

# Disability Visibility Podcast

## Episode 73: Housing

Guests: Sean Betouliere and Ian Smith

Host: Alice Wong

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### Introduction

[radio static, voices singing with hip-hop beat]

LATEEF MCLEOD: This is the *Disability Visibility Podcast* with your host, Alice Wong.

ALICE WONG: Hello, all you gorgeous humans and cyborgs! Welcome to the *Disability Visibility Podcast*, conversations on disability politics, culture, and media. I'm your host, Alice Wong. Today's episode is about housing with Sean Betouliere and Ian Smith. Both Sean, Ian, and I live in the San Francisco Bay Area where affordable and accessible housing is in short supply and notoriously difficult to find. Sean and Ian will discuss the case of *Smith v. City of Oakland*, a class action lawsuit brought by Disability Rights Advocates (DRA) and the [Public Interest Law Project](#) in 2019. The case alleges Oakland renters who need to live in accessible units are either shut out of the City's rent control protections entirely, or forced to live in inaccessible units. Sean is a Staff Attorney at DRA, and Ian is one of the main plaintiffs in addition to Sunday Parker and Mitch Jeserich. Please note, our conversation took place on October of 2019, so some things may've changed since then. The case is ongoing, and you can find out the latest on DRA's website at [DRAlegal.org](https://DRAlegal.org). Are you ready? [electronic beeping] Away. We. Go!

ELECTRONIC VOICE: 5, 4, 3, 2, 1.

ALICE: Ian and Sean, thank you so much for being for being on my podcast today.

IAN SMITH: Absolutely.

SEAN BETOULIERE: Thank you for having us.

ALICE: And today, I wanna talk about housing. And before we get started, I would like you both to introduce yourselves. So, Ian, do you wanna go first and then Sean?

IAN: Sure. So, I'm Ian Smith. I've been living here in the Bay Area since 2012, especially living in Oakland. And we'll talk about that later where I lived and how I ended up here. And yeah.

ALICE: OK, great. Thanks, Ian. How about you, Sean?

SEAN: So, my name is Sean Betouliere. I'm a staff attorney at Disability Rights Advocates, and we're one of two nonprofits that brought this case on behalf of Ian and some other folks. Sunday Parker and Mitch Jeserich are the other two plaintiffs. I have lived in the Bay for probably about 15 years. And in addition to being a disability rights lawyer, I'm also a person with disability as well. I have cerebral palsy. So, a lot of the stuff that we do is sort of near and dear to my own heart and my own life.

ALICE: Thank you, Sean.

### The housing landscape in the San Francisco Bay Area

ALICE: And all three of us do live in the San Francisco Bay Area. And it is kind of a unique spot in terms of just nationally, talking about policy, just the issues with housing here. That's kind of uncommon but not that uncommon. For those who are unfamiliar with this area, can you both kinda describe the housing landscape and what you've seen in terms of changes over the last few years? Ian, do you wanna go first and then Sean?

IAN: Sure. So, like I said. I moved here in 2012. And when I was starting to move out here, when I was starting to look out here 'cause I had a job offer, I met a friend of a friend, and I was asking for advice on looking for housing. Actually, not disability-related advice, just hey, I'm getting outta grad school. I have not done an apartment off campus before. What does this look like? And I told my friend my estimated budget, and she just laughed and said, "Yeah, no, that's not gonna, that's not gonna work out here. This is not the market you're used to." And she was right. It was, at the time in 2012, it was already pretty expensive to live in the Bay Area, and it's only gotten more expensive since. And you can see, and again, not even touching on accessible housing yet, you can see people have moved further and further from San Francisco. So, those of us that used to say we wanna live in Oakland 'cause it's cheaper than San Francisco proper are now moving out to further and further suburbs in the East Bay and the South Bay. So, that's, I think, sort of the baseline for area that we're starting to talk about.

ALICE: Thank you, Ian. How about you, Sean?

SEAN: So, you know, I think Ian pretty much covered it. You know, this has always been an expensive place to live, and that has only become more and more pronounced over time. Certainly, it's now, I think Oakland, as of when I last checked, was the sixth most expensive real estate market in the country for a renter. It means that a lot of folks are being displaced from that area. And folks with disabilities who tend to have lower incomes are even more susceptible to that, and they're particularly susceptible to that because of the fact that generated this case, which was that if you a disability and need accessible housing, you can't even get the same rent control protections that other folks do have an opportunity to have.

### Disability Rights Advocates lawsuit and rent control

ALICE: Yeah. And the reason why I'm talking with you both today is that on August 28<sup>th</sup> of 2019, Disability Rights Advocates filed a lawsuit alleging that people with disabilities are discriminated in Oakland's rent stabilization program, which is also known as rent control. Sean, could you tell me more about why DRA filed this suit and kind of the backstory or the origins of how this lawsuit came about?

SEAN: Yeah, yeah. I can talk a little bit about that. So, I mean, you know, I think we've known for a long time that if you needed accessible housing, you really couldn't find anything that fell within rent control protections. So, that was just sort of a known fact in the disability community. And as I think I've said in other interviews, you know, for a while back, it maybe wasn't such a big problem because rent wasn't going up sort of astronomically. But then in the past several years, it really, maybe the past decade at this point, it really has started to go up astronomically. And people have been forced out of their homes, forced out of their communities, had to move multiple times, faced, as in Ian's case, just these really extreme rent increases of 70% over just a couple years, sometimes in the range of 40% a single year. And that inability to benefit from the protections of rent control really became a more extreme problem.

And I was talking about that with Sunday Parker, another of the plaintiffs in this case. And it really got me thinking about like what, or got us thinking at DRA, about what could be done about this. So, we spent quite a bit of time trying to think through how this could be addressed and decided that it really was a violation of the ADA. Because folks with disabilities were uniquely excluded from the benefits of the rent control program. And that we should try to address that through the American with Disabilities Act.

[peaceful music break]

ALICE: And for people who don't know how rent control works, can you kinda describe a little bit more about this program and how it actually does exclude people with disabilities?

SEAN: Yeah. So, the way the program works is that it covers rental housing. There's some sort of technical details, but basically, it covers most rental housing except for single family homes built before January 1<sup>st</sup> 1983. And the issue with that is that all accessible housing pretty much was built after that date. So, the program covers about 60% of the rental housing in Oakland. And if you're a non-disabled person who doesn't need accessible housing, you've got basically a 60% chance of getting something that falls within the program.

IAN: Let's look at that statistic a second because it's not just a roll of the dice, 60%. It's also where do I want to live? Do I want to accept the expensive new housing that is not rent controlled? Do I wanna make a choice that says I'm gonna live somewhere older or, you know? These are choices that, in a lot of cases, that people make that are not choices that are available to folks that need accessible housing.

SEAN: Right. Right, right. So, if you're a non-disabled person, you have a good shot at being able to rent a unit that falls within the protections of the rent control program. And what that means is that your rent can only go up by a certain percentage a year. It's usually in the range of 2-3%. And that means that you have some measure of security, in that even as rents are going up around you, if you're in one of these units, you are less likely to be displaced. You're more likely to be able to stay in your home, stay in your community, stay in the city that you love, stay near your job, all of this sort of stuff.

And then as Ian was saying, you know, folks with disabilities who need accessible housing, they need to live in newer units that were built with accessibility in mind. And what that means is that they can't benefit from this program, and they are susceptible to essentially unlimited rent increases. And so, for many people, and Ian is among them, their rent has gone up 10% a year, 15% a year, 30% a year. And that is a very real financial burden. And in a lot of cases, it means that people have to leave where they are.

[peaceful music break]

ALICE: Ian, I'd like to hear more about why you wanted to be part of this lawsuit as one of the plaintiffs along with Sunday Parker and Mitch Jeserich, and also just kinda your own personal story of how these increases have really impacted your life on a very real, personal way.

IAN: Sure. So again, jumping back to when I moved here, the first thing I did was look around at Craigslist. At the time, that seemed to be what people I knew were doing. And nothing that's on Craigslist is accessible, like none of it. And so, eventually, when I gave up on the Craigslist route, I said, OK. My options are look for newly-built buildings or hire a broker. I don't actually know if that's the thing that people do around San Francisco. It was a thing where I went back on the East Coast. But, so I ended up in the building that I'm in currently, which was only two or three

years old, I think, when I moved in. And by doing that, what I got was the ability to know that there was an elevator in the building. Know that the hallways and the doorways and the bathrooms complied with the current building code. But we don't really apply it retroactively. Hence this problem of you kinda have to live in relatively new housing.

And then to get to the sort of the impact of these, like Sean said, and as is in the file, my rent has gone up by 70% since I moved here seven years ago. And my income has absolutely not gone up by 70%, right? That's why it's a bigger chunk of my income every year. And in particular, in the year that it went up the most coincided with a year where I got a pretty significant career jump. And I recall I got the paperwork in something like May or April that, hey, you're getting a promotion. Your salary is going up by a certain amount. And then a month later, I got my new lease, and crap. It's all gone. It is all gone. You know, I have been able to stay in the place where I am because my salary is in tech where I am able to make that work. But it gets harder every year.

And at this point, it's somewhat unpredictable, right? There's been years where it's upwards of 30%. There've been years where it's closer to 5 or 10%. But it makes it real hard to plan for what is this year gonna look like in terms of rent?

ALICE: And what do you see for the future for yourself in terms of if these increases do continue? And ultimately, what are some kind of hard choices you might have to make for yourself regarding your career and where you live?

IAN: So, I moved out here in large part for my career, not solely my career, but again, I work in tech. And so, the job opportunities that are available to me in the Bay Area are better than they are in most parts of the U.S. I have a lot of ability to move between jobs, and in particular, the sub-part of the industry, the startup sector in the industry is centrally-located here. And so, leaving that would have a significant career impact. And it would also mean leaving behind some of the communities that attracted me to the Bay Area in the first place. You know, we have a large deaf community. We have a large queer community. We have a large disability community. It would be rough to leave those, right? And in all the ways that a geographic place becomes home, I have seven years of living here and building up network and building up friends and family.

ALICE: Yeah. These are really difficult, right, really difficult decisions, especially you can imagine people who have a lot of other financial responsibilities. Maybe they have families. Maybe they have all kinds of additional costs. So, it's like really, really precarious. Right.

SEAN: Right.

IAN: Right. And if somebody with my career and my lack of dependents and so on is having to worry about these things, what kinda impact does rent in the Bay Area have on people without that flexibility and without those resources?

SEAN: You know, I think this is a really good segue into the fact that, you know, this is a case that we're bringing on behalf of a class of affected individuals. So, Ian and Mitch and Sunday are all people that are affected by this personally. This is real for them. But they are also, you know, they've sort of stepped forward to say, we're doing this for the benefit of everybody who's affected. We're doing this for the benefit of all people with disabilities who are denied access to the benefits of the rent control program.

You know, one thing I realized that I forgot to mention was just sort of how the Americans with Disabilities Act works. One of the basic premises of that law is that folks with disabilities need to have the same access to government programs, government benefits, government services that's available to everyone else.

ALICE: In addition to being a violation of the ADA, are there other violations in terms of just being a lawsuit of maybe state or city regulations or laws?

SEAN: There are. We chose to bring the lawsuit under the federal Americans with Disabilities Act. And the reason for that is that there's this sort of very basic principle in the law which says, that that's rooted in the Constitution, it's rooted in what's called the supremacy clause of the Constitution. And what that clause says is that federal laws are supreme. And so, if there's a conflict between a federal law and a state law, a federal law and a local law, the federal law has [unclear]. And where that comes into play here is that the city's rent control program, the sort of exemption that exists, where it says, you know, only units this old or older are covered, that's a matter of local Oakland law. There is also a state law called the Costa Hawkins Rental Housing Act, which basically does two things. It was passed in 1995, and it said essentially, if you're a municipality who doesn't have rent control yet, you can't impose rent control on anything built after 1995. If you do already have rent control, like the city of Oakland already had rent control, then whatever your preexisting exemption date was, that preexisting exemption date is set in stone.

So, when we're suing the City of Oakland and saying, look. People with disabilities don't have access to this rent adjustment program because of the way that you've structured it, because of where you've set this exemption date, one of the issues is that potentially, in order to change that program, they would be in conflict with both the local ordinance and also the state law, the Costa Hawkins Rental Housing Act. And basically, we're saying, look, there's this basic principle, basic Constitutional principle that says a federal law like the Americans with Disabilities Act takes precedence. And the federal Americans with Disabilities Act says, you've gotta give people with disabilities the same shot, the same benefit that other folks enjoy. Here, that's not happening.

[peaceful music break]

### [The housing crisis as a disability issue and expanding the number of plaintiffs](#)

ALICE: So, Ian, I was wondering, do you have any other kinda thoughts about the housing crisis? Because I think a lotta communities are facing a housing crisis, regardless of whether it's similar to the SF Bay area or not. But housing is a very fundamental need that everybody has. So, what are your thoughts about that in terms of just how the housing crisis is a disability issue, especially for people who are multiply-marginalized, who are just open to multiple forms of discrimination, so?

IAN: I think that the piece that makes this disability-specific is that we do have these sort of disability-rooted influences in where we can choose to live already. And then combine that with the fact that our community is already un- and underemployed, is already on the lower end of the income scale, right? And so, these are sort of compounding issues. You're right that the housing crisis in the Bay Area has touched a lotta communities. And certainly, this lawsuit doesn't address the entire problem. My sense, looking at the housing crisis as somebody who lives out here, has been for a long time, we're gonna need not one solution to this, but a number of solutions to address a number of different problems that interact. So, this is one piece of that,

and it's the piece that, Sean and I and the two other plaintiffs are sort of uniquely positioned to address.

The other, you sort of left this open as a bit of a general question, I think the other thing that is, is that when we talk about accessible housing, we're not saying purpose-built housing. We're not saying build a new thing. We're not saying build something that is disabled tenants only. We're saying you already have accessible housing. It just happens that you didn't used to build it, and now you're building it. And we'd like to have access to those same units, right? We're not saying build a unit that has all of these extra features. We're saying, use common sense building code. Because that's what gets most of us in the door, yes.

ALICE: Great. And are you looking for more plaintiffs, or is this just kind of you're starting with three?

SEAN: So, you know, we are. We are potentially. And we're certainly looking for what are called declarants, so other folks who are members of the class who would share their stories. And I should've mentioned this earlier: There are basically three ways that people, or there's three ways that I've thought of, that people with disabilities are affected by being blocked out of the benefit of the rent adjustment program in Oakland. Some are affected in the way that Sunday and Ian are, which does that they live in accessible units because they need to live in accessible units. But they don't get the protections of the rent adjustment program because their units just aren't covered by that program. And so they just have rent increase after rent increase after rent increase. And that is one harm. Another group are folks like Mitch who maybe they have enough strength or enough mobility at the moment that they can live in a unit that's not fully accessible.

IAN: And then, of course, the precarity that introduces your life, right? What happens when your body changes either short- or long-term? Can you maintain that approach to housing? Can you maintain employment while also maintaining that approach to housing? This becomes a spiraling issue for a lot of us.

SEAN: Right. And, you know, I think a lot of folks, because they need to be in a unit, [chuckles] because they can't afford to just be in a unit that doesn't have the protections of rent control, they will subject themselves to sort of like both the dignitary harm of living in an inaccessible unit and also the real constant risk of physical injury and sometimes the actual physical injury that comes from living in a unit that's really hard for you to navigate, where you can't maybe get your wheelchair in all the rooms, or you can't cook a meal in your kitchen or whatever it may be, whatever that inaccessibility may mean for that particular person.

ALICE: Yeah, and I also think about how this is the struggle of a lot of people where a growing percentage of their income is going toward housing, and that means that other necessities of life such as food, healthcare, all the basics, those budgets are shrinking that's going toward housing, which they really, oftentimes have no choice over, you know? Having a place to live is often just one of the most kind of basic things that they have to cover.

SEAN: So, I should mention that I got a little sidetracked, but the third group of folks who maybe were in Ian's and Sunday's situation, living in an accessible unit, didn't have control, and because their rent went up higher than they could afford, they just got displaced from the city entirely and are no longer in Oakland. So, we're really looking for folks who have had—we've talked to several already—but we're looking for more folks who fit into any of those groups.

ALICE: Great. Thank you for that.

## Wrap-up

ALICE: So, as we wrap up, is there anything the both of you would like to share about just final thoughts about housing and disability, as that relates to disability?

IAN: I think the one thing I would add here is that not only is housing itself complex in the problems that we see, it's also complex in how it touches your life. So, where you live determines the job opportunities you have access to. It determines that kind of transportation you have access to. We talk about food deserts, right? Do you live somewhere that is close enough to sources of food that you can have a healthy and economically-sustainable diet? It impacts your access to your community, your social life, your family life. Like, there is no part of a person's life that isn't touched upon by their housing in some way. And so, the impact of the housing crisis barrier is really an impact across the entire spectrum of our lives.

ALICE: Well, Ian and Sean, thank you so much for talking with me today. I know that this is a very specific aspect of housing, but I think this is a really important lawsuit. And hopefully, whatever happens at the end, that it's gonna make a positive impact, not just locally, but hopefully nationally. So, thank you so much for being on my podcast!

IAN: Thanks for having us.

[hip hop]

♪ Knees up, toes down  
Let's dance, get as low as you would  
If you were my sweatpants  
How far will they go?  
Oh, yeah, yeah.... ♪

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You can also find out more about Sean and Ian at my website.

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Thanks for listening! And see you on the Internets! Bye!!!!

♪ Rock it to the blast off  
Stop, drop dance off ♪