

McKay Cunningham 2-2-22
THE COLLEGE of IDAHO



Respectful

1:30 → 2:00
1:15 on at 2:00

W-6110 Cte W-54

RACIAL COVENANTS, REDLINING & INTERGENERATIONAL WEALTH IN IDAHO

RS 29.219 Sen. Wintrow

[Chair and Cte] Chairman Lahey; Members of the Cte
good afternoons!

Mr. Chair & cnd.

Introduction:

I am an Idahoan (live in Boise, w/ wife and four children)
Been a lawyer for 22 years
(although I practiced for several years) Primary vocation as educator and academic
Over 13 years as law professor – focusing and publishing in Constitutional Law/Property Law

Currently a professor and administrator at the College of Idaho – in Caldwell.

Purpose:

My primary purpose is to answer the question why?
What is the problem the law seeks to address? Why do we have this problem?

So, I'll briefly speak about historical policies that lead us to this moment - legislation

Overview:

In part, this legislation derives from two of the most pernicious legal practices undermining inclusion, and equity.

Racial covenants and redlining are relatively underappreciated historical practices that continue to generate discriminatory repercussions today.

Redlining:

Redlining was a ~~discriminatory practice~~ federal program that provided home-ownership opportunities to

Banks, insurance companies, and brokers refused loans and mortgages within specific ~~geographic~~ neighborhoods, based on the racial make-up of those neighborhoods.

In wake of the Great Depression

Stabilize
Via homeownership

Financial Tools

Number of financial tools to incentivize homeownership
– particularly for low middle-class Americans.

Working class Americans didn't have today's equivalent of \$350,000 stashed under a mattress to buy a home. Banks instead would front 90 or 100 percent of the home price because the loans were backed by the federal government.

A federal agency was created to administer these programs/funds,

Home Owners' Loan Corporation 1933
Federal Housing Administration,

drew maps for over 200 cities to grade the riskiness of lending to neighborhoods.

[slide]

The maps were color-coded using an A to D scale.

A was green and deemed "best."

B was blue and labeled "still desirable."

C was yellow and marked "definitely declining."

And D was red and labeled "hazardous."

Neighborhoods that had people of color living in them were marked in red

— hence the term "redlining"

— and considered high-risk for mortgage lenders.

[slide SLC]

This redlining approach was NOT hidden or subtle

It was grounded in the work of two individuals, **Homer Hoyt** and **Frederick Babcock**.

-both high-ranking employees of the federal gvt – Fed Hous Admin.

Wrote books and underwriting manuals

maintained that minorities reduce property value and
that the races should be kept separate

They even ranked races and nationalities by order of "desirability."

AND that is precisely what they did:

In New York City, for example, the Federal Housing Administration EXPLAINED the rationale for redlining a particular neighborhood:

*"There is a steady infiltration of negro, Spanish and Puerto Rican into the area," and
"colored infiltration is a definitely adverse influence on neighborhood desirability."*

One of the most common Explanation for why a particular neighborhood was redlined =
simple:

"Infiltration of: Negroes"

In Richmond Virginia – one neighborhood was coded Blue, instead of Green rating. Why?
"Respectable people, but homes are too near negro area,"

Practice of Redlining was not isolated.

It was replete across the Country:

Univ. of Richmond researchers created an interactive map. Screen shot. "Mapping Inequality"
[Slide]

SUM:

Illustrates, from 1934 to 1968, the federal government made homeownership accessible to a subset of Caucasian people by guaranteeing their loans, but explicitly refused to back loans to people of color

<< transition to racial covenants >>

Didn't stop there. The private sector followed the federal gvt's lead.

The Gvt's practice of redlining worked hand-in-hand with the private sector's practice of racial covenants

Racial Covs:

Developers and private land owners embedded racial covenants in property deeds. Titles.

These racial covenants prohibit all non-whites from owning or occupying property within the neighborhood – unless doing so as a domestic servant.

[slide of language]

e c k R s

Typically, these racial covenants "ran with the land," a legal term that signifies perpetuity. i.e., racial covenant was not tied to the original owner of the land. It continued to bind successive owners because it "ran with the land."

There are likely thousands of properties in Ada County alone that still have racial covenants in their titles.

In very preliminary research -- of just one County in Idaho
– I've unearthed over 50 subdivisions in Ada County alone with racial covenants.

Here is another example of a subdivision - Vista Avenue in Boise.
[just down the road from where we sit] 1958

some academics Nationwide, it is estimated that *more than half* of

- all residential properties
- built during the post-depression housing boom
- included racial covenants.

<<< >>>

Of course redlining and racial covenants are outlawed today.
The Fair Housing Act 1968 outlawed such practices.

It might be tempting to stop there.
If these practices are now illegal, what's the problem?

These policies, among others, have entrenched racial disparities.
Have helped make racial disparities systemic to this day.

There is a clear connection between homeownership and wealth accumulation. It's critical. It is one of the few ways that any household, but particularly low or middle-income households, can accumulate wealth and pass that wealth to future generations.

Today, the wealth gap that separates whites from communities of color reflects the continuing impact of these historical practices.

[Slide]

The net worth of a typical white family, \$188,200, is nearly eight times greater than that of a black family at \$24,100 and more than five times the wealth of a Latinx family at \$36,100.

More locally:
[picture of 1960s demographics].

What does the River Street district look like now?
Our largest homeless population statewide.
Almost every single homeless shelter in Ada county is within or proximate to this district...

So.....this is the "why"

These are the past policies that lead to this moment. To this proposed legislation

Of course, this proposed Legislation does not attempt to remediate all of these historic inequities.

But it allows Idahoans to do something about it – if they choose to do so.

I've discussed this proposed legislation through the lens of redlining and racial covenants – ie., legal history.

Zoe Ann Olsen, who will speak next, has a much more compelling context by which to address this legisla

– how racial covenants are practically harming Idahoans today.

Zoe Ann...

RENT

Avg. househ. wealth
Homeowner: \$ 255(k)
Renter: \$ 6(k)

Rothstein, Richard. *Color of Law: A Forgotten History of How our Government Segregated America*. Liveright, 2017.

Nancy H. Welsh, *Racially Restrictive Covenants in the United States: A Call to Action*, available (more than half – nationwide)

Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS NOTES (Sept. 28, 2020).

(White family wealth 8x black family)

FED. RES. SYS., 2019 SURVEY OF CONSUMER FINANCES, <https://www.federalreserve.gov/econres/scfindex.htm> (last updated May 20, 2021). (Rental household wealth)

Interfaith and the River of Life Rescue Mission shelters are located there as well as many services (e.g. Corpus Christi House and CATCH (and of course the former Cooper Court)), the City Lights Women's/Children's Center is located on 14th and Jefferson

County Clerk

Dear Honorable Chairperson Lakey and Honorable Senators:

My name is Zoe Ann Olson, and I am the Director of the Intermountain Fair Housing Council. IFHC is a nonprofit organization whose mission is to ensure open and inclusive housing for all people, and we serve the whole State. Year after year, realtors, brokers, homebuyers, homeowners, tenants, and reporters contact Intermountain Fair Housing Council about racist and discriminatory language in deeds and CC&Rs concerned that it will affect the purchase or sale of a home denying Idahoans from achieving the American dream.

About two years ago, a homebuyer came into our office and showed us the Covenant, Conditions and Restrictions for a home that he wished to purchase that was part of a homeowner's association. He was shocked and hurt to see that one provision that said, "No persons other than persons of the White race may reside on the property except domestic servants of the owner or tenant," and wondered if he could still purchase the home or have his friends visit. I told him that the CC&R term was illegal and discriminatory under the federal Fair Housing Act and Idaho Human Rights Act, we helped address the language, and he eventually purchased the home. And now Senate Bill SB1240 would allow the homeowner to modify the language themselves without cost.

Even though the Civil Rights Act of 1866, the federal Fair Housing Act and its amendments, and the Idaho Human Rights Act prohibited and prohibit race, color, national origin discrimination in housing transactions and were passed with bipartisan support, the bricks of discrimination still exist as barriers to homeownership and generational wealth creation. Homeownership is an important component of building generational wealth; however, Idahoans of color are more likely to experience housing discrimination, cost burden and struggle to achieve homeownership. For example, Prosperity Now reports that 46% of white renter households in Idaho are cost-burdened compared to 51% of Latino households and 59% of Black households. High housing costs and discriminatory practices prevent families from achieving financial security and broaden the wealth gap among Idahoans.

Community members who have experienced racist language in their deed or covenants and the harm of redlining, discrimination, and segregation because of these practices, now have a mechanism in this proposed law that allows an owner or tenant of property that is subject to one of these racial covenants to record a modification document that specifically voids the racial covenant. The modification document would be part of the deed or chain of title to the property

and would state that the discriminatory language of the racial covenant is void and unenforceable. The beauty of this law like the Civil Rights Act of 1866, Fair Housing Act of 1968 and as amended under President Ford in 1974 and President Reagan in 1988, the Idaho Human Rights Act, is that our legislators, realtors, brokers, title professionals, clerks, civil rights and government leaders, lawyers, community members, homeowners and buyers, renters have come together in bipartisan support to remove one of these bricks of discrimination allowing all Idahoans to be free from this barrier to homeownership. We hope that you will support Idahoans in achieving this dream.

Thank you for your service.

Ed Labenski

Testimony S1240

Feb 02, 2022

2216 S Toluka Way, Boise, ID 83712

208 985 6220

ed.labenski@gmail.com

My name is Ed Labenski. My wife is Cynthia and we own a home in Warm Springs Mesa in Boise. Our house has one of these restrictive covenants (provisions) in the property record, and I am here to give testimony in support of this bill.

First, I want to thank the Chair and Committee Members for holding this hearing and giving consideration to this bill. Our home was built in 1976 (*please take note this date*). The provision on racial restrictions for our home, however, dates to 1958. It was attached to our home as a feature of the subdivision, 18 years after it was recorded, and 8 years after the Fair Housing Act deemed these provisions void and illegal. With this bill, this is the first time Idaho homeowners will be able to directly address this issue. In effect, amend and update our property records in a clear and informative way to remove uncertainty and re-enforce valid and well established standards in Idaho law.

I'd like to keep my testimony simple: 1) focus on our personal experience and 2) how this bill will benefit homeowners like us.

In 2018, Cynthia and I were first time home buyers. We were lucky to have our second offer on a home accepted, and in a neighborhood that we loved. The Boise real estate market was very competitive, and we had to act quickly. Our daughter Beatrice was three years old, and this was (at the time) one of the biggest decisions of our lives.

Cynthia and I didn't have access to the full property record until after the bid was accepted, and before the contingency needed to be signed. I remember this experience vividly. I had just read the section on external structures in my CC&R and thought: "I may need to get clarification about the location of the shed on the property." And then I read the following:

Section 23. Racial Restrictions. No part of the real property, or any building site or structure, shall at any time be sold, conveyed, rented or leased, in whole or in part, to any person or persons not of the white or caucasian race. No person, other than one of the white or caucasian race, shall be permitted to occupy any property in said subdivision, or portion thereof, or any building thereon, except a domestic employee actually employed by a person of the white or caucasian race, where the latter is an occupant of such property."

I quickly found Cynthia downstairs with our daughter, and read her this section. And without taking a single breath she turned to me and said: "**we cannot buy this home.**" It was the

night before signing the contingency. Of course, I spent several subsequent hours researching this provision, and learned that it was void and unenforceable. But the initial impact of the language was clear and unavoidable, and it shaped our perception of the home (and the area). We signed the contingency that night, but we knew our involvement wouldn't end. If possible, we would find a way to deal with this issue, and continue to advocate for a community that reflects our values and is welcoming to everyone.

The bill you are considering today is simple, clear, easy to use, and most importantly, effective. In our neighborhood, there is no longer an HOA. There is no vote that can be taken to strike this language from our property documents. Some home owners have attempted to go to court to strike these provisions. But this remedy is costly and time consuming, and is not guaranteed to be successful. The only reasonable remedy for us, and for many other homeowners in our region, is the one we are considering today. Our home has been sold half a dozen times since it was built in 1976. We recently met a BSU Alum who rented our home with two other students in the 1990s. Based on the documentation provided by Prof. Cunningham, it is conceivable that there are hundreds of transactions every year where buyers, sellers, and tenants come into contact with these restrictions for the first time (over and over and over again).

We have a chance to address this issue today. With your help, we can provide clarity and certainty to these records. We don't have to leave it to skillful guesswork to understand what is valid and enforceable in our property records. These issues were decided long ago. Cynthia and I love our community, and I shudder to think where we would be if we didn't buy our home in 2018 (or if selling our home may raise similar questions about a confusing property record to other qualified home buyers). With this bill, we can bring our property records up to date. We can modify our records in a meaningful and standard way to better reflect the communities we live in today ... the shared feeling and love we have for our neighbor ... and the special status and prominence we give to the law in Idaho.

Many of you have already done so, and I strongly urge this committee to support this bill.

Thank you very much.

Hello Chair, Vice Chair and Committee Members.

My name is Linda Ipaye. My husband is brown skinned, our children are brown skinned, I am a real estate broker, Realtor, business owner and most importantly a human.

Over the last 18 years in the real estate industry I have come across CCR's that have had verbiage that stopped me in my tracks. They contained racist and discriminatory language that made it so that a human with non-'white' skin was prohibited from purchasing, renting or occupying a home! It was something that could affect me and my family. I have 'white' in quotes because as our daughter when she was 5 years old stated so eloquently to a group of adults discussing discrimination, with her hands on her hips said, 'My Dad is dark brown, my mom is light brown and me and my brother are medium brown, we are all just shades of brown!'. From the mouths of babes.

Even though I know this verbiage today would be illegal and unenforceable, that does not mean someone may try to use it to discriminate against another person.

I believe that if 1 human has a right to have something, then all humans do. It seems like a simple statement. Yet, it is not. This discriminatory housing verbiage exists across this nation. Many states have already passed laws to deal with this issue.

It is simple though. The verbiage is hurtful.

Let's do this to make sure discrimination does not happen to anyone in Idaho. I support and ask you to support and pass S1240 and remove discriminatory language from deeds and CC&Rs.

Thank you so much for your time and attention to this matter.