NO. 06-3376

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LYNNE BLOCH, et al.,

Plaintiffs-Appellants,

v.

EDWARD FRISCHHOLZ, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 1:05-cv-05379
The Honorable Judge George W. Lindberg

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC., LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION, INC., PUBLIC INTEREST LAW CENTER OF PHILADELPHIA, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, THE MISSISSIPPI CENTER FOR JUSTICE, NATIONAL FAIR HOUSING ALLIANCE, AND CHICAGO FAIR HOUSING ALLIANCE AS *AMICI CURIAE* SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL AND REMAND ON FAIR HOUSING ACT CLAIMS

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: **06-3376**

Short Caption: **Lynne Bloch, et al. v. Edward Frischholz, et al.**

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Lawyers' Committee For Civil Rights Under Law Of The Boston Bar Association, Inc.

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Public Interest Law Center of Philadelphia

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Lawyers' Committee For Civil Rights Of The San Francisco Bay Area

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Washington Lawyers' Committee For Civil Rights And Urban Affairs

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The Mississippi Center For Justice

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

PERIODICALS

NON-PERIODICAL PUBLICATIONS

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*

I. The Lawyers' Committee For Civil Rights Under Law And Its Local Affiliates

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonprofit civil rights organization that was founded in 1963 by the leaders of the American bar, at the request of President Kennedy, to help defend the civil rights of racial minorities and the poor. The Lawyers' Committee works with communities across the nation to combat, protest, and remediate discriminatory housing practices, many of which occur after a person acquires or rents a dwelling. The Lawyers' Committee has litigated a number of post-acquisition discrimination claims under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (the "Act" or "FHA").[1]

The Lawyers' Committee has eight independently governed local affiliates around the country that share its interest in promoting fair housing. Six of these affiliates also litigate fair housing cases, and they join the Lawyers' Committee as *amici* here. These six affiliates are: (i) Chicago Lawyers' Committee for Civil Rights Under Law, Inc.; (ii) Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, Inc.; (iii) Public Interest Law Center of Philadelphia; (iv) Lawyers' Committee for Civil Rights of the San Francisco Bay Area; (v) Washington Lawyers' Committee for Civil Rights and Urban Affairs; and (vi) Mississippi Center for Justice. Each of these affiliates also has litigated fair housing cases involving post-acquisition discrimination.

II. National Fair Housing Alliance

The National Fair Housing Alliance ("NFHA") is a consortium of private, non-profit, fair housing organizations, state and local civil rights groups, and individuals. Its mission is to

[1] For the sake of brevity, throughout this brief, *amici* refer to post-purchase and post-rental discrimination alike as "post-acquisition discrimination."

identify and eliminate housing discrimination throughout the United States. NFHA was founded twenty years after passage of the FHA. In conjunction with its members, NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. As part of its enforcement activities, NFHA assists its members and participates itself in federal and state court litigation brought under the Act.

With its extensive involvement in post-acquisition housing discrimination cases across the country, NFHA stands in a unique position to address this important policy issue regarding the scope of the FHA, and respectfully submits that its views may prove of substantial assistance to the Court in its resolution of this appeal.

III. Chicago Area Fair Housing Alliance

The Chicago Fair Housing Alliance ("CAFHA") is a non-profit membership association of organizations, governmental bodies, and individuals concerned with combating housing discrimination and promoting integrated communities. Through research, education, and advocacy, CAFHA seeks to further fair housing rights and equal opportunity in housing; develop strategies to promote long-term diversity in neighborhoods and communities; and combat discrimination and harassment. Many of CAFHA's members, including Chicago Lawyers' Committee for Civil Rights Under Law, Inc. and South Suburban Housing Center, have received numerous complaints of post-acquisition housing discrimination.

SUMMARY OF ARGUMENT

Amici file this brief in support of Plaintiffs-Appellants Lynne, Helen, and Nathan Bloch (the "Blochs"), urging reversal of the panel majority's decision and a remand of the Blochs' FHA claims. *Amici* are national and local non-profit organizations dedicated to enforcing the FHA with the goal of ending housing discrimination. *Amici* have collectively litigated dozens of

cases involving post-acquisition discrimination that, if the panel majority's decision is affirmed, would no longer be permitted under the FHA in this Circuit.

Amici concur in the interpretation of the relevant statutory and regulatory language set forth in Judge Wood's dissenting opinion in the panel decision, in the United States' *amicus curiae* brief offered in support of Plaintiffs-Appellants, and in Plaintiffs-Appellants' panel brief filed on October 17, 2007. *Amici* offer this brief based on their own experience in litigating post-acquisition FHA cases to explain that: (i) from the passage of the FHA in 1968 until this Court's decision in *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004), courts routinely and uniformly gave effect to Congress's intent by interpreting the Act as prohibiting post-acquisition discrimination; (ii) adopting the restrictive interpretation of the Act advanced in *Halprin* and extended by the panel majority would ignore long-standing precedent and would countenance egregious post-acquisition conduct, such as the sexual harassment of tenants by landlords, the bombing of an African American homeowner's car or the burning of a cross on his front lawn, and the wholesale denial of municipal services to communities based on their racial composition; and (iii) more than forty years after the passage of the FHA, post-acquisition discrimination remains a serious and all-too-common problem.

Based on *amici*'s experience in litigating post-acquisition cases under the FHA and current work assisting tenants and homeowners with post-acquisition discrimination issues, *amici* strongly urge the *en banc* Court to reverse the panel majority's decision and remand this case to the district court.

ARGUMENT

The Long-Settled Interpretation That The FHA Prohibits Discrimination Against Owners, Tenants, And Occupants Of Dwellings Fulfills Congress's Intent To Provide A Necessary Remedy And Deterrent To Egregious Discriminatory Conduct.

In the panel decision in this case, a divided Court concluded that section 804(b) of the FHA "does not address discrimination after ownership has changed hands." *Bloch v. Frischholz*, 533 F.3d 562, 563 (7th Cir. 2008). In reaching this conclusion, the panel majority adopted and, indeed, extended the reasoning of *Halprin*, stating:

> [w]e observed in *Halprin* that § 804(b) forbids discrimination in the 'terms, conditions, or privileges of sale or rental of a dwelling,' but does not address discrimination after ownership has changed hands – and that § 817, on which the regulation rests, makes it unlawful to interfere with a person in the enjoyment of rights under § 804 (and some other sections) but does not enlarge any of those rights. This means, *Halprin* held, that religiously motivated harassment of owners or tenants does not violate the [FHA] *or its regulations*.

Bloch, 533 F.3d at 563-64 (emphasis added).

In *Halprin*, this Court stated that because plaintiffs "are complaining not about being prevented from acquiring property but about being harassed by other property owners . . . it is difficult to see how they can have been interfered with in the enjoyment of any right conferred on them by section 3604," thus suggesting that the FHA was intended only to protect *access* to housing. 388 F.3d at 329. The Court reasoned that, since "[b]ehind the Act lay the widespread practice of refusing to sell or rent homes in desirable residential areas to members of minority groups[, and s]ince the focus [of the Act] was on their exclusion, the problem of how they were treated when they were included, that is, when they were allowed to own or rent homes in such areas, was not at the forefront of congressional thinking." *Id.* However, the historical backdrop against which the FHA was written belies such a parsing of the problem of housing discrimination in America.

As illustrated in Lorraine Hansberry's landmark play, *A Raisin in the Sun*, housing discrimination against owners, tenants, and occupants of dwellings – what *Halprin* characterized as "post-acquisition" housing discrimination – was a grave evil in the America in which the FHA was enacted in 1968. *Raisin* reflects the plight of a fictional African American family, the Youngers, who, even after being fortunate enough to *purchase* a home, suffer egregious acts of discrimination once they attempt to *live* in that home. At the time the FHA was enacted, post-acquisition housing discrimination took various forms, including the two depicted in *Raisin* where: (i) white neighbors offer to pay African American families *not* to move in, even though they had already purchased their home, *see* Lorraine Hansberry, A RAISIN IN THE SUN 116 (Vintage Books 1994) (1958); and (ii) white neighbors threaten violence against African American families once they move in to their home. *Id.*[2] A rhetorical question posed by the threatening white neighbor in *Raisin* – "What do you think you are going to gain by moving into a neighborhood where you just aren't wanted and where some elements – well – people can get awful worked up when they feel that their whole way of life and everything they've ever worked for is threatened," *id.* at 119 – illustrates how post-acquisition discrimination, if left unchecked, can render the FHA's robust guarantee of equal housing opportunity an empty promise.

Congress's intent to ensure that the FHA extended to post-acquisition discrimination like that in *Raisin* is apparent in the language of the Act itself, as well as in its legislative history. For instance, the language of Section 804(b) of the Act is not limited to prohibiting discrimination in the "terms and conditions" of housing, but extends to both the "*privileges of* sale or rental of a dwelling" and "the provision of *services and facilities* in connection therewith." (emphasis

[2] The events depicted in *Raisin*, while fictional, are based on Ms. Hansberry's actual experience in Chicago living in "a hellishly hostile 'white neighborhood' in which, literally, howling mobs surrounded [her] house." Lorraine Hansberry adapted by Robert Nemiroff, TO BE YOUNG, GIFTED, AND BLACK 20 (Prentice-Hall 1969) (1969).

added). A plain reading of the Act thus demonstrates that Congress did not intend to restrict the Act solely to the actual sale or rental of a dwelling, but wished to ensure that the FHA's protections extend to the "privileges" and "services and facilities" that flow from real estate transactions. Additionally, the legislative history of the FHA, while limited, reflects an intent to cover the post-acquisition discrimination illustrated in *Raisin*, as the preamble to the Senate's first draft of the FHA declared that it was "the policy of the United States to prevent discrimination on account of race, color, religion, or national origin in the purchase, rental, financing, and *occupancy* of housing throughout the United States." 114 Cong. Rec. 2270 (1968) (emphasis added).[3] Indeed, Congress acknowledged in a 1967 Senate report that race-based violence against people exercising their civil rights was a real problem, not simply a matter of fiction:

> a small minority of lawbreakers has resorted to violence in an effort to bar Negroes from exercising their lawful rights. Brutal crimes have been committed not only against Negroes exercising Federal rights but also against whites who have tried to help Negroes seeking to exercise these rights. Acts of racial terrorism have sometimes gone unpunished and have too often deterred the free exercise of constitutional and statutory rights.

See S. Rep. No. 90-721 (1967), reprinted in 1968 U.S.C.C.A.N. 1837, 1839.

The Supreme Court, in interpreting the FHA for the first time in *Trafficante v. Metropolitan Life Insurance Co.*, observed that the "language of the Act is broad and inclusive," and, thus, Congress's chosen words are entitled to "a generous construction." 409 U.S. 205, 209, 212 (1972). The Supreme Court then interpreted the Act as conferring standing upon *existing*

[3] The FHA initially prohibited housing discrimination on the basis of "race, color, religion, or national origin." Pub. L. 90-284 § 804, 82 Stat. 81, 83 (1968). The Act was amended in 1974 to prohibit housing discrimination on the basis of sex. Pub. L. 93-383 § 808, 88 Stat. 633, 729 (1974). Congress again amended the Act in 1988 to prohibit housing discrimination on the basis of handicap and familial status. Pub. L. 100-430, 102 Stat. 1619-39 (1988).

tenants to vindicate housing discrimination under the FHA. *Id*. at 209. In light of the Act's language, legislative history, and the Supreme Court's pronouncement in *Trafficante,* it is thus not surprising that for almost thirty-five years, the Act provided a much needed remedy and deterrent to unfair, ugly, egregious, and even dangerous behavior in the form of post-acquisition conduct. *See, e.g., Krueger v. Cuomo*, 115 F.3d 487, 491 (7th Cir. 1997) (deciding that post-acquisition "harassment in the housing context can violate the [FHA]"); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1289 (7th Cir. 1977) (permitting existing property owners to challenge zoning restrictions under the FHA).[4] In fact, before this Court suggested in *Halprin* that the FHA applies only to "activities . . . that prevent people from acquiring property," 388 F.3d at 328, this Court had never read the Act so narrowly.

Indeed, from 1968 until *Halprin* was decided in 2004, courts in this Circuit consistently extended FHA protections to *existing* tenants and homeowners, as well as their guests, and found that the Act prohibited a wide range of post-acquisition discrimination. *See, e.g., Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845, 852 (N.D. Ill. 2003) ("As the Seventh Circuit and other courts have concluded, the prohibitions of section 3604 [of the FHA] extend beyond mere sales and rentals of real estate."). To illustrate, before this Court approved a narrow reading of the FHA in *Halprin*, the Act had been found to prohibit: **(i) sexual harassment of tenants**, *Krueger*, 115 F.3d at 491 (landlord repeatedly engaged in unwanted touching of tenant, sometimes in front of her children, and requested to engage in sex); *Grieger v. Sheets*, No. 87 C 6567, 1989 WL 38707, at *1-2 (N.D. Ill. Apr. 10, 1989) (landlord repeatedly demanded sexual favors from tenant in exchange for needed repairs and threatened to shoot victim's husband after victim refused

[4] A list of more than five dozen pre-*Halprin* decisions recognizing that post-acquisition discrimination is prohibited under the Act is attached as Exhibit A. *See, also,* Rigel C. Oliveri, *Is Acquisition Everything? Protecting The Rights Of Occupants Under The Fair Housing Act*, 43 Harv. C.R.-C.L. L. Rev. 1, 1 (2008).

sexual advances); *Woods v. Foster*, 884 F. Supp. 1169, 1171 (N.D. Ill. 1995) (operators of homeless residential facility repeatedly subjected female tenants to "sexual advances, lewd touching of their bodies, sexually suggestive remarks and requests for sexual favors"); **(ii) racial intimidation and harassment of tenants and homeowners**, *Johnson v. Smith*, 810 F. Supp. 235, 236, 239 n.5 (N.D. Ill. 1992) (white neighbors burned cross on African American family's lawn to protest "an African-American family moving into a formerly all-Caucasian neighborhood"); *Stackhouse v. DeSitter*, 620 F. Supp. 208, 209, 211 (N.D. Ill. 1985) (white neighbor firebombed car after African American family rented an apartment); *Waheed v. Kalafut*, No. 86 C 6674, 1988 WL 9092, at *1 (N.D. Ill. Feb. 2, 1988) (white neighbors firebombed African American family's home, shouted racial epithets, and chanted "Ku Klux Klan" after family moved into home); *Whisby-Myers*, 293 F. Supp. 2d at 852 (white neighbor detonated explosive as African American homeowner passed in her car and then yelled racial epithets at her)[5]; and **(iii) discriminatory denial of services to racially-identifiable communities or tenants.** *Southend Neighborhood Improvement Ass'n v. County of St. Clair*, 743 F.2d 1207, 1210 (7th Cir. 1984) (FHA prohibits discrimination in the provision of "services generally provided by governmental units such as police and fire protection or garbage collection"); *Campbell v. City of Berwyn*, 815 F. Supp. 1138 (N.D. Ill. 1993) (city terminated additional police protection for African American family after family refused to move in response to racial violence and harassment).[6]

[5] For a full analysis and discussion of the Act's coverage of harassment cases, see Aric Short, *Post-Acquisition Harassment and the Scope of the Fair Housing Act*, 58 Ala. L. Rev. 203 (2006).

[6] For a full analysis and discussion of the Act's coverage of discriminatory municipal services, see Robert G. Schwemm, *Cox, Halprin and Discriminatory Municipal Services Cases Under the Fair Housing Act*, 41 Ind. L. Rev. 717 (2008).

Tellingly, none of these pre-*Halprin* decisions placed members of protected groups in the untenable situation where they "win the battle (to purchase or rent housing) but lose the war (to live in their new home free from invidious discrimination)." *See Bloch*, 533 F.3d at 571 (Wood, J., dissenting). Nor do any of these decisions hold or even suggest, as the panel majority did in this case, that a plaintiff must allege a constructive eviction to state a claim under the Act. Such a heightened standard would uproot settled Seventh Circuit precedent which holds that a current tenant can bring a "hostile housing environment cause of action" against a landlord where sexual harassment "unreasonably interferes with use and enjoyment of the premises." *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996) (quoting *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993)); *see also Wilstein v. San Tropai Condo. Master Ass'n*, No. 98 C 6211, 1999 WL 262145, at *11 (N.D. Ill. Apr. 22, 1999) (recognizing hostile housing environment claim based on religion and disability). It also would conflict with the Supreme Court's holding in the employment context that harassment violates Title VII where it is "sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create[s] an abusive work environment," regardless of whether the employee can show a constructive termination. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (quotations omitted).[7] Requiring a tenant or homeowner to first leave a discriminatory housing situation before filing suit also would place a severe and unwarranted burden on victims who, in many cases, may lack the resources to flee even a severely discriminatory housing situation. *See, e.g., Krueger*, 115 F.3d at 489-90 (single mother of two children receiving federal housing assistance remained in an apartment owned by harassing landlord because she "felt she had few alternatives); *Woods*, 884 F. Supp. at 1171

[7] This Court has "recognized that [the FHA] is the functional equivalent of Title VII, and so the provisions of these two statutes are given like construction and application." *Kyles v. J.K. Guardian Sec. Serv., Inc.*, 222 F.3d 289, 295 (7th Cir. 2000) (internal citations omitted); *see also DiCenso*, 96 F.3d at 1008 (relying on Title VII cases to interpret the FHA).

(single mothers residing at "residential facility for otherwise homeless families" with their children were sexually harassed by facility managers). In short, the FHA does not require victims of discrimination to tolerate unlawful practices so severe that tenants must sacrifice their housing to state a valid claim under the Act.

All courts in this Circuit, prior to *Halprin*, followed the Supreme Court's direction to interpret the Act "broadly," *Trafficante*, 409 U.S. at 209, and gave effect to Congress' sweeping goal of preventing discrimination on account of race, color, religion, sex, national origin, handicap, and familial status "in the purchase, rental, financing, and *occupancy* of housing throughout the United States." 114 Cong. Rec. 2270 (1968) (emphasis added). *Amici* urge this Court to uphold more than thirty-five years of precedent by reversing the trend to narrowly interpret the FHA started in *Halprin* and followed by the panel majority in this case, and thereby allow owners, tenants, and occupants of dwellings to once again remedy post-acquisition discrimination in this Circuit through the Act.

IV. The Narrow Interpretation Of The FHA Relied Upon By The Panel Majority Permits Post-Acquisition Housing Discrimination To Go Unchecked By Federal Anti-Discrimination Law.

The practical effect of this Court's decision in *Halprin* and the panel majority's decision in this case has been immediate and severe both in this Circuit and in other jurisdictions where *Halprin* has been recognized as persuasive authority. The shortcomings of the narrow interpretation of the FHA relied upon by the panel majority are highlighted by the following incongruous results it has yielded:

- a landlord could not refuse to rent an apartment to an African American, but that same landlord could refuse to provide heat and water mid-tenancy because the tenant is African American, *see Farrar v. Eldibany*, No. 04 C 3371, 2004 WL 2392242, at *4 (N.D. Ill. Oct. 15, 2004) (relying upon *Halprin*, 208 F. Supp. 2d 896);

- neighbors could not prevent an African American woman from purchasing a home, but they could harass her on the basis of her race or color with impunity after she bought the house, *see King v. Metcalf 56 Homes Ass'n, Inc.*, No. 04-2192-JWL, 2004 WL 2538379, at *2 (D. Kan. Nov. 8, 2004) (citing *Halprin*, 208 F. Supp. 2d at 900-01); *see also Lawrence v. Courtyards at Deerwood Ass'n., Inc.*, 318 F. Supp. 2d 1133, 1143 (S.D. Fla. 2004) (citing *Halprin*, 208 F. Supp. 2d 896); and

- African American homeowners who had lived in their neighborhood for decades could not sue a local government to obtain water and sewer services or facilities that were being withheld on a discriminatory basis, but any individual who wished to move into that same neighborhood – and likely had no knowledge of the level of services or facilities that the local government actually provided – could bring such a claim. *See Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. March 17, 2008) (relying on *Halprin*'s progeny).

The restrictive interpretation of the FHA advanced in *Halprin* and relied upon by the panel majority in this case significantly undermines the effectiveness of the Act by changing the decisive question from *whether* there was housing discrimination to *when* such housing discrimination occurred. If this Court embraces the panel's decision, many tenants and homeowners who have indisputably experienced racial, sexual, or other forms of harassment or discrimination by landlords, neighbors, or municipal authorities will be without a remedy under the FHA in this Circuit merely because the discrimination occurred after they took occupancy of their dwelling.

While the examples cited above may seem dramatic, in the experience of *amici*, they reflect the growing trend that has developed both in this Circuit and across the country in the wake of *Halprin*. Cases alleging conduct held to violate the Act as interpreted pre-*Halprin* are now often dismissed for failing to state a claim simply because the alleged discriminatory conduct took place post-acquisition. For example, in *King v. Metcalf 56 Homes Ass'n, Inc.*, a district court dismissed an African American plaintiff's claims that she was intimidated,

harassed, and stalked by her landlord's white employees and her white neighbors (*e.g.*, defendants photographed her, listened to her phone conversations, and monitored her egress and ingress from her home) simply because her "allegations relate[d] entirely to her use and enjoyment of a residence that she had already acquired." No. 04-2192-JWL, 2004 WL 2538379, at *3 (D. Kan. Nov. 8, 2004). Other courts have employed this same reasoning to reach this same result. *See Farrar*, 2004 WL 2392242, at *4 ("Plaintiff alleges that defendants violated the [FHA] by denying her heat and hot water – a service associated with the maintenance of her apartment and therefore outside the scope of the statute."); *see also Reule v. Sherwood Valley I Council of Co-Owners, Inc.*, No. Civ. A. H-05-3197, 2005 WL 2669480, at *4 (S.D. Tex. Oct. 19, 2005) (dismissing homeowner's FHA claim against homeowners' association after noting that the Act "relates to discriminatory activities that prevent people from acquiring property" (citation omitted)).

Not only does such a narrow reading of the FHA leave many tenants and homeowners without a meaningful remedy to redress egregious discriminatory conduct, it runs the risk of granting local governments virtual immunity from claims that they failed to provide neighborhoods and communities essential government services on the basis of race or any other protected characteristic. As an example, in *Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. March 17, 2008), pending appeal as No. 08-11958-DD (11th Cir.), a district court entered summary judgment in favor of the City of Port Wentworth and against members of an African American community that, for decades, had not received water, sewer, and drainage services from the city. Rather than considering the merits of the lawsuit, the court reasoned that the FHA claim was barred under *Halprin*'s progeny because "the alleged discrimination in the provision of services is wholly *unrelated to the sale or rental of the subject*

properties, which many Plaintiffs have owned since before the City annexed the area." *Id.* at *12 (emphasis added). Since only current residents (as opposed to prospective residents) of a community will ordinarily have the knowledge and motivation to challenge a local government's discriminatory provision of municipal services or facilities, the application of the narrow view of the FHA adopted by the panel majority in this case likely would have the practical effect of wiping out most, if not all, cases involving the discriminatory denial of services, no matter the severity of the discrimination at issue. *See* Schwemm, 41 Ind. L. R. at 794 (explaining why "§ 3604(b)'s guarantee of nondiscrimination in housing-related 'privileges' and 'services' – even if limited to those connected with the 'sale or rental of a dwelling' – should apply, as to 'rentals,' throughout a tenant's residency and, as to 'sales,' to privileges and services that are tied to homeownership").

In light of the anomalous results that the panel majority's restrictive view of the Act creates – whereby individuals are left without an essential remedy for egregious discriminatory intimidation and harassment, local governments are effectively immune from FHA lawsuits, and the practical value of the Act is limited at best – it is not surprising that at least two courts have refused to interpret the Act so narrowly. *See U.S. v. Koch*, 352 F. Supp. 2d 970, 973-79 (D. Neb. 2004) (criticizing the reasoning of *Halprin* and noting "that the court's analyses are questionable in two key respects: they counsel that a narrow interpretation ought to be given to the language of section 3604, and they depend greatly upon a narrow view of the FHA's legislative history"); *Richards v. Bono*, No. 5:04CV484, 2005 WL 1065141, at *3 (M.D. Fla. May 2, 2005) (deteriming that the reasoning of *Halprin*'s progeny "does not extend to cases of post-acquisition discrimination in a rental context"). This Court likewise should, in deciding this case, reject the restrictive interpretation of the FHA espoused in *Halprin* and extended by the panel majority.

V. In The Experience Of *Amici*, Egregious Post-Acquisition Conduct Continues To Be A Pervasive Problem.

Amici have extensive experience litigating post-acquisition discrimination cases. (*See* Declarations on behalf of *Amici*, attached as Exhibits B through D; *see also* Declaration of John R. Petrusak on behalf of South Suburban Housing Center, attached as Exhibit E.) Each *amicus* regularly receives complaints alleging post-acquisition discrimination, including sexual harassment, racial threats and violence, and discriminatory practices by landlords. For example, more than 30% of the housing discrimination complaints that the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. ("CLC") received during the past two years involved claims for post-acquisition discrimination. (Ex. B at ¶ 5.)

This experience demonstrates that post-acquisition discrimination not only has been, but continues to be, a pervasive problem both in this Circuit and nationwide.[8] The post-acquisition cases *amici* recently have litigated reveal discriminatory conduct against tenants and homeowners that, if not covered by the Act, render the FHA a nullity in redressing some of society's most reprehensible conduct. For example, CLC is currently handling the following cases involving egregious post-acquisition discrimination:

- White neighbors of an African American homeowner, from 2002 until 2006: (i) routinely stalked and videotaped her; (ii) threatened her

[8] *Amici* have brought post-acquisition claims under the FHA for more than 35 years. *See, e.g.*, *Trafficante*, 409 U.S. 205 (1972) (plaintiffs represented by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area); *Woods-Drake v. Lundy*, 667 F.2d 1198 (5th Cir. 1982) (plaintiffs represented by the Lawyers' Committee then located in Jackson, Mississippi); *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, No. CIV.A.96-2495RMU, 1997 WL 1877201 (D.D.C. Dec. 18, 1997) (plaintiffs represented by Washington Lawyers' Committee for Civil Rights and Urban Affairs); *Lane v. Cole*, 88 F. Supp. 2d 402 (E.D. Pa. 2000) (plaintiffs represented by Public Interest Law Center of Philadelphia); *Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845 (N.D. Ill. 2003) (plaintiffs represented by CLC); *Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. Mar. 17, 2008) (plaintiffs represented by the Lawyers' Committee).

verbally and in writing with racial epithets, including "nigger" and "black bitch"; (iii) falsely reported her son to the police as a murder suspect; and (iv) placed tacks and nails around her automobile at both her home and work. (*Id*. at ¶ 6.d.)

- A white neighbor of a Puerto Rican man: (i) threatened to kill him and rape his wife; (ii) referred to him and his friends as "spic" and "pork chop"; and (iii) told him and his family to "move out and go back to their people." (*Id*. at ¶ 6.e.)

- A townhome association enacted a rule that essentially bans all children from playing anywhere outdoors and further prohibits any children under the age of eighteen from even appearing outside their homes without parental supervision. (*Id.* at ¶ 6.l.)

The Lawyers' Committee also is currently litigating a significant post-acquisition housing discrimination case, *Steele v. City of Port Wentworth*. (Ex. C at ¶ 6.a.) As discussed, *supra*, *Steele* was dismissed after a district court concluded, relying on *Halprin*'s progeny, that the FHA does not prohibit post-acquisition discrimination. *See* 2008 WL 717813, at *12. *Steele* is currently pending in the Eleventh Circuit Court of Appeals under case number 08-11958-DD. (Ex. C. at ¶ 6.a.)

Similarly, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area is counsel in *Committee Concerning Community Improvement v. City of Modesto*, No. 1:04cv6121, 2006 WL 3834171 (E.D. Ca. Dec. 29, 2006), where several Latino homeowners and renters sued the City of Modesto and other defendants under the FHA for discriminatory provision of services and facilities on the basis of race. The court dismissed the FHA claim on the basis that the services at issue were not provided in connection with the acquisition of a dwelling and, thus, did not state a claim under the FHA. *See id.* at *1. The court also prevented plaintiffs from adding a new FHA claim in their Third Amended Complaint because "Plaintiffs already own their homes" and, thus, any alleged housing discrimination could not have resulted "from a denial of housing."

Id. at *8. This case is currently pending in the Ninth Circuit Court of Appeals under case numbers 07-16715 and 07-17407.

As *amici* have seen firsthand, post-acquisition discrimination continues to be a disease in America – killing dreams, ruining lives, and shattering communities. But the Fair Housing Act can and should serve as an antidote to this problem, as it provided a remedy to tenants and homeowners for decades before this Court suggested in *Halprin*, and affirmed in the panel majority's decision, that the FHA applies only to *access* to housing. Fortunately, the Court now has the opportunity to clarify its position, reaffirm the principles set forth in *Trafficante*, 409 U.S. at 209, 212, and explain that an individual's right to fair housing does not evaporate when the moving van pulls away from the curb. Should the Court fail to do so, the ironic result will be that families in this Circuit will have less protection from discriminatory treatment in their homes in 2009 than at any time since the passage of the Fair Housing Act – an era when families like the Youngers in *A Raisin in the Sun* were routinely threatened and harassed simply because they wanted to live and raise their children in an integrated neighborhood.

CONCLUSION

For the foregoing reasons, the decision of the district court should be reversed and remanded for further proceedings.

Dated: February 27, 2009

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation imposed by Fed. R. App. P. 32(a)(7)(B) and 29(d). This brief was prepared using Microsoft Word 2003 and contains 5,281 words of proportionally spaced text. The type face is Century Schoolbook, 12-point font.

s/ David F. Benson

CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 31(e)

I hereby certify that the digital version of this brief was generated by printing to PDF format from the original word processing file and not by scanning paper documents. Counsel did not have access to the original word processing files for Exhibits B-E to the brief. Therefore a digital version of Exhibits B-E are not available.

s/ David F. Benson

CERTIFICATE OF SERVICE

I, David F. Benson, an attorney, hereby certify that on February 27, 2009, I caused two true and correct copies of the foregoing BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC., LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION, INC., PUBLIC INTEREST LAW CENTER OF PHILADELPHIA, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, THE MISSISSIPPI CENTER FOR JUSTICE, NATIONAL FAIR HOUSING ALLIANCE, AND CHICAGO FAIR HOUSING ALLIANCE AS AMICI CURIAE SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL AND REMAND ON FAIR HOUSING ACT CLAIMS to be served via the United States postal service, first class mail, postage prepaid, upon the following:

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EXHIBIT A

Pre-*Halprin* Decisions Recognizing That The Fair Housing Act Protects Against Post-Acquisition Discrimination

Seventh Circuit Court of Appeals Cases

Krueger v. Cuomo, 115 F.3d 487 (7th Cir. 1997) (recognizing FHA post-acquisition claim where landlord allegedly engaged in quid pro quo sexual harassment of existing tenant and attempted to evict her because she rejected his advances)

DiCenso v. Cisneros, 96 F.3d 1004 (7th Cir. 1996) (recognizing that the FHA can protect post-acquisition claim of hostile housing environment through sex discrimination)

United Farm Bureau Mut. Ins. Co., Inc. v. Metro. Human Relations Comm'n, 24 F.3d 1008 (7th Cir. 1994) (recognizing FHA post-acquisition claim by white resident where insurance company declined to renew his homeowner's policy because he lived in a racially mixed neighborhood)

Southend Neighborhood Improvement Ass'n v. County of St. Clair, 743 F.2d 1207 (7th Cir. 1984) (recognizing FHA post-acquisition claim where municipality provides different and inferior municipal services, like police, fire protection, or garbage collection, based on a protected class)

Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977) (recognizing FHA post-acquisition claim where existing property owners contended village's refusal to rezone property was racially discriminatory)

Seventh Circuit District Court Cases

Walton v. Claybridge Homeowners Ass'n, Inc., No. 1:03-CV-69-LJM-WTL, 2004 WL 192106 (S.D. Ind. Jan. 22, 2004) (recognizing FHA post-acquisition claim where African American plaintiff purchased home and homeowners association and white neighbors began constantly harassing plaintiff because of her race; harassment included acts of vandalism like placing dog feces on rear doormat, constantly throwing trash in plaintiff's yard, and making physical and death threats)

Whisby-Myers v. Kiekenapp, 293 F. Supp. 2d 845 (N.D. Ill. 2003) (recognizing FHA post-acquisition claim where white defendant set off bomb while African American plaintiff drove to work and confronted plaintiff screaming racial epithets)

Marthon v. Maple Grove Condo. Ass'n, 101 F. Supp. 2d 1041 (N.D. Ill. 2000) (recognizing FHA post-acquisition claim where existing tenant alleged harassment by neighbors and condominium association on the basis of plaintiff's disability)

Bryant v. Polston, No. IP 00-1064-C-T/G, 2000 WL 1670938 (S.D. Ind. Nov. 2, 2000) (recognizing FHA post-acquisition claim where defendants engaged in a continuous pattern of racially derogatory remarks, acts of intimidation and gestures of violence or bodily harm with a gun due to plaintiffs' association with persons of African American descent)

Balachowski v. Boidy, No. 95 C 6340, 2000 WL 1365391 (N.D. Ill. Sept. 20, 2000) (recognizing FHA post-acquisition claim where landlord failed to make reasonable accommodations for plaintiff's disability, including providing a proper ramp at the front and rear entrances and accessible electrical outlets)

Anast v. Commonwealth Apartments, 956 F. Supp. 792 (N.D. Ill. 1997) (recognizing FHA post-acquisition claim where defendants failed to provide reasonable accommodation to tenant's disability by refusing to postpone eviction action until after plaintiff was out of the hospital and able to understand the proceedings)

Simovits Jr. v. Chanticleer Condo. Ass'n, 933 F. Supp. 1394 (N.D. Ill. 1996) (recognizing FHA post-acquisition claim where condominium association's discriminatory covenant against families with children cost plaintiff opportunity to sell condominium unit at a higher price)

Woods v. Foster, 884 F. Supp. 1169 (N.D. Ill. 1995) (recognizing FHA post-acquisition claim where female plaintiffs alleged that defendants conditioned the benefits of a residential facility for otherwise homeless families upon the performance of sexual acts)

Valenti v. Salz, No. 94 C 7053, 1995 WL 417547 (N.D. Ill. July 13, 1995) (recognizing FHA post-acquisition claim where mentally ill plaintiff alleged harassment and unlawful eviction)

Campbell v. City of Berwyn, 815 F. Supp. 1138 (N.D. Ill. 1993) (recognizing FHA post-acquisition claim where defendants terminated police protection because home-owning plaintiffs were African American; police protection was initially provided to guard plaintiffs from racially motivated attacks)

Johnson v. Smith, 810 F. Supp. 235 (N.D. Ill. 1992) (recognizing FHA post-acquisition claim where defendants allegedly participated in a cross-burning on plaintiffs' lawn)

Stirgus v. Benoit, 720 F. Supp. 119 (N.D. Ill. 1989) (recognizing FHA post-acquisition claim where white defendants threw Molotov cocktail through African American plaintiffs' window 10 days after plaintiff bought and moved into all-white neighborhood)

Grieger v. Sheets, No. 87 C 6567, 1989 WL 38707 (N.D. Ill. Apr. 10, 1989) (recognizing FHA post-acquisition claim where defendant demanded sexual favors from tenant in exchange for performance of repairs and continued tenancy)

Seaphus v. Lilly, 691 F. Supp. 127 (N.D. Ill. 1988) (recognizing existence of an FHA post-acquisition claim where African American plaintiff alleged that white neighbors and condominium association attempted to make plaintiff leave house because of his race through acts of violence and property damage, including physical assault and attempted arson)

Waheed v. Kalafut, No. 86 C 6674, 1988 WL 9092 (N.D. Ill. Feb. 2, 1988) (recognizing FHA post-acquisition claim where African American plaintiffs' house was firebombed and where white defendant verbally insulted plaintiffs on racial basis, threw beer bottles, and set plaintiffs' house on fire)

Stackhouse v. DeSitter, 620 F. Supp. 208 (N.D. Ill. 1985) (recognizing FHA post-acquisition claim where white defendant firebombed the car of African American plaintiff, who had moved into all white neighborhood where defendant lived)

Concerned Tenants Ass'n of Indian Trails Apartments v. Indian Trails Apartments, 496 F. Supp. 522 (N.D. Ill. 1980) (recognizing FHA post-acquisition claim where plaintiff alleged that landlord allowed apartment building to fall into disrepair after tenant population shifted from predominantly white to predominantly African American) (superseded by statute)

<u>Cases From Other Federal Courts of Appeal</u>

Hamad v. Woodcrest Condo. Ass'n, 328 F.3d 224 (6th Cir. 2003) (recognizing FHA post-acquisition claim where condominium association had rule prohibiting families with children from purchasing or living in units on the second or third floors)

Neudecker v. Boisclair Corp., 351 F.3d 361 (8th Cir. 2003) (recognizing FHA post-acquisition claim where plaintiff alleged that he suffered harassment due to his mental disability while a tenant at the defendant's apartment complex)

Harris v. Itzhaki, 183 F.3d 1043 (9th Cir. 1999) (recognizing FHA post-acquisition claim where landlord's agent made racist statements within earshot of African American tenant, falsely claimed not to have received tenant's rent check, and twice served tenant with a three-day notice to vacate contrary to established policy)

Radecki v. Joura, 114 F.3d 115 (8th Cir. 1997) (recognizing FHA post-acquisition claim where landlord evicted tenant with mental disability)

Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993) (recognizing FHA post-acquisition claim for hostile housing environment where the alleged sexual harassment unreasonably interferes with plaintiff's use and enjoyment of premises and harassment is sufficiently severe or pervasive to alter conditions of the housing arrangement)

Betsey v. Turtle Creek Assocs., 736 F.2d 983 (4th Cir. 1984) (recognizing FHA post-acquisition claim where defendants' all-adult conversion policy, which resulted in the eviction of families with children, had a disproportionate adverse impact on minority tenants)

Woods-Drake v. Lundy, 667 F.2d 1198 (5th Cir. 1982) (recognizing FHA post-acquisition claim where defendant landlord threatened to evict white plaintiffs because they had hosted a dinner party including three African American guests)

Cases From District Courts Outside the Seventh Circuit

N.D. Fair Hous. Council, Inc. v. Allen, 319 F. Supp. 2d 972 (D.N.D. 2004) (recognizing FHA post-acquisition claim where plaintiffs alleged that they were discriminatorily singled out for rent increase, prohibited from having a pet, and made to pay a fee upon move-out on the basis of race and disability)

Hous. Rights Ctr. v. Sterling, 404 F. Supp. 2d 1179 (C.D. Cal. 2004) (recognizing FHA post-acquisition claim where landlord created hostile environment by deviating from historical housing practices regarding the acceptance of rent checks and pursuit of back rent, refusing and returning rent payments, making discriminatory statements and policies, and providing biased treatment by building personnel because of tenant's race)

Lopez v. The City of Dallas, Texas, No. 3:03-CV-2223-M, 2004 WL 2026804 (N.D. Tex. 2004) (recognizing FHA post-acquisition claim where defendant city provided different and inferior municipal services, including environmental and flood protection and adequate drainage facilities, to neighborhood because residents were predominantly Hispanic)

United States v. Plaza Mobile Estates, 273 F. Supp. 2d 1084 (C.D. Cal. 2003) (recognizing FHA post-acquisition claim owners of mobile home parks enacted rules and regulations discriminating on the basis of familial status by restricting or denying access to common facilities based on age)

Hous. Rights Ctr. v. Donald Sterling Corp., 274 F. Supp. 2d 1129 (C.D. Cal. 2003) (recognizing FHA post-acquisition claim where landlord closed parking garage and required existing tenants to identify place of birth, citizenship, and date of naturalization on application for garage door opener to regain access to parking garage)

Gibson v. County of Riverside, 181 F. Supp. 2d 1057 (C.D. Cal. 2002) (recognizing FHA post-acquisition claim where defendant imposed an age 55-or-over zoning restriction that did not comply with federal law and enforced the age limitation against home-owning plaintiffs with children)

Andujar v. Hewitt, No. 02 CIV. 2223(SAS), 2002 WL 1792065 (S.D.N.Y. Aug. 2, 2002) (recognizing FHA post-acquisition claim where landlord threatened eviction because tenant's goddaughter and soon to be foster child moved in with tenant)

Miller v. City of Dallas, No. Civ.A. 3:98-CV-2955-D, 2002 WL 230834 (N.D. Tex. Feb. 14, 2002) (recognizing FHA post-acquisition claim where defendant city provided inferior municipal services, including flood protection, zoning, and streets and drainage services, to neighborhood because residents were predominantly African American)

Inland Mediation Bd. v. City of Pomona, 158 F. Supp. 2d 1120 (C.D. Cal. 2001) (recognizing FHA post-acquisition claim where plaintiffs alleged that the city provided municipal services to existing tenants differently because of race; noting that the FHA guarantees tenants the right to equal treatment once they have become residents of certain housing)

Lane v. Cole, 88 F. Supp. 2d 402 (E.D. Pa. 2000) (recognizing FHA post-acquisition claim by tenant and guest where white defendant confronted white neighbor, shaking his arms and threatening to kill, punch, and hospitalize her because tenant had African American guest and children spend the evening)

Egan v. Schmock, 93 F. Supp. 2d 1090 (N.D. Cal. 2000) (recognizing FHA post-acquisition claim where defendants attempted to drive plaintiffs out of their home by harassing and intimidating plaintiffs on the basis of national origin over nine years, including calling plaintiffs derogatory racial names like "dirty Indians" and telling plaintiffs to go back where they came from)

Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7 (D.D.C. 2000) (recognizing FHA post-acquisition claim where defendant allegedly engaged in "reverse redlining" in targeting current homeowners in African American communities with predatory lending practices)

Texas v. Crest Asset Mgmt., Inc., 85 F. Supp. 2d 722 (S.D. Tex. 2000) (recognizing FHA post-acquisition claim where apartment owner and management constantly referred to plaintiff, who was of Lebanese descent, as an "Arab terrorist," threatened to force plaintiff out of the apartment complex, and failed to renew plaintiff's lease because of plaintiff's national origin)

United States v. Pospisil, 127 F. Supp. 2d 1059 (W.D. Mo. 2000) (recognizing FHA post-acquisition claim where defendants burned a cross on non-white plaintiff's lawn)

Fowler v. Borough of Westville, 97 F. Supp. 2d 602 (D.N.J. 2000) (recognizing FHA post-acquisition claim where plaintiffs, who were recovering alcohol and drug abusers, alleged borough used building code enforcement and police harassment to drive plaintiffs out of their group home because of their disability)

Walker v. Crawford, No. 5:97-CV-1033, 1999 WL 33917846 (N.D. Ohio Sept. 16, 1999) (recognizing FHA post-acquisition claim where defendant landlord sexually harassed female tenants and conditioned the plaintiffs' rental terms on their submission to sexual advances)

Ohana v. 180 Prospect Place Realty Corp., 996 F. Supp. 238 (E.D.N.Y. 1998) (recognizing FHA post-acquisition claim where neighbors engaged in discriminatory acts against existing tenants because of their Hebrew race, Jewish religion, and Middle Eastern national origin)

Fair Hous. Cong. v. Weber, 993 F. Supp. 1286 (C.D. Cal. 1997) (recognizing FHA post-acquisition claim where apartment complex rule restricted families with children from using building's swimming pool)

Reeves v. Carrollsburg Condo. Unit Owners Ass'n, No. CIV. A. 96-2495RMU, 1997 WL 1877201 (D.D.C. Dec. 18, 1997) (recognizing FHA post-acquisition claims where white defendant repeatedly threatened to rape and lynch African American plaintiff, uttered other racist and sexist verbal abuse, and sent plaintiff written notes of racist and sexist nature, conduct tolerated by the condominium association)

Green v. Konover Residential Corp., No. 3:95CV1984, 1997 WL 736528 (D. Conn. Nov. 24, 1997) (recognizing FHA post-acquisition claim where apartment complex ignored plaintiffs' repair requests because they were African American while at the same time promptly addressing repair requests of white tenants)

Byrd v. Brandeburg, 922 F. Supp. 60 (N.D. Ohio 1996) (recognizing FHA post-acquisition claim where white defendants threw a Molotov cocktail onto African American plaintiffs' porch, committed other acts of vandalism to plaintiffs' house, and used racial slurs)

Williams v. Poretsky Mgmt., Inc., 955 F. Supp. 490 (D. Md. 1996) (recognizing FHA post-acquisition claim where employee of apartment management company allegedly sexually harassed a female tenant)

United States v. Sea Winds of Marco, Inc., 893 F. Supp. 1051 (M.D. Fla. 1995) (recognizing FHA post-acquisition claim where defendants enforced policy requiring

identification wristbands to be worn by unit renters only against Hispanic tenants and selectively monitored the activities of and made derogatory remarks towards Hispanic tenants)

Roe v. Sugar River Mills Assocs., 820 F. Supp. 636 (D.N.H. 1993) (recognizing FHA post-acquisition claim where landlord threatened to evict existing tenant for conduct related to mental disability)

Miller v. Towne Oaks East Apartments, 797 F. Supp. 557 (E.D. Tex. 1992) (recognizing FHA post-acquisition claim where property manager assumed white plaintiff was racist and filed eviction action when plaintiff was victim of racial harassment from African American neighbors)

United States v. L & H Land Corp., 407 F. Supp. 576 (S.D. Fla. 1976) (recognizing FHA post-acquisition claim where white apartment manager refused to allow African American guests of white tenant access to common patio area because it was against the rules)

State Court Cases

Gomes v. Casagmo Condo. Ass'n, No. 331907, 1999 WL 566862 (Conn. Super. Ct. July 23, 1999) (recognizing FHA post-acquisition claim where defendant continually threatened plaintiffs with fines and foreclosure of their condominium unit because plaintiffs' daughter and her family moved into unit)

Martin v. Palm Beach Atl. Ass'n, Inc., 696 So.2d 919 (Fla. Dist. Ct. App. 1997) (recognizing FHA post-acquisition claim where condominium association's prohibition of children was allegedly unlawfully discriminatory)

HUD Cases

HUD v. Kogut, Fair Housing- Fair Lending Rep. (Aspen) ¶ 25,100 (HUD ALJ 1995) (recognizing FHA post-acquisition claim where landlord sexually harassed a current tenant and evicted her because she rejected his unwanted sexual advance)

HUD v. Gutleben, Fair Housing-Fair Lending Rep. (Aspen) ¶ 25,078 (HUD ALJ 1994) (recognizing FHA post-acquisition claim where white neighbor, on numerous occasions, called African American complainants, including young children, racially derogatory terms and expressed that complainants were not welcome in neighborhood)

HUD v. Paradise Gardens, Fair Housing-Fair Lending Rep. (Aspen) ¶ 25,037 (HUD ALJ 1992) (recognizing FHA post-acquisition claim where current homeowners and

lessees did not have equal access to housing community's facilities because of familial status)

HUD v. Tucker, Fair Housing-Fair Lending Rep. (Aspen) ¶ 25,033 (HUD ALJ 1992) (recognizing FHA post-acquisition claim where building manager wrongfully tried to evict white tenant, refused to accept rent from white tenant, and undertook campaign of harassment against white tenant at her place of work after tenant's African American boyfriend moved in with tenant)

HUD v. Denton, Fair Housing-Fair Lending Rep. (Aspen) ¶ 25,014 (HUD ALJ 1991) (recognizing FHA post-acquisition claim where respondent landlord enforced a one-child per unit policy and evicted tenant complainants because of familial status)

HUD v. Murphy, Fair Housing-Fair Lending Rep. (Aspen) ¶ 25,002 (HUD ALJ 1990) (recognizing FHA post-acquisition claim where mobile home park's rules discriminatorily prevented current tenants from building a clubhouse for their children and selling their mobile homes to prospective buyers with children)

HUD v. Jerrard, Fair Housing-Fair Lending Rep. (Aspen) ¶ 25,005 (HUD ALJ 1990) (recognizing FHA post-acquisition claim where white landlord singled out tenant by increasing tenant's rent because tenant had African American guests and where landlord made racially discriminatory comments to tenant and others)

B

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LYNNE BLOCH, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No.: 06-3376
	)	
EDWARD FRISCHHOLZ, et al.,	)	
	)	
Defendants-Appellees.	)	

DECLARATION OF ELIZABETH SHUMAN-MOORE

I, Elizabeth Shuman-Moore, an attorney, state and depose on oath that, if called to testify as a witness in this matter, I could competently testify as follows:

1. I am duly licensed to practice law in the State of Illinois, and am the Director of the Fair Housing Project and the Project to Combat Bias Violence of the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. (the "Chicago Lawyers' Committee"). I have been an attorney with the Chicago Lawyers' Committee since 1990.

2. I am submitting this declaration in support of the Chicago Lawyers' Committee's *amicus* brief filed in this case.

3. The Chicago Lawyers' Committee was founded in 1969 as a cooperative effort of Chicago's leading law firms to contribute to the enforcement of the then-newly-passed federal civil rights laws, including the Fair Housing Act, Title VIII of the Civil Rights Act of 1968. For the past forty years, the Chicago Lawyers' Committee has litigated fair housing cases in the metropolitan Chicago region, including numerous cases involving post-acquisition discrimination.

4. The Chicago Lawyers' Committee's Fair Housing Project strives to eliminate discriminatory housing practices by: (i) educating people about their rights and responsibilities under fair housing laws; (ii) conducting intake on and investigating

complaints of discrimination, using testing and other tools; (iii) when the evidence warrants, providing free legal representation to individuals and groups who wish to enforce their fair housing rights in administrative agencies and courts, and (iv) advocating on a wide range of housing-related issues, including fair advertising and lending, subsidized housing, and affordable housing. Sources of referral include the internet, governmental agencies, and grassroots, community-based, advocacy, and other fair housing organizations.

5. From February 2007 through January 2009, the Fair Housing Project investigated and/or litigated 122 complaints of housing discrimination based on protected classes protected by the Fair Housing Act. Of that number, 38, or 31% of such cases, involved post-acquisition discrimination.

6. Following are descriptions of cases that the Chicago Lawyers' Committee has litigated involving post-acquisition discrimination:

a) A man detonated an explosive in the van of a Muslim-American family, parked in front of their house, to intimidate and interfere with the family because of their religion and national origin and because they were occupying the house in a southwest suburb.

b) A white man set off an explosive in May 2001 as his African American neighbor drove past his house in Calumet City because of her race. The white man previously buried the explosive in the parkway in front of his house and detonated it by remote control when the African American neighbor drove by, and then came out of his house and insulted her with racial epithets. *Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845 (N.D. Ill. 2003).

c) Three white men attacked three African American teenage children as they walked home from a high school football game in far northwest suburban Fox Lake in August 2002. The defendants called the children "niggers," told the children to get out of their town or they would kill them, and held a knife to the throat of one of the girls. The girl testified at trial that she pleaded with the defendants not to kill her, and her mother testified that the attack shattered their family happiness in what they thought was their dream home.

d) Two white neighbors of an African American homeowner have, from 2002 until 2006: (i) routinely stalked and videotaped her; (ii) often threatened her verbally and in writing with racial epithets, including "nigger" and "black bitch"; (iii) falsely reported her son to the police as a murder suspect; and (iv) placed tacks and nails around her automobile at both her home and work.

e) A white neighbor of a Puerto Rican family has, from 2007 to the present: (i) threatened to kill the Puerto Rican father and rape his wife; (ii) referred to the Puerto Rican father and his friends as "spic" and "pork chop"; and (iii) told the Puerto Rican father and his family to "move out and go back to your people."

f) Five young white men threw a brick through a window of the home and burned a cross in the yard of a house where a white woman, her adult biracial children and their black spouses lived, because of race. *Johnson v. Smith*, 810 F. Supp. 235 (N.D. Ill. 1992).

g) A white man began to harass and intimidate an African American family because of race within days of their moving into a house in a south Chicago suburb in 1995. These actions culminated in the white man burning a large cross in their

yard and throwing a paving stone at the African-American man, injuring his ear. *Bailey v. Budlove*, 98 C 3486 (N.D. Ill. 1998).

h) A landlord rented an apartment to an African American woman without her white husband being present. After the landlord learned that they were an interracial couple, the landlord delayed making repairs, threatened the couple, called them racially derogatory names, physically attacked the couple, and illegally locked them out of their apartment in September 2005.

i) A neighbor of a Jewish man and his wife of Mexican origin told the couple that he hated Jews, told the woman to go back to South America, and physically attacked the couple and their son in separate incidents.

j) A male owner of apartment building verbally and physically harassed a female tenant from the time she moved in until she moved out of the building. *Ashford v. Raval*, 95 C 4430 (N.D. Ill. 1995).

k) Neighbors approached a Latino family after the family purchased a home on the northwest side of Chicago, and said that the previous home owners were instructed not to sell to blacks or Latinos. The neighbors later: (i) repeatedly shouted insults at the family against their race, ethnicity, and gender; (ii) threatened the family; and (iii) physically attacked members of the family. *Ramos v. Kraft*, 94 C 6031 (N.D. Ill. 1994).

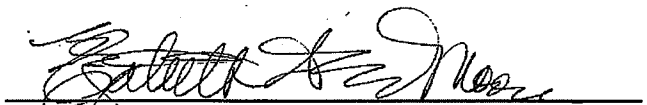
l) A townhome association enacted a rule in January 2008 that essentially bans all children from playing anywhere outdoors, and further prohibits any children under the age of eighteen from even appearing outside their homes without parental supervision.

m) White neighbors firebombed an African American woman's house ten days after she moved into a predominantly white neighborhood. *Stirgus v. Benoit*, 720 F. Supp. 119 (N.D. Ill. 1989).

n) Three young white men built a wooden cross with the words "KKK rules" written on it, and set it in the front yard of a south suburban African-American family. *Cotton v. Duncan*, 1993 WL 473622 (N.D. Ill. 1993).

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2009.



Elizabeth Shuman-Moore

C

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LYNNE BLOCH, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No.: 06-3376
	)	
EDWARD FRISCHHOLZ, et al.,	)	
	)	
Defendants-Appellees.	)	

DECLARATION OF JOSEPH D. RICH

I, Joseph D. Rich, an attorney, state and depose on oath that, if called to testify as a witness in this matter, I could competently testify as follows:

1. I am duly licensed to practice law in District of Columbia, and am the Acting Director of the Fair Housing Project of the Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee"). I also serve as the Senior Counsel for Federal Agencies and Litigation for the Lawyers' Committee.

2. The Lawyers' Committee is a nonpartisan, nonprofit organization that was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law.

3. There are eight independent affiliates of the Lawyers' Committee located in Boston, Massachusetts; Philadelphia, Pennsylvania; Chicago, Illinois; Denver, Colorado; San Francisco, California; Los Angeles, California; Washington, DC; and Jackson, Mississippi. Civil rights work by the Lawyers' Committee is national in scope and includes litigation, as well as legislative and programmatic advocacy. Civil rights work by affiliate organizations is concentrated in their local areas and is more litigation-

oriented. The Lawyers' Committee coordinates its work with the independent affiliates through periodic conference calls and an annual dinner.

4. The Lawyers' Committee has developed the Fair Housing Project (the "Project") to work in communities across the nation to combat and remediate discriminatory housing. The nature of the Project is systemic in scope, and most of the fair housing cases initiated by the Lawyers' Committee as part of the Project are class actions. The Lawyers' Committee, as part of the Project, also files briefs as *amicus curiae* in fair housing cases raising important fair housing issues.

5. The Lawyers' Committee comes to learn of allegations of violations of the Fair Housing Act through a variety of sources, including the following: complaints made to its web-based intake; through phone calls and e-mail messages to Project staff; through information learned from newspapers or other news sources; and through information it obtains from other civil rights organizations.

6. The following two cases illustrate the types of lawsuits that the Lawyers' Committee has recently handled involving post-acquisition discrimination:

a) ***Steele v. Port Wentworth,*** Case No. CV405-135 (S.D. Ga., filed August 3, 2005). The Lawyers' Committee brought this class action lawsuit against the City of Port Wentworth, Georgia alleging, *inter alia,* that the city violated Section 804(b) of the Fair Housing Act by refusing to provide long-time residents of a historically African American area of the city the same basic water and sewer services that the city provided to the residents of the predominantly white remainder of the city.

On March 17, 2008, the district court granted the city's motion for summary judgment and dismissed the case. With respect to the Section 804(b) claim, the

court held that the FHA did not apply to discrimination in the provision of municipal services because the discrimination occurred post-acquisition. The court relied on *Halprin*'s progeny and further opined that this narrow view of the FHA "appears to be the majority position among district courts that have considered the issue." 2008 WL 717813, at *12 (S.D. Ga. Mar. 17, 2008) (citations omitted). *Steele* is currently pending in the Eleventh Circuit Court of Appeals under case number 08-11958-DD.

b) ***King, et al. v. Blakely Housing Authority***, 1:00-CV-109 (M.D. GA, filed June 26, 2000). The Lawyers' Committee brought this class action lawsuit against the Blakely (Georgia) Housing Authority ("BHA") alleging, *inter* alia, that the BHA violated Section 804(b) of the Fair Housing Act by harassing, interrogating, and threatening African American tenants and their guests, while not subjecting white tenants to the same adverse treatment. The complaint further alleged that the BHA cut down trees and installed surveillance cameras at its predominantly African American property, but did not do so at its predominantly white property. The Department of Justice filed a similar suit against BHA in 2002 and the two cases were consolidated.

The parties entered into a consent decree in September 2004 that settled the consolidated cases, provided significant monetary relief for the plaintiffs, and enjoined discrimination "against any person in the terms, conditions, or privileges of rental or sale of a dwelling or in the provision of services or facilities in connection therewith, including engaging in any harassment or intimidation, because of race or color."

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2009.

Joseph D. Rich

D

D

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LYNNE BLOCH, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No.: 06-3376
	)	
EDWARD FRISCHHOLZ, et al.,	)	
	)	
Defendants-Appellees.	)	

DECLARATION OF JENNIFER R. CLARKE

I, Jennifer R. Clarke, an attorney, state and depose on oath that, if called to testify as a witness in this matter, I could competently testify as follows:

1. I am duly licensed to practice law in the Commonwealth of Pennsylvania, and am the Executive Director of the Public Interest Law Center of Philadelphia (the "Law Center"), a not-for-profit public interest law firm formed in 1969 as the Lawyers' Committee for Civil Rights Under Law, Philadelphia Branch. The Law Center was incorporated in 1974 by five former chancellors of the Philadelphia Bar Association and is dedicated to advancing the Constitutional promise of equal citizenship to all persons irrespective of race, ethnicity, national origin, disability, gender or poverty. The Law Center retains its affiliation with the Lawyers' Committee for Civil Rights Under Law.

2. The Law Center provides legal and technical support to the Fair Housing Rights Center in Southeastern Pennsylvania, Inc. (the "FHRC"), a not-for profit organization with a mission of ensuring equal access to housing opportunities for all people by educating the public on fair housing laws, providing assistance to individuals who have experienced housing discrimination, monitoring the community for compliance with applicable housing laws, and offering

information and counseling on housing related issues. The Law Center also assists other fair housing advocacy organizations, advises persons regarding potential housing discrimination and harassment claims, and, in some cases, represents individuals with housing discrimination and harassment claims.

3. Through these activities, the Law Center is aware of numerous incidents where persons have been harassed and denied the enjoyment and benefits of housing accommodations – whether owned or rented – because of their race, gender or other protected status. For example, the Law Center has received complaints that crosses have been burned and racial threats made for the purpose of discouraging persons from continuing to live in their homes or on the basis of the race of their guests.

4. The Law Center has also brought several lawsuits seeking redress for post-acquisition discrimination under the Fair Housing Act. Illustrative examples of these types of cases include:

a.) The Law Center was lead counsel for the plaintiff in *Lane v. Cole* 88 F. Supp. 2d 402 (E.D. Pa. 2000). In *Lane*, two white landlords harassed and discriminated against a white tenant for hosting African American guests at her apartment. Specifically, after learning that the white tenant's guests were African American, the landlords told the tenant to "look for somewhere else to live" because the "neighbors were not tolerant of [white tenants hosting African American guests]." *Id.* at 404. The next day, the landlord evicted the tenant, and the following day, one of the landlords "physically confronted [the tenant] in the hallway outside her apartment door," "blocked [her] egress, 'violently' shook his arms and threatened to 'punch her,' to 'put her in the hospital,' to 'kill her' and to 'remove the blacks' from the apartment if she did not do so." *Id.* at 405-06. The landlord then said "that 'a neighbor had complained about there being blacks in the building' and that 'problems were going to continue' until [the white tenant]

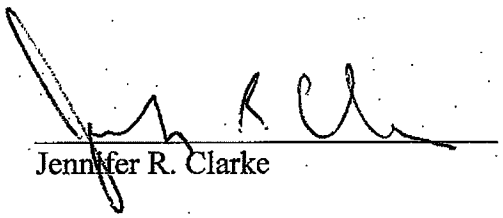
and [her African American guests'] 'kind' were gone." *Id.* When the white tenant moved out a few days later, the landlord spotted the tenant's African American guest and her two children waiting in a nearby car and shouted that the tenant ""better get in the car and leave or he would come and break her kneecaps' and to get 'that trash' out of here, referring to [the white tenant's African American guest and her children]." *Id.*

b) In 2002, the Law Center represented three African American women who claimed that their landlord made racial and sexual remarks to them, entered their apartments without permission, and provided differential or abusive treatment in repairs and rent collection. The parties settled this dispute before the Court ruled on any dispositive motions.

5. The FHRC – to which the Law Center provides legal and technical support – received eighteen complaints of post-acquisition housing discrimination during the period 2007 through 2008. Of these eighteen post-acquisition discrimination complaints, five were based on race; five were based on disability; three were based on sex; one was based on national origin; one was based on religion; and one was based on familial status.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2009.



Jennifer R. Clarke

E

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LYNNE BLOCH, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No.: 06-3376
	)	
EDWARD FRISCHHOLZ, et al.,	)	
	)	
Defendants-Appellees.	)	

DECLARATION OF JOHN R. PETRUSAK

I, John R. Petruszak, an attorney, state and depose on oath that, if called to testify as a witness in this matter, I could competently testify as follows:

1. I am duly licensed to practice law in the State of Illinois, and have been the Executive Director of South Suburban Housing Center ("SSHC") for the last fourteen years.

2. SSHC is the regional, private, non-profit fair housing enforcement and housing counseling agency located at 18220 Harwood Avenue, Suite 1, Homewood, Illinois 60430, serving the south Chicago metropolitan area since 1975. The organizational mission of SSHC is to eliminate housing market discrimination based on race or membership in other protected groups under the fair housing laws, and to foster stable, long-term diverse communities. SSHC is a long time member of both the Chicago Area Fair Housing Alliance (CAFHA) and the National Fair Housing Alliance (NFHA).

3. SSHC achieves its organizational purposes by operating fair housing monitoring and enforcement, affirmative rental placement and homebuyer counseling, and fair housing education and outreach programs for the benefit of residents in its

primary service area, as well as, other areas that are underserved by such programs and seek SSHC's assistance.

4. The fair housing enforcement activities implemented by SSHC's Testing and Compliance Programs have provided full service fair housing complaint intake, investigation and testing for fair housing violations and the processing of enforcement actions for more than 30 years. The organization has conducted over 3,915 fair housing test investigations and has been involved in more than 261 formal fair housing enforcement actions (including municipal, county, state, and federal administrative, as well as, federal court actions).

5. At the end of 2008, SSHC completed a 3-year fair housing enforcement project (calendar years 2006, 2007 and 2008) in which 267 new complaints from bona fide individuals were processed for intake. Of these complaints, 103, or 38.6% of that total, involved the investigation of post-acquisition issues.

6. These post-acquisition complaints fall within a variety of basic fact categories including claims of: a) harassment or retaliation committed by the housing provider, condominium/homeowners association, other tenants or neighbors; b) eviction or non-renewal of lease; and c) refusal to make reasonable accommodations or modifications requested by a disabled tenant.

7. Examples of specific post-acquisition complaints alleging housing discrimination issues that SSHC has processed during the last three years include:

a) A condo association's refusal to honor, based on a "no pet" policy, a disabled individual's request for a reasonable accommodation to have a support dog in his unit;

b) A landlord's refusal to re-new the lease of a married couple who had a child during the course of the lease term;

c) A landlord's refusal to renew the lease of a Caucasian woman who allowed her African American boyfriend to move in with her. The same landlord took no action when the woman, several years before, had allowed a Caucasian boyfriend to openly occupy the unit with her;

d) A landlord's refusal to grant a disabled individual's reasonable accommodation request to use his motorized wheelchair in a high-rise senior housing facility; and

e) A male landlord sexually harassing a single female head of household tenant.

8. A substantial percentage of the fair housing complaints received from the general public and processed by SSHC's fair housing enforcement programs during the last several years involve post-acquisition or post transaction housing discrimination issues.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

John R. Petruszak

Executed on:
February 26, 2009