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Judge rules state agency broke law

By Karisa King

Updated 11:32 p.m., Tuesday, March 20, 2012

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A federal judge ruled Tuesday that the largest program to create affordable housing in Texas violates fair housing law by disproportionately building apartments in poor minority neighborhoods while placing few projects in affluent areas that are mostly white.

Although the ruling came in response to a 2008 lawsuit that focused on Dallas, it could potentially have a sweeping impact on how the state runs the program, which will disperse about \$55 million in tax credits this year.

The agency that oversees the money, the [Texas Department of Housing and Community Affairs](#), has 60 days to submit a plan to correct the disparity, according to the order issued by U.S. District Court

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Judge Sidney Fitzwater.

The ruling represents a costly and stinging defeat to TDHCA, which has spent about \$1.6 million to defend the lawsuit.

The fair housing group in Dallas that filed the lawsuit, the Inclusive Communities Project, claimed that TDHCA deliberately used race as a factor when it made choices about how to allocate the money. The group found that in Dallas, 85 percent of tax credit-funded apartments were in areas where minorities made up at least 70 percent of the population.

Fitzwater stopped short of blaming the housing agency for the disparity. That was a key victory for TDHCA, which contended that it has little discretion over which projects win the federal subsidy.

In its legal defense, TDHCA emphasized that it dispenses money according to a complex set of scoring criteria that is mostly dictated by state and federal laws. Developers compete every year for a limited amount of tax credits, which allow them to raise money to cover construction costs.

Both sides of the lawsuit declined to comment on the ruling.

It was not clear whether TDHCA plans to appeal the decision, but in a written statement issued late Tuesday, the department seemed to indicate that it is weighing the possibility.

"We are carefully reviewing the decision and considering next steps," the statement said.

The agency also emphasized that it understands the gravity of the ruling.

"We remain committed to fair housing choice for all Texans as the department carries out its mission of helping all Texans achieve an improved quality of life through the development of better communities," the statement said.

Advocates and housing providers reacted to the ruling with a mix of praise and concern.

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"This case was important because it was able to expose the way the program operates to produce segregated housing," said [John Henneberger](#), co-director of the [Low Income Housing Information Service](#), a nonprofit group in Austin.

Henneberger, who has raised longtime concerns about where the developments are located, also questioned whether the judge's ruling went far enough.

"I don't think it is a matter of simply a benign administration of a set of very complex rules," he said.

Henneberger also criticized the amount of money the housing department spent to defend itself against a lawsuit, which he said had a predictable outcome.

Jim Brown, executive director of [Texas Affiliation of Affordable Housing Providers](#), said he disagreed with the premise of the lawsuit. He fears that the ruling will interrupt the allocation of tax credits this year, a delay that could cost the state jobs and hurt the economy.

Regardless of the state agency's response to the ruling, he predicted that questions about how to change the pattern of where Texas builds affordable housing will not be resolved any time soon.

"There are going to be some fairly lengthy debates that dictate what route we're going to take," Brown said.

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