

The History of Fair Housing As a Civil Right In the State of Ohio¹

1

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HISTORY OF FAIR HOUSING AS A CIVIL RIGHT IN THE STATE OF OHIO

Ohio has had a long and complicated history of the issues involved with Fair Housing, even though its own effective Fair Housing statutes are of very recent origin. It is important to understand the background to the issues in order to appreciate the need for these laws and their enforcement.

A review of the last 200 years of Ohio history suggests the following themes which impact on civil rights related to housing again and again, and are more prominent perhaps than in some other states:

- 1) Ohio as a setting of great heterogeneity and human change, in which many groups have found it necessary to jostle and vie with each other for opportunities and rights. The state has more large- and medium-sized urban areas than most, yet also celebrates small town life; it is a major Midwest farm state and also part of the Great Lakes and Appalachia; its commerce, education and industry have attracted sizeable numbers from nearly every conceivable ethnic and racial group; and with each generation someone new has come seeking a better life here. Issues of intergroup relations naturally come to the fore in such a setting and state.
- 2) Ohio as a border state, in which sectionalism of the Civil War-type produced varieties of White responses to African-Americans from one part of the state to another. This heritage also reinforced the problems African-Americans encountered during and after industrialization vs. other "ethnic" immigrants to the state, when Black Ohioans could not escape the "badge of color" in social and economic relationships. The legacy of rejection from these encounters is manifest in the experiences of Black Ohioans seeking housing justice in neighborhoods and suburbs.
- 3) Ohio's economy as a vital, yet periodically troubled, engine of prosperity whose operation has sometimes excluded African-Americans and other disadvantaged groups from full enjoyment of its benefits. Native African-Americans found that capitalist-led industrialization favored European immigrant labor or pitted the two groups against each other, fostering conflict rather than class solidarity. While White Ohioans used government subsidies to move to the suburbs in increasing numbers, Black Ohioans found themselves largely locked into central cities with aging housing and declining tax bases. The housing industry has played an active role in enforcing segregation and in opposing fair housing laws during most of this century. When other groups-such as people with disabilities and families with children-fought to broaden the fair housing laws during the 1970's and 1980's, some industry groups opposed any expansion of the fair housing laws to include other protected classes or, more subtly, tried to weaken the law by pushing for broad exemptions, limited remedies, and ineffective enforcement mechanisms.
- 4) Ohioans as a citizenry who elect leaders and approve Constitutions which have generally been less prompt and less progressive on civil rights than those of the Federal government or many other Northern states. This failure of public leadership (not limited, to be sure, to the field of civil rights) creates a vacuum, which has been entered, from time to time, by economic and social interest groups. Their advocacy of or opposition to civil rights deserves a prominent place in Ohio's history, and has shaped the tortuous yet highly exciting progress Ohio has made toward equitable housing laws.

The focus in this historical essay is on housing and other civil rights with regard to race, the principal Fair Housing issue in Ohio. Housing rights pertaining to other protected classes will deserve increasing attention in coming years.

Ohio before the First World War

In all likelihood, Ohioans have battled each other over place of residence for as long as the land has been inhabited. In the period before European settlement, other tribes decimated the Erie tribe of Native Americans. The French and British, and then the British and Americans, fought each other over who would control access to the Great Lakes and the Ohio Valley. During and after the Revolutionary War, frontiersmen or troops engaged Ohio Indians in the Battles of Piqua, the Sandusky, Fallen Timbers and elsewhere, as well as perpetrating the massacre at Gnadenhutten. The objective was to drive the Indians farther West and so secure the frontier for settlement by White yeoman farmers coming from the East Coast. The belief was that co-existence between the two groups was impossible.

The longest-running civil rights issues in Ohio have concerned African-Americans. This is despite the fact that during most of the Eighteenth and Nineteenth Centuries, the total number of Blacks living in Ohio was relatively small. At the time of statehood, there were only 337 Blacks in the Northwest Territory. On the eve of the Civil War, in 1860, "Ohio was home to just 36,700 Blacks, slightly more than two percent of the population." (FN - Knepper pp. 96,205)

The Northwest Ordinance of 1787 adopted by Congress under the Articles of Confederation stipulated that slavery would not be permitted in the Northwest Territory, whose capital was Marietta. Later, the territorial assembly meeting in Cincinnati rejected petitions to set aside this rule, though perhaps more on economic than moral grounds. In 1802, the Ohio Constitutional Convention also confirmed the new state's prohibition of slavery, though only after "hours of struggle to reconcile opposing viewpoints." (FN - Knepper p. 96) However, the Convention failed by one vote to extend the franchise to African-Americans.

Pre-statehood Ohio was actually a crazy quilt of conflicting land claims by various East Coast colonies, later states. Though ceding political claims to these lands, several states retained ownership and distributed large areas to war veterans or sold them to politically connected speculators. Thus, initial settlement in portions of Ohio could be from particular states: New Englanders in the (Connecticut) Western Reserve; Virginians in the Virginia Military District lands and along the Ohio; Marylanders and Pennsylvanians coming overland; others, including Massachusetts families, floating down the Ohio River on flatboats. This sectionalism had enormous political consequences, producing within Ohio the atmosphere and culture of a border state. And since settlement from slave holding states in southern Ohio proceeded more rapidly than New York-New England settlement in northern Ohio, the initial tone of race relations in the state was tilted toward the southern view.

These attitudes eventuated in the "Black Laws" which were state law during much of the Nineteenth Century. Historian George Knepper writes: "From the earliest days of statehood, Ohio Blacks were relegated to an inferior position. While often serving as pawns in political contests, they were denied the vote, deprived of certain basic civil liberties (e.g., they could not serve on juries or testify against Whites), banned from the militia, excluded from some public services such as the 'poor house,' and prevented from sending their children to the public schools." (Knepper - p. 204-5) As Knepper notes, enforcement of these laws varied widely, being lax or impossible in many northern Ohio communities such as Cleveland, especially in the lead-up to the Civil War.

Much of the antipathy stemmed from fears, concentrated in the southern-settlement and Ohio River counties, of an influx of freed or escaped Black slaves. For example, in 1804 the Ohio General Assembly adopted a law "designed to slow Black migration to Ohio. Upon entering the state, a Black had to post bond for \$500... and had to file evidence of his free status with local authorities." (Knepper - p. 205) Knepper writes, however, that: "Even well-disposed Whites perceived Blacks as an inferior race, incapable of developing the full equivalent of White accomplishments and virtue. Ohioans were determined to keep the state 'White Man's Country.'" (p. 205) Presumably it was easier to give lip service to civil rights in areas of the state where few Blacks lived.

The Abolitionist movement from 1830 on struck a responsive chord in various parts of the state, particularly after the inflammatory Fugitive Slave Act of 1850 and Federal court efforts to enforce it. (The Ohio General Assembly actually troubled itself to pass its own law in 1839 directing state officials to apprehend fugitive slaves, but it was in force for only four years.) Mobs in Cleveland, Wellington and elsewhere fought with bounty hunters or police to free escaped slaves who had been caught. The Underground Railroad ferried Blacks from towns such as Ripley, along the Ohio River, north to places like Painesville and Ashtabula where they were hidden in church Steeples and basements and smuggled aboard ships to Canada. Elsewhere, German freethinkers immigrating to Cincinnati gave open sympathy to African-American aspirations. Oberlin College was a center of abolitionist proselytizing. John Brown and Harriet Beecher Stowe were other Ohioans playing catalytic roles in the national movement. Although some Blacks did settle in urban and rural Ohio at this time, the emphasis was on helping those who were passing through.

The Civil War found Ohio politically divided. On the one hand, Ohioans voted strongly for President Lincoln and made one of the largest contributions of men and material to the Union war effort. On the other hand, public disaffection with the war found a charismatic spokesman in Congressman Clement Vallandigham of Dayton, a Confederate sympathizer and "Copperhead" Democrat who made a vigorous run for the governorship in 1863 even after being jailed and exiled as a security risk. In any event, the Civil War became more an issue of which White leaders would govern than of how it would help Black Americans.

Both before and after the Civil War, Ohioans held Constitutional Conventions that addressed civil rights issues. The Constitution adopted in 1851 denied the vote to both Blacks and women. The proposed Constitution of 1874 would have granted limited suffrage to women, but was defeated by popular vote. An amendment framed at the 1912 convention to give the vote to women was also defeated at the polls. Interestingly, the 1912 convention proposed another amendment to eliminate the word "White" from the Constitution as regarded voting rights. The voters rejected this also, even though Blacks had been voting in Ohio elections since 1870 by virtue of the Fifteenth Amendment to the U.S. Constitution. It took until 1923 for Ohio "to delete color as a voting criterion from its state constitution." (Knepper p. 335)

This grass roots activism sense of 19th century justice carried over to the political life of the state of Ohio. The election of John P. Green, a black, as state senator from Greater Cleveland, suggested to Ohio that the vision of a multi-racial society could be realized in Ohio. This post-Civil War open attitude peaked in 1884 with the Legislature enacting anti-bias legislation. This legislation was aimed at ending the "black codes" that prohibited blacks from taking advantage of public facilities. Specifically the legislation made it a misdemeanor "to refuse to grant to all citizens... regardless of race the full enjoyment of accommodations, advantages, facilities and privileges of such public places as inns, restaurants, theaters, barber shops." This legislation placed Ohio in a leadership role in combating racial discrimination.

As a result of the Civil War, Ohio's cities began an intense period of industrialization and population growth. While significant numbers of African-Americans lived in Cincinnati, Columbus, and some other towns, for the most part the industrial work force was staffed by Whites migrating from Ohio's farms and immigrating from overseas. To the pre-war ranks of the Irish and German Immigrants, the post-war period added much greater diversity from groups little seen before in America: Italians, Slovenians, Croatians, Poles, Lithuanians, Slovaks, and others. Sizeable numbers of Jewish and Eastern Orthodox religious adherents were added to the mix of what had been Protestant and Catholic Christian communities. Southern and Eastern Europeans were particularly prominent in the Mahoning Valley and in Cleveland. Toledo included these groups and also Mesopotamian Chaldeans spilling over from Detroit. During this period, Ohio received little immigration from Asia, Latin America, or directly from Africa.

Most of the newcomers spoke no English and many had few skills. They were not especially more qualified for industrial work than Southern or Ohio Blacks; but for the most part employers preferred to recruit overseas than in their own back yard, until the First World War necessitated a change. Employers did use Blacks from time to time as strikebreakers, to keep the threat of organized labor at

bay. This manipulated role did not nurture good race relations among African-Americans and their working class brethren of other ethnic origins.

The European immigrants initially tended to concentrate in particular neighborhoods, especially those with the least expensive housing, close to commercial centers or industrial plants, or in places where an ethnic religious parish could be organized. For example, in Cincinnati, the Over the Rhine district was a center of German settlement and culture. In Cleveland, the Central district southeast of the main market became home to many Italian and Jewish immigrants. Yet it was unusual for one White ethnic group to comprise more than 50 percent of a neighborhood. Blacks also resided in the Central district, and in many other neighborhoods of Cleveland. Prior to the First World War, patterns of residence were much more racially heterogeneous there, and perhaps in other Ohio cities, than they were to become following the Great Migration and the response of Ohio's housing industry and communities to it.

From the First World War to the 1960's

Coinciding with the First World War were several developments that set in motion great changes in race relations in Ohio cities and elsewhere in America. The presence of the first Southerner in the White House since Civil War days brought a chill to the Federal government's role in race relations. The War abruptly cut off the flow of new European immigrant labor to American factories precisely at the same time that it increased demand for American products. Employers were forced to look at domestic labor markets to fill their wartime needs. Meanwhile, the ravages of the boll weevil on the Southern cotton crop and the oppressive regime following the end of Reconstruction in the South caused many African-Americans to be receptive to recruiters. The Great Migration pushed or pulled millions of Blacks from the South to the North over the next fifty years.

Cleveland's experience was not atypical of northern industrial centers. Between 1910 and 1920, its Black population quadrupled, from 8,448 to 34,451. By 1930 the Black population doubled again, to 71,899. Blacks comprised 1.5 percent of the city's population in 1910 and 8.0 percent in 1930. (FN-Kenneth Kusmer, p. 10) An even larger migration North occurred during and immediately after the Second World War. By 1960, more than a quarter of a million Blacks lived in Cleveland.

In contrast to the previous period of history, African-Americans were becoming a significant population group in Ohio. But as they became more numerous, in Cleveland and other Ohio cities, White citizens and community social and economic institutions responded to the perceived threat. One of the more dramatically chilling responses was the emergence of the Ku Klux Klan as an organized social and political force in some parts of the state during the 1920's. However, it is certain that racist policies and practices of economic, social, and governmental institutions have had more lasting and far-reaching consequences on civil rights and especially housing rights in Ohio. Institutionalized patterns of racial discrimination enforced by government regulation or professional associations replaced looser, more sporadic instances of social bias. The mold from which urban Ohio's race relations have come for the last seventy-five years was cast at this time. A pattern of expectations for Blacks and Whites was put into place and has proved extremely durable.

In housing, real estate companies encouraged the use of restrictive covenants to bar African-Americans, and sometimes other groups, from the purchase of property in many areas. Developers of one exclusive Cleveland suburb specified that no Blacks, even those professionals who could well afford to, would reside therein. In another suburb, a neighborhood association developed a more sweeping restrictive covenant, curiously omitting Blacks (perhaps an oversight) but naming Jews and many Southern and Eastern European ethnic groups. Usually, however, as the European ethnics became "Americanized" and more economically prosperous, their money was welcomed in the real estate market; but not so for Blacks. Restrictive covenants were ruled legally unenforceable by the U.S. Supreme Court in *Shelley v. Kramer (1948)* but continued to be observed by many sellers and agents for long afterward.

The Federal government explicitly supported racial exclusion in its FHA and VA mortgage loan insurance programs for many years. FHA manuals spoke of the need to avoid introduction of "inharmonious racial groups" into all-White neighborhoods. Public housing projects built during the Great

Depression were originally racially segregated by policy, with separate projects for Blacks and Whites. When the Federal government subsidized White America's move to the suburbs after the Second World War by providing low interest home loans and convenient superhighways, Black America was relegated to the older inner city housing being vacated by Whites.

Excluded now from most neighborhoods by institutional design or by acts of individual hostility and violence, African-Americans "piled up" in the few areas open to them. Population densities in the ghetto increased as families doubled up or as large houses were cut up into many substandard "kitchenette" apartments. With demand high and supply limited, rents or prices could be higher for the same quality than in nearby White areas. Thus, there was a strong economic incentive for some real estate agents to engage in "panic peddling" or "block-busting" in targeted, usually adjacent White neighborhoods. The Lee-Harvard area of Southeast Cleveland provided many classic examples of these practices ca. 1960, with agents facilitating the move of a single Negro purchaser to a block, followed by blanketing the area with phone calls and leaflets offering to buy from edgy homeowners "before it's too late" though also probably at less than the homes were really worth. The agent could make a profit twice, selling the departing White family a new home in some suburb, and selling their old home to an eager Black family at a considerable mark-up. Banks, savings and loan associations, and insurers typically supported the practices by refusing loans to Blacks except in the ghetto or in "changing neighborhoods." The flip side of these practices was that White buyers would typically be "steered" away from such areas by the realty companies and lenders. All this was legal.

Excluded as well from the White real estate trade associations and from working in many community institutions such as hospitals, banks, department stores, law firms, and churches, Ohio Black's made their own response. They developed a strong set of parallel economic and social institutions within the ghetto. Chapters of the NAACP and the Urban League were established in many Ohio cities. To this day, the Cleveland area has two real estate bodies: the Cleveland Area Board of Realtors (CABOR-now with multi-racial membership); and the Cleveland Association of Real Estate Brokers (CAREB-a mainly Black trade association). The resources available to the ghetto institutions, however, were in no way comparable to those existing in the community at large.

Federal efforts in the late 40's laid out impressive goals such as decent and safe housing for all Americans under the Housing Act of 1949. But, in reality, urban renewal became a program of "Negro removal" from center cities throughout America. When the Brown decision was reached in 1954, as a practical matter, legally segregated schools had fallen. However, twenty years after the Brown decision, the *Milliken v. Bradley* case would in effect draw the boundary line for school desegregation at suburban boundaries, and with few exceptions would keep the white suburbs removed from school desegregation orders.

Politically, African-Americans were represented on big-city councils and school boards and had elected a few members of the Ohio General Assembly and the lower judiciary. However, there was no Black mayors in cities of any size, no Black statewide elected officials, and no Black representatives in the U.S. Congress from Ohio. The U.S. Supreme Court's ruling in *Brown v. Board of Education (1954)* was of interest but did not yet have direct relevance to public education in Ohio. While Ohio Blacks had grown in numbers in the past five decades, they had a limited voice and little real power in public life.

Changes in the 1960's and Since

Numbers combined with effective Black leadership in Ohio and the U.S. to create many civil rights breakthroughs in law during the turbulent decade of the 1960's. A more receptive public stance to civil rights, whether from positive or fearful motives, helped facilitate this progress. Because of Ohio's special nature, many of these initiatives have taken longer to implement effectively than in other Northern states. In many ways, we are still waiting for these initiatives to supplant Ohio's legacy of racial discrimination. In the meantime, new battles have arisen over newly prohibited types of unlawful discrimination, notably discrimination against persons with disabilities and families with children.

On the eve of the decade, in 1959, the Ohio General Assembly passed legislation prohibiting discrimination in employment and establishing the Ohio Civil Rights Commission. This legislation clearly made enforcement of anti-bias laws a state responsibility, although adequate funding of the work would not always be forthcoming. However, a vehicle had been created which could be brought forward to carry the issue of housing rights. Fair housing in Ohio received a boost when a young representative, Carl B. Stokes, in 1965 pushed through Fair Housing legislation in the Ohio Legislature three years before fair housing legislation became a reality in Washington, D.C. Unfortunately, the state of Ohio did not have an effective Fair Housing law for a number of years after the *Lysyj* decision of 1974 (38 O.S.2d 217, 380.0.2d 287).



This Ohio Supreme Court decision pulled the teeth out of the state Fair Housing Act, and it was not until Vernon Sykes (D-Akron) introduced H.B. 5, a state Fair Housing Law, with the support of a Democratic governor, Richard F. Celeste. Ohio had a Fair Housing Law in June 1987.

Pictured left to right, Donald B. Eager, R.J. Stidham, Governor Richard F. Celeste, Vernon Sykes, and Carl White. June 1987

In August of 1988, the Federal Fair Housing Law was amended to substantially increase the power of the Department of Housing and Urban Development to seek relief for individual claims of housing discrimination. Other amendments broadened the number of protected classes to include families with children, as well as a broad definition of handicapped.

Judith Y. Brachman, Assistant Secretary for Fair Housing and Equal Opportunity in the Reagan Administration, grandfathered the Ohio law into substantial equivalency in 1989, a goal that had eluded the state since 1965. Vernon Sykes again led the charge to enact a substantially equivalent Fair Housing law and after an incredible effort the law was passed by the Ohio legislature and signed by Governor George Voinovich in June 1992. The Ohio Civil Rights Commission issued rules in the fall of 1992, and the state of Ohio began processing Ohio Fair Housing discrimination cases in November of 1992. Meanwhile, voters during the 1970's and 1980's continued to reject amending the Ohio Constitution to permit the issuance of mortgage revenue bonds for housing. It was not until multi-family housing was removed and voters' anxiety over low-income minority housing was reduced that the issue passed in November of 1982. The Ohio Housing Finance agency was created in June of 1983 and was in political reality a wholly owned subsidiary of the Ohio Association of Realtors.

It was not until a torrent of public criticism was launched against the Agency by very active private non-profit private fair housing agencies around the state—including Housing Opportunities Made Equal in Cincinnati, the Akron Fair Housing Contact Service, Toledo Fair Housing Center, and Metropolitan Strategy Group/Cuyahoga Plan of Ohio—that the Housing Finance Agency reluctantly adopted fair housing policies and recognized the exclusion of minorities from the mortgage revenue bond program.

Meanwhile, the political power of African-Americans has expanded during the decade of the nineties. During the early nineties, Congressman Louis Stokes, representing Greater Cleveland, became one of the most powerful members of Congress. A mayoral runoff in Cleveland in 1989 featured two African-Americans, Michael R. White and George L. Forbes. Mayor White later easily won reelection. However, despite political and civil rights advances, much work remained to be in assuring equal rights for African-Americans and other racial minorities. And the battle to assure equal access to housing and other civil rights to other disadvantaged groups—such as people with disabilities and families with children—is at an early stage.

New Directions in Fair Housing Law and Advocacy

Until the enactment of the federal Fair Housing Amendments Act (FHAA) of 1988, both the Ohio and federal fair housing laws primarily protected racial and ethnic minorities against housing discrimination. The FHAA was enacted with two purposes: (1) to strengthen the administrative enforcement provisions of Title VIII; and (2) to extend the protection of Title VIII to additional individuals by including handicap and familial status as prohibited bases for discrimination.¹

Congress' intent for the Fair Housing Act in general, and the 1988 amendments in particular, is to assure all Americans equal access to adequate housing and an equal opportunity to obtain housing of their choice.² By amending the Fair Housing Act to prohibit familial status and handicap discrimination, Congress both expanded the scope of the fair housing law and made the law more relevant to persons residing in racially homogenous rural areas of Ohio. Since relatively few African-Americans or other racial minorities live in rural areas of Ohio, the fair housing laws had little impact on those areas until the enactment of the FHAA in 1988 and the subsequent enactment of "substantially equivalent" Ohio legislation in 1992. Since 1992, housing discrimination charges based on familial status or handicap have risen sharply.

By enacting the prohibition against familial status discrimination, Congress intended to enhance the civil rights of families with children and to assure the availability of affordable housing to families with children, including larger families and low-income families. During the Senate debate of the FHAA, Senator Frank Lautenberg eloquently argued in favor of the familial status prohibitions on the grounds of fairness:³

The United States stands for certain principles, which have distinguished our country. Among the most important of these is an absolute commitment to equal rights under the law. Protection against discrimination is the hallmark of our civil rights laws. Congress has made it illegal to discriminate against people in several fundamental aspects of life. Few things are as basic as shelter. The Fair Housing Act of 1968 was passed to assure equal access to housing....

Discrimination takes many faces, some more subtle than others...[as to familial status, the] issue is whether a family can live in a decent place of their own choosing or whether it is forced to live where others want them to...[t]his country needs to give more than lip service to its principles. The strength of this country is in the promise of equal opportunity for all. Surely, the right of equal access to housing is part of that promise.

This conclusion was echoed by Senator Edward Kennedy, Senate manager of the bill and an original co-sponsor.⁴

We have also taken note of increasing discrimination in our society against families. It is difficult to believe, but it has been increasingly so, particularly families with small children.

We have tolerated separate, but not equal housing for too long. We have tolerated a situation in which families with children have had second-class status. Now they, too, will benefit from the promise and reality of a fair opportunity to obtain adequate housing.

¹ See, generally, Preamble to Final Rule Implementing the Fair Housing Amendments Act of 1988, originally appearing at 54 Fed. Reg. 3232, *et seq.* (Monday, January 23, 1989), now codified at 24 C.F.R. Ch.1, Subch. A, App. 1.

² See, generally, Congressional Record of Senate Proceedings of February 3, 1986, remarks of Senator Mathias, page S 849; Congressional Record of Senate Proceedings of August 2, 1988, remarks of Senator Weicker, page S 10551.

³ Congressional Record of Senate Proceedings for August 2, 1988, page S 10558.

⁴ Id. At S 10561.

During the 1986 Senate floor discussion on the FHAA, Senator Mathias noted numerous reports by state and local human services agencies from coast-to-coast indicating that more and more families were being “forced to double up, slit up, or go homeless” because they were denied fair and equal access to quality housing.⁵ Senator Mathias cited a contemporary Washington Times news article and a 1980 HUD study concluding that 25 percent of all rental housing in the United States was completely unavailable to families, and that an additional 50 percent of the rental stock imposed significant restrictions on either the age or the number of children. Therefore, families with children lacked fair access, partly or completely, to 75 percent of all the rental housing in America. In rental cases, this had resulted in families being evicted from their homes “because they had the temerity to have babies.”⁶

In June 1988, the United States House of Representatives defeated an amendment to the FHAA striking all protections for familial status, as proposed by some House members concerned about preserving the status of elderly housing. At that time, Representative Mike Syner pointed out that the largest and fastest growing segment of America’s homeless population was comprised of the nation’s children; he argued that there was “no more pro-family legislation” which congress could approve than the familial status provisions of the FHAA.⁷ Furthermore, Representative pat Schroeder argued that the familial status provisions were necessary because of the economics of the private housing market; real discrimination against families with children begins when housing is in short supply, and it starts with denying housing to single mothers with children. It was her experience that whenever the supply of housing was tight, families would be excluded.⁸

Representative Morella argued that since shelter is a basic need, equal access to decent, affordable housing was at the core of American values. Noting that “without decent housing, quality family life is virtually impossible,” Representative Morella stated that since families with children accounted for 30 percent of the nation’s homeless population, retaining familial status protections in the FHAA would be a step toward reducing the increasing number of homeless families. With more households now headed by single mothers, Representative Morella stated that assuring families with children equal access to housing “is more important than ever.”⁹

Finally, Representative Dellums strongly urged retention of the familial status provisions, noting that “[m]any studies have shown that discrimination against children results in children too often living in substandard and overcrowded housing and contributes to the growing crisis of homelessness among families with children.” Moreover, Representative Dellums observed that adult-only housing “tends to be located in newer development areas which are predominately white areas” and that the “net result of such policies is to force minority households with children into existing ghettos, thus reinforcing racially segregated housing.”

Ohio, like the nation, has a serious affordable housing shortage, which is exacerbated by housing discrimination against families with children. In October 1998, the Coalition on Homelessness and Housing in Ohio (COHHIO) released its study, “Out of Reach: Rental Housing at What Cost?” This study analyzed the problems renters face in the private rental market in Ohio. This study found that significant numbers of renters paid burdensome percentages of their incomes in rent:

- 37 percent of all Ohio renters are unable to afford rent for a two-bedroom unit. “Unable to afford” is defined as those renters who must pay more than 30 percent of their incomes for rent.
- In all 17 of Ohio’s metropolitan areas, low-income renters must pay more than one-third of their incomes for a two-bedroom unit.

⁵ Congressional Record of Senate Proceedings of February 3, 1986, page S 849.

⁶ Id.

⁷ Congressional Record of Housing Proceedings on June 23, 1988, pages H 4680-81.

⁸ Id. At H 4683.

⁹ Id. At H 4684.

- In all 39 counties analyzed, low-income renters must pay more than one-third of their incomes for a two-bedroom unit.
- In all of 17 of Ohio's metropolitan areas and all of Ohio's 39 counties analyzed, renters who earn minimum wage would have to work between 60 and 81 hours per week to afford a two-bedroom unit. This does not take into consideration additional living expenses such as utilities, childcare, food and other necessities.

Nor is this problem of affordable housing for families with children limited to urban areas. The COHHIO study included many rural counties, including economically distressed counties such as Belmont, Brown, Lawrence, and Washington Counties. In none of the rural counties could low-income renters afford to pay the fair market rent for a two-bedroom unit under the "30 percent of income" test.

In addition to familial status, the 1988 amendments to the Fair Housing Act extended the protections of the Act to discrimination because of handicap. The FHAA had three broad purposes in relation to people with disabilities:

- to end segregation of the housing available to people who have disabilities;
- to give people with disabilities greater opportunity to choose where they want to live; and
- to assure that reasonable accommodations be made to the individual needs of people with disabilities in securing and using housing.

The intent of Congress is clear from the House Report:¹⁰

The Fair Housing Amendments Act, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

The disability rights movement played a major role in securing the Congressional passage of the disability provisions in the FHAA. Perhaps 43 million Americans (nearly 17 percent of the population) have some form of disability. People with disabilities have long been fragmented by types of disabilities, and each disability has its own advocacy group. However, "disability rights" as a concept cuts across the fragmented fields of associations covering single mental and physical disabilities. The idea of a cross-disability coalition began to take form with the independent living movement in the 1970's. All 50 states, including Ohio, now have a network of independent living centers. The Disability Rights and Education Fund (DREDF), founded in 1979, became the national legal and lobbying arm of the disability rights movement and assisted in drafting and passing the disability provisions of the FHAA and the Americans with Disabilities Act (ADA). Other, more militant organizations such as ADAPT (started in 1983) carried out demonstrations and civil disobedience to push for full access to housing, employment, public services, public accommodations, and attendant services for independent living.

Additional impetus for the 1988 handicap amendments to the Fair Housing Act came from the 1985 United States Supreme Court decision in City of Cleburne v. Cleburne Living Center.¹¹ In Cleburne, the complaint alleged that the City of Cleburne had violated the plaintiff's equal protection rights by refusing to grant a special use permit to an organization to establish a group home for mentally handicapped persons. However, the Supreme Court, by its ruling, refused to apply strict scrutiny to discrimination against disabled people. The Cleburne decision convinced advocates for the disabled and sympathetic members of Congress that legislative protections for persons with disabilities were needed.

¹⁰ Fair Housing Amendments Act committee Report, H.R. Rep. No. 711, 100th Cong., 2d Sess. 3355 (1988).

¹¹ 473 U.S. 432 (1985).

The FHAA provides broad protections for persons with disabilities. As with race, sex, familial status, etc., the handicap provisions of the FHAA prohibit outright discrimination, such as refusing to rent or sell to individuals or trying to evict them because of a handicap. But the handicap provisions of the FHAA contain three unique categories of unlawful discrimination. The first category is a refusal to allow a reasonable modification of the premises at the request of a person with disabilities. The second category is a refusal by a landlord or other housing provider of an individual's request for a reasonable accommodation in rules, policies, practices, or services to enable him or her to acquire or enjoy a unit. The third category is a landlord's or other housing provider's failure to make certain units of newly constructed multi-family housing (first made available for occupancy on or after March 13, 1991) accessible to disabled persons who are mobility-impaired. These three additional requirements are powerful tools that require landlords and other housing providers to take affirmative steps to ensure that people with disabilities have an equal opportunity to use and enjoy their living environment in the same manner as all members of society.

As relatively new areas of fair housing law, both familial status and handicap discrimination laws continue to evolve through court decisions, HUD rules and policy changes, and new legislation. For example, on December 28, 1995, the President signed into law the Housing for Older Persons Act (HOPA), which broadened the definition of "housing for older persons" that is exempted from the familial status law. On December 22, 1998, HUD promulgated a new policy governing occupancy standards that will allow many landlords and other housing providers to deny housing to families with children by applying a "two persons per bedroom" standard. More recently, State Representative Amy Salerno has introduced, and the Ohio House of Representatives has passed, legislation (HB 264) that substitutes the term "disability" for the term "handicap" in the Ohio antidiscrimination statutes. Another pending bill, HB 338, would require Ohio real estate appraisers initially to complete a course on federal, state, and municipal fair housing law in order to be eligible for certification or licensure as a real estate appraiser.

Moreover, there is a growing awareness that unlawful housing discrimination is pervasive in both urban and rural areas. Historically, civil rights agencies and advocates have concentrated their resources and efforts on eradicating unlawful discrimination in urban areas because of the large population of African-Americans and other racial minorities, the early focus on race discrimination, the paucity of civil rights attorneys in rural areas, and the highly visible pattern of racially segregated urban housing as manifested by the existence of the inner city ghetto.

However, there is now a growing focus on combating housing discrimination in rural areas. There are several reasons for this change. First, the newer types of unlawful discrimination—familial status and handicap—are just as prevalent in rural areas as in urban areas. If anything, problems of familial status and handicap discrimination may be more severe and pervasive in rural areas because of the smaller housing supply, greater geographic distances and related mobility barriers, the absence of local fair housing agencies or civil rights attorneys, and the greater predominance of unsophisticated "mom-and-pop" landlords and property owners in rural housing markets. In addition, both legal aid and private attorneys in rural areas have successfully challenged some discriminatory practices and those precedents have encouraged more challenges to discriminatory housing practices in rural areas. Finally, many low-income families with children in rural areas live in mobile home parks. There has not been aggressive enforcement of the fair housing laws against mobile home parks and some are designated for "older persons" only.

The Ohio Civil Rights Commission (OCRC) has also refocused its energies. It has experienced a large increase in the numbers of fair housing and handicap discrimination claims being filed with the agency. Both the OCRC and HUD have expanded their community education and outreach efforts. Enhanced funding for the OCRC, resulting in the hiring of more investigators and the acquisition of computers, has improved the capacity of the OCRC to investigate charges of housing discrimination in rural areas of Ohio.

Additionally, many small cities have established local fair housing agencies and passed local fair housing ordinances. In several rural counties, local legal aid programs have received funding to do fair housing education, outreach and cases. The Ohio Department of Development, the Metropolitan Strategy Group, and the Ohio Fair Housing congress have all devoted greater resources to educational efforts on

fair housing and served as clearinghouses for the dissemination of information to civil rights and housing advocates throughout the state of Ohio. At the same time, housing coalitions focused on issues of housing affordability and availability—such as COHHIO and the Rural Housing Coalition—now recognize that there is a strong relationship between housing discrimination and housing accessibility, and have advocated for stronger enforcement of the fair housing laws. Also, professional associations of realtors, architects, and apartment owners have conducted national, state, and local fair housing trainings for their members.

In summary, the story of Fair Housing and other civil rights in Ohio has engaged its people from its beginnings as a state. Battles over civil rights and housing discrimination predate the codification of the Ohio and federal civil rights laws. But it was these new laws and the establishment of enforcement mechanisms within HUD and OCRC that first provided victims of discrimination powerful and effective legal tools for combating and deterring housing discrimination. The enactment of these laws also sent a clear societal message: housing discrimination based on race, color, national origin, sex, handicap, or familial status will not be tolerated. It is up to everyone to make that message a reality for all protected classes and in all parts of Ohio, including small cities, rural areas, and more sparsely populated areas of the state.

History Of Ohio Laws Against Discrimination

July 29, 1959²

Enactment of Ohio's Fair Employment Practices Law prohibiting discrimination by reason of race, color, religion, national origin or ancestry.

The Ohio Civil Rights Commission was established by the Ohio Legislature as the state agency responsible for enforcing the laws against discrimination.

October 24, 1961

Enactment of law prohibiting discrimination in places of public accommodation.

October 30, 1965

Enactment of law prohibiting discrimination in housing, but limited to commercial housing. This designation excluded all residences designed for two families or less which were occupied by owners. The 1965 amendment specifically excluded injunctive relief.

November 12, 1969

Law amended and broadened to include all housing.
Enactment of law prohibiting discrimination in burial lots.

December 19, 1973

Enactment of law prohibiting discrimination by reason of sex.

January 14, 1976

Enactment of law prohibiting discrimination in credit.

July 23, 1976

Enactment of law prohibiting discrimination by reason of disability.

August 18, 1976

Enactment of law prohibiting discrimination by reason of age in credit.

November 13, 1979

Law prohibiting discrimination by reason of age broadened.

July 26, 1984

Enactment of law prohibiting discrimination by institutions of higher education by reason of handicap.

September 28, 1987

Housing discrimination law amended and broadened.

May 31, 1990

Age law amended to read 40 and above.

² The first laws against discrimination were introduced in the Ohio General Assembly in 1945. But it took 14 years and 7 General Assemblies to pass Ohio's first state statutes protection the civil rights of citizens. (From an archive report approximately 1980- *State Agencies in Ohio: Their Role in Eliminating Segregated Housing* prepared by The Housing Advocates)

June 30, 1992

Housing law amended to add familial status as a protected class to bring state law into conformity with Title VIII of the Fair Housing Act of 1968; housing law further amended and broadened; state law amended to bring it into conformity with 1990 Americans with Disabilities Act.

December 16, 1999

H.B. 264 changes the word “handicap” to “disability” throughout the Ohio Revised Code.

The bill will not change the definition of disability under the law. Currently, the term handicap is defined as a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

May 17, 2007

Governor Ted Strickland signed Executive Order 2007-10S establishing a policy against discrimination based on sexual orientation or gender identity by State of Ohio Cabinet agencies or Boards or Commissions in making the following employment-related decisions: hiring, layoff, termination, transfer, promotions, demotions, rate of compensation, or eligibility for in-service training programs.

March 24, 2008

On December 20, 2007, Governor Strickland signed into law the “Ohio Veterans Package” (Sub. H.B. 372), which is intended to support members and veterans of the armed services. Perhaps the most significant change made by the statute is the addition of “military status” to the list of protected classes under R.C. 4112.02. This change means that discrimination is prohibited based on military status in the same way as on the basis of race, color, religion, sex, age, national origin, ancestry, or disability. The Act defines “military status” as “service in the uniformed services,” including voluntary or involuntary service in the U.S. armed forces, full-time National Guard duty, and duty or training for the Ohio