

THE UNFAIR FAIR HOUSING BILL

Congress currently is seeking ways of strengthening the enforcement of laws prohibiting racial discrimination in housing. The aim is to make it easier to prosecute those who break the law. To do so, Congress is focusing on a so-called fair housing bill, S. 558, co-sponsored by Senators Edward Kennedy, the Massachusetts Democrat, and Arlen Specter, the Pennsylvania Republican. But this is a seriously flawed attempt in pursuit of a worthwhile goal. It is long on enforcement but short on the safeguards necessary to protect the rights of U.S. citizens falsely charged with discrimination.

If Congress wishes to beef up enforcement and penalties, then it must specify very clearly what is discrimination. Outright refusal to rent or sell on the basis of race, for example, can be dealt with by straightforward prohibitions. But reasonable practices that do not involve an intent to discriminate should not be deemed illegal discrimination subject to harsh penalties. The danger with the bill is that vague and uncertain standards of liability invite the harassment of innocent landlords and sellers.

Some states and localities already are adopting housing quota policies to mix races in neighborhoods through various forms of inducements or pressures. The definition of "discrimination" needs to make clear that the federal legislation does not authorize such quota policies, and that real estate brokers and others will not break federal law merely by failure to help enforce such questionable quotas. Indeed, federal legislation should reaffirm that such state housing racial quotas are illegal for they establish racial classifications and discriminatory practices. The U.S. Department of Justice currently is challenging such quotas in court.

Lack of Safeguards. The Kennedy-Specter bill substantially increases the penalties for discriminatory practices, adding new punitive damages and criminal penalties. It would establish a system of administrative law courts and judges to adjudicate and impose such penalties without the constitutional protection of trial by jury, or other safeguards normally incorporated in the judicial process. This lack of safeguards would seriously endanger the rights of innocent Americans in cases which tend to be very emotional and political in nature. Moreover, the use of administrative tribunals elsewhere has not led to a quick resolution of cases. Either party is still able to resort to court after the process is over. The Administration

proposes instead a binding arbitration system to force a speedy but fair resolution of disputes. This would likely be far more effective than cumbersome tribunals.

The Kennedy-Specter bill would also provide federal grants for local community groups to help eliminate housing discrimination and enforce the law. But this program simply would channel taxpayer money to local political activist groups, who doubtless would use the resources to campaign for their own ideological agendas, such as rent control, prohibitions on evictions, and restrictions on development. Federal funding of these activities is an abuse of the taxpayer. Congress should be eliminating the funding of political activists where it already exists, not expanding it to new areas.

In addition, the Kennedy-Specter bill would add new prohibitions on insurance companies denying coverage to prospective customers on the basis of race. Yet there is no evidence of significant discrimination by insurers. The danger in the legislation is that insurers would be prevented from refusing coverage based on a valid assessment of risk in inner city neighborhoods. Such restrictions would not only be unfair to the insurers but would just make it generally much more difficult and expensive to obtain housing insurance.

Excluding Drugs and Alcohol. The Kennedy-Specter legislation adds vague new prohibitions against discrimination on the basis of handicap. While this is needed, it can be abused. To prevent this, language needs to be added to the bill to exclude from the definition of handicap any impairment due to alcoholism, drug abuse, or other conditions that are a potential danger to the safety or property of others. Moreover, the proposed legislation requires landlords to allow handicapped renters, at the renter's expense, to modify their leased premises to suit their handicap. But such modifications should be limited to minor alterations. If not, landlords could face enormous and unexpected costs when they rent their property. Congress should require the renter to bear the cost of restoring the premises to their original condition.

The proposed legislation further defines discrimination against the handicapped as designing or constructing any multifamily dwelling not providing for equal access and use by the handicapped. This would, in effect, establish the precedent of national building code regulations which may require housing features with substantial costs well in excess of benefits. This unneeded regulatory burden would significantly increase housing costs for lower income Americans and likely reduce housing construction.

With careful consideration and protections for the rights of all U.S. citizens, a comprehensive and effective fair housing bill is possible. Yet the Kennedy-Specter bill would impose heavy financial burdens on property owners and open the door further to racial quotas and politically motivated nuisance suits. If lawmakers focus solely on the goal of enforcement and pay inadequate attention to the rights of the falsely accused, or the unintended burdens such legislation could impose, the new housing legislation will be fair in name only.

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