

10-1032 MAGNER V. GALLAGHER

DECISION BELOW: 619 F.3d 823

LOWER COURT CASE NUMBER: 09-1209

QUESTION PRESENTED:

The Fair Housing Act makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer ... or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). Respondents are owners of rental properties who argue that Petitioners violated the Fair Housing Act by "aggressively" enforcing the City of Saint Paul's housing code. According to Respondents, because a disproportionate number of renters are African--American, and Respondents rent to many African--Americans, requiring them to meet the housing code will increase their costs and decrease the number of units they make available to rent to African-American tenants. Reversing the district court's grant of summary judgment for Petitioners, the Eighth Circuit held that Respondents should be allowed to proceed to trial because they presented sufficient evidence of a "disparate impact" on African-Americans.

The following are the questions presented:

1. Are disparate impact claims cognizable under the Fair Housing Act?
2. If such claims are cognizable, should they be analyzed under the burden shifting approach used by three circuits, under the balancing test used by four circuits, under a hybrid approach used by two circuits, or by some other test?

CERT. GRANTED 11/7/2011