

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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SUPREME COURT DECIDES TO REVIEW DISPARATE IMPACT QUESTIONS

In a long awaited action, the Supreme Court has decided to hear the case of Mt. Holly Citizens In Action, Inc.

The case involves *the* viability of claims of disparate impact under the Fair Housing Act.

As you know, overt discrimination is illegal. However, the argument is that certain acts are not discriminatory in and of themselves but disparate or discriminatory impact can flow from such conduct. In the Mount Holly case, a New Jersey town planned to redevelop an area previously occupied by low to moderate income minorities. Residents argued that the redevelopment had a disparate impact on these minorities, constituting a disparate impact violation. In other words, the minorities that would lose their homes, would be unable to afford the new housing

as proposed. While there was no overt discrimination, the result of otherwise legal actions created a discriminatory effect, i.e. a disparate impact on a protected group.

With very little legislative or regulatory language to support their position (some have argued none) the Federal agencies have adopted disparate impact as a cornerstone of their Fair Lending policies. If the Supreme Court finds that disparate impact claims were not available for use in attacks under the Fair Housing Act, it could seriously affect the ongoing CFPD examinations. Fair Lending challenges have become a significant aspect of these CFPB exams.

All of us in the industry should follow this with great interest.

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