WASHINGTON
LEGISLATIVE OFFICE

June 4, 2015

RE: ACLU Opposes Garrett Amendment to H.R. 2577, the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2016

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Dear Representative:

On behalf of the American Civil Liberties Union ("ACLU"), we write to urge you to **oppose Rep. Scott Garrett's Amendment to the fiscal 2016 Transportation, Housing and Urban Development, and Related Agencies ("T-HUD") Appropriations Act**. A recorded vote on this amendment is anticipated on the House floor today.

Vote NO on Representative Garrett's Amendment to H.R. 2577

Representative Garrett's Amendment would prohibit the Department of Housing and Urban Development (HUD) from using funds in the fiscal 2016 T-HUD appropriations bill to "implement, administer, or enforce the final rule entitled 'Implementation of the Fair Housing Act's Discriminatory Effects Standard'…(78 Fed. Reg. 7 11460; Docket No. FR-5508-F-02)." This rule enforces sections of the Fair Housing Act that bar discriminatory conduct (24 C.F.R. 100), including those practices that have a discriminatory effect, "where it predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin."

The ACLU recommends opposing the amendment for the following reasons:

- **The Garrett Amendment would seek to overturn almost fifty years of congressional intent and federal courts' approval of the disparate impact standard.** When the Fair Housing Act was enacted in 1968, Congress recognized that it was necessary to prohibit all forms of discrimination including that resulting from discriminatory intent, as well as acts neutral on their face which had a discriminatory effect.[1] In 1988, Congress extended the coverage of the act to prohibit discrimination based on familial status and disability, and also enhanced the Department of Housing and Urban Development's (HUD) authority to interpret the Fair Housing Act by giving the agency the power to

[1] Senator Edward W. Brook, a co-sponsor of the Fair Housing Act observed that the Act "recognize[d] the manifold and insidious ways in which discrimination works its terrible effects," and aimed to undo the "practical result" of discriminatory policies and break the "dreary cycle of the middle-class exodus to the suburbs and the rapid deterioration of the central city." 114 Cong. Rec. 2085 (1968) at 2279-80. For a detailed discussion of the legislative history of the Act, see Brief of Current and Former Members of Congress as Amici Curiae in Support of Respondents, Township of v. Mt. Holly Garden Citizens in Action, Inc., (2013) (No.11-1507), available at: https://www.aclu.org/racial-justice-womens-rights/township-mt-holly-v-mt-holly-gardens-citizens-action-incamicus-brief.

conduct formal adjudications and to issue regulations interpreting the Fair Housing Act. Furthermore, between 1968 and 1988, all nine courts of appeals which considered the issue, concluded that the act permitted the use of disparate impact claims to fight discrimination in all of its forms.[2]

- **The Garrett Amendment would remove protections for people of color against discriminatory housing practices that were prevalent during the recent economic crisis.** Cases challenging the lending practices which brought about the economic crisis that threatened the economy as a whole, but had particularly serious consequences on individuals and communities of color illustrate that the disparate impact standard is a careful, measured way of protecting all Americans from discrimination. In the wake of the economic crisis of 2008, discriminatory lending practices, which included providing high risk subprime loans to members of communities of color became increasingly prevalent. Despite repeated attempts to blame the recipients of these mortgages for these loans with the suggestion that a combination of their greed and their lack of creditworthiness was the cause of their problems, the evidence shows that in 2005, 55 percent of subprime borrowers had sufficiently high credit scores to qualify for prime loans.[3] People of color were disproportionately included in that number. A joint report from HUD and the Department of the Treasury found that, as of 2000, "borrowers in black neighborhoods [were] five times as likely to refinance in the subprime market than borrowers in white neighborhoods," even when controlling for income.[3] Even more striking was that "[b]orrowers in upper-income black neighborhoods were twice as likely as homeowners in low-income white neighborhoods to refinance with a subprime loan."[4]

- **The Garrett Amendment would remove crucial legal protections for women and children who face eviction or housing denials based on domestic and sexual violence perpetrated against them.** Discriminatory housing policies contribute to and exacerbate the housing crises faced by victims. However, many of the housing policies that can punish victims – such as zero tolerance-for crime policies (sometimes referred to as one-strike policies), or policies that explicitly target victims of domestic and sexual violence – are facially neutral. Disparate impact analysis reveals how these policies adversely impact women and girl, who make up the vast majority of victims of domestic and sexual violence. It also allows survivors to challenge housing policies that, when enforced against them, eliminate housing options and endanger their safety.

- **The Garrett Amendment would remove protections that the disparate impact standard provides for disabled veterans and people with disabilities.** The disparate impact standard requires that landlords cannot require that tenants have a job. All income must be considered. This allows disabled vets who receive veterans' benefits to be able to find apartments. Elimination of the disparate impact would make it considerably more difficult to bring federal cases challenging policies which imposed arbitrary policies unrelated to any legitimate interest. Although some states and municipalities have laws forbidding discrimination based upon

[2] *See Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934-35 (2d Cir. Apr. 5, 1988), *aff'd in part*, 488 U.S. 15 (1988); *Rizzo*, 564 F.2d at 146-47 (3d Cir. 1977); *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982); *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1386 (5th Cir. 1986); *Arthur v. City of Toledo*, 782 F.2d 565, 575 (6th Cir. 1986); *Village of Arlington Heights*, 558 F.2d at 1288-89 (7th Cir. 1977); *City of Black Jack*, 508 F.2d at 1184-85 (8th Cir. 1974); *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1311 (9th Cir. 1982); *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1559 n.20 (11th Cir. 1984). After 1988, two more circuits considered this question. As a result, eleven total circuits have held that disparate-impact claims are cognizable under the Act. *See Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 49 (1st Cir. 2000); *Mountain Side Mobile Estates P'ship v. HUD*, 56 F.3d 1243, 1251 (10th Cir. 1995). The D.C. Circuit has yet to resolve the issue. *See 2922 Sherman Ave. Tenants' Ass'n v. District of Columbia*, 444 F.3d 673, 681 (2006).

[3] Rick Brooks & Ruth Simon, Subprime Debacle Traps Even Very Credit-Worthy, Wall St. J., Dec. 3, 2007.

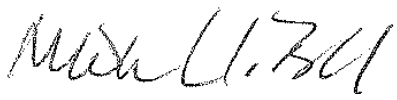
[4] U.S. Department of Housing and Urban Development. Curbing Predatory Home Mortgage Lending (2000) at 47- 48, available at: http://www.huduser.org/Publications/pdf/treasrpt.pdf.

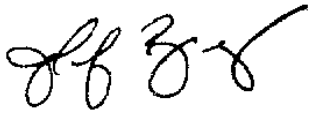
source of income, those protections are far from being universal. As a result, groups who rely on sources of income other than full time employment, which could include disabled veterans, single mothers receiving child support or public assistance, people with disabilities on Social Security, or any other persons who is fully able to meet financial obligations relating to housing could be unfairly excluded from housing opportunities. Furthermore, elimination of the disparate impact standard would make it more difficult for individuals who are unable to hold full-time jobs, such as disabled veterans and other people with disabilities—a protected class—to have any recourse to enforce their rights.

ACLU strongly urges the House to vote NO on the Garrett Amendment to H.R. 2577.

For more information, please contact Jennifer Bellamy, Legislative Counsel, at (202) 715-0828 or jbellamy@aclu.org.

Sincerely,





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