



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
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Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Select Committee on Housing
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Presented by James D. McGaughey
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Good afternoon and thank you for the opportunity to comment on **Proposed Bill No. 50, AN ACT CONCERNING HOUSING FOR THE ELDERLY.**

This bill would change the eligibility rules for admission to state funded housing projects that are currently available to both older people and younger people with disabilities. The bill would limit admission to only people who are 62 years old or older. Our Office opposes this proposal for several reasons:

First, it has long been the policy of Connecticut to encourage and provide support for the development and subsidization of undifferentiated housing for both seniors and younger people with disabilities. This policy is reflected in the statutory definition of the term "elderly persons" in C.G.S. § 8-113a(m), which has, since 1961, included persons, regardless of age, "who have been certified by the Social Security Board as being totally disabled under the Social Security Act, or by any other federal board or agency as being totally disabled". The program created by this statute recognizes that seniors and people with disabilities share a common need for safe, affordable, accessible housing, and that for many, this is a need that cannot be met through the private housing market. Over the years, this policy has had many benefits, not the least of which has been provision of decent, secure homes for a great many individuals, some elderly, some with disabilities, many who fit both categories. Indeed, one of its benefits has been the formation of many long-lasting, positive relationships amongst tenants. Any move to step back from this tradition of undifferentiated availability of subsidized housing for seniors and people with disabilities would constitute a troubling sea change in State policy.

Second, the stock of affordable, accessible housing is already woefully inadequate. Our Office periodically holds or participates in consumer forums on disability issues. I cannot recall a forum held at any time in the last 20 years when the need for more – much more - affordable, accessible housing has not been among the top two or three issues identified. The Information and Referral unit of our Office receives hundreds of calls each year from people with disabilities who are seeking housing and cannot find any. Improvements in home care and other community-based support services have increasingly made it possible for many people with physical and mental disabilities to live in their own homes rather than in a nursing home or other facility. Indeed, preliminary planning information gathered in the wake of the U.S. Supreme Court's *Olmstead* decision indicates that in Connecticut as many as 1500 people now living in long term care facilities are

interested in moving out and living independently, and the Governor's budget projects that at least 500 of these individuals will move in the coming year. So the need for affordable, accessible, safe, decent housing is probably greater now than it has been at any time since the late 1940s. Seen in this context, any policy change that would reduce or restrict the availability of housing opportunities for people with disabilities can only exacerbate the problem.

Several years ago the Legislative Program Review and Investigations Committee conducted a study of the questions raised in this bill. Their report indicated the rental market in some parts of that state is extremely tight, and even when people with disabilities can avail themselves of various subsidies, they experience considerable difficulty locating safe, affordable housing. A combination of economics and potentially discriminatory rental practices may now be contributing to this difficulty. I have recently learned from advocates involved in the effort to help people with disabilities leave nursing homes and find housing, that in many areas around the State, even possession of a state issued Rental Assistance Program voucher offers little prospect of finding market rate units: landlords are assuring applicants that they will accept RAP vouchers, but that prospective renters must meet minimum income guidelines that apply to all tenants - minimum income requirements that are so high that anyone who can meet them would be categorically ineligible for the Rental Assistance Program.

Third, against this background of policy history and unmet need, legislation that would create advantages for one group at the expense of another raise questions of law as well as fundamental fairness. For example, Section 8-115a of the General Statutes, which is the underlying statute that this bill would amend, requires, among other things, that housing authorities "annually submit verification that the significant facilities and services required to be provided to the residents of such project pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 USC 3600 et. seq.) are being provided." Yet, the federal Fair Housing Amendments Act (FHA) explicitly prohibits discrimination on the basis of mental or physical disability, as does the Equal Protection clause of the Connecticut Constitution (Article XXI, as amended). In fact, Connecticut's Equal Protection clause provides that "[n]o person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because ...[of] physical or mental disability." Applying traditional Constitutional analysis to this language, our Appellate Court has held that state laws that discriminate on the basis of disability are unconstitutional unless the government can demonstrate a "compelling interest" *Daly v. DelPonte*, 608 A2nd93 (Conn. App. 1992).

No doubt legal arguments could also be mounted based on the State's obligation "affirmatively to further" fair housing opportunities, as required of recipients of federal housing and community development funds (see 42 USC §5309(a); 24CFR §570.303(d)). Even the Americans with Disabilities Act could be invoked. In its landmark *Olmstead*

decision, the U.S. Supreme Court upheld federal ADA regulations requiring that people with disabilities be situated in the “most integrated setting”, which the Court described as “...a setting that enables an individual with disabilities to interact with non-disabled persons to the fullest extent possible.” The point here is that any proposal to restrict admission of non-elderly disabled people to a program that has historically been open, without any sort of quota, would predictably generate litigation.

I am also aware that under HUD regulations, housing authorities can obtain permission to allocate certain units within federally subsidized housing projects as “elderly only” – a practice that effectively limits admissions of younger people with disabilities. However, prior to implementing such a designation plan, the regulations require housing authorities to submit to HUD a detailed plan that includes an assessment resources available to meet the needs of non-elderly disabled people. There is no comparable requirement under this proposal. And, precisely because some municipalities are more heavily invested in HUD sponsored housing, than others, allowing similar allocation practices in state-subsidized senior/disabled housing units, could have a very dramatic impact on the availability of housing for people with disabilities.

But even if this bill did require a HUD type plan prior to implementing an admissions policy change, legal problems would persist. Congress specifically exempted certain owners of federally subsidized housing from the FHA, permitting them to adopt selection preferences for seniors (see Housing and Community Development Act of 1992). But it did not exempt any other type of housing from the provisions of the FHA or other federal non-discrimination requirements.

Lastly, to the extent this bill has arisen from complaints and reports of conflicts between residents living in housing projects, I would urge caution in responding. Conflict is a predictable feature of just about any human endeavor, especially one that invites people from a variety of backgrounds to live in very close proximity with each other. It is important, however, that public policy issues be decided based on sound evidence and accurate understanding. It is particularly important to be careful when the contemplated policy response lines up with traditional, but quite unfair stereotypes and prejudices. Over the past decade a number of changes have been made to the laws governing this program. Individuals who use drugs, abuse alcohol, or have recent histories of disruptive or dangerous behavior are not eligible for admission to these projects, and any tenant who is convicted of selling or possessing drugs, or who violates relevant provisions of the Landlord –Tenant Act (e.g. C.G.S. § 47a-15) can be subjected to eviction proceedings. Short of that, housing authorities can employ the services of Resident Services Coordinators, who can mediate lesser disputes and help secure relevant social services for any resident, including any senior who needs them. State-level policy should encourage effective, individual responses to disruptive behavior, not segregation or categorical quotas.

Thank you for your attention. If there are any questions, I will try to answer them