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At the Supreme Court

On June 25th, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project Inc.*, the Supreme Court upheld the permissibility suits under the Fair Housing Act based upon a disparate impact theory of liability. In reaching that decision, Justice Kennedy, writing for a 5-4 court majority, discussed Court precedent permitting disparate impact cases under Title VII of the Civil Rights Act. The Court's decision surprised many observers because this case was the latest in a series of cases of this type that the Court had agreed to hear. The earlier cases that the court had accepted were settled before the Court was able to render an opinion. This led to speculation that the Court may have been looking for an opportunity to restrict disparate impact cases in a way that could also have had an impact on the ability to bring disparate impact cases in the context of employment under Title VII because of alleged disparate impact on the basis of criminal history or other information. In a dissenting opinion, Justice Thomas, who was Chairman of the Equal Employment Opportunity Commission ("EEOC") prior to his appointment to the Supreme Court, was critical of the case law interpreting Title VII and the EEOC's role in the development of disparate impact actions under Title VII. It remains to be seen to what extent the Court's decision will result in an increase of disparate impact claims in housing or employment situations generally, as a result of the use of criminal history or other information by employers and landlords in particular.

On Capitol Hill

On June 2, 2015, President Obama signed the USA Freedom Act, Public Law 114-23, which reauthorized and reformed certain government surveillance programs and authority. Among the changes made by the USA Freedom Act were amendments to FCRA Sections 626 and 627 which regulate the conditions under which the FBI and other government agencies can obtain information from consumer reporting agencies for counter-terrorism purposes.

On June 1st, the House of Representatives passed by voice vote HR 1168, the *Native American Children's Safety Act*. The bill would "amend the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings." Separately, the Senate version of the legislation, S. 184, passed the Senate without amendment by unanimous consent. Specifically, the bills would require that, prior to a foster care placement or approval of a foster care license, the tribal social services agency:

- Complete a criminal records check of each covered individual who resides in the household or is employed at the institution in which the foster care placement will be made; and
- Conclude that each covered individual…meets such [background check] standards as the Indian tribe shall establish.

The bills also would require that such standards must include, among other things:

- Fingerprint-based checks of national crime information databases;
- Checks on any abuse registries by the Indian tribe; and

- Checks in any child abuse and neglect registry maintained by the State in which the covered individual resides.

At the CFPB

The Consumer Financial Protection Bureau (CFPB) has published a blog post entitled, "Consumer Advisory: Fact-check Your Specialty Consumer Report." In the post, the CFPB informs consumers that the national credit reporting systems are not the only consumer reporting agencies that "collect and sell [consumer] personal data." According to the CFPB's post, "specialty consumer reporting agencies, compile and sell reports with all kinds of personal data including, but not limited to, the history of your employment, rental, banking, lending, insurance, and criminal background." The CFPB's post includes a list of consumer reporting agencies, "so [consumers] can fact-check them to ensure [their] personal report data is accurate and complete" before applying for a job, renting an apartment or engaging in other activities that may involve consumer reports. For more information, including the CFPB's list of consumer reporting agencies, visit: http://www.consumerfinance.gov/blog/consumer-advisory-fact-check-your-specialty-consumer-report/.

At the FTC

The administrative proceeding against LabMD over the now-defunct company's alleged data security failures continued at the Federal Trade Commission (FTC). On June 15, the FTC denied LabMD's motion to disqualify Chairwoman Ramirez from the proceeding on the grounds that she "has been irrevocably tainted and compromised" because of her involvement in the Commission's response to inquiries about from the House Oversight and Government Reform in connection with its related investigation into facts that gave rise to the FTC's case. LabMD also alleged that there is "a reasonable suspicion" that she prejudged the case. In a unanimous 3-0 decision (with Chairwoman Ramirez and Commissioner Brill not participating) the Commission rejected LabMD's motion finding that Chairwoman Ramirez had not engaged in any activities that merit her disqualification from the case. Other legal wrangling in the case continues, including an effort by LabMD to get the administrative law judge in the case to refer Tiversa, the company that was involved in disclosure of the breach to the FTC and the source of congressional hearings over its role in the matter, to the Justice Department for a potential criminal investigation into Tiversa's actions in connection with the breach of LabMD's information that is at the heart of the FTC action.

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