cities region that fail to meet such goals or that maintain exclusionary zoning

¹ Available at http://www.mnhousing.gov/idc/groups/administration/documents/document/mhfa_013204.pdf

communities. Minn. Stat. § 473.172; Minn. Stat. § 473.173; Met Council Housing Development Guide Chapter, Policy 39 at p. 45 (1985).

As relevant to this complaint:

- Despite its clear authority to withhold such funding pursuant to Policy 39, the Met Council is presently refusing to use its authority over the comprehensive plans of local governmental units to advance the provision of affordable housing in high-opportunity communities. This refusal has had the purpose and effect of concentrating affordable housing units in low-opportunity in the Cities of Minneapolis and Saint Paul and in certain inner-ring suburbs, such as Brooklyn Park, Brooklyn Center and Richfield, with negative impacts on school segregation and inability to provide government services.
- In its role as recipient of a three-year \$5 million Sustainable Communities Regional Planning grant from HUD, the Met Council conducted a Fair Housing Equity Assessment (“FHEA”), which it submitted to HUD in March 2014. That FHEA documented a “region threatened by racial and ethnic disparities,”² acknowledged that certain public investments in affordable housing have “limited the residential choices for low-income households and households of color,”³ and found that “racially concentrated areas of poverty are expanding.”⁴ Despite these findings, the Met Council continues to fail to use its authority to overcome these impediments to fair housing choice, by requiring local governmental units to provide their fair share of affordable housing, which would have an integrative effect in many suburban jurisdictions, open new areas of opportunity to families of color, and help to reverse the increasing resegregation of public schools. The Met Council’s FHEA ignores the impact of land use, zoning and affordable housing funding policies and attributes the region’s continuing residential and school segregation to the preferences of people of color and discrimination by unnamed third parties. This does not comply with its obligation to affirmatively further fair housing.
- On July 23, 2014, the Met Council released for public comment a new Housing Policy Plan (“HPP”) that has the purpose and effect of increasing segregation by, *inter alia*, repealing the existing strong fair share policy, eliminating the Council’s use of transportation and park funds to encourage compliance with communities’ statutory fair share obligation, and incentivizing affordable housing development along transit lines in

² Metropolitan Council, CHOICE, PLACE AND OPPORTUNITY: AN EQUITY ASSESSMENT OF THE TWIN CITIES REGION, Executive Summary, available at <http://www.metrocouncil.org/Planning/Projects/Thrive-2040/Choice-Place-and-Opportunity/FHEA/Choice,-Place-and-Opportunity-Executive-Summary.aspx> , at I.

³ Id. at III.

⁴ Id.

areas of minority concentration and of racial transition. Complainants are informed that the Met Council will provide final approval of the HPP before November 30, 2014. In taking the aforementioned actions, the Met Council has perpetuated segregation in violation its Federal Civil Rights Obligations.

- Furthermore, under the auspices of the Livable Communities Act (“LCA”), the Met Council sets specific affordable housing goals for individual metropolitan communities. Over time, it has dramatically reduced the goals of predominately white outer-ring suburbs, while increasing the relative share borne by the heavily nonwhite and Hispanic central cities, as well as by Complainant Brooklyn Park. In assigning LCA funding, the Met Council also employs a ranking system that provides additional affordable housing funds to communities that already rank highly in terms of affordable housing efforts, and holds back such funding for municipalities that rank poorly on such efforts. Through these actions, the Met Council has hindered the opportunity to provide for integrative, affordable housing in high-opportunity suburban communities.
- As part of a continuing pattern and practice, the Met Council has also permitted the conversion of suburban land once zoned for high-density, affordable, multifamily development to revert back to low-density zoning classifications, thereby destroying the opportunity to provide for integrative, affordable housing.
- As noted above, pursuant to authority from the State, the Met Council also exercises substantial discretion over the regional distribution of federal Low Income Housing Tax Credits, and has exercised that discretion with the purpose and predictable effect of locating a disproportionate number of LIHTC units in racially segregated, low-income, low-opportunity communities.

These actions have had the purpose and effect of excusing compliance with affordable housing goals by predominantly white, higher-opportunity suburbs, and prioritizing more affordable housing in communities that are already characterized by minority concentration and poverty.

Despite its annual certification of compliance with Federal Civil Rights Obligations, the Met Council’s actions and inactions outlined above have the purpose and effect of concentrating affordable housing units in low-opportunity neighborhoods in the Cities of Minneapolis and Saint Paul and in certain inner-ring suburbs, such as Brooklyn Park, Brooklyn Center and Richfield. Under federal law and pursuant to its contractual obligations to HUD, the Met Council is required, as a condition of receiving HUD funds, to affirmatively further fair housing. 42 U.S.C. § 3608. The actions and inactions outlined above constitute evidence that the Met Council is not meeting that affirmative obligation.

3. Respondent **Minnesota Housing Finance Agency** (“Minnesota Housing”) received \$197,913,723 from HUD in 2012 and \$190,858,012 from HUD in 2013. Major sources of funds include the Section 8 Housing Assistance Payments Program, the HOME Investment Partnerships Program, and Neighborhood Stabilization Program Grants. As alleged above, Minnesota Housing also administers the LIHTC program for the State of Minnesota.

As relevant to this complaint, Minnesota Housing has:

- Since at least 2010, and continuing to the present, allocated 62% of all LIHTC to the Twin Cities region.
- Adopted Qualified Allocation Plans with a scoring system that predictably results in additional LIHTC units being located in low-opportunity communities of Minneapolis and Saint Paul, and limits the number of LIHTC units that are developed in high opportunity suburban communities. The scoring system provides no points for developments that provide for racial integration, and very few points for developments in low-poverty areas. By contrast, well over 100 points are available for proposals in areas of minority concentration or resegregation.
 - Recent MHFA tax credit allocation data also show that between 2005 and 2011, \$10 million of new construction added about 1,200 of new units in the central cities, often in segregated neighborhoods, while at the same time, the state rejected about \$32 million worth of requests from suburban areas, the part of the region more likely to have higher achieving and more integrated schools. In the suburbs, 85 percent of these LIHTC units are in white or stably integrated area. In the city, 85 percent of the units are in neighborhoods with more than 30 percent minority households and virtually all of the units are in areas with mostly non-white, high poverty and low performing schools.
 - It is also possible that suburban units could have been developed at lower expense than central city units. Over the last six years the average subsidy per unit according to MHFA in the central cities was \$8,219. In the suburbs it was \$7,934. In this light, it is noteworthy that, according to the Dakota County Community Development Agency, rents in the projects they have built are much more affordable in terms of both the government subsidy and the tenant rent than those in equivalent central city units. Such suburban units would have provided not only shelter to children living in them but access to schools with much better graduation and college attendance rates.

- Failed, in the 2011 Minnesota Analysis of Impediments to Fair Housing Choice (for Plan Years 2012-2016)⁵, to identify any of the actions above as impediments to fair housing choice, and failed to take appropriate actions to overcome such impediments, as required by federal law.

Despite its annual certification of compliance with Federal Civil Rights Obligations, the actions and inactions of Minnesota Housing outlined above have the purpose and effect of concentrating affordable housing units in low-opportunity neighborhoods in the Cities of Minneapolis and Saint Paul and in certain inner-ring suburbs, such as Brooklyn Park, Brooklyn Center and Richfield.

c. Actions and decisions by the Respondents, as outlined above, have had the purpose and predictable effect of locating a disproportionate number of LIHTC units in racially segregated, low-income, low-opportunity communities. Each Respondents' actions, policies and practices are continuing at the time this Complaint was submitted.

d. For at least one year prior to the filing of the complaint, the Respondents have individually and collectively administered the LIHTC program and other housing and community development programs in a fashion that concentrates LIHTC developments in low-opportunity communities in the Twin Cities region, characterized by racially- and ethnically-concentrated areas of poverty and poor-performing schools, in violation of their Federal Civil Rights Obligations

f. By its actions and inactions alleged herein, each Respondent has violated its Federal Civil Rights Obligations and failed to take appropriate and effective actions to overcome the effects of impediments to fair housing that are open, obvious and publicly known to be impediments to equal housing opportunity for African American and Hispanic residents of the Twin Cities region.

g. By acting and failing to act as described in this Complaint, each Respondent has intended to and has: discriminated against African American residents of the Twin Cities region; discriminated against Hispanic residents of the Twin Cities region; and prevented residents and potential residents of the Twin Cities region from living in integrated communities free of discrimination.

Conclusion

HUD has the authority, and the obligation, to review claim of discriminatory impacts of the State's LIHTC-program administration, and the LIHTC processes of the suballocators. The Secretary also has the obligation and responsibility to review the State's submissions and certifications in applications for funds and to enforce compliance with CDBG program requirements and the intent of Congress.

⁵ Available at http://www.mnhousing.gov/idc/groups/administration/documents/document/mhfa_013204.pdf

For the reasons set out above, Complainants ask HUD to:

- i. Declare that Respondents' policies and conduct violate their Federal Civil Rights Obligations;
- ii. Deem Respondents' certifications of compliance with their Federal Civil Rights Obligations insufficient to support obligation of HUD funds;
- iii. Require Respondents to take actions to come into compliance with their Federal Civil Rights Obligations;
- iv. Award Complainants damages pursuant to their proof in these proceedings; and
- v. Award other relief pursuant to the Fair Housing Act or Title VI, including monetary damages, reasonable attorney fees and costs.

8. The most recent date on which the alleged discrimination occurred:

The violations are ongoing as of the date of this Complaint's submission.

9. Types of federal funds identified:

Community Development Block Grant; HOME Investment Partnership; Emergency Solutions Grant; Housing Opportunities for People with AIDS; Shelter + Care, Section 8 Housing Choice Vouchers; Neighborhood Stabilization Program; Sustainable Communities Initiative.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Title VI of the Civil Rights Act of 1964
Section 109 of Title I of the Housing and Community Development Act of 1974
Fair Housing Act of 1988

Dated: November 5, 2014.

Respectfully submitted,



Michael Allen
Relman, Dane & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036-2456
Telephone: 202/728-1888
FAX: 202/728-0848
E-mail: mallen@relmanlaw.com