No. 71-708

In the Supreme Court of the United States

OCTOBER TERM, 1971

PAUL J. TRAFFICANTE, ET AL., PETITIONERS

v.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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CITATIONS

~~H.R. 2516, C. , 2d Sess~~—Continued

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OPINIONS BELOW

The opinion of the court of appeals is reported at 446 F.2d 1158 (Pet. App. A, 1-9). The opinion of the district court is reported at 322 F. Supp. 352.

JURISDICTION

The judgment of the court of appeals was entered on August 6, 1971, and a petition for rehearing en banc was denied on September 13, 1971. The petition for a writ of certiorari was filed on November 26, 1971, and was granted on February 22, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

The United States will discuss the following question:

Whether, under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619, tenants in an apartment complex have standing to maintain a suit against their landlord for his refusal to rent to non-whites on the basis of race.[1]

STATUTE INVOLVED

Section 810 of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3610, provides in relevant part:

> (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. * * *
>
> * * * * *
>
> (d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: * * *

[1] Petitioners also rely upon the Civil Rights Act of 1866, 42 U.S.C. 1982. See notes 6, 36 *infra*.

INTEREST OF THE UNITED STATES

In 1968, Congress enacted Title VIII of the Civil Rights Act to implement the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. The fulfillment of this objective depends in large measure on the resources available for enforcement. While the Department of Housing and Urban Development and the Attorney General have important responsibilities under Title VIII,[2] complaints by private persons are the principal method of securing compliance with the fair housing provisions, whether through conciliation or litigation.[3] Accordingly, the United States has a substantial interest in this case, where the issue concerns the class of persons entitled to prosecute complaints under Title VIII.[4]

STATEMENT

Petitioners Trafficante, a white, and Carr, a Negro, are tenants in Parkmerced, an apartment complex in San Francisco, California, having approximately 8000 residents, less than one percent of whom are non-white (Pet. App. C, at 2). On May 13, 1970, they filed separate complaints with the Secretary of Housing and Urban Development pursuant to Section 810 of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3610, which provides in pertinent part that complaints may be filed by "Any person who claims to

[2] See 42 U.S.C. 3608–3611, 3613, 3631.

[3] See 42 U.S.C. 3610, 3612.

[4] The United States participated as *amicus curiae* in the court of appeals and in support of the petition for certiorari in this case.

have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved')," 42 U.S.C. 3610(a). (Pet. App. C, at 5.) They alleged that Metropolitan Life Insurance Company, then owner of Parkmerced, had discriminated against non-whites on the basis of race in the rental of apartments within the complex, in violation of Section 804 of Title VIII, 42 U.S.C. 3604. (*Ibid.*)

Pursuant to 42 U.S.C. 3610(c), HUD notified the appropriate state agency in California of their complaints (*ibid.*). After the state agency referred the complaints back to HUD because it did not have adequate resources to deal with the charges,[5] and after HUD had failed to secure voluntary compliance within 30 days, petitioners Trafficante and Carr brought this action against Metropolitan in the United States district court under 42 U.S.C. 3610(d).

Their complaint alleged that, in violation of Title VIII, Metropolitan had discriminated against nonwhite rental applicants by, among other things, making it known to them that they would not be welcome at Parkmerced; manipulating the waiting lists for apartments and delaying action on their applications; and adopting and applying discriminatory acceptance standards (Pet. App. C, at 3–4).[6] They claimed that, as a result of these practices, they had been injured

[5] Pet App. A, at 2 n. 1.

[6] The complaint also sought relief on the basis of 42 U.S.C. 1982 (Pet. App. C, at 6).

in the following respects: (a) they had been deprived of the social benefits of living in an integrated community; (b) they had lost the business and professional advantages they would have derived from living with members of minority groups; and (c) they had been "stigmatized" within the community as residents of a "white ghetto," and had thereby suffered embarrassment and economic damages in "social, business and professional activities" (Pet. App. C, at 4–5). Plaintiffs sought an order directing Metropolitan to cease and desist from engaging in discriminatory housing practices, an award of actual and punitive damages, and reasonable attorneys' fees (Pet. App. C, at 7).

Later, the Commitee of Parkmerced Residents Committed to Open Occupancy and other Parkmerced tenants filed a complaint in intervention under Section 812 of Title VIII, 42 U.S.C. 3612, which substantially repeated the allegations of the original complaint; also, Parkmerced Corporation, which acquired the apartment complex from Metropolitan after the original complaint had been filed, was joined as a defendant (Pet. App. A, at 2).

The district court held that petitioners were not within the class of persons entitled to sue under Title VIII and dismissed the complaints. The court of appeals affirmed on the same basis (Pet. App. A). Although recognizing that the language in the statute authorizing suit by any person "who claims to have been injured by a discriminatory housing practice," 42 U.S.C. 3610(a), is "very broad" (*id.* at 4 n. 6), the court of appeals construed the statute narrowly to

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permit complaints only by "persons who are the objects of discriminatory housing practices" (*id.* at 6).[7]

ARGUMENT

INTRODUCTION AND SUMMARY

The issue in this case is one of statutory interpretation: are tenants "persons aggrieved" within the meaning of Section 810 when they have been injured by their landlord's discriminatory housing practices against non-white rental applicants? If only the language of the statute were considered we think there would be no doubt that such tenants have standing to sue as "persons aggrieved." They "have been injured by a discriminatory housing practice" and, on its face, Section 810(a) requires no more.

The legislative history of the Fair Housing Act points in the same direction. The Act was intended to eliminate the harmful consequences to both whites and non-whites of racial discrimination in housing. The damage to incumbent tenants from their landlord's exclusion of non-whites may differ from the damage to persons who are the direct objects of discrimination. But Congress recognized, throughout its consideration of the Act, the kind of injury alleged by petitioners here as incumbent tenants, and in Section 810 required only that the complainant's injury result from discriminatory housing practices.

Moreover, private complaints are the primary method of securing compliance with the Act. There is

[7] The court of appeals also held, as had the district court, that petitioners had no standing to sue under 42 U.S.C. 1982 (Pet. App. A, at 7–9). See note 36 *infra*.

no reason why Congress would have intended to exclude any group of persons who could be expected to seek enforcement in order to redress the injury they sustain, especially incumbent tenants who are in a position to know of their landlord's practices and who incur a continuing injury even when those who have been unlawfully turned away satisfy their housing needs elsewhere before the landlord's violation can be remedied.

Before turning to the specific question presented by this case, we will first discuss briefly the structure of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619, commonly known as the Fair Housing Act. The Act prohibits discrimination on the basis of race, color, religion, or national origin in the sale or rental of housing by private owners, real estate brokers, and financial institutions. 42 U.S.C. 3604, 3605, 3607. Specifically, it is unlawful to refuse to rent or negotiate for rental because of race or color; to discriminate against any person in the terms, conditions, or privileges of rental because of race or color; or to represent to any person because of race or color that a dwelling is not available for rental when the dwelling is in fact available. 42 U.S.C. 3604.

The Secretary of Housing and Urban Development is empowered to receive and investigate complaints regarding discriminatory housing practices. 42 U.S.C. 3610. The Secretary must defer to state agencies that can provide relief, but if the state agency does not act the Secretary may seek to resolve the complaint "by informal methods of conference, conciliation, and per-

suasion." 42 U.S.C. 3610(a). If these attempts fail, the complainant may proceed to court under Section 810 (d). 42 U.S.C. 3610(d).

Also, a person aggrieved may proceed under Section 812 by bringing an action in court within 180 days after the alleged discriminatory housing practice occurred. 42 U.S.C. 3612. The court may appoint an attorney for the complainant, may grant as relief an injunction, and may award actual damages and punitive damages up to $1,000, together with costs and attorney fees. 42 U.S.C. 3612(b) and (c).

In addition, under Section 813 the Attorney General may bring a civil action in federal court whenever he has reasonable cause to believe that any person "is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted" by the Act. 42 U.S.C. 3613. Such suits by the Attorney General, as well as suits by private persons under Section 812, shall "be in every way expedited." 42 U.S.C. 3614.

Thus, complaints by private persons under Section 810 or Section 812 are the primary method of securing compliance with Title VIII.[8] And, in our view, incumbent tenants alleging that they have been injured by their landlord's discriminatory housing practices against non-white rental applicants are entitled to file such complaints with the Secretary and may thereafter sue in court if the Secretary is unable to settle the matter through informal means.

[8] Section 810 is derived from Section 11 of S. 1358, 90th Cong., 1st Sess., which Senator Mondale offered as an amendment to H.R. 2516—the bill that eventually became the Civil Rights Act of 1968. 114 Cong. Rec. 2270 (1968). (As introduced and passed in the House, H.R. 2516 did not contain a fair housing title.)

After a number of cloture motions failed, see 114 Cong. Rec. 3426, 3427, 4064, 4065, the Senate passed Senator Mondale's motion to table his proposed amendment. 114 Cong. Rec. at 4570. Senator Dirksen then introduced a substitute amendment to H.R. 2516, which also contained a fair housing title. 114 Cong. Rec. at 4570–4573.

The Dirksen substitute, which the Senate later passed, 114 Cong. Rec. at 5992, and the House subsequently agreed to, 114 Cong. Rec. at 9621, retained from the Mondale amendment the provision in Section 810(a) allowing complaints to be filed by "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved')."

Section 812 is derived from the Dirksen substitute, which deleted the provisions in the Mondale amendment that would have empowered the Secretary to hold hearings and issue cease and desist orders upon complaint or on his own initiative, which orders would have been enforceable in court. See 114 Cong. Rec. at 2271–2272, 4573. (Under the Mondale amendment a complainant could also sue in court if the Secretary declined to resolve a charge or if the person aggrieved refused to consent to a settlement, see 114 Cong. Rec. at 2271 (Section 11(a)).

There are no Committee reports on Title VIII either in the House or the Senate. However, the Senate held extensive hearings on S. 1358—the Mondale amendment, see *Hearings before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency on S. 1358, S. 2114, and S. 2280*, 90th Cong., 1st Sess. (1967), and these were frequently referred to in the floor debates, see 114 Cong. Rec. at 2278 (Sen. Mondale); *Jones* v. *Alfred Mayer Co.*, 392 U.S. 409, 415 n. 16. Also, the House held hearings on the bill as passed by the Senate, see *Hearings on H. Res. 1100 before the House Committee on Rules*, 90th Cong., 2d Sess. (1968).

I

PETITIONERS ARE WITHIN THE TERMS OF SECTION 810 AS "PERSONS AGGRIEVED" BY A DISCRIMINATORY HOUSING PRACTICE

Section 810, pursuant to which petitioners Trafficante and Carr brought this action, provides in relevant part that "[a]ny person who claims to have been injured by a discriminatory housing practice * * * (hereafter 'person aggrieved')" may file a complaint with the Secretary and, if the complaint is not resolved, may bring a civil action in court, 42 U.S.C. 3610 (a) and (d). Construing a similar "standing" provision in Title VII of the Civil Rights Act of 1968, 42 U.S.C. 2000e–5,[9] the Third Circuit has held that the language Congress used "shows a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Hackett* v. *McGuire Brothers, Inc.*, 445 F. 2d 442, 446 (C.A. 3).[10] Here, the court below itself recognized that the relevant language in Section 810(a) is "very broad" (Pet. App. A, at 4 n. 6).

Under the above-quoted language of Section 810(a), it seems apparent that petitioners Trafficante and Carr are "persons aggrieved": each is a "person," see 42 U.S.C. 3602(d); each "claims to have been injured by a

[9] Under that Section, charges may be filed with the Equal Employment Opportunity Commission by "a person claiming to be aggrieved" by an unlawful employment practice, 42 U.S.C. 2000e–5(a); if the matter is not resolved by EEOC, the person aggrieved may bring a civil action in court, 42 U.S.C. 2000e–5(e).

[10] The court there held that a pensioner had standing to file a complaint against his former employer charging unlawful employment discrimination against him in the past and against all present and potential non-white employees.

discriminatory housing practice"; and each has alleged acts by his landlord that constitute violations of the Act, see 42 U.S.C. 3604. Moreover, since petitioners' allegations must be treated as true,[11] they are persons who have in fact been injured by discriminatory housing practices that their landlord committed.[12]

II

THE PURPOSE OF TITLE VIII CONFIRMS THAT INCUMBENT TENANTS HAVE STANDING TO SUE THEIR LANDLORD FOR HIS REFUSAL TO RENT TO NON-WHITES ON THE BASIS OF RACE WHEN THE TENANTS HAVE BEEN INJURED BY SUCH DISCRIMINATORY HOUSING PRACTICES

Although petitioners thus come squarely within the terms of the Act as "persons aggrieved," the court

[11] The court of appeals affirmed the district court's dismissal at the pleading stage for failure to state a claim upon which relief could be granted (see Pet. App. A, at 6 n. 8).

[12] While the original complaint in this case was brought pursuant to Section 810, which authorizes complaints to be filed and suits to be brought by all "persons aggrieved," the complaint in intervention was based on Section 812, which does not contain a standing provision. However, there is nothing to indicate that Congress intended to entitle a narrower class of persons to sue under Section 812 than under Section 810 for redress of the same violations.

Rather, Section 812, which is derived from the Dirksen substitute for the Mondale amendment, see note 8 *supra*, was added in place of the provisions empowering the Secretary of Housing and Urban Development to enforce cease and desist orders in court, *ibid.* Since under the Mondale amendment the Secretary could have issued such orders after charges had been filed by any person aggrieved, see 114 Cong. Rec. at 2271–2272, and since the Dirksen substitute was intended merely to supply a different method of enforcement for the same class of persons, Sections 810 and 812 should not be interpreted differently with respect to standing.

of appeals held that they were not entitled to prosecute complaints because Congress did not intend "to grant standing to sue to any private persons other than the direct victims of discriminatory housing practices proscribed by the Act" (Pet. App. A, at 7). But the purpose of the Fair Housing Act, as revealed by its language and legislative history, lends no support to the limiting construction the court of appeals imposed on the broad language Congress utilized; instead it confirms what the plain meaning of Section 810(a) clearly indicates—that incumbent tenants have standing to maintain actions against their landlord when they have been injured by his discriminatory practices against rental applicants.

The general purpose of the Fair Housing Act is set forth in Section 801: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. When Congress passed legislation to this end in 1968, it did so because of the severe damage that minority groups suffered as a result of housing discrimination [13] and because state laws had not been fully enforced and had therefore proven ineffective.[14]

While it was generally recognized that members of minority groups were damaged the most from dis-

[13] See, *e.g.*, 114 Cong. Rec. 2274 (1968) (Sen. Mondale); *id.* at 2279–2280, 2524–2528 (Sen. Brooke); *id.* at 2704 (Sen. Javits).

[14] See, *e.g.*, *Senate Hearings*, *supra* note 8, at 16 (colloquy between Sen. Mondale and Attorney General Clark); 114 Cong. Rec. 2705, 2706 (1968) (Sen. Javits); *id.* at 4574 (Sen. Dirksen); *id.* at 9572 (Rep. Leggett); *House Hearings* (*Part I*), *supra* note 8, at 4 (Rep. Celler).

crimination in housing, proponents of this legislation also emphasized that persons other than those who were the direct objects of discrimination had a substantial interest in ensuring fair housing since they suffered as well.[15] It was pointed out that to a large extent housing patterns had been imposed on home-seekers—both white and non-white [16]—and that the "readiness of Americans to live in mixed neighborhoods is ahead of the policies and practices of the

[15] For example, Senator Javits pointed out that housing discrimination adversely affected not only the person discriminated against but also the people in the community where he had chosen to live. 114 Cong. Rec. at 2706.

A witness at the Senate hearings testified that the "damage of racial injustice and segregation in housing is greatest on the colored people but it is placing a heavy burden on white Americans * * *." *Senate Hearings*, *supra* note 8, at 180 (statement of Algernon D. Black, Member of the Board of Directors, American Civil Liberties Union). Others noted that housing segregation contributed to a divided society, with whites and blacks hostile to one another because they had been kept apart by a wall of discrimination. *Id.* at 83 (statement of Commissioner Frankie M. Freeman, United States Commission on Civil Rights); 114 Cong. Rec. at 3124 (Sen. Hatfield).

The Secretary of Housing and Urban Development testified that fair housing legislation was needed to stabilize neighborhoods, thus benefiting both whites and blacks in the community. *Senate Hearings*, *supra* note 8, at 37; see also *id.* at 21.

And in advocating passage of the Fair Housing Act, Senator Mondale, the author of the provision at issue in this case, see note 8 *supra*, and 114 Cong. Rec. at 2277, stated that "We have learned many times over that in truly integrated neighborhoods people have been able to live in peace and harmony—and both Negroes and whites are richer for the experience." 114 Cong. Rec. at 3422.

[16] *Senate Hearings*, *supra* note 8, at 78 (statement of Commissioner Frankie M. Freeman, United States Commission on Civil Rights).

housing establishment." [17] Landlords and apartment managers, for example, often refused to rent to nonwhites on the basis of race not so much out of bigotry but because of business considerations.[18]

Of particular relevance to this case is the example, frequently cited during consideration of the Act,[19] of the discrimination experienced by a black Naval officer when he attempted to rent an apartment in a certain building.[20] The officer, in his testimony at the Senate hearings, included a letter from one of the tenants complaining of the officer's exclusion and stating that "as a tenant, I would neither approve nor want to support a policy as vicious and uncalled for as racial exclusion." [21] After referring to this officer's plight during the Senate debates, Senator Mondale, the author of the provision at issue in this case, see notes 8 & 14 *supra,* predicted that passage of the Fair Housing Act would dispel fear and ignorance and that "both Negroes and whites [would use] * * * the law in the spirit in which it was intended." 114 Cong. Rec. at 3422.[22] On the other hand, there is nothing to

[17] *Id.* at 180 (statement of Algernon D. Black, Member of the Board of Directors, American Civil Liberties Union).

[18] See, *e.g.*, 114 Cong. Rec. at 2991–2992, 2993, 3421 (Sen. Mondale); *id.* at 3127 (Sen. Hatfield); *id.* at 9599 (Rep. Corman); *Senate Hearings*, *supra* note 8, at 35 (statement of Robert C. Weaver, Secretary of Housing and Urban Development).

[19] See, *e.g.*, 114 Cong. Rec. 2277–2278, 2540, 2993, 3422 (1968).

[20] *Senate Hearings*, *supra* note 8, at 200–204.

[21] *Id.* at 202.

[22] The quotation in the text is taken from the following portion of Senator Mondale's statement (114 Cong. Rec. at 3422):

"We have learned many times over that in truly integrated neighborhoods people have been able to live in peace and harmony—and both Negroes and whites are the richer for the experience.

"Thus, a large part of the job that lies ahead of us—that of overcoming ignorance, and teaching the truths of integration—can be assigned to the role of law as a teacher. The same ignorance and fear was present in the debates over public accommodations in the 1964 civil rights law, the same horror stories with a few changes were circulated then. But the law has, on the whole, operated smoothly and well, and both Negroes and whites have used the law in the spirit in which it was intended.

"I believe the same will be true when we pass this measure. There will not be a great influx of all the Negroes in the ghettos into the suburbs—in fact, the laws of supply and demand will take care of who moves into what house in which neighborhood. There will, however, be the knowledge by Negroes that they are free—if they have the money and the desire—to move where they will; and there will be the knowledge by whites that the rapid, block-by-block expansion of the ghetto will be slowed and replaced by truly integrated and balanced living patterns."

[23] 114 Cong. Rec. at 6000.

indicate that Congress thought it had barred tenants from seeking administrative and judicial relief to prevent discrimination against those attempting to rent or that relief could be obtained only by those persons directly discriminated against.

Indeed, when Congress' evident concern with the injury resulting from discrimination against others is considered together with matters relating to enforcement of the Act, it becomes even more apparent why Congress used the broad language of Section 810(a) to define the persons entitled to file complaints and why incumbent tenants, such as petitioners, were thereby granted standing to sue. Congress knew that the Act would cover more than 52 million housing units,[23] that

state laws had made little impact, in part because they had not been enforced,[24] that non-white rental applicants would not always be sure whether they had been rejected or turned away because of their race,[25] and that under the Act complaints by private persons would serve as the primary method of discovering violations and securing compliance.[26] Thus, during the Senate debate, Senator Mondale stressed the need for, in his words, "private attorneys general" to prosecute complaints[27] and successfully opposed amendments that would have discouraged such actions.[28] It is noteworthy too that the only specific objection to the standing provision voiced in either the House or the Senate was that it was too broad.[29]

[24] See note 14 *supra*.

[25] See, *e.g.*, 114 Cong. Rec. at 2993 (Sen. Mondale); *id.* at 9599 (Rep. Corman: "There are the cases where Negroes driving about the city looking for apartments have seen 'for rent' signs in apartment house windows only to find upon inquiry that the apartment has been rented and that the landlord forgot to remove the sign. * * * Those owners who on seeing a nonwhite applicant for an apartment fake records to show that the apartment rents for twice its advertised rate.").

[26] Senator Jordan had objected to the Mondale amendment, see note 8 *supra*, which empowered HUD to issue cease and desist orders, because this would necessitate the hiring of a "whole army of employees" to ensure full enforcement. 114 Cong. Rec. at 3348.

[27] 114 Cong. Rec. at 5515.

[28] This Court has recognized the critical importance of private litigation in the enforcement of civil rights legislation. See, *e.g.*, *Newman* v. *Piggie Park Enterprises*, 390 U.S. 400, 401–402; *Allen* v. *State Board of Elections*, 393 U.S. 544, 556–557.

[29] 114 Cong. Rec. at 9604 (Rep. Pucinski).

Here, as this Court stated in *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 477, where the relevant statute authorized appeal by all "persons aggrieved" by the Commission's grant or denial of a license, "Congress had some purpose" in using such broad language.[30] We have discussed above the goals Congress sought to achieve and the policies reflected in the Act. It would be inconsistent with these congressional aims for the class of persons entitled to sue under Title VIII to be as limited as the court of appeals held.[31]

Tenants in housing facilities maintained on a segregated basis by their landlord, as well as those who have been excluded because of their race, are injured

[30] In our view the standing issue in this case is similar to the question presented in *Sanders* and is unlike *Association of Data Processing Service Organizations Inc.*, v. *Camp*, 397 U.S. 150, and *Barlow* v. *Collins*, 397 U.S. 159, because in the latter cases the relevant statute did not, as in this case and *Sanders*, have a specific provision conferring standing on a defined class of persons.

Thus, since there is no dispute that petitioners have alleged sufficient injury in fact to comply with Article III requirements, see *Sierra Club* v. *Morton*, No. 70–34, decided April 19, 1972, the question here is whether Title VIII should be interpreted to confer standing on petitioners and other incumbent tenants similarly situated.

[31] See also *Kennedy Park Homes Ass'n* v. *City of Lackawanna*, 318 F. Supp. 669, 697 (W.D. N.Y.), affirmed, 436 F. 2d 108, 112 (C.A. 2) (opinion of Mr. Justice Clark), certiorari denied, 401 U.S. 1010, upholding the standing of the Diocese of Buffalo and others to sue under Title VIII of the Civil Rights Act of 1968. Plaintiffs there claimed that the city had discriminatorily rezoned property owned by the Diocese that had been selected as a site for a low-income housing project.

by such illegal practices,[32] as Congress recognized. In their complaint in this case, petitioners have set forth in detail the nature of their injury (see statement, *supra,* p. 5).[33] There is no reason why Congress would have intended to allow suits only by rejected applicants and not by the tenants themselves.

The people already living in an apartment complex are in a position to know whether their landlord is discriminating on the basis of race; they will know the racial composition of their apartment building; they will know whether apartments are vacant while nonwhite applicants are turned away; and they will know from their own experience how prospective tenants are chosen. Moreover, the continuing injury suffered by incumbent tenants as a result of their landlord's discriminatory practices is often more amenable to effective judicial redress than is the injury to a prospective tenant who has been turned away, since the latter may satisfy his housing needs elsewhere before

[32] Compare *Nyquist* v. *Lee*, 402 U.S. 935, where this Court affirmed a district court decision, 318 F. Supp. 710 (W.D.N.Y.), which sustained the standing of white and black parents to challenge, under the equal protection clause, a New York statute limiting the authority of local school boards to desegregate their schools. The district court's decision was based in large part on the injury suffered by school children attending substantially uniracial schools as a result of restrictions on their opportunity to know and attend school with children of other races, 318 F. Supp. at 714.

[33] In addition to pecuniary loss, petitioners claim other injury, the nature of which is described in detail in the affidavit of the Associate Dean of the Harvard Medical School (Pet. App. D) and closely parallels the concerns expressed in Congress during consideration of the Act. See note 15 *supra.*

judicial or administrative relief can be secured.[34] The incumbent tenants, therefore, may often have a substantially greater incentive to bring and prosecute fully a lawsuit, and there is no reason for construing the statutory conferral of standing contrary to this reality and the plain meaning of the language Congress used.

Furthermore, where, as petitioners allege here, nonwhite applicants are told by the landlord that "residents, management and employees will create a hostile atmosphere" for them if they are accepted (Pet. App. C, at 3), suits by such persons are discouraged. They may not want to live in such a place and may thus be unwilling to sue in order to secure their right to do so. In such situations, suits by the tenants themselves are essential if private litigation is to secure full compliance as Congress intended.[35]

For these reasons, the Secretary of Housing and Urban Development, acting through the Regional Administrator, construed the statute as authorizing complaints to be filed by petitioners Trafficante and Carr as incumbent tenants (Pet. 12). But the court of appeals, by interpreting Section 810(a) to preclude suits by such tenants, apparently has also barred them from filing with the Department complaints seeking

[34] During the Senate hearings, Senator Mondale pointed out that only 12 percent of the complaints filed under state housing laws were satisfactorily closed, in part because "the complainant finds that he cannot wait out the period required for investigation and settlement" (*Senate Hearings*, *supra* note 8, at 16).

[35] See *Sullivan* v. *Little Hunting Park*, 396 U.S. 229, 237; *Barrows* v. *Jackson*, 346 U.S. 249, 259; see also note 28 *supra.*

informal conciliatory action. The Secretary's interpretation of the statute he administers is entitled to great weight. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433–434; *Udall* v. *Tallman*, 380 U.S. 1, 16. In light of this administrative construction, together with the language of the statute itself and Congress' evident purpose in using that language, petitioners are within the class of persons entitled to sue and the court of appeals erred in holding otherwise.[36]

III

THE FACT THAT THE ATTORNEY GENERAL IS EMPOWERED TO SUE WHEN THERE IS A "PATTERN OR PRACTICE" OF DISCRIMINATION DOES NOT PRECLUDE PRIVATE SUITS IN SUCH SITUATIONS

There is some suggestion in the opinion of the court of appeals that petitioners should not have standing because the Attorney General may sue under Section 813 to correct "patterns and practices" of housing discrimination (see Pet. App. A, at 6–7). But there is nothing in the language or legislative history of the Act to indicate that when a landlord's discrimination rises to such a level that a "pattern or practice" may

[36] In our view, proper resolution of the principal issues in this case, which are raised under Title VIII, will make it unnecessary for this Court to reach petitioners' additional contentions under 42 U.S.C. 1982. We note, however, that to the extent petitioner Carr claims to be a victim of tokenism in a housing development that discriminates against members of his race (see Pet. App. D, at 5–11), his complaint seems within the terms of Section 1982 as a claim that he is denied "the same right * * * as is enjoyed by white citizens * * * to * * * lease * * * real * * * property." Cf. *Jones* v. *Alfred Mayer Co.*, 392 U.S. 409; *Griffin* v. *Breckenridge*, 403 U.S. 88.

exist, private suits are or should be barred. To the contrary, the more pervasive the discriminatory practices the more need there is for private enforcement.

Congress knew, as this Court itself has recognized, see note 28 *supra*, that in light of the limited size of the Attorney General's staff, private persons would have to be relied upon, even in situations where the Attorney General is empowered to act. (At present, most of the fair housing litigation conducted by the Attorney General is handled by the Housing Section of the Civil Rights Division, which currently has an authorized strength of 22 attorneys.) In such situations, suits by individual plaintiffs are both private and public actions; they act on their own behalf, but they also sue as private attorneys general in vindicating a policy that Congress considered to be of the highest priority. See *Newman* v. *Piggie Park Enterprises*, 390 U.S. 400, 401–402.[37] To the extent that the court below viewed the availability of a suit by the Attorney General as precluding private litigation, its decision constitutes an unwarranted restriction on the resources available to combat patterns of discrimination in housing.

[37] See also *J. I. Case Co.* v. *Borak*, 377 U.S. 426, 432; *Allen* v. *State Board of Elections*, 393 U.S. 544, 556; *Perkins* v. *Matthews*, 400 U.S. 379, 392, 396.

Civil rights legislation over the past 15 years has generally contained provisions for both public and private enforcement. See, *e.g.*, 42 U.S.C. 2000a (public accommodations); 42 U.S.C. 2000c (public education); 42 U.S.C. 2000e (employment). And the fact that the Attorney General may sue has precluded neither private litigation (see cases cited above) nor the granting of broad relief in private actions, see *Griggs* v. *Duke Power Co.*, 401 U.S. 424.

CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be reversed.

Respectfully submitted.

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