

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., :  
:  
Plaintiff/Relator, :  
:  
-v- :  
:  
WESTCHESTER COUNTY, NEW YORK, :  
:  
Defendant. :  
-----X

**ECF CASE**  
**06 CV 2860 (DLC)**

**DECLARATION OF KEVIN D. WALSH**

KEVIN D. WALSH, pursuant to 28 U.S.C. §1746, declares that the following is true and correct:

1. I am associate director of Fair Share Housing Center (FSHC), a New Jersey not-for-profit organization. The mission of FSHC is to end discriminatory or exclusionary housing patterns which have deprived the poor, particularly those presently living in inner cities, of the opportunity to reside in an environment which offers safe, decent, and sanitary housing near employment and educational opportunities. I make this declaration in support of Anti-Discrimination Center’s (ADC’s) motion to intervene.

2. I and my organization have extensive experience in observing and acting to combat municipal resistance to the development of housing affordable to very-low and low-income families, especially housing that would be placed in middle-income or wealthier neighborhoods, or in neighborhoods that have a low percentage of African-American and Latino residents (which very often are the same neighborhoods). We have extensive experience with techniques employed by exclusionary jurisdictions to both stymie development and locate housing in a way

## **EXHIBIT A**

February 23, 2010

VIA E-MAIL

Mr. James M. Johnson, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

**Re: U.S. ex rel. Anti-Discrimination Center v. Westchester County**

Dear Mr. Johnson:

As leaders of fair housing organizations and other civil rights advocates, we write to express our concern that you have described the “primary” problem in Westchester’s “Implementation Plan” as being one of vagueness. As the Anti-Discrimination Center (“ADC”) has made clear in *Prescription for Failure*, the submission was indeed plagued by vagueness and evasion, but the primary problem is that Westchester’s plan – if one could call it a plan – was not directed towards meeting the AFFH obligations of the Settlement Order.

We believe that it is essential that you require Westchester to remedy ***each and all*** of the deficiencies identified by ADC in *Prescription for Failure*. Without limiting the foregoing, it is especially important that you require that the Implementation Plan:

- (1) acknowledge the existence of segregation in Westchester, the fact that a principal goal of the Settlement Order is the end of de facto residential segregation in Westchester County, and the fact that a major impediment to affordable housing development in the whitest communities in Westchester has long been municipal resistance to development that may facilitate racial and ethnic integration;
- (2) actually *plan* for the County to acquire interests in land on the Census Blocks with the lowest percentages of African-Americans and Latinos; and
- (3) affirm both Westchester’s state-based and its federal-based authority to challenge zoning and other barriers to the development for affordable affirmative furthering of fair housing purposes in connection with the land it will acquire, and affirm Westchester’s intention to use that authority.

As Chair of the Brennan Center for Justice, you know that the Racial Justice page of the Brennan Center’s website quotes the late Justice Brennan for his crucial observation that, “We cannot let colorblindness become myopia which masks the reality that many ‘created equal’ have been treated within our lifetimes as inferior both by the law and by their fellow citizens.” **It is our belief that the proper implementation of the Settlement Order to affirmatively further fair housing and promote racial and ethnic integration is critical to the future of fair housing, integration, and regional equity.** At its core, the Settlement Order treats the need to overcome race-based barriers frankly and explicitly. The integrity of the Settlement Order requires two things most of all: (1) a willingness to speak the truth of the SO’s

desegregation focus; and (2) a determination to make clear to all parties that they must *fully* comply with all provisions, including those concerning desegregation.

Respectfully submitted,

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Kennett Square, PA

Ed Gorman, CEO  
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Mary Compton, Executive Director  
Unidos Para La Gente  
San Marcos, TX

that minimizes the extent to which housing affordable to very-low and low-income families is actually integrated into the residential heart of a neighborhood.

3. I have reviewed descriptions and site photographs of sites in Westchester referred to in ADC's moving papers as the Rye, Cortlandt, and Larchmont developments, which raise significant concerns as to the suitability of these sites.

4. Locating units on the edge of municipalities in or near areas of minority concentration just across municipal boundaries has the effect of not making residents of such housing full members of the community (in actuality or in perception). Isolating residents in the least desirable areas of a municipality and in areas of high minority concentration does not suffice to affirmatively further fair housing.

5. Creation of studio and one-bedroom units alone does not provide housing that is accessible to families with children. As families with children are protected under the federal Fair Housing Act, such units cannot be said to affirmatively further fair housing, especially when combined with the locational issues mentioned above.

6. Sound planning also requires consideration of current and proposed surrounding uses of any property. All three of these developments appear to be isolated developments not integrated into a comprehensive planning strategy. Especially because all three of these sites are cut off from much of the surrounding neighborhood by major transportation corridors, there is significant potential for creating a separation, if not formal segregation, between the affordable units and the rest of the community's residential development.

7. One basic technique that has repeatedly been found to be useful in terms of sending a message of true integration, as well as in leveraging the ability to build more affordable units than would otherwise be possible, has been to create mixed-income developments. Such

developments create integration between market rate and affordable units and thus do not isolate lower-income individuals from the rest of the community. In fact, in many mixed-income developments in New Jersey, the affordable units are indistinguishable from the market-rate units, scattered throughout the development.

8. A significant portion of fair housing remedies in New Jersey has consisted of mixed-income development; it is unclear to me why the overwhelming percentage of units thus far approved in Westchester have failed to use this common technique.

9. Mixed-income developments also reduce the public subsidy required per unit significantly. In such developments, increasing permissible density allows the developer to generate income through additional market-rate homes, and thereby provide a cross-subsidy to make other homes more affordable. In fact, there are many examples in New Jersey of affordable homes being built with no public subsidy at all in such situations.

10. In contrast, 100 percent affordable developments require the highest levels of public subsidy.

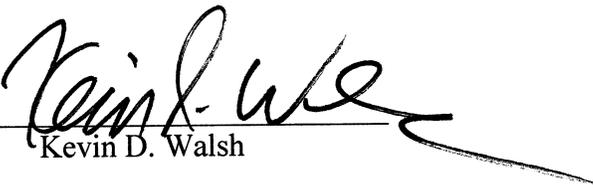
11. In February 2010, we joined with more than 90 other fair housing organizations and advocates to send a letter to the Monitor urging real and complete implementation of the Consent Decree (the letter is attached as Exhibit A). In that letter, we highlighted the need for Westchester to be required to acquire interests in *appropriately sited* housing parcels (i.e., sites with maximum desegregation potential), and to be required to use its authority under state and federal law to overcome municipal resistance to such housing.

12. Unfortunately, implementation of the Consent Decree to date has not met the standards outlined in this letter.

13. As we noted in the letter, and as we continue to believe today, this case has national

significance. Proper implementation of the desegregation goals of the Decree “is critical to the future of fair housing, integration, and regional equity,” as the letter noted.

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. 15, 2011.

  
Kevin D. Walsh