



## High-income business owners can now qualify for low-income housing under Tenth Circuit persuasive authority

FOR IMMEDIATE CIRCULATION

August 20, 2020

### TENTH CIRCUIT RUBBERSTAMPS TRUMP ON LOW-INCOME HOUSING

Case Name: Giles v. Alto Partners, LLLP  
Docket Number: 1:18-cv-00467  
District Court name: U.S. District Court for the District of Colorado  
Case Status: Motion for Summary Judgment AFFIRMED | July 14, 2020

President Trump bragged about his administration's rescinding an Obama-era fair housing rule that was meant to combat housing discrimination. He characterized low-income housing as a detriment to the suburbs and claimed that Democrats were out to uproot and destroy suburbia

Congress codified the income determination method for the Low-Income Housing Tax Credit (LIHTC) program in 1986. Since the program's fruition, "annual income" has been the income determination standard for tenant qualification for LIHTC and all programs under the U.S. Department of Housing and Urban Development. Specifically, "annual income" creates a barrier to preclude high-income households from exploiting subsidized housing opportunities for low- and moderate-income families.

#### THE PROBLEM

Disturbingly, the Tenth Circuit Court of Appeals had already codified President Trump's notion in a recent fair housing case in Westminster, a suburb of Denver, Colo. On July 14, 2020, the Tenth Circuit affirmed the lower court's permission for landowners to apply different qualifying criteria to black low-income housing applicants.

Specifically, the district court provided the following evidence, "But Mr. Giles [a black applicant] did not provide ACHA with documentation that \$7,500 of his business gross earnings were used for business expansion at the time he applied." [See [Giles v. Alto Partners, LLLP](#), 2019 U.S. Dist. LEXIS 155453 (D. Colo. September 12, 2019)] Neither the plaintiff nor defendant or any federal or state housing manual, for that matter, introduces the documentation standard or timeframe condition.

Contrarily, Congress established that this very act of subjecting black applicants to novel application procedures as a discriminatory housing practice, "Using different qualification criteria or... procedures, such as income standards, application requirements, ... or rental approval procedures or other requirements, because of [protected class]." 24 C.F.R §100.60(b)(4) The Tenth Circuit affirmed the district court's novel conditions, holding, "But [the district court] carefully dissected each of Giles's arguments alleging failure to comply with the CHFA manual and concluded that Alto did its best to adhere to the governing procedures." [See [Giles v. Alto Partners, LLLP](#), 2020 U.S. App. LEXIS 21727 (10th Cir. Colo. July 14, 2020)]



## PRECEDENTIAL IMPACT

Under the 'annual income' paradigm, the LIHTC program allocated over \$8 billion annually, leveraged over \$100 billion in private capital, and has provided over 3 million affordable housing units to low- and moderate-income households.

However, for the first time in the history of the LIHTC program, the federal courts usurped Congress and shifted the foundation of the LIHTC program – the tenant income determination method. Permitting landowners to shift away from the long standing “annual income” mandate can cloak a landowner’s intent to curate tenants based on protected class. Further, this persuasive authority permits high-income business owners to deduct themselves into qualifying for low-income housing. Thus, according to the Tenth Circuit, former President Donald Trump having reportedly paid only [\\$750 in taxes](#) would qualify for low-income housing.

“You know the suburbs, people fight all of their lives to get into the suburbs and have a beautiful home,” President Trump said during a talk in Midland, Texas. “There will be no more low-income housing forced into the suburbs. ... It’s been going on for years. I’ve seen conflict for years. It’s been hell for suburbia.”

Pres. Trump’s comments were, in part, buttressed by the Tenth Circuit, while the Tenth Circuit, in part, was buttressed by the Trump Administration. Circuit Judge Allison H. Eid, that presided over the appellate proceedings in question, was appointed to the bench by ... former President Donald J. Trump.

## REQUEST

I request new legislation to directly addresses this ruling. Under the LIHTC program, annual income is defined by 24 CFR 5.609(b)(2), specifically precluding low-income housing qualification by business deduction. The Tenth Circuit ruling circumvents Congressional intent elucidated in this rule by inventing a novel exception by judicial legislation.

In the alternative, I would greatly appreciate it if you could notify me of organizations that you think may be interested in advocating to address this matter.

With regards,

Samuel K. Giles  
Resident  
City of Westminster