

November 29, 2011

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Re: U.S. ex rel. Anti-Discrimination Center v. Westchester County (06-CV-2860)

Dear Mr. Johnson:

In February, May, June, and again in July 2010 we and other fair housing and civil rights groups wrote separate letters to you and to HUD to express our continued concerns about Westchester's initial efforts to implement the Consent Decree.<sup>1</sup> Since then, there still has been little progress. Among other deficiencies, Westchester still has not submitted an AI that HUD has approved, has yet to adopt a compliant Implementation Plan, continues to deny the reality that the County is residentially segregated, won't challenge municipal barriers to fair housing choice, and has evaded its obligation to cause affordable housing to be built that actually affirmatively furthers fair housing. Thus, we are compelled to write again to express our concern about both Westchester County's pattern of non-compliance with its fundamental obligations under the Consent Decree, and the failure of the Monitor and the Government to fully implement all the terms and objectives of the Decree, despite ample authority to do so.<sup>2</sup>

We are, of course, pleased that Westchester's violation of its obligation to promote legislation banning discrimination based on lawful source of income has been identified in the Monitor's Report and Recommendation of November 14 and that action has been required. This was a clear obligation of the Consent Order, and the County's longstanding defiance of this requirement had to be addressed.

We are disappointed, however, that the County's non-compliance with its obligations regarding local exclusionary zoning did not receive similar treatment in the Monitor's Report. As has been apparent from the beginning of the implementation of the Consent Decree, the County, for over two years, has consistently avoided making any of the structural changes that were contemplated by the Consent Decree. Furthermore, the County Executive has publicly stated that he will not enforce that part of the Decree which requires County action to challenge local exclusionary zoning ordinances which block the housing required by the decree. Yet, the Government did not seek, nor did the Monitor impose, any sanctions on Westchester for its failure to act over a period of more than two years, even though the Report explicitly recognized this failure.<sup>3</sup>

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<sup>1</sup> See, e.g., [http://prrac.org/pdf/Westchester\\_Advocates\\_2010\\_02\\_Letter.pdf](http://prrac.org/pdf/Westchester_Advocates_2010_02_Letter.pdf).

<sup>2</sup> See, e.g., Consent Decree, ¶¶ 13, 39, and 58.

<sup>3</sup> The only requirement in the Report addressing this issue is that Westchester must identify zoning barriers and issue a general plan on what types of barriers would generate a legal response. These are tasks that should have been done in an Analysis of Impediments and an Implementation Plan almost two years ago and effectively overlook the County Executive's explicit refusal to comply with the requirement to act.

As we noted in our February 23, 2010 letter to you, Westchester needs to be required to “actually *plan*...to acquire interests in land on the Census Blocks with the lowest percentages of African-Americans and Latinos” so that it is in a position to use the authority under the *Berenson* and *County of Monroe* doctrines that it acknowledged it possessed and was appropriate to use in the Consent Decree.<sup>4</sup> Furthermore, while the County has agreed, pursuant to the Decree, that it will use all its housing policies and programs to end segregation,<sup>5</sup> it has taken no steps to do so, and the Government and Monitor have yet to take meaningful steps to hold Westchester to its commitment.

It is now 27 months after the entry of the Decree, and there has not been any material progress or compliance. Given the delay in the County’s implementing the Consent Decree, and in the Government’s monitoring and enforcement efforts, we urge you to reverse your earlier opposition to the Motion to Intervene filed by the Anti-Discrimination Center (the organization that litigated the matter in the first place) to ensure the presence of a party that will seek vigorous enforcement of the Consent Decree. In the meantime, we urge you to immediately promulgate an Implementation Plan that fully addresses all of the terms and AFFH objectives of the Decree, as required by Consent Decree, ¶ 20(d). Thank you for your consideration of our views.

Sincerely,

Joseph Rich  
Lawyers Committee for Civil Rights Under Law  
Washington, DC

Philip Tegeler  
Poverty & Race Research Action Council  
Washington, DC

Shanna L. Smith  
National Fair Housing Alliance  
Washington, DC

cc: Secretary Shaun Donovan, Department of Housing & Urban Development

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<sup>4</sup> See Consent Decree, p. 1, ¶¶ 1-2; p. 2 ¶ 1.

<sup>5</sup> See Consent Decree, ¶31.