

The Housing Consumer, Social Justice and the New Law Against
Familial Status Discrimination: A Discussion

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ABSTRACT

This paper looks at the political, social and economic aspects of familial status discrimination with regard to housing in light of the Fair Housing Amendments Act of 1988. It examines the costs and benefits of discriminating against families with children.

Introduction

Discrimination as used herein means that "equals are treated unequally or that unequals are treated equally" (Sharp, Register and Leftwich 1988, p.290). Economic discrimination can occur in the input market or the product market. Discrimination occurs in the input market (labor) market when individuals are paid differently for equal productivity or are paid the same for unequal productivity. In either case, an individual's income is not based on output, but rather, on some factor unrelated to productivity, such as race, gender or age. In the labor market where discrimination does not exist, individuals who produce an identical output would secure an identical income.

Discrimination often occurs in the product market when different individuals are charged different prices for the same product. In a market without discrimination, price is the rationing agent. The individual who is willing and able to pay the market price, procures the product. Conversely, the individual unable or unwilling to pay does not get the product. In housing discrimination, however, the price is often not the rationing agent. The price of rent is identical for everyone, but some individuals (who are able and willing to pay), by virtue of personal or familial characteristics, are denied access to equal housing. Specifically, households have been denied their particular housing preferences due to the fact that they have children. Thus, this behavior of landlords constitutes economic discrimination: equals, in terms of willingness and ability to pay, are treated unequally.

On September 13, the Fair Housing Amendments Act of 1988 (FHAA) was signed into law (Fair Housing Amendment Act of 1988). This was meant by the U.S. legislature to address the problem of economic discrimination with regard to housing. The FHAA is the first attempt to strengthen the enforcement provisions of the Fair Housing Act of 1968. Handicap and familial status were added to the categories of discrimination already prohibited: race, color, religion, sex, and national

origin (Fair Housing Act 1968). The ramifications for and against housing discrimination on the basis of family status are the focus of this paper. First, the new law will be examined. Second, the economic costs and benefits of discrimination against families with children will be reviewed. Third, social and political justice for families with children, both traditional and vulnerable, will be reviewed.

The New Fair Housing Amendments Act of 1988

The FHAA marks the first time that "familial status" has gained protection under any federal laws that protect civil rights. Studies have found that up to 75% of the U.S. rental housing has excluded prospective tenants who have children (Marans and Colten 1980). The severe housing accessibility problems of families with children do not so much result from landlords who are malicious, as from market forces resulting from housing practices that reflect changing demographics, increasing housing costs, and a shortage of housing (Fair Housing Amendments Act of 1987:Hearings).

The 1987 Congressional hearings on fair housing identified a number of trends in the family housing market. The increasing cost of home ownership has pushed more and more families into the rental market. The demographic trends run counter to the market of families with children. New households reflect the higher proportion of singles and childless couples. The housing industry, responding to the "adult" market, has built apartments with fewer bedrooms and less square footage. Even if affordable, most of the new housing is not being geared to families with several children.

Tenant selection prerogatives have resulted in a variety of practices that affect accessibility of housing for families with children. A HUD national survey (Marans and Colten 1980) found that 25% of all rental units overtly operated under a "no children" or "adults only" policy. An additional 50% of all units had restrictive policies that would preclude many families. Restrictions included limits on the number of children in a unit such as one child per bedroom. Other restrictions involved the availability of only certain units or sections of a complex for families, minimum child ages, maximum child ages, and rules against children of different sexes who share the same bedroom. Another practice was to impose a surcharge for each child.

Discriminatory practices affecting families with children are explainable both economically and

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socially. Too often, an industry such as housing neglects the social dimension of the problem. Since the households of racial and ethnic minorities statistically have more children than white families, the political dimension, specifically that of racism, is also present. Child restriction policies therefore have a disproportionately large impact on these groups because "adults only" housing is concentrated in newer developments in predominantly suburban areas. Thus, traditional families with children are excluded along with vulnerable families with children: minority families, young families, single-parent families, and poor families. Thus, the politics of intervention, reflected in the FHAA, protect the civil rights of all families with children from "familial status" discrimination.

The meaning of family in the FHAA is very broad. The definition reads as follows:

- (k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--
- (1) a parent or another person having legal custody of such individual or individuals; or
 - (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person (Fair Housing Amendments Act of 1988).

While the definition may be read literally so as to emphasize legal custody and written permission as qualifiers of other persons than parents, the "written permission" alternative would be a rather simple way to legitimize various informal living arrangements, such as a live-in grandparent who has assumed the role of the parent, for purpose of FHAA protection (Fair Housing Amendments Act of 1988). The definition, thus, goes beyond the concept of the "traditional family".

The FHAA definition of familial status is supplemented by the following addendum:

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years (Fair Housing Amendments Act of 1988).

The FHAA defers to local and State occupancy regulations with the following proviso: "Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling" (Fair Housing Amendments Act of 1988). The provision recognizes some local regulatory prerogatives as to how many persons can occupy a dwelling unit but does not use local occupancy regulations to define the meaning of "family" to limit who can occupy a dwelling. Although such restrictive definitions are common at the local level, the FHAA's definition of familial status will control in all cases, because it preempts local standards, but not all common law qualifications for housing. Thus, the target for

the law is the "adult" housing market which no longer can discriminate against families, who are married or unmarried, with children.

Some apartment managements still advertise "all adult," but most references to "adult" are more discrete. As a result of the FHAA, "adult only" or "no children" advertisements become as legally discriminatory as "no blacks." The Fair Housing Act, before FHAA, made it unlawful to indicate in any advertisement of a dwelling any preference, limitation, or discrimination based on race, color, religion, sex, or national origin (Fair Housing Act 1968). "Familial status" (and "handicap") are simply added by FHAA as additional forms of prohibited discrimination and thus have an equal status in terms of legal protection.

Real estate interests sought some guarantee in FHAA that developers or landlords could adopt a plan of occupancy that would allocate units within a development as suitable for families with children, while other areas would be limited to families without children or single adults. When familial status was grafted onto the existing prohibitions, that arrangement was difficult to accommodate. It was as difficult as offering housing for blacks in one part of the apartment complex and whites in another part. It is thus unlawful under the Fair Housing Act "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, [familial status] or national origin" (Fair Housing Amendments Act of 1988). The courts will eventually resolve the legality of apartment development rules and policies that make further distinctions based on familial status since common law landlord prerogatives still remain untouched by FHAA. They must be exercised in an equal manner, however. Thus, families with children may be rejected if they are not financially qualified. Also, families with children that are determined to be undesirable in terms of cleanliness, care for property, or creation of a nuisance, may be rejected. Whether a landlord can require a larger deposit because of children, add a surcharge to the rent, or limit a two-bedroom dwelling to two children are matters for further legal determination.

Economic Reasons For and Against Discrimination Against Families with Children

The housing industry supports the "adult market" for various economic reasons. Recent demographic phenomena, such as the rise of the yuppie population which is relatively affluent, show that some tastes run counter to the family market. The housing industry has targeted this yuppie population because it has money. The yuppie lifestyle reflects a new freedom from children. Work satisfaction has replaced the satisfactions of home life. Life in the fast lane does not require nor want children. Less space is necessary for living. Therefore, the housing industry emphasizes the size, style and "aesthetic" factors that reflect this new adult mindset. Children would

require more room, more playgrounds, more living space. The housing industry recognizes only two alternatives: provide for tenants with children or tenants without children. There are market forces that have persuaded the housing industry to favor the childless adult market because this group has more money and can afford to spend more on housing. These forces provide strong economic incentive to discriminate on the basis of family status.

Other relatively recent demographic occurrences serve as a basis for the housing industry to support the "adult market." Recent trends indicate that the average size of households is shrinking. In 1988 the average number of persons per household was 2.64 while in 1970 it was 3.14 (U.S. Dept. of Commerce 1988a, p.5). One reason for this decrease is the fact that families have fewer children. In 1988 the average number of persons per household under age 18 was 0.70; in 1970 it was 1.09 (U.S. Dept. of Commerce 1988a, p.5). Another indication of the trend toward smaller households is that in 1988, only 10% of all married-couple households had three or more children under age 18 while in 1970 nearly 21% had three or more children (U.S. Dept. of Commerce 1988a, p.4). Based on the above statistics, from the individual landlord's perspective, there are substantial financial benefits to discriminating against families with children. With recent trends to limit the size and formation of households, singles and younger married couples become the preferred market by landlords. By catering to this market, landlords can increase their incomes substantially either because households in this market are able to pay higher prices for housing than are persons of other household statuses or, because landlords can reduce costs or increase productivity. Smaller housing units can be provided to accommodate these smaller households. Specific restrictions on the number of persons per rental unit allow the landlord to discriminate against children. Rents can be increased on the assumption that smaller households have a greater ability to pay higher rents. Thus, the individual landlord benefits from discrimination against families with children.

The phenomenon of people waiting longer to marry also contributes to the increased number of smaller households, which financially benefits the landlord. The median age at first marriage in 1970 was 23.2 for males and 20.8 for females; in 1988 the ages were 25.9 and 23.6, respectively (U.S. Dept. of Commerce 1988a, p.7). Single persons do not require large housing units. Presumably they can afford to allocate more of their income to housing as they theoretically have no family obligations. Furthermore, these singles desire a lifestyle which often differs from the "family-oriented" lifestyle. The social amenities that "adults" enjoy differ. Landlords who restrict units to "adults only" can provide these amenities for an increased rent. The landlord, thus realizes economic benefits.

In addition, further economic benefits for the landlord can be realized due to the increased number of households because of the postponement of

first marriages and the increased number of marriages which result in breakups. An increased number of households implies a need for an increased number of housing units. Due to lags in construction which occur in the housing industry and some housing units being restricted to a particular group, there is a shortage of available rental units which results in increased prices. Those individuals or families who are fortunate enough to secure housing will pay an inflated price for it. This inflated price now becomes the market value. The result is an economic benefit for the landlord.

The potential for economic benefits for the landlord can be further explained by looking at housing cost and income trends. Housing costs have increased dramatically over recent years. The housing price index (1982=100) for new one-family houses sold (including value of the lot) was 54.8 in 1976 and 113.6 in 1986. This is an increase of about 107% (U.S. Dept. of Commerce 1989b, p.54). According to the Consumer Price Index (CPI), rent increased nearly 104% from 1975 to 1986 (1967=100) (U.S. Dept. of Commerce 1988b, p.451). (The overall CPI increased slightly less than 93% during this same period.) While median family income for all families increased about 104% from 1976 to 1986, (U.S. Dept. of Commerce 1989a, p.445 and 1987b, p.2), the picture is not so bright for some family types. The median income for married couples (1986) was \$32,805 while that for female householders, no husband present was only \$13,647. Male householders with no wife present realized a median income of \$24,962 in 1986 (U.S. Dept. of Commerce 1987a, p.12). Female householders have the lowest median income and thus they cannot afford the price increases in the housing market. The numbers demonstrate that discrimination against single females with children (the case for many female householders, no husband present) would be profitable for the landlord. Landlords who rent only to married couples could increase the rent level (due to increased ability to pay by married couples because of fewer family obligations) and, thus, increase their incomes.

Although clearly there are individual benefits to be gained by the landlord who discriminates against families with children, there are equally clear and more compelling economic reasons not to discriminate. There are some important costs that are associated with the practice of family status discrimination. However, whereas the benefits tend to be private (or individual) in nature, the costs are often social in nature.

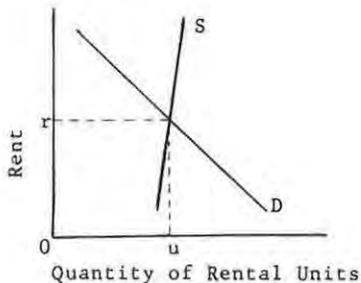
The social costs required a social solution, such as a law. This was the FHAA. The 1988 FHAA policy establishes a strategy for promoting families. Since the family is the basic economic as well as social unit of society, it follows that efforts should be taken to secure its existence. If families (with children) are continually discriminated against with respect to housing, it is possible that households will opt for fewer or no children in the future. Currently, there is concern that in the future there will be inadequate manpower to continue scientific and economic endeavors. If there are more disincentives to having children,

the future of our nation could be at greater risk than it is today.

Furthermore, there is considerable value to be realized in the consuming activities of children. In a review of the literature on the subject of children as consumers, McNeal and McDaniel reported that "...children from approximately age four and on are consumers. From an economic standpoint, they have desires and the ability to buy" (McNeal and McDaniel 1982, p.400). The annual expenditures by this group (children ages 4-12) of its own money, thus, is between two and three billion dollars--enough for many businesses to consider it a market" (McNeal and McDaniel 1982, p.401). This does not include adult money spent on children. Eliminating children from communities would, in many cases, substantially alter the nature of the economic activity of those communities.

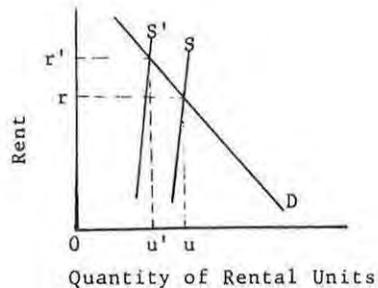
It is also the case that economic disadvantages for tenants exist when discrimination occurs. When one group is excluded from part of any market, that group must crowd into the remaining components of that market. In the housing market, this would mean the remaining housing units. There are thus some economic costs of housing discrimination which can be illustrated by use of the crowding model (Fletcher 1979). In a free market where price is the rationing factor, there exists an equilibrium rent, r in Figure 1, and an equilibrium quantity of rental units, u in Figure 1. As noted in Figure 1 by the nearly vertical supply curve, supply is relatively inelastic in the short run. That is, in the short run, it is difficult to add housing units.

Figure 1 Open Housing



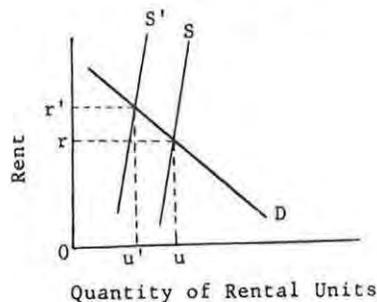
In a market where discrimination exists, the supply of housing available to members of the excluded group decreases, as illustrated in Figure 2 by the shift in supply from s to s' . This shift prompts an increase in equilibrium price (rent) from r to r' , in Figure 2, for the available units. Households with children must crowd into housing units which are available to them. Landlords of these units become price makers by virtue of the reduced supply, the relatively inelastic supply and, the necessary nature of housing. Landlords who practice discrimination will promote their rental units as quieter, better maintained, and more adult-

Figure 2 Housing Available to Households with Children After Exclusion



oriented. Because of these amenities, along with fewer units available which can "boast" about the fact that there are no children, rents will increase (Figure 3). Since it is assumed that households without children would not want to rent in units accepting children, Figure 3 reflects a

Figure 3 Housing Desirable to Households Without Children



decrease in the supply of rental units (from the total available) for households without children. Thus, in markets where discrimination exists, all tenants pay higher rents.

Although a landlord's income increases with little or no increase in costs, from a community standpoint, there is likely to be an economic loss. Given the budget constraint of any particular household, when more money is spent on one good or service, less money is available for other goods and services. The opportunity cost of higher rents in a community is less income for the butcher, the theater owner or some other community enterprise. Analogous to Thurow's contention that "...discrimination causes a large reduction in the potential level of output of the American economy" (referring to labor market practices against blacks) (Thurow 1969, p.158), residential discrimination reduces the amount of economic input for the community. The costs to society will likely supersede the gains for individual landlords. Furthermore, if this model is valid, there exists a misallocation of resources. The price (rent) has increased while it is not clear that marginal cost has changed under the practice of discrimination.

Some would contend that children are noisier, dirtier, require more facilities to accommodate their needs and generally contribute to the deterioration of a building more than do young adults or households without children. They would say that it costs more to operate a building which permits children. Consumer resources that are allocated to paying housing prices which do not reflect marginal cost are allocated in a manner similar to resources which are misallocated to purchasing monopoly services. "Too little is produced of the monopolized good. Society is less well off...than it could be" (Mansfield 1989, p.506).

The next section will discuss the social and political reasons for discrimination, focusing on equal economic opportunity which ought to exist, as the FHAA argues, for adults and families with children.

Political and Social Justice for Families with Children

The political and social reasons for discrimination against families with children are the same as reasons identified, such as race or sex, to discriminate against any particular class of people identified in the FHAA. There are, however, differences between traditional reasons not to discriminate and the kind of discrimination based on family status. Traditional political reasons against discrimination have justified constitutional as well as legislative restraints to protect special groups of people. The reasons for protection are triggered when there are unfair prejudice and false stereotypes that are no longer relevant to the political process. Discrimination against women in the job market rests on unfair prejudice. Gender is not relevant to most jobs. False stereotypes, such as the belief that women are poorer decisionmakers than men, is a gender difference that has no scientific justification as a sex difference (Powell 1988).

The traditional groups accorded the status of suspect classes reflected in the earlier Fair Housing Act, race, color, religion, sex and national origin, are there for clear reasons. One reason is that an immutable trait is a characteristic over which one has no control. Since it is not voluntary, one is not responsible for it, and thus discrimination has been viewed as politically unfair. Race or gender is not voluntary. People, however, do have some control over child-bearing or child-rearing, so people do not immutably have children.

Another reason for discrimination emphasizes a history of unequal treatment toward a class which is based upon an irrelevant, incorrect or false stereotype. Those who have nationalities other than United States or a different religion or color have been excluded from owning land. The politically powerless have often been those who have been denied civil rights. Thus unfair prejudice or false stereotypes with no basis in fact have produced constitutional and legislative protections for special groups of people. People

with children have been subject to stereotypes and prejudice.

Should families with children be protected groups? Historically families with children were not politically powerless or subject to a history of unequal treatment. In fact, they had been favored, given our traditional family values. Only recently has there been a shift toward the "adult" market. Thus the traditional reasons to protect special groups do not apply to the protection of families with children.

Since the housing industry has based its attitudes on false assumptions about families with children, the FHAA has promoted equal opportunity for all consumers. The fact that a family has children does not mean that they are parasites, and therefore need special help. The new law does not require that special help. Thus the traditional family with children that can pay wants what adults want. They want distributive justice, i.e. a fair distribution of rental property based upon affordability. They want an equal opportunity, equal access to affordable housing. They want the happiness of living where they can afford it. Finally, they want to not be stigmatized but given equal respect. They want the dignity and respect to be treated as equals in the housing market.

The tough cases, however, do not concern the traditional family with children who can afford the rent, but rather the vulnerable family with children. These include minority families, young families, single-parent families or poor families. The vulnerable family needs the protection of civil rights laws to guarantee equal opportunity because they are often objects of unfair prejudice or victims of false stereotypes. Minority families with children are already protected by the FHAA, but they may or may not be able to afford housing. The fact of being black or Hispanic, however, does not justify discrimination. Race is irrelevant to equal opportunity. Single-parent families similarly are also stereotyped. Society has beliefs about divorced parents who have children. The single head-of-household may or may not have a low income or may or may not deviate from a conservative lifestyle. Parents who are not married are not necessarily poor tenants. These attitudes of society are out of touch with reality. Young families with children either can afford the rental property or they cannot. Being young is not a relevant difference to justify discrimination. Many young families make moves based on the opportunities for their children, e.g. schools. Why should those who can afford housing be denied that opportunity?

Finally, the poor comprise a major group of vulnerable families with children. Since they cannot afford the rental housing, they can be denied equal opportunity or the same access as those who can afford the rental property. Poor families are a major concern. This could be addressed as a matter of social justice through public housing. No doubt their problems should be addressed, but this is not the issue in familial status discrimination. That issue is equal opportunity based

upon income. Irrelevant factors that deny the family with children the opportunity to be consumers are the basis of the new law.

Conclusions

Families with children are not parasites, they belong on an equal footing with other housing consumers. They want equal access to rental property. The new law addresses the issue of social justice because equal cases are treated equally unless there is a relevant difference. Children are not a relevant difference as, for example, poverty is. The FHAA guarantees equal opportunity for the adult without children as well as the family with children. The FHAA assumes that it is good business for economic reasons as well as social and political reasons not to discriminate on the basis of family status.

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