

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL FAIR HOUSING ALLIANCE,
TEXAS LOW INCOME HOUSING
INFORMATION SERVICE, and TEXAS
APPLESEED,

Plaintiffs,

STATE OF NEW YORK,

Proposed Intervenor-Plaintiff,

v.

BEN CARSON, Secretary of the U.S.
Department of Housing and Urban
Development, in his official capacity,

And

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Defendants.

Civ. Action No. 1:18-cv-01076-BAH

Pursuant to 28 U.S.C. § 1746(2), I, RuthAnne Visnauskas, hereby declare as follows:

1. I am the Commissioner/Chief Executive Officer of New York State Homes and Community Renewal (NYSHCR).
2. NYSHCR is a consolidated leadership platform of associated New York State executive agencies and public benefit corporations, all created by state legislation, with the shared mission to build, preserve and protect affordable housing and increase home ownership across New York State.
3. NYSHCR is comprised of five agencies, which are the Division of Housing and Community Renewal (DHCR), the Housing Trust Fund Corporation (HTFC), the Housing Finance

Agency (HFA), the State of New York Mortgage Agency (SONYMA), and the Affordable Housing Corporation (AHC).

4. New York State receives funding from the U.S. Department of Housing and Urban Development (HUD) through several grant programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program, the Emergency Solutions Grant (ESG) program, and the Housing Opportunities for People with AIDS (HOPWA) program.

- a. The primary goal of the CDBG program is to develop viable communities by providing decent housing, a suitable living environment and expanding economic opportunities, principally for persons with low and moderate incomes. In addition to facilitating housing-related activities that support the State's affordable housing goals and objectives, the New York State CDBG Program also provides non-housing assistance to communities and local units of government for economic development and public facilities. In 2017, New York State received \$45,611,334 from the CDBG program.
- b. New York State uses funds from the HOME program to fund the NYS HOME Local Program, which funds a variety of residential housing activities to expand the supply of decent, safe, and affordable housing throughout the State of New York. In 2017, New York State received \$18,592,698 from the HOME program.
- c. New York State uses funds from the ESG program to coordinate activities to enhance the quality and quantity of homeless facilities, services for homeless persons, including rapid re-housing, and services to those at risk of homelessness. In 2017, New York State received \$6,562,502 from the ESG program.

d. New York State uses funds from the HOPWA program to support housing assistance and connected supportive services for persons with AIDS. The State also uses HOPWA funds to pay for short-term rent and mortgage and utility payments for persons with HIV/AIDS who are at risk of becoming homeless and to provide similar funding for persons with HIV/AIDS who are at risk of homelessness to not-for-profit agencies. In 2017, New York State received \$2,482,680 from the HOPWA program.

5. New York State distributes funding that it receives from HUD to local counties, municipalities and for HOPWA, to non-for-profit organizations, that do not receive funding directly from HUD. Forty-nine large counties and municipalities in New York State receive funding directly from HUD and manage their HUD programs independently of New York State. These communities are known as HUD “Entitlement Jurisdictions.” New York State and each of the Entitlement Jurisdictions must conduct and submit various planning and reporting documents to HUD, including a Consolidated Plan.

6. New York State welcomed the Affirmatively Furthering Fair Housing (AFFH) Rule issued and made final by HUD in 2015 (80 Fed. Reg. 42,272 (July 16, 2015)). Under the AFFH Rule, states and Entitlement Jurisdictions that are required to submit a Consolidated Plan must also complete a detailed Assessment of Fair Housing (AFH), a planning document that includes a diagnosis of local fair housing impediments and actionable plans to address them. HUD outlined a process, provided data sets, and formulated a Local Government Assessment Tool in order for local governments, like the Entitlement Jurisdictions within New York State, to complete the AFH.

7. New York State takes seriously its statutory obligation, found in the Fair Housing Act of 1968 and triggered by the State’s receipt of HUD funds, to affirmatively further fair housing

throughout the State. To fulfill this commitment, the State depends on both HUD and local jurisdictions contributing to the State's efforts to promote integration and genuine housing choice.

8. NYSHCR is concerned about the suspension of the AFFH Rule through the withdrawal of the Assessment Tool, the reinstatement of the "Analysis of Impediments to Fair Housing Choice," and the harm that results to the State and its residents. These decisions mean that localities that are Entitlement Jurisdictions are suspended from the requirement that they submit an AFH. As such, the State will not be able to include the data and analysis resulting from those AFHs in its own analysis, and further, will not be able to rely on the actionable items from the AFHs to further promulgate regional and/or coordinated plans that combine approaches and strategies from each Entitlement Jurisdiction's localities.

9. The AFH process is necessary for localities to analyze and address impediments to fair housing choice and historical patterns of residential segregation. Using the Assessment Tool and HUD-provided data, localities' AFHs would have identified the contributing factors for segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs. The AFFH Rule's standardized process and formalized rules optimize NYSHCR's ability to analyze local government plans, improving NYSHCR's operations and making them less resource-intensive.

10. For its AFH plan due in 2021, NYSHCR would have sought (and if available will use) the AFH plans of other New York Entitlement Jurisdictions. The AFH plans from these cities and communities are critical to NYSHCR's ability to complete its own fair housing analysis. Due to the suspension of the Rule, NYSHCR can no longer rely on the availability of that data and analysis from the Entitlement Jurisdictions, and will be required to engage consultants to ensure the data obtained from the Entitlement Jurisdictions is available to the extent possible during its lengthy

planning process. Even so, it is implausible at the State-level to get the granularity of analysis that would be enabled by a local jurisdiction's conducting its own AFH and sharing its findings with the State.

11. Not only does NYSHCR rely on data and analysis provided by Entitlement Jurisdictions, NYSHCR also relies on their local responses and action plans to fair housing challenges as part of its own planning process on addressing housing barriers. These HUD Entitlement Jurisdictions, which include the most populated cities and counties in New York State, manage their fair housing planning and housing programs independently of NYSHCR and are in the best positions to identify local impediments to fair housing choice and take meaningful actions to address these barriers. Information about how these jurisdictions intend to fulfill their obligation to affirmatively further fair housing informs New York State in how it will do the same.

12. New York State needs all its localities to identify and analyze barriers to fair housing and take steps to increase access to affordable housing – regardless of an individual's race, ethnicity, family status or disability. Local solutions, identified by and carried out by local governments and their constituents, are needed to address those local policies or practices that deny access to fair housing choice and may perpetuate residential segregation within these HUD Entitlement Jurisdictions. The AFH Rule and the Assessment Tool do exactly that.

13. Local governments' AFH plans inform New York State in how it will work to address barriers to housing, as well as its overall housing policy. For example, barriers to fair housing identified by localities help NYSHCR prioritize its actions to affirmatively further fair housing on the state level and identify programmatic and policy needs. NYSHCR also anticipated using local government AFH plans to determine gaps in responses to issues plaguing different areas and

geographies and how to address these issues on a macro level with the full force of New York State.

14. While statewide policies and legislation are critical to reducing discrimination and segregation statewide, certain other policies and legislative changes can only be affected at the local level. Exclusionary zoning practices, for example, have long been recognized as a contributing factor to residential segregation. These ordinances, even if identified as an impediment to housing at the State level, cannot currently be changed at the State level. They are largely within the purview of local municipalities. If these jurisdictions are not required to take actions to identify and address such practices through a meaningful AFH process, there is little that the State can do in their stead.

15. The suspension of the AFFH Rule's requirements frustrates New York State's own ability to identify barriers to housing and affirmatively further fair housing statewide. New York State is reliant on the work done by local municipalities in actively identifying and addressing impediments to housing and contributing factors to residential segregation. Without a sufficient commitment by local jurisdictions to do their part, there will be areas of entrenched policy and practice that cannot be reached by NYSHCR desegregation efforts.

16. HUD's decision to reinstate the Analysis of Impediments process – in which Entitlement Jurisdictions certify to the completion, but do not have to submit to HUD, an Analysis of Impediments to Fair Housing Choice (AI) – is inadequate. The AIs completed by the 48 Entitlement Jurisdictions (exclusive of New York City) and evaluated by New York State in preparation of its own 2016 AI demonstrate that the current AI process largely does not result in meaningful evaluations of fair housing barriers and action items on local levels, and thus does not fill the gap left by the delay of the AFFH Rule.

17. NYSHCR found that many localities needed to undertake a more rigorous process of assessing local fair housing issues and creating a plan to address them. For example, the localities' AIs did not: adequately analyze local impediments to fair housing choice and identify meaningful actions to address these barriers; reflect sufficient outreach to minorities and members of the protected classes in the development of the AI; demonstrate an understanding of fair housing issues and laws; contain an adequate level of data analysis to fully assess the existence of demographic and housing trends and conditions that disproportionately impact members of protected classes; or include an adequate level of policy analysis and its impact on the protected classes.

18. Most jurisdictions did not review their previous AIs and the progress achieved (or lack thereof) as part of the development of new and continuing strategies to affirmatively further fair housing. For example, most jurisdictions did not review how their zoning ordinances affected developers' ability to construct new multi-family housing without a special permit or public hearing, which may directly impact NYSHCR's ability to fund the development of affordable housing in low-poverty areas that may be segregated. Additionally, some jurisdictions failed to include a clearly stated list of impediments in their AIs.

19. NYSHCR's work to increase access to affordable housing, decrease racially concentrated areas of poverty, and develop multifamily housing in historically segregated, low-poverty areas with well performing schools, is frustrated by the inadequate AI system, which lacks a structured decision-making process. The lacking oversight by HUD and the suspension of the Assessment Tool for Local Governments only compounds this problem.

20. Regressing to the AI process, which did not include the HUD assistance necessary for many jurisdictions to complete fulsome and actionable fair housing plans, increases the risk that

jurisdictions will not be able adequately address fair housing issues, including segregation and the resulting harms.

21. Based on NYSHCR's experience, smaller jurisdictions that have fewer resources to commit to gathering the information and conducting the demographic analyses that are required to evaluate fair-housing issues, goals, and priorities may have difficulty being able to complete the robust AFH process without the HUD assistance contemplated in the AFFH Rule. Absent the AFFH Rule, and the standardization, data and technical assistance that it affords, these jurisdictions and others may decline to engage in the AFH process.

22. Inadequate local responses to segregation harm New York State as a whole because of their impact on State planning and State residents, in addition to other State goals. For example, depressed home values in segregated areas of concentrated poverty lower the State's tax base and limit its ability to invest in building affordable housing.

23. The perpetuation of segregation is also detrimental to New York families and to the State, because residential segregation worsens outcomes for individuals and families. Young children that move from high-poverty, highly-segregated areas to lower-poverty neighborhoods improve their social outcomes. These children see a drastic increase in total lifetime earnings, employment rates, mental and physical health and subjective well-being compared to those children who remain in high-poverty areas.

24. NYSHCR acknowledges that the AFFH Rule requires investments of time and money, among other things, but we believe that the process is worth the expenditures because of the tangible benefits it can produce for the State and its residents.

25. In anticipation of the Rule's requirements, and because the AFH plan framework provided more precise standards and a fair housing planning model, NYSHCR devoted time and resources

to adopt and implement the AFH framework of the AFFH Rule in its 2016 Analysis of Impediments to Fair Housing Choice. NYSHCR relied on the clear guidance in the AFFH Rule and modeled its analysis on the AFFH Rule's Assessment Tool published by HUD.

26. The AI analyzed various categories directly set forth in the Assessment Tool, as follows: (a) segregation levels in the jurisdiction; (b) racially and ethnically concentrated areas of poverty in the New York State Entitlement Jurisdiction; (c) disparities in access to community assets or opportunity; (d) disproportionate housing needs; and (e) fair housing enforcement and outreach capacity.

27. NYSHCR's public engagement process, how it was documented in the AI and how it informed the findings and recommendations of the AI, were modeled after the AFFH Rule. A central component of the AI consisted of a statewide dialogue on policies, regulations, and practices relating to housing that was intended to establish communication with communities across New York State. The community participation plan for NYSHCR's AI involved outreach to those populations who have historically experienced exclusion, including racial and ethnic minorities, limited English proficient (LEP) persons, and persons with disabilities.

28. Additionally, NYSHCR employees attended HUD trainings on the AFH process, which they found to contain useful feedback from those who had completed the AFH process previously. Voluminous and well laid-out resources and materials were provided at these trainings on how to complete the AFH. One of these employees also had the opportunity to ask questions of HUD staff and was confident that one could complete an AFH after the training.

29. New York State believes that a detailed, fact-driven evaluation is important for identifying the different fair-housing issues that a particular jurisdiction may face, and that most of the time,

effort, and expense required to complete such an evaluation is not necessarily a function of the AFFH Rule itself but rather the complexity of analyzing and addressing fair housing issues.

30. For the foregoing reasons, it is NYSHCR's hope that the AFFH Rule be fully implemented not only across local governments, but across the full range of HUD recipients, including New York State, as soon as possible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of June, 2018



RuthAnne Visnauskas