No. 18-10053

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GEORGIA STATE CONFERENCE OF THE NAACP; TROUP COUNTY CHAPTER OF THE NAACP; PROJECT SOUTH; CHARLES BREWER; CALVIN MORELAND; APRIL WALTON; PAMELA WILLIAMS; and JOHN DOES 1-3

Plaintiffs-Appellants,

vs.

CITY OF LAGRANGE, GEORGIA,

Defendant-Appellee.

BRIEF OF FORMER HUD ASSISTANT SECRETARIES FOR FAIR HOUSING AND EQUAL OPPORTUNITY AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

On Appeal from the U.S. District Court for the Northern District of Georgia
Case No. 3:17-cv-00067-TCB (Batten, J.)

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Case No. 18-10053

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, *amici curiae* disclose the following persons who may have an interest in the outcome of this case:

Batten, Hon. Timothy C. (Trial Judge)

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Williams, Pamela (Plaintiff-Appellant)

Georgia State Conference of the NAACP, et al. v. City of LaGrange, Georgia
Case No. 18-10053

Amici curiae are unaware of any publicly traded company or corporation having an interest in the outcome of this case or appeal.

Dated: March 5, 2018

BRANCART & BRANCART

/s/ *Elizabeth Brancart*
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INTEREST OF AMICI CURIAE[1]

Amici curiae are four former Assistant Secretaries of the United States Department of Housing and Urban Development ("HUD"). Each administered HUD's Office of Fair Housing and Equal Opportunity ("FHEO"). The mission of FHEO is to study and eliminate housing discrimination. FHEO enforces the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and is responsible for promulgating regulations and issuing guidance related to the Act.

Amici curiae are experts in the field. Each has a fundamental personal and professional interest in ensuring that the Fair Housing Act is accurately interpreted and fairly applied in cases of housing discrimination. They submit this brief to explain why the district court's ruling that the Fair Housing Act applies only to discrimination at the time of a rental or sales transaction is erroneous.

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[1] Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this brief. Pursuant to Fed. R. App. P. 29(a)(4)(E), *amici curiae* state that no party or counsel for a party authored this brief in whole or in part and that no party, counsel for a party, or person, other than *amici curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Amici are the following individuals:

• Elizabeth Julian, Assistant Secretary for Fair Housing and Equal Opportunity, 1995-1996, and Deputy General Counsel for Civil Rights and Litigation, U.S. Department of Housing and Urban Development, 1994-1995. Ms. Julian is the founder and now serves as the Senior Counsel of the Inclusive Communities Project in Dallas, Texas.

• Eva Plaza, Assistant Secretary for Fair Housing and Equal Opportunity, 1997-2001. Today Ms. Plaza is an attorney in private practice in Los Angeles, California.

• John D. Trasviña, Assistant Secretary for Fair Housing and Equal Opportunity, 2009-2013. Today, Mr. Trasviña is Dean of the University of San Francisco School of Law in San Francisco, California.

• Gustavo Velasquez, Assistant Secretary for Fair Housing and Equal Opportunity, 2014-2017. Today, Mr. Velasquez is Director of the Washington-Area Research Initiative, Urban Institute, in Washington, D.C.

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ISSUE TO BE DECIDED

Whether the district court erred in construing § 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b), to apply only to discrimination occurring at the time of acquisition of housing.

SUMMARY OF ARGUMENT

Based on their knowledge, experience, and expertise spanning decades and two presidential administrations, the former HUD Assistant Secretaries submit this brief as *amici curiae* because the district court's erroneous interpretation of § 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b), misreads the plain language of the Act, ignores decades of judicial rulings, and disregards longstanding HUD regulations that are entitled to *Chevron* deference. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984).

The Fair Housing Act, 42 U.S.C. § 3604(b), makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." Here, the district court concluded that § 3604(b) applies only "at the time of acquisition of housing" and that a plaintiff bringing a §

3604(b) claim must prove an "inability to acquire housing." (Joint Appendix ["J.A."] at 89-91, Order, D.C. Doc. No. 27 at 8-10.) That narrow construction of § 3604(b) is contrary to the interpretation of the Fair Housing Act by HUD – the federal agency charged with administering the Act – reflected in HUD's regulations and adjudications since 1989. The district court's construction of § 3604(b) is also contrary to the consensus reached by the federal courts in the 20 years following passage of the Act. Both HUD and those federal courts construe § 3604(b) as applying to post-acquisition discrimination.

When a federal agency interprets a statute that the agency is responsible for administering, courts must give the agency's interpretation due deference if (1) Congress has delegated interpretive authority to the agency, (2) the statute is silent or ambiguous with respect to the issue at hand, and (3) the agency's interpretation of the statute is reasonable. *Chevron*, 467 U.S. at 843; *Sierra Club, Inc. v. Leavitt*, 488 F.3d 904, 911-12 (11th Cir. 2007). HUD's regulations meet the standards triggering *Chevron* deference.

First, Congress delegated the authority to interpret the Fair Housing Act to HUD. 42 U.S.C. §§ 3608(a), 3614a. *See Meyer v. Holley*, 537 U.S.

280, 287-88 (2003) (applying *Chevron* to a HUD regulation interpreting the FHA). Second, HUD's interpretation is consistent with the plain language of the Fair Housing Act prohibiting discrimination "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith." 42 U.S.C. § 3604(b). HUD's interpretation that § 3604(b) applies to post-acquisition conduct is reasonable. It comports with the plain language of the Act as well as with federal court interpretations of the Act between its passage in 1968 and adoption of the Fair Housing Amendments Act in 1988. In 1988, Congress re-enacted § 3604(b) without change and is presumed to have been aware of and to have adopted that judicial interpretation. *Lorillard v. Pons*, 434 U.S. 575, 580 and n.7 (1978).

FACTS ALLEGED BY PLAINTIFFS IN THIS CASE

According to the plaintiffs' complaint, the City of LaGrange is the sole provider of essential municipal utilities to city residents, including electricity, gas and water. (J.A. 16-17, 30 [Complaint, D.C. Doc. 1, ¶¶ 2, 46].) For LaGrange residents, their homes either get utilities from the City or they go without. (J.A. 30 [Complaint, ¶ 46.) LaGrange conditions individuals' ability to receive utilities on their satisfaction of all debts owed

the City, including unpaid fees and fines assessed by the LaGrange Municipal Court that are *unrelated* to utility service. (J.A. 30 [Complaint, ¶ 49].) LaGrange's policy and practice of conditioning access to utilities on the payment of unrelated court debt is codified in an ordinance titled "Payment of unpaid bills and debts, service termination." LaGrange Mun. Code § 20-1-7(h). Enacted by the LaGrange City Council in 2004, this ordinance states:

> Any applicant for utility service who owes an unpaid utility bill or other debt to the city, including but not limited to court judgments and fines, shall pay such unpaid bill or debt prior to obtaining utility service. Additionally, customers who owe debts to the city of any type shall be subject to having utility services terminated for failure to pay said debts without any prior notice from the city.

LaGrange Mun. Code § 20-1-7(h). (J.A. 33 [Complaint, ¶ 63].) Documents utilized by the City also expressly threaten utility service disconnection because of court debt. (J.A. 41 [Complaint, ¶ 81].) Specifically, the City's notice informing residents that court debt has been added to their existing City of LaGrange utility account states: "In order to avoid interruption of service, your utility account must not have an arrears and you must contact the Collection Department, Room 103, at City Hall to make arrangements to pay the above fines." (J.A. 42, 81 [Complaint, ¶ 81 and Exh. A].) The

City's Utility Service Application further states: "7. Any debt owed to the City of LaGrange including but not limited to court judgments and fines shall be paid prior to obtaining utility service, 8. Applicants with delinquent amounts owed to the City of any type shall be subject to having utility services terminated for failure to pay said debts." (J.A. 42, 83 [Complaint, ¶ 81 and Exh. B].) African Americans are disproportionately harmed by the City's policy. (See J.A. 37, 39-40 [Complaint, ¶¶ 72, 78].)

The City adopted another policy in 2008 that requires an individual to produce *both* a Social Security Number ("SSN") *and* a photo identification issued by a state or federal government entity as a condition to obtaining a utilities account. (J.A. 41-42 [Complaint, ¶¶ 82, 84].) Many non-citizens, including people lawfully present, are ineligible to obtain SSNs from the Social Security Administration. (J.A. 42 [Complaint, ¶ 85].) Nor can they provide the second photo identification required by the City. (J.A. 43 [Complaint, ¶ 90].) That policy disproportionately harms Latinos who reside or seek to reside in LaGrange. (J.A. 46 [Complaint, ¶¶ 94-98].)

Taken as true, these facts state a claim for "discriminat[ion] . . . in the . . . provision of services or facilities in connection [with the sale or rental of a dwelling], because of race, color, . . . or national origin" in violation of the

Fair Housing Act, 42 U.S.C. § 3604(b).

ARGUMENT

I. The Fair Housing Act prohibits a broad range of discriminatory housing practices, including the conduct alleged in the complaint against LaGrange.

In enacting the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (the "FHA" or "Act"), Pub.L. 90-284, 82 Stat. 81, Congress declared that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The FHA, as amended by the Fair Housing Amendments Act of 1988 (the "FHAA"), Pub.L. 100-430, 102 Stat. 1619, authorizes an "aggrieved person" to pursue an administrative complaint with HUD or to a file a lawsuit in court. 42 U.S.C. §§ 3610, 3613(a)(1)(B). An aggrieved person is any person who (1) claims to have been injured by a discriminatory housing practice; or (2) believes that he or she will be injured by a discriminatory housing practice that is about to occur. 42 U.S.C. § 3602(i). A discriminatory housing practice is an act that is unlawful under 42 U.S.C. §§ 3604, 3605, 3606 or 3617. 42 U.S.C. § 3602(f). These provisions broadly prohibit discrimination related to housing.

As relevant here, § 3604 prohibits discrimination in the sale and

rental of dwellings, making it unlawful:

> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, . . . or national origin. 42 U.S.C. § 3604(a).
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, . . . or national origin.
>
> (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, . . . or national origin, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).
>
> (d) To represent to any person because of race, color, . . . or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

42 U.S.C. § 3604(a)-(d). Section 3604(e) prohibits blockbusting. Section 3604(f) extends the protections of 3604 to persons with disabilities and provides a more detailed definition of what conduct constitutes "discrimination" against that protected class. 42 U.S.C. § 3604(f)(1)-(3). Sections 3605 and 3606 prohibit discrimination in real estate-related transactions and brokerage services. 42 U.S.C. §§ 3605 and 3606. Finally, section 3617 makes it unlawful to coerce, intimidate, threaten or interfere

with persons in the exercise of rights under the Act. 42 U.S.C. § 3617.

II. The text of § 3604(b) is properly read to apply to post-acquisition conduct.

The plain language of § 3604(b) is properly read to prohibit discrimination in the terms, conditions or privileges and provision of services and facilities in connection with occupying a dwelling after it is sold or the rental agreement signed, protecting not only the right to acquire, but the right to inhabit a dwelling. Indeed, "it is difficult to imagine a privilege that flows more naturally from the purchase or rental of a dwelling than the privilege of residing therein." *United States v. Koch*, 352 F. Supp. 2d 970, 976 (D. Neb. 2004). The language prohibiting discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith" on its face is reasonably read to refer to "rental" in the broad sense of the ongoing occupancy of the dwelling as opposed to the act of signing a rental agreement. Almost 40 years ago, in *Concerned Tenants Ass'n of Indian Trails Apartments v. Indian Trails Apartments*, 496 F. Supp. 522, 525–26 (N.D. Ill. 1980), the district court specifically rejected the argument that § 3604(b) "only relates to activities that bear upon the availability of

housing," opining that "[s]uch a tortured interpretation of the application of § 3604(b) is ludicrous and runs counter to the plain and unequivocal language of the statute." *Id.*

The language "provision of services or facilities in connection therewith" is fairly read to encompass activities and benefits that are ongoing, such as use of common areas, provision of maintenance, staffing, and rules enforcement. To restrict "provision of services or facilities" to those tied only to the initial sale or rental transaction would severely and unnecessarily circumscribe the Act. Such a restrictive reading is inappropriate where the language of the FHA is "broad and inclusive" and must be given a "generous construction." *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972).

III. Congress affirmed that § 3604(b) covers post-acquisition conduct when it passed the Fair Housing Amendments Act of 1988.

The FHAA, passed in 1988, extended the protections of the Act to persons with disabilities and families with children and, among other changes, augmented its remedies. It did not make any changes to the text of § 3604(b), which had been consistently interpreted by the federal courts to cover post-acquisition conduct, contrary the district court's ruling here.

Between 1968 and 1988, federal courts interpreting the FHA consistently applied its provisions to conduct beyond rental or sales transactions. In one of the first court of appeals decisions construing the Act, the Fourth Circuit stated that, "[i]n combating racial discrimination in housing, Congress is not limited to prohibiting only discriminatory refusals to sell or rent." *United States v. Hunter*, 459 F.2d 205, 214 (4th Cir. 1972) (holding that newspapers may violate the FHA by publishing discriminatory advertisements). Shortly after that, the Sixth Circuit announced that examination of the Act "reveals a broad legislative plan to eliminate all traces of discrimination within the housing field." *Marr v. Rife*, 503 F.2d 735, 740 (6th Cir. 1974). The Supreme Court recently acknowledged the broad coverage of the Act, stating:

> [T]he FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation's economy. *See* 42 U.S.C. § 3601 ("It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States"); [H.R. Rep. 100-711, at 5, 1988 U.S.C.C.A.N. 2173, 2174 (June 17, 1988)] (explaining the FHA "provides a clear national policy against discrimination in housing").

Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 2521 (2015) ("*Inclusive Communities*").

Between passage of the FHA in 1968 and passage of the Fair Housing Amendments Act in 1988, the consensus of the federal courts was that § 3604(b) prohibited discrimination in the provision of services and facilities, including municipal services, in connection with *a dwelling*, not only in connection with the sale or rental *transaction* in which the dwelling was acquired. Cases decided during the first 20 years following passage of the FHA acknowledging that construction include:

• *Woods-Drake v. Lundy*, 667 F.2d 1198, 1201 (5th Cir. 1982) (landlord's imposition of rule on white tenants that they may not have black guests violated § 3604(b) because it "'discriminated[d] in the terms, conditions, or privileges of ... rental of a dwelling ... because of race ...").

• *Mackey v. Nationwide Ins. Companies*, 724 F.2d 419, 424 (4th Cir. 1984) ("Section 804(b) prohibits discrimination against any person in the provision of services or facilities in connection with a dwelling. . . . It encompasses such things as garbage collection and other services of the kind usually provided by municipalities.").

• *United States v. L & H Land Corp.*, 407 F. Supp. 576, 579 (S.D. Fla. 1976) (discrimination against white tenants by prohibiting them from

having black guests violated § 3604(b)).

• *Meadows v. Edgewood Mgmt. Corp.*, 432 F. Supp. 334, 335 (W.D. Va. 1977) (finding that § 3617 provides a remedy where a resident manager and maintenance technician are dismissed by their employers because of their aid or encouragement to existing tenants in asserting their right to equal services and conditions of housing under § 3604(b)).

• *Concerned Tenants Ass'n of Indian Trails Apts. v. Indian Trails Apts.*, 496 F. Supp. 522, 525–26 (N.D. Ill. 1980) (finding that black residents of an apartment complex stated a claim under § 3604(b) where they alleged that the complex no longer received the level of services and facilities it had received when the building population was predominantly white).

• *Schmidt v. Boston Hous. Auth*., 505 F. Supp. 988, 993-94 (D. Mass. 1981) (the FHA "was enacted in 1968 to prohibit a wide variety of discriminatory housing practices ranging from a discriminatory refusal to rent or sell on the basis of race to discrimination in the terms and conditions of housing").

• *Khawaja v. Wyatt*, 494 F. Supp. 302, 305 (W.D.N.Y. 1980)

(plaintiff tenant stated claim for discrimination under § 3604(b) where landlord failed to take action on tenant's complaints of harassment; FHA prohibits "deni[al], on the basis of race certain 'conditions,' 'services,' or 'facilities' in connection with renting a dwelling")

• *Grieger v. Sheets*, 689 F. Supp. 835, 840 (N.D. Ill. 1988) (claim of quid pro quo sexual harassment by existing tenant against landlord stated a claim for violation of § 3604(b)).

In fact, a search for the term "3604(b)" in the Westlaw federal courts database for the time period between 1968 and September 13, 1988, the date of passage of the FHAA, reveals no case in which a court held that § 3604(b) was inapplicable to post-acquisition discrimination in terms or conditions or services and facilities.

And it was not only the lower federal courts that read § 3604(b) as covering post-acquisition discrimination. Shortly after the passage of the FHA, Justice Harlan, joined by Chief Justice Burger and Justice White, dissented in *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 247-48 (1969), a housing discrimination case brought under the Civil Rights Act of 1866, 42 U.S.C. § 1982. The plaintiffs alleged that a community association

had refused to grant an African American lessor in possession of property in the community access to communal recreational facilities. For the dissenters, Justice Harlan argued that the writ of certiorari had been improvidently granted and should be dismissed because the case lacked public importance in the wake of passage of the FHA. Justice Harlan explained that the newly enacted FHA "explicitly makes it unlawful to 'discriminate against any person in the terms, conditions, or privileges of * * * rental (of housing), or in the provisions of services or facilities in connection therewith, because of race, (or) color * * *.' 42 U.S.C. § 3604(b)," and that "should a Negro in the future rent a house but be denied access to ancillary recreational facilities on account of race, he could in all likelihood secure relief under the provisions of the Fair Housing Law." *Id.* at 248, 251.

Between 1968 and 1988, when courts did conclude that denial of municipal services did not violate the FHA, it was because the courts considered that the particular service was too far removed from the occupancy of housing, not because § 3604(b) applied only to the inability to *acquire* housing. The cases turned on their unique facts and none construed § 3604(b) as the district court did here:

• *Southend Neighborhood Imp. Ass'n v. St. Clair Cty.*, 743 F.2d 1207, 1210 (7th Cir. 1984), held that § 3604(b) did not cover a homeowner's suit against a county for failure to maintain neighboring properties because county "decisions regarding how to administer properties it holds by tax deeds are distinct from" the types of services covered by § 3604(b), which are those generally provided by governmental units such as police and fire protection or garbage collection.

• *Vercher v. Harrisburg Hous. Auth.*, 454 F. Supp. 423, 424–25 (M.D. Pa. 1978), held that police protection services were not covered by the FHA because they had no "direct connection with the sale, rental or occupancy of housing."

Congress is presumed to be aware of judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change as was done with respect to § 3604(b) in 1988. *Lorillard v. Pons*, 434 U.S. 575, 580 and n.7 (1978) (citing to decisions by lower federal courts); *Bank of America Corp. v. City of Miami*, 137 S. Ct. 1296, 1303-04 (2017). Thus, when Congress passed the FHAA in 1988 it presumably was aware of the 20 years of decisions by the federal courts interpreting §

3604(b) as applicable to post-acquisition discrimination and to have adopted that interpretation.

IV. HUD's interpretation of the FHA is entitled to deference.

It was against this backdrop – 20 years of federal court interpretation of the FHA and Congress's re-enactment of § 3604(b) without change – that HUD issued its final rule implementing the Fair Housing Amendments Act. 54 Fed. Reg. 3232-01 (Jan. 23, 1989); 24 C.F.R. Part 100. The regulations issued in January 1989 by HUD's Office of Fair Housing and Equal Opportunity (the office each *amici* subsequently led) provide HUD's "interpretation of conduct that is unlawful housing discrimination" under the Act, 24 C.F.R. § 100.50(a), as authorized by Congress, 42 U.S.C. § 3614a.

HUD regulations interpret § 3604(b) as making it unlawful to "[d]iscriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities *in connection with sales or rentals*, because of race, color, religion, sex, handicap, familial status, or national origin." 24 C.F.R. § 100.50(b)(2) (emphasis added). The regulations go on to cite examples of prohibited actions. Actions that violate § 3604(b) include, but are not limited to:

> Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin. 24 C.F.R. § 100.65(b)(2).
>
> Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her. 24 C.F.R. § 100.65(b)(4).
>
> Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors. 24 C.F.R. § 100.65(b)(5).

HUD's final rule also set forth "[o]ther prohibited sale and rental conduct" which may "otherwise make unavailable" housing, including "[r]efusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin." 24 C.F.R. § 100.70(d)(4). Although HUD placed the regulation on municipal services under the heading of conduct that "otherwise makes unavailable" housing, it acknowledged that the examples of unlawful conduct set forth in §§ 100.50 - 100.90 may violate more than one of the subsections of 42 U.S.C. § 3604. 24 C.F.R. § 100.50(a). Thus, "providing [municipal services] differently because of race, color . . . or national origin" may violate § 3604(b) and may, under certain circumstances, make housing "otherwise

unavailable" under § 3604(a).

HUD's interpretation of the FHA meets the requirements for *Chevron* deference because

(1) Congress has delegated interpretive authority to HUD, 42 U.S.C. §§ 3608, 3612, 3614a; *Inclusive Communities*, 135 S. Ct. at 2537;

(2) the language of the FHA, if not plainly encompassing post-acquisition conduct as discussed above in Part II above, is silent or ambiguous with respect to the issue at hand; and

(3) HUD's interpretation of the statute is reasonable based on the language of the FHA, its purpose, and the consensus of the federal courts at the time of the passage of the FHAA in 1988 as already discussed.

Chevron, 467 U.S. at 843; *Sierra Club, Inc. v. Leavitt*, 488 F.3d at 911–12.

HUD's reasonable interpretation is entitled to deference. "[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U.S. at 844; *Sierra Club*, 488 F.3d at 911-12. Thus, even if in the first instance this Court would construe § 3604(b) as limited to discrimination at the time of acquisition of housing, it must give deference

to HUD's reasonable interpretation of the statute it was charged with administering.

Additional support for according deference to HUD's interpretation comes from HUD's longstanding construction of § 3604(b) in adjudication of FHA complaints. HUD Administrative Law Judges have consistently construed the FHA as applying to post-acquisition conduct when they adjudicate charges of discrimination[2]. HUD's position in adjudicating FHA charges is entitled to judicial deference. *Pfaff v. HUD*, 88 F.3d 739, 747 (9th Cir. 1996) (courts must "review with deference an agency's interpretation of the statute that it has responsibility to enforce, whether that interpretation

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[2] *See Secretary, HUD v. Paradise Gardens, Sec. II, Homeowners Assoc.*, 1992 WL 406531, *10-13, Fair Housing - Fair Lending (P-H) ¶ 25,037 (HUDALJ Oct. 15, 1992) (swimming pool rules unreasonably restricting children's access violated § 3604(b) by discriminating against families with children in provision of services or facilities); *Secretary, HUD v. Quintana*, 1994 WL 667139, *7, Fair Housing - Fair Lending (P-H) ¶ 25,088 (HUDALJ Nov. 21, 1994) (requiring tenants with children to pay a rent surcharge per month per child violated § 3604(b)); *Secretary, HUD v. Housing Authority of the City of Las Vegas*, 1995 WL 678326, *19, 25-26 (HUDALJ Nov. 6, 1995) (housing authority violated § 3604(b) by imposing different documentation requirements on tenants for approval of unit transfer based on race); *Secretary, HUD v. Krueger*, 1996 WL 418886, *12-13 (HUDALJ June 7, 1996) (sexual harassment of resident violates § 3604(b) and § 3617); *Secretary, HUD v. Colclasure*, 1998 WL 2785, *3 (HUDALJ Jan. 5, 1998) (requiring tenants with children to pay a rent surcharge per month per child violated § 3604(b).

emerges from an adjudicative proceeding or administrative rulemaking"). Moreover, the longevity of HUD's interpretation in itself also suggests deference. Longstanding, clearly articulated interpretation of a statute by the administering agency is the sort which is entitled "to great judicial deference." *Federal Maritime Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 745 (1973). The district court's failure to accord due deference to HUD's interpretation of § 3604(b) was error.

CONCLUSION

Amici respectfully request that the Court find that the district court erred in narrowly construing the Fair Housing Act, 42 U.S.C. § 3604(b), as applying only to discrimination involving "the inability to acquire housing" and reverse the judgment.

Dated: March 5, 2018

Respectfully submitted,
BRANCART & BRANCART

/s/ *Elizabeth Brancart*
Brancart & Brancart
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation set forth in Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B). This brief contains **4468** words, exclusive of the components that are excluded from th3 word count limitation in Rule 32(f). This certificate was prepared in reliance upon the word-count function of the word processing system (WordPerfect) used to prepare this brief. This document complies with the typeface requirements set forth in Federal Rules of Appellate Procedure 32(a)(5) because it has been prepared in a proportionally spaced typeface using font size 14 Times New Roman.

Dated: March 5, 2018

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I HEREBY CERTIFY that on this 5th day of March, 2018, seven true and correct copies of the attached brief was served via First Class United States Mail to the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit and electronically filed the same using the Court's CM/ECF system, which will automatically send electronic copies to the following counsel of record:

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