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Supreme Court Case "Worse Than Obamacare" Creates Claim for "Unconscious Prejudice"

A very controversial case was settled by the Supreme Court on June 25, but was lost amidst the furor over the ObamaCare and gay "marriage" decisions.

Surprisingly, the overlooked case — *Texas Department of Housing and Community Affairs v. Inclusive Communities* — could be turn out to be more destructive to freedom than either of the other cases and although it didn't merit special lighting for the White House, the Obama administration praised the decision just as loudly.

In the *Texas Housing* case, the justices came to a split decision, five of them holding, according to a *Washington Post* report,

> that federal housing law allows people to challenge lending rules, zoning laws and other housing practices that have a harmful impact on minority groups, even if there is no proof that companies or government agencies intended to discriminate.

You read that right: a person accused of discrimination in housing can be found liable for that alleged discrimination whether or not there is any evidence that there was any intent to discriminate.

A *Wall Street Journal* article provides a little background on the case:

> Texas, whose housing department was fighting a fair-housing claim, maintained that the Fair Housing Act of 1968 required that plaintiffs show intentional discrimination, which demands a higher level of proof.
>
> The case originated in Dallas, where an advocacy group called the Inclusive Communities Project claimed the Texas housing agency discriminated by distributing federal tax-credit subsidies almost entirely to buildings going up in poor, black neighborhoods, thereby solidifying residential segregation.

In plain terms, the five-justice majority held that regardless of actual discrimination on the basis of race, a person could file a complaint based on "disparate impact," meaning that if in a particular area the demographic data can be interpreted to be injurious to minorities, then the builder or zoning authority can be held accountable for racism, regardless of intent or evidence.

Here's how the *Wall Street Journal* described Justice Anthony Kennedy's constitutional contortion:

> The court's opinion, by Justice Anthony Kennedy, noted America's history of racial segregation and the efforts Congress has made to remedy its continuing effects, including the statute disputed in Thursday's case.
>
> "The court acknowledges the Fair Housing Act's continuing role in moving the nation toward a more integrated society," Justice Kennedy wrote, joined by Justices Ruth Bader Ginsburg, Stephen

> Breyer, Sonia Sotomayor and Elena Kagan.

The phrase that pays from the majority opinion is "unconscious prejudice."

In other words, most (white) Americans are so prejudiced, Kennedy believes, that they discriminate against minorities without even knowing it. They are sleep segregating, you might say.

Not surprisingly, the Big Government blog at breitbart.com called the case "worse than Obamacare," and provided a pithy selection from the dissenting opinion written by Justice Samuel Alito:

> The dissent, written by Justice Samuel Alito, points out the absurdity of using "disparate impact" as a measure of racial discrimination. By the same logic, he writes, minimum wage laws must be racist, because they can be shown to have a disproportionately negative effect on young black males, who are priced out of the labor market. Alito also notes that neither the 1968 Fair Housing Act, nor its 1988 amendments, allowed "disparate impact" to be evidence of racial discrimination.

But, now it doesn't matter what the law says because, once again, the black-robed oligarchs of the Supreme Court have assumed the role of legislators and have converted an act of Congress into a judicial fiat.

Predictably, President Obama was happy with the holding and issued a statement, published by the *Washington Post*, which reads:

> the decision "reflects the reality that discrimination often operates not just out in the open, but in more hidden forms." And Attorney General Loretta Lynch said the Justice Department would continue to vigorously enforce the Fair Housing Act "with every tool at its disposal — including challenges based on unfair and unacceptable discriminatory effects."

This comment from the Justice Department echoes the language in earlier promises to "execute their [federal agents'] duties" to enforce federal gun control measures, regardless of state laws to the contrary.

Breitbart put a fine point on the ruling's potential harmful effect on liberty:

> How bad is this decision? The federal government expected to lose — so much so, in fact, that it spent years settling cases on "disparate impact" before they could reach the Supreme Court, lest that tool of intimidation be taken away.
>
> The Court has now affirmed one of the federal government's most abusive tactics: the threat of racial discrimination lawsuits. And the biggest losers, Alito points out, are the poor, because now local efforts to improve poor neighborhoods can be blocked by lawsuits alleging racial discrimination when the rent is raised.

So, just as the ObamaCare case (*King v. Burwell*) and the same-sex "marriage" case (*Obergefell v. Hodges*) saw the Supreme Court redefining words and replacing the thinking and intent of the legislative branch with their own will, *Texas Housing v. Inclusive Communities* shows them making that same substitution, only this time it's for every person in the United States!

As of last Thursday, you might be a racist and not even know it.

One final word on this spate of Supreme Court usurpation of power from our third president.

In 1819, Thomas Jefferson warned that accepting the power of the Supreme Court to "explain the Constitution" would convert that document into no less than a "*felo de se*" [act of suicide] and would

reduce the Constitution into "a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."

It has certainly been misshapen now into a form the Founders would not recognize.