

THE FAIR HOUSING ACT AFTER FIFTY YEARS: OPENING REMARKS

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Fifty years ago, on this day in late March, the United States was about to go through one of the darkest stretches in modern American history. At the end of March 1968, President Lyndon Johnson announced that he would not run for reelection. Just a few days later, of course, on April 4th, Martin Luther King Jr. was assassinated. A couple of months after that, on June 6th, Robert Kennedy died as he campaigned for President of the United States. Cities across our country were in a state of total unrest. It was, as many have described it, a year of tumult for our country; a year where we were questioning the future of this nation that we hold dear, a year of division.

And yet, during that darkest of times, the seeds of tremendous progress were planted when, at the urging of civil rights advocates, President Lyndon Johnson signed the Fair Housing Act of 1968.¹ Over the years, this groundbreaking piece of legislation has helped to reduce barriers to housing opportunities for Americans of all different backgrounds. Today, every time a person seeks to rent an apartment, to get a mortgage, the protections of the Fair Housing Act are there. It is also there when states make decisions about how they are going to

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¹ 42 U.S.C. §§ 3601–19 (2018).

allocate low-income housing tax credits or when cities make decisions about how they are going to invest certain federal resources. Five decades later, we can say very plainly and simply that as a nation we are more prosperous, more open, and more fair because of the Fair Housing Act.

I remember about four years ago when President Obama called me to ask if I would be interested in taking on the role of Secretary of Housing and Urban Development (HUD). I remember the date was April 16, 2014. I do not know about you, but it was not every day that the President called me to ask if I wanted a job. That is why I remember the day. I recall that I had just gone through the drive-through at Panda Express, and I saw the phone ring, and my cell phone said 'Private.' I answered the phone, and it was the President.

When I thought about moving to Washington, D.C., I had some reservations. At that time, when I looked forward to getting into public service it was to be Mayor of San Antonio, the city in which I was born in and grew up in. The city was doing relatively well at the time, and we just passed, in November of 2012, a ballot initiative to significantly expand high-quality full-day Pre-K, called Pre-K for SA.² I thought things were going well, and I was comfortable where I was. But at the same time, I thought about the tremendous opportunities that HUD extends to so many different Americans in all parts of our country, including through its work on fair housing.

I am proud to say that during the Obama Administration, during those eight years, and the two and a half years that I was at HUD, we took the Fair Housing Act seriously. We gave it a life. We tried to do what we could to ensure that it reached every corner of our nation and every person. We did that by ensuring that the Department brought significant complaints, that it followed through, and that it used litigation as a significant strategy. We did that by expanding the number of staff in our Fair Housing office, little by little.³ We did it by vigorously

² See *About*, SAN ANTONIO, <https://www.sanantonio.gov/Pre-K-4-San-Antonio/about> [<https://perma.cc/646F-PJE4>] (last visited Jan. 15, 2019).

³ Compare JULIÁN CASTRO, A MEMO TO THE AMERICAN PEOPLE 12 (2017), and Alana Semuels, *The Future of Housing Segregation Under Trump*, ATLANTIC (Nov. 29, 2016), <https://www.theatlantic.com/business/archive/2016/11/the-future-of-desegregation-under-trump/509018> [<https://perma.cc/73X9-QZY3>] (“HUD has been adding [under Obama] staff to administer the rule and monitor communities’ process of evaluating their housing options.”), with Alana Semuels, *Trump Administration Puts on Hold an Obama-Era Desegregation Effort*, ATLANTIC (Aug. 30, 2017), <https://www.theatlantic.com/business/archive/2017/08/trump-hud/538386> [<https://perma.cc/WD3V-NBJR>] (“HUD did not fare well in President Trump’s proposed budget, which called for \$6.2 billion cuts in HUD, a 13 percent reduction.”).

supporting the work of non-profits throughout our country that are on the ground and by doing important work to ensure that the Fair Housing Act is not just a piece of paper, but that it means something—whether you live in Anchorage, Alaska, or New York City. We also did what we could to enforce the Fair Housing Act robustly. We took on rulemaking.⁴

One of my proudest moments during those two and a half years was standing in Chicago to announce the implementation of the Affirmatively Furthering Fair Housing (AFFH) rule.⁵ This rule, many, many years in the making, helps ensure that communities throughout the United States take seriously their obligation to ensure that opportunity is spread equally and that they continue to combat discrimination. I believe that communities can continue to desegregate and that neighborhoods can fully represent the character of their communities. The AFFH was particularly significant because the Fair Housing Act says that the Secretary of HUD has an obligation to affirmatively further fair housing,⁶ but that had never been defined by rule. It had been tried twenty years earlier in the late 1990s,⁷ but just did not make it over the finish line. The Obama Administration, a year or so before I started as Secretary, put into motion the rulemaking process by first going out to communities and seeking their input on how we should pursue an AFFH rule that had been the struggle twenty years earlier. Payers and other local officials had deep concerns about how the AFFH rule might be implemented.

The Obama Administration learned from those previous struggles, and so a multi-year effort was launched that culminated in 2016 when we got the very first AFFH plans from a few communities across the country. The AFFH rule was not the only thing that the Obama Administration did. We also passed things like Small Area Fair Market

⁴ See Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42271 (July 16, 2015) (to be codified at 24 C.F.R. pt. 5, 91, 92, 570, 574, 576, and 903); Athena Jones, *Obama Administration Announces New Fair Housing Rules*, CNN (July 8, 2015, 11:42 AM), <https://www.cnn.com/2015/07/08/politics/fair-housing-rules-obama-administration/index.html> [<https://perma.cc/D6WY-GEXN>].

⁵ Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42271 (July 16, 2015) (to be codified at 24 C.F.R. pt. 5, 91, 92, 570, 574, 576, and 903).

⁶ 42 U.S.C. § 3608(d)–(e) (2018).

⁷ See Nikole Hannah-Jones, *Living Apart: How the Government Betrayed a Landmark Civil Rights Law*, PROPUBLICA, <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law> [<https://perma.cc/Z7DU-HWKP>] (last updated July 8, 2015) (“In 1998, [former HUD Secretary Andrew] Cuomo proposed a regulation that defined what it meant to ‘affirmatively further fair housing.’”).

Rents to adjust how we allocate resources for vouchers.⁸ As folks will remember in 2015, groundbreaking research was released by Raj Chetty and his team from Harvard University.⁹ It showed that, particularly in the lives of adolescents, moving to higher opportunity areas in a community made a difference, educationally and economically, in terms of their long-term prospects. Small Area Fair Market Rents was an approach to go small—and by that I mean to granularize how we set voucher levels; instead of looking at metropolitan statistical areas, by looking at zip code level data. And by doing that, it gives families more resources to move into those zip codes where rents are higher. In addition to rulemaking and enforcement, we also focused intensely on place.

As a former Mayor, I saw firsthand that one of the continuing struggles of cities across this country is the challenge of distressed neighborhoods: neighborhoods without the infrastructure investment, utility investment, transit options, and amenities that equal good quality of life in Twenty-First Century America. From the very beginning of the Obama Administration, the President was determined to turn distressed communities around. And to kick that off, in 2010 we had the Sustainable Communities Effort, a partnership among HUD, the Department of Transportation, and the Environmental Protection Agency to look holistically at how we can lift up these communities,¹⁰ not piece by piece, but by working on housing in addition to job creation, transit options, clean air, clean water, and all of those things that go into making up economic opportunity and improving quality of life.

I will never forget in my own experience as a young city councilman, being approached after a neighborhood meeting by a middle-aged woman who asked if I would put resources for new sidewalks for her mother's street in the next year's budget. When I asked her "Why?" she said that her mother lived on that street for decades, but it still did not have sidewalks. And that recently, her mom had been

⁸ Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 81 Fed. Reg. 80,567 (Nov. 16, 2016) (to be codified at 24 C.F.R. pt. 888, 982, 983, and 985).

⁹ Raj Chetty, Nathaniel Hendren & Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AM. ECON. REV. 855 (2016).

¹⁰ See *OED Place-Based Initiatives Coordination*, U.S. DEP'T HOUS. & URB. DEV., https://www.hud.gov/program_offices/economic_development/place_based/other_initiatives [<https://perma.cc/3GLZ-3Z9M>] (last visited Jan. 16, 2019).

diagnosed with diabetes. Her doctor said that it would be good for her to get around the neighborhood and walk to improve her circulation. But the woman said that her mother could not walk safely around the neighborhood because there were no sidewalks. For me, it was the first time that I recognized as a young policymaker the connections between infrastructure, health, and safety. The Obama Administration took connecting those dots very seriously, not only through sustainable communities, but also through the Choice Neighborhood Grant program and Promise Zones.¹¹

And because of that, today there are dozens and dozens of communities that are planning and acting in a more holistic, comprehensive way to lift up distressed communities and neighborhoods that need it. In early March, I read a headline that said *HUD Looks to Remove Anti-Discrimination Language from Mission Statement*.¹² It was an Article about the current Trump Administration and its plans to revamp the mission statement of HUD, except to dampen its words and its commitment to fair housing work. That is a shame, and unfortunately it also fits a pattern. The Trump Administration has already tried to slow-walk the AFFH rule.¹³ It has tried to kill off Small Area Fair Market Rents.¹⁴ They are going in the wrong direction. For we know that, even with all the progress that we have seen in these fifty years since 1968, there is much work that remains to be done. Research continues to show, for example, that minorities still face discrimination when trying to rent an apartment or buy a home.¹⁵ Even the new tools for finding accommodations like

¹¹ See *Choice Neighborhoods*, U.S. DEP'T HOUS. & URB. DEV., <https://www.hud.gov/cn> [<https://perma.cc/5LXN-Q2RW>] (last visited Jan. 16, 2019); *Promise Zones*, U.S. DEP'T HOUS. & URB. DEV., <https://www.hudexchange.info/programs/promise-zones> [<https://perma.cc/WS3H-JQTJ>] (last visited Jan. 16, 2019).

¹² Eli Watkins, *Washington Post: HUD Looks to Remove Anti-Discrimination Language from Mission Statement*, CNN (Mar. 8, 2018), <https://www.cnn.com/2018/03/07/politics/hud-ben-carson-anti-discrimination/index.html> [<https://perma.cc/VY9E-4CZQ>].

¹³ See *HUD Indefinitely Suspends AFFH Rule, Withdraws Assessment Tool*, NAT'L LOW INCOME HOUS. COALITION (May 21, 2018), <https://nlihc.org/article/hud-indefinitely-suspends-affh-rule-withdraws-assessment-tool> [<https://perma.cc/5G59-KNU5>].

¹⁴ See Will Fischer, *Trump Administration Blocks Housing Voucher Policy that Would Expand Opportunity and Reduce Costs*, CTR. ON BUDGET & POL'Y PRIORITIES (Sept. 7, 2017), <https://www.cbpp.org/research/housing/trump-administration-blocks-housing-voucher-policy-that-would-expand-opportunity> [<https://perma.cc/V9NG-D97B>].

¹⁵ See Michelle Singletary, *Black Homeownership Is As Low As It Was When Housing Discrimination Was Legal*, WASH. POST (Apr. 5, 2018), https://www.washingtonpost.com/news/get-there/wp/2018/04/05/black-homeownership-is-as-low-as-it-was-when-housing-discrimination-was-legal/?utm_term=.485f8a6b8f02 [<https://perma.cc/7JUE-J7F5>].

Airbnb have shown a weakness, an openness to be used in the wrong way by folks who would discriminate.¹⁶

We have seen complaint after complaint of patrons showing up to an Airbnb rental just to be turned back when the landlord finds out who is trying to rent. Facebook, as many will know, launched the ability of folks to put housing ads on their platform.¹⁷ The issue was that advertisers could choose which groups could see their ad, and which groups could not, based on race and ethnicity, a clear violation of the Fair Housing Act. And those are just the new platforms. There is still, of course, the old discrimination that happens when somebody shows up at the door trying to rent an apartment or look at a house. The research tells us that we are not out of the woods yet; that even in 2018, the Fair Housing Act is needed on the ground. My hope is that going forward we will do several things. First of all, we need to expand and not contract the reach of the Fair Housing Act. During the Obama Administration, we tried very intently to ensure, for example, that the LGBT community could fully come under the Fair Housing Act.¹⁸

I believe that the federal government needs to continue in that direction. It means that we need to move forward with AFFH. There are communities across the country who have been working on plans to submit complaints, taking those plans seriously. And the federal government has an opportunity to continue that forward progress instead of turning it back. It means appropriately staffing the Fair Housing and Equal Opportunity Office at HUD. For those of you who follow the Department, you know that there has been a disturbing loss of staff over the years. When President Ronald Regan walked in the door, there were 16,000 people working at HUD.¹⁹ By the time President

¹⁶ See Diamond Smith, *Renting Diversity: Airbnb as the Modern Form of Housing Discrimination*, 67 DEPAUL L. REV. 581 (2018).

¹⁷ See Charles V. Bagli, *Facebook Vowed to End Discriminatory Housing Ads. Suit Says It Didn't*, N.Y. TIMES (Mar. 27, 2018), <https://www.nytimes.com/2018/03/27/nyregion/facebook-housing-ads-discrimination-lawsuit.html> [<https://perma.cc/5CXG-Q3W3>].

¹⁸ See Press Release, The White House, *The Obama Administration's Commitment to Winning the Future for the LGBT Community* (2011), https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/lgbtfactsheet.pdf [<https://perma.cc/536G-7LNV>]; *Equal Access for LGBT Individuals*, NAT'L HOUS. L. PROJECT, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/equal-access-for-lgbt-individuals> [<https://perma.cc/52LH-TFUZ>] (last visited Jan. 16, 2018).

¹⁹ See Howard Kurtz, *HUD Fertile Ground for Wrongdoing*, WASH. POST (June 18, 1989), <https://www.washingtonpost.com/archive/politics/1989/06/18/hud-fertile-ground-for-wrongdoing/97aa4670-0822-437a-9143-5bebe9cd8e8b>.

Obama walked out the door, there were less than 8,000.²⁰ There was one analysis in 2014 that showed that we needed at least 200 more staffers in the Fair Housing and Equal Opportunity Office alone to adequately do the job and meet the demands of the Department.²¹

And as much as we tried to increase those staffing levels, we are still not where we need to be. It is important for Congress, as it looks at its budget not only this year but also in the years to come, to increase those staffing levels and to make more resources available to those non-profits working on the ground in order to give life to the Fair Housing Act. If Congress and the Administration will not do that, then my hope is that state and local governments will. During the Obama Administration, the White House did an excellent job of reaching out to cities that believe in this kind of work. There is no reason that those cities cannot continue to do innovative and impactful work when it comes to ensuring that we rid our housing market of discrimination, even if these days we do not have an administration that is nearly as supportive.

Second, in order to make opportunities real, especially for the most vulnerable Americans out there, we need to strike a balance and invest in both mobility and place-based work—especially after the report that Raj Chetty and his colleagues released and because of tremendous concerns about gentrification and displacement in neighborhoods throughout our country. There is a raging debate about the best way to tackle these issues. Should we put our resources into ensuring that families can move to “higher opportunity areas” of their choice?²² Or should we invest in those traditionally underserved and distressed neighborhoods?²³ The answer of course is that we have to do both of those things. I believe that we need to give folks a robust choice to move into neighborhoods of opportunity if they want to do that. And at the

²⁰ See Ben Lane, *Ben Carson Sworn In, Spends First Day as HUD Secretary*, HOUS. WIRE (Mar. 3, 2017), <https://www.housingwire.com/articles/39479-ben-carson-sworn-in-spends-first-day-as-hud-secretary> [<https://perma.cc/FKS3-HR4Y>].

²¹ See MEGAN HABERLE & JORGE SOTO, *DISCRIMINATION AND SEGREGATION IN HOUSING: CONTINUING LACK OF PROGRESS IN UNITED STATES COMPLIANCE WITH THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* 8 (2014).

²² See, e.g., Alicia Mazzara, *Housing Vouchers Can Do More to Move Families Into High-Opportunity Neighborhoods*, CTR. ON BUDGET & POL’Y PRIORITIES (Jan. 4, 2019, 10:30 AM), <https://www.cbpp.org/blog/housing-vouchers-can-do-more-to-move-families-into-high-opportunity-neighborhoods> [<https://perma.cc/A36F-JMQD>].

²³ See, e.g., ROLF PENDALL ET AL., *URB. INST., REVITALIZING NEIGHBORHOODS* (2016), http://www.urban.org/sites/default/files/publication/85236/revitalizing-neighborhoods-the-federal-role_0.pdf [<https://perma.cc/RNP5-6NZT>].

same time, in many of the communities that I traveled to during my work as Secretary, I saw and heard from families that do not want to move. I remember talking to a woman who lived in one of the urban core neighborhoods in New Orleans. She said, “This is my home. My grandmother lived here. My mother lived here, and I’ve lived here for years.”

Complicating this is that in communities across the United States, especially in urban core neighborhoods, as those housing markets have heated up, we have seen growing displacement. We have seen folks who would like to be able to stay in their neighborhoods but cannot afford it anymore. And at the same time, through qualified allocation plans, states, and our approach at HUD, I do not believe that we are nuanced enough right now in striking that balance between those two things and recognizing that sometimes those neighborhoods that we have considered to be distressed are also turning the corner because of gentrification. So now the challenge is not necessarily just to get folks out into something better, it is also to be able to keep them in as those neighborhoods get better amenities, better infrastructure, and stronger schools. We have some catching up to do here, but I think that it can be done at the state level and at the federal level in the years to come. Especially during this time when legislation like the Fair Housing Act, or issues that deal with race, ethnicity, or sexual orientation, are dismissed by this administration; it is simply identity politics.

We need strong legal strategies, and that is where you come in. I am happy to be here, because I am with a group of folks that I know in your careers—whether that is in the private sector, the public sector, or the non-profit sector—will have an opportunity to do a lot of good. You will have the opportunity either through your volunteer efforts, if you work in the private sector, or through your livelihood, if you work in the public or the non-profit sector, to take on these kinds of challenges and to represent organizations or individual clients that are butting up against the reality that we still need these protections in Twenty-First Century America.

Today in the United States, if you turn on cable news or go on the internet—on Twitter especially—what you see are folks talking past each other. You see emotion getting the better of people. In the study of law and in the practice of it, we are taught to look at the evidence, to always consider both sides, to reserve final judgment until you have seen and considered all of the evidence, and to do it in a way that is professional. My hope is that in the years to come lawyers will do their part in a big way or a small one, through volunteer efforts or through their careers, to

ensure that the Fair Housing Act and laws like it continue to protect vulnerable Americans everywhere, so that all of us have our chance to reach the American dream. In the years to come, I am convinced that this is the only way that we are going to prosper. So, happy birthday to the Fair Housing Act, and may it live not only another fifty years, but until it is no longer necessary in our country. And I believe that we will reach that day, and that you all are part of a generation of folks that can help make that possible.