

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 UNITED STATES OF AMERICA *ex rel.* :
 ANTI-DISCRIMINATION CENTER OF :
 METRO NEW YORK, INC., :
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 Plaintiff/Relator, :
 :
 -v- :
 :
 WESTCHESTER COUNTY, NEW YORK, :
 :
 Defendant. :
 -----X

ECF CASE

06 CV 2860 (DLC)

DECLARATION OF MICHAEL L. HANLEY

MICHAEL L. HANLEY, pursuant to 28 U.S.C. §1746, submits this declaration in support of the motion of the Anti-Discrimination Center to intervene in this action, and declares that the following is true and correct:

1. I am a senior staff attorney with the Rochester office of Empire Justice Center, where I have worked since 1982. My work focuses on systemic discrimination in state and federal low-income housing programs, and on other forms of racial disparities and the denial of equal access to housing opportunities for minority children, including disparities in health risks related to housing segregation and neighborhood environmental justice issues.

2. I am the most recent chair of the New York State Advisory Committee (NY SAC) to the United States Commission on Civil Rights (not currently convening due to federal budget cuts), and for from 2005-07 served as co-chair of the Public Interest Committee of the New York State Bar Association’s Real Property Law Section. As Chair of the NY SAC, I helped to organize and chair a series of fact-finding hearings across the state in which we examined the extent to which housing program policies were having a racially exclusionary effect or failed to

be fully utilized to further fair housing

3. For more than two decades I have centered much of my professional activities around the federal obligation for communities and housing programs to “affirmatively further” fair housing under the requirements of the Fair Housing Act, the Housing and Community Development Act, and the Quality Housing and Work Responsibility Act. That requirement has been a key issue in my direct litigation, in my litigation support activities, in trainings I have developed and provided, and in the additional support and consulting functions that are encompassed in my responsibilities at the Empire Justice Center.

4. Since at least 1989, when the Comer v. Cisneros (37 F.3d 775, 2d Cir 1994) litigation was first filed in the Western District, my work has addressed the “affirmatively furthering” obligations, including its inclusion as a key element in the development and monitoring of the numerous Comer consent decrees (1995-2007); in the development of a comprehensive regional fair housing plan for Monroe County; as a continuing member (since at least 1995) of the NYS Partnership Advisory Committee advising on the development of the New York State Consolidated Plan; as a consultant in the drafting of the Analysis of Impediments to Fair Housing for the City of Rochester (2003-05); and, in 2001, is a series of trainings for the State of Connecticut specifically addressed to conveying the significance of the federal obligation affirmatively to further fair housing.

5. In my experience throughout this time, municipalities and housing agencies nearly without exception either refused to directly address systemic issues of racial exclusion in housing, or at a minimum, lacked even rudimentary awareness of the existence and scope of the affirmative obligation to further fair housing (AFFH) and have failed to accept that the applicable statutes impose a duty to do more than simply refrain from unlawful discrimination.

Typically municipalities, just as the County of Westchester has, have simply signed pro forma certifications of compliance even when challenged to identify specific activities that actually further fair housing.

6. For many years, particularly in the late 1990s, I was involved with national housing and civil rights groups who advocated strongly for clearer and stronger implementing regulations (and enforcement) from the Department of Housing and Urban Development regarding the “affirmatively furthering” obligations. In that regard, I followed closely the promulgation of a proposed rule from HUD in 1998, only to see that the regulation promptly withdrawn from further public comment (through the unusual procedure of issuing a press release) in March of 1999 in response to what the Housing Development Reporter described as strong opposition from the League of Cities and associations of municipal officials [see 26 HOUS. & DEV. REP., Nov. 2, 1998, at 396; 26 HOUS. & DEV. REP., Jan. 25, 1999, at 606; 26 HOUS. & DEV. REP., May 3, 1999, at 827.] At the time, I took that unusual step surrounding the withdrawal of that proposed regulation to be a clear signal of the extent of the opposition of municipalities to addressing their obligations to affirmatively furthering fair housing. I have had no reason to believe that since then that opposition has diminished.

7. My direct experience in confronting the New York State Division of Housing and Community Renewal (now the New York State Office of Homes and Community Renewal) on this issue year after year in connection with the preparation of the state’s 5-Year Consolidated Plans, their Annual Action Plans, and their Analysis of Impediments to Fair Housing has left me to conclude that even at the state level there has been no political will to confront the NIMBY opposition to addressing race issues in connection with the development of affordable housing, and instead there had been a nearly universal deference to the “home rule” priority within the

state, even when that policy has conflicted with state zoning law requirements to address regional housing needs.

8. I viewed -- and I know that my civil rights colleagues throughout the country have viewed -- the entry of the Consent Decree in this matter as a potentially historic moment where a segregated county would be made to cause its municipalities to end their exclusionary zoning practices and begin to allow affordable housing to be built in white neighborhoods of opportunity.

9. As such, Decree enforcement was seen as being able to send a message to jurisdictions across the country that AFFH would hereafter need to be taken seriously. In the absence of such enforcement, unfortunately, exactly the opposite message has been sent.

10. To the best of my knowledge, within New York State, HUD has taken no steps to sanction local municipalities for failing to honor their obligation affirmatively to further fair housing, or to review the sufficiency and validity of their boilerplate certifications that they are doing so. I believe that, given my many years of involvement on this issue, I would be aware if such reviews or enforcement efforts were underway.

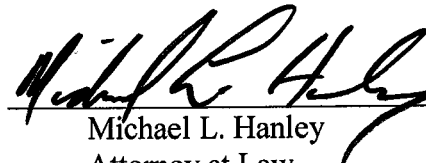
11. The importance of the Consent Decree's reliance on Westchester's using its authority under New York State law to counter local resistance to development cannot be overstated. It is contrary to my experience, and contrary to the experience of every civil rights attorney I know, to expect that municipalities that have long maintained exclusionary zoning will elect to change that zoning as long as maintenance of the status quo remains an option.

12. It is only when municipalities understand that sufficient enforcement and monitoring structures are in place that they respond by meaningfully addressing their obligation to further fair housing and address existing patterns of segregation. To that end, it is my belief that is

critical to the implementation of the Consent Decree that a party with the expertise and perspective of the Anti Discrimination Center be included with full party status in this action.

13. Full enforcement of the Decree is urgently needed.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Executed on Sept. 14, 2011.


Michael L. Hanley
Attorney at Law