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LDF Files Amicus Brief Urging Proper Interpretation of Core Civil Rights Doctrine in Fair Housing Lawsuit against Bank of America

Today, the Legal Defense Fund (LDF) filed an amicus brief calling on the U.S. Court of Appeals for the Fourth Circuit to correct an erroneous interpretation of a core civil rights doctrine in *National Fair Housing Alliance v. Bank of America*. This case comes after 20 fair housing organizations and three homeowners presented evidence that Bank of America discriminated based on race through, among other things, its practice of failing to maintain and market bank-owned homes in Black and Latino neighborhoods in cities across the country.

The amicus brief – on behalf of LDF, the Metropolitan Washington Employment Lawyers Association, the National Housing Law Project, and the Poverty and Race Research Action Council – highlights how the District Court decision misapplied disparate impact doctrine. Specifically, it states the court incorrectly concluded that only express policies that cause unjustified discrimination can support claims brought under the Fair Housing Act. Brian Corman, Rebecca Ojserkis, and Dana Busgang of Cohen Milstein Sellers & Toll appeared on behalf of the four organizations.

“This misinterpretation of long-standing civil rights doctrine cannot go uncorrected,” said **Jennifer A. Holmes, Deputy Director of Litigation at LDF**. “Treating inaction as a safe harbor would discourage housing providers and employers from taking steps to prevent discrimination or bias from infecting their practices. Years of legal precedent hold that a practice of inaction or omission that leads to unjustified discriminatory effects is subject to legal action. We call on the Fourth Circuit to correct the District Court’s conclusion to the contrary.”

“A company’s lack of a policy on important issues can lead to unchecked discrimination,” said **Hayley Hahn, Assistant Counsel at LDF**. “And that’s exactly what the plaintiffs allege here – that property management decisions informally deprioritized maintenance in Black and Latino neighborhoods, with no justification or reason why. That’s something that our nation’s civil rights laws don’t allow.”

“Nearly 60 years ago, Congress enacted the Fair Housing Act to address the kinds of discriminatory policies and practices alleged in this case against Bank of America,” said **Brian Corman, a partner at Cohen Milstein who focuses on Fair Housing Act litigation**. “The District Court’s misapplication of the disparate impact doctrine undermines the remedial aims of the Fair Housing Act and similar civil rights laws, threatening to unwind essential civil rights protections that have enabled communities to access housing and build generational wealth. We urge the Fourth Circuit to correct this interpretation of the Fair Housing Act and

reaffirm the law's core protections to ensure that discriminatory and unlawful policies and practices are brought to an end."

Throughout its history, LDF has challenged public and private policies and practices that deny Black people opportunities and choices in housing and employment. The organization has also spent decades advancing the correct interpretation of the doctrine of disparate impact discrimination, including its representation of the plaintiffs in *Griggs v. Duke Power Company*, the seminal Title VII disparate impact case that the Supreme Court decided in 1971.

Today's brief continues this advocacy by highlighting how the district's court interpretation of disparate impact ignores well-established precedent which holds that informal practices or a failure to act can also violate the Fair Housing Act when, as here, they cause unjustified discriminatory effects on Black and Latino individuals and neighborhoods.

Read the full brief [here](#).

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Founded in 1940, the Legal Defense Fund (LDF) is the nation's first civil rights legal organization.

LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957, though it was founded under the leadership of Thurgood Marshall while he was at the NAACP. LDF's Thurgood Marshall Institute (TMI) is a division of LDF that undertakes innovative research and houses LDF's archive. In all media attributions, please refer to us as the Legal Defense Fund or LDF (do not include NAACP) and refer to the Institute as LDF's Thurgood Marshall Institute or TMI.