

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 18-10053-AA

GEORGIA STATE CONFERENCE OF THE NAACP ET AL.,
Appellants,

v.

CITY OF LAGRANGE, GEORGIA,
Appellees.

Appeal from the United States District Court for the Northern District of Georgia
No. 3:17-CV-00067

**AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS BY ATLANTA
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FOUNDATION, AND GEORGIA LEGAL SERVICES PROGRAM
SEEKING REVERSAL**

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No. 18-10053-AA

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

The undersigned attorney certifies, under rule 26.1 of the Federal Rules of Appellate Procedure, that Georgia Amici Atlanta Legal Aid Society, Atlanta Volunteer Lawyers Foundation, and Georgia Legal Services Program are each non-profit organization and no publicly held corporation has a 10% or greater ownership in any of them.

The undersigned attorney further certifies, under Eleventh Circuit Rule 26.1-1, that the following may have an interest in the outcome of the case:

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STATEMENTS OF INTEREST OF AMICI CURIAE¹

All parties have consented to the filing of this brief of Amici Curiae.

Founded in 1924 by volunteer attorneys, the **Atlanta Legal Aid Society (ALAS)** meets the civil legal needs of the poorest and most vulnerable citizens in the Atlanta metro area. ALAS has five offices serving five counties in metro Atlanta—Fulton, DeKalb, Cobb, Gwinnett, and Clayton. ALAS has 75 attorneys on staff to provide free legal services to qualifying, low-income clients in issues ranging from family law, to consumer work, to housing and public benefits. In 2016, ALAS opened over 20,000 new cases to provide legal advice and representation to ensure that low-income individuals have access to justice in the legal system.

The Atlanta Volunteer Lawyers Foundation, Inc. (AVLF) was created in 1979 through the joint efforts of the Atlanta Legal Aid Society, the Atlanta Bar Association, the Atlanta Council of Younger Lawyers, and the Gate City Bar Association. AVLF is the largest provider of pro bono legal services in Greater

¹ Pursuant to Fed. R. Civ. P. 29(a)(4)(E), Amici Curiae certify that no party's counsel authored this brief in whole or in part, that no party or party's counsel contributed money intended to fund the preparation or submission of the brief, and that no person (other than amicus curiae, their members and their counsel) contributed money intended to fund the preparation or submission of the brief.

Atlanta. For over 37 years, AVLF has promoted access to justice by inspiring volunteer attorneys to provide high-quality education, advocacy, and representation at no charge to low-income families with basic civil legal needs at critical times in their lives. AVLF's programs include services for domestic violence survivors, landlord/tenant disputes, evictions, unpaid wages, and probate issues. AVLF annually leverages donated attorney hours valued at over \$2,500,000, directly serving approximately 500 tenants, 2000 survivors of domestic violence, and hundreds more through community outreach and other programming annually. Today, AVLF's focus is on ensuring that when low-income Atlantans stand up to demand safe and stable housing or to break free from domestic violence, a lawyer always stands with them.

Georgia Legal Services Program (GLSP), founded in 1971 by the Young Lawyers Section of the State Bar of Georgia, is a statewide non-profit law firm serving 154 counties in Georgia outside the five-county metropolitan Atlanta area including Troup County. GLSP offers free legal services in civil cases to people with low incomes. GLSP clients have "high stakes" problems such as domestic violence, eviction or foreclosure, denial of hard-earned benefits such as unemployment, inability to get critically-needed employment, housing, health care,

food aid, and many more. GLSP's work is to assure that people with low income have access to justice and opportunities to escape poverty. GLSP represents clients by advocating for increasing and preserving opportunities for decent, affordable housing; improving housing conditions, including physical conditions and management practices; and expanding and enforcing low-income tenants' and homeowners' rights.

ALAS, AVLF, and GLSP ("Georgia Amici") are uniquely situated to address the Eleventh Circuit about the importance of the Fair Housing Act and its benefits to their clients, who are disproportionately persons of color and other vulnerable individuals facing historic discrimination. Further, Georgia Amici have provided legal assistance to more than 64,000 survivors of domestic violence in a variety of legal issues over the past decade; for those clients, the availability of claims under the Fair Housing Act provides critical protection from housing discrimination related to the abuse. Amici are also well-positioned to address the devastating impact that restrictive utility policies, such as the ones adopted by the City of LaGrange, would have on poor and especially vulnerable families if they were adopted in other communities throughout the state.

Georgia Amici's work provides low-income persons with opportunities to escape poverty, but residential segregation is inextricably linked to the cycle of poverty. Residential segregation, and the discriminatory behaviors and policies that perpetuate it, concentrate poverty within certain areas and restrict residents' ability to move to higher opportunity areas.² Because the disparate provision of municipal services leads to increased residential segregation,³ the discriminatory policies at issue in this case frustrate Georgia Amici's broader missions by restricting Amici's ability to help clients escape poverty. Georgia Amici clients are mainly renters; therefore, this brief will primarily address the way these policies affect renters. However, many of the lessons apply equally to homeowners.

This amicus brief is submitted in support of the Appellants. Amici also adopt the Appellants' brief in its entirety.

² Douglas S. Massey & Jonathan Tannen, *Segregation, Race, and the Social Worlds of the Rich and Poor*, in *The Dynamics of Opportunity in America: Evidence and Perspectives*, 13, 14 (Irwin Kirsch & Henry Braun eds., 2016).

³ 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, 30 (2008).

STATEMENT OF THE ISSUES

1. Do the prohibitions against housing discrimination in the federal Fair Housing Act, 42 U.S.C. § 3604(b), apply only at the moment of sale or rental of housing, or do they also apply to residents who have completed the rental or purchase of their homes?

SUMMARY OF THE ARGUMENT

This appeal asks the Court to decide whether the Fair Housing Act (“FHA”), 42 U.S.C. § 3604(b), which prohibits discrimination, is limited to discrimination at the moment of sale or rental, or whether it also protects residents from discrimination in connection with housing they already occupy. Amici have vast experience representing low-income and other disadvantaged individuals in housing cases. Amici also represent these groups in other sorts of cases that may affect their ability to access housing, such as domestic violence cases. The purpose of this brief is to demonstrate the negative consequences for Amici’s clients if, as the District Court held, the Fair Housing Act were interpreted not to protect them from discrimination following the acquisition of housing.

Amici discuss how such an interpretation of the Act would leave unprotected domestic violence survivors and minority groups who are disparately affected by

policies subjecting individuals with criminal records to eviction. Amici further argue that utility policies like those of the City of LaGrange will discriminatorily subject minority and immigrant populations to segregation and homelessness. The requirements for identification documents to obtain utility service cannot be met by many immigrants and also will disproportionately impact other minority populations.

In light of the negative effects of the District Court's ruling severely limiting the reach of the Fair Housing Act, Amici request that this Court reverse the District Court and uphold the broad anti-discrimination mandate of the Fair Housing Act.

ARGUMENT

Georgia Amici attorneys regularly confront institutional discrimination in the post-acquisition housing context. Unfortunately, for many people in protected classes, initial access to housing is only the first step in a long battle for safe and affordable housing free of discrimination. Too often, renters and homeowners with low incomes face discrimination after they acquire housing; they need the ability to bring claims under the Fair Housing Act to combat illegal practices.

Families with low incomes in Georgia, who are disproportionately members of protected classes, risk displacement and homelessness if other communities

across the state enact discriminatory utility policies similar to those of LaGrange. These policies have the potential to dramatically decrease access to housing for families with low incomes who already face housing insecurity and difficulty obtaining essential services due to their poverty.

Georgia Amici request that this Court reverse the District Court's ruling so that families with low incomes throughout Georgia will not face additional discrimination forcing them to live in areas with fewer services, worse schools, and less access to opportunities to escape residential poverty.

I. The District Court's erroneous interpretation of post-acquisition claims under 42 U.S.C. § 3604(b) has significant consequences for low-income Georgians' ability to bring a variety of valid claims under the Fair Housing Act.

The City of LaGrange's actions show that *de jure* residential segregation is alive and well in Georgia; and, "its vestiges remain today, intertwined with the country's economic and social life."⁴ Too often, Georgia Amici's clients are the victims of this discrimination in rental housing. The Fair Housing Act, which the U.S. Supreme Court has said deserves a "broad and inclusive compass,"⁵ is a method for clients to bring causes of action for discriminatory practices that

⁴ *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2515 (2015) ("Inclusive Communities").

⁵ *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995).

segregate Georgia communities. Yet, if the District Court’s narrow interpretation of the Fair Housing Act (FHA) stands, clients facing a variety of discriminatory practices in the rental market in Georgia will have no federal recourse.

Although the issue in this case is limited to particular utility practices within the City of LaGrange, the interpretation of the applicable law has potentially broad consequences for other FHA claims clients with low incomes may bring. Two types of FHA claims—the first involving survivors of domestic violence and the second African Americans with criminal histories—are instructive to understand the importance of the FHA in addressing post-acquisition discrimination.

A. Survivors of domestic violence, who face discrimination in housing, need the ability to bring causes of action under the FHA.

The Fair Housing Act prohibits discrimination, including conduct which has a disparate impact, on the basis of sex.⁶ The U.S. Department of Housing and Urban Development (HUD) has recognized that survivors of domestic violence face historical barriers to safe and stable housing because of their victimhood.⁷ In passing the Violence Against Women Act, Congress found that “women and

⁶ 42 U.S.C. § 3604(b); 24 C.F.R. § 100.500; *see also Inclusive Communities*, 135 S. Ct. at 2525.

⁷ U.S. Dep’t of Hous. and Urban Dev. Memorandum: *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act 1* (Feb. 9, 2011) (“HUD Memorandum”).

families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”⁸ In recognizing this historical discrimination, and the fact that women are “overwhelmingly the victims of domestic violence,” HUD takes the position that survivors who are evicted or lose a subsidy based on the violence they experience may have a cause of action for sex-based disparate impact discrimination under the FHA.⁹

Georgia Amici have represented countless victims of domestic violence who faced eviction or loss of their housing subsidies because of acts of domestic violence against them. Commonly, the situation arises when a victim who calls the police for assistance after domestic violence is evicted under a facially neutral “one-strike policy” aimed at preventing crime or police activity at the home. Rather than making the community safer, this policy has the opposite effect. It discourages survivors from calling the police when they are victims of criminal attacks, undermining public safety. Moreover, eviction revictimizes the survivor and her family. These survivors have potential claims for discrimination because

⁸ 42 U.S.C. § 14043e(3) (findings published in the Violence Against Women Act).

⁹ HUD Memorandum at 2 (citing Jennifer R. Truman & Michael R. Rand, U.S. Dep’t of Justice, *Criminal Victimization, 2009* (2010)).

the neutral policy has a disparate impact on women based on their status as victims of domestic violence. These policies, which cause domestic violence survivors to become homeless, are precisely the type that motivated Congress to enact VAWA and HUD to issue its 2011 memorandum on the application to the FHA.

Several courts across the country have heard discrimination cases on similar grounds.¹⁰ For instance, in Norristown, Pennsylvania, a survivor of domestic violence brought an FHA claim against the municipality after it enacted a set of “nuisance” ordinances, which required landlords to evict residents who engaged in “disorderly behavior” requiring police intervention.¹¹ In that case, female survivor of domestic violence and her neighbors called the police for emergency assistance on multiple occasions when her former boyfriend attacked her.¹² After the final incident—in which the former boyfriend stabbed her and she was airlifted to the hospital—the city revoked the landlord’s rental license and forced him to evict the

¹⁰ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 678 (D. Vt. 2005) (settlement reached after court found that eviction of domestic violence victim, if proven, could constitute sex discrimination under FHA); *Briggs v. Borough of Norristown, et al.*, No. 2:13-cv-02191 (E.D. Pa filed Apr. 29, 2013) (settlement reached); *Alvera v. C.B.M. Group*, No. 01-857 (D. Or. filed July 10, 2001).

¹¹ Complaint at 1, 2, 34, *Briggs*, No. 2:13-cv-02191.

¹² *Id.* at 9-15.

survivor.¹³ The survivor brought FHA claims against the municipality because the ordinance had a disparate impact on female tenants who are the victims of domestic violence.¹⁴ Under a settlement with HUD and the survivor, Norristown later repealed the ordinance and paid the survivor \$495,000 in damages and attorneys' fees.

Despite the lesson of Norristown, nuisance ordinances such as these have spread across the country, and are being challenged on fair housing grounds.¹⁵ If the FHA does not apply to post-acquisition conduct, as the District Court held, survivors of domestic violence in Georgia will be unable to bring FHA claims for this type of discriminatory ordinance.

B. Minorities with criminal histories experience discrimination which leads to claims under the FHA.

Georgia Amici also have clients who face post-acquisition discrimination in housing based on a landlord's use of a criminal background check. Landlords will sometimes attempt to evict clients based on a discovery of a criminal record after tenant has been living at a unit. Many times, these criminal histories are old or

¹³ *Id.* at 16.

¹⁴ *Id.* at 34.

¹⁵ *See, e.g., Hope Fair Hous. Ctr. v. City of Peoria, Illinois*, No. 1:17-cv-01360 (C.D. Ill. filed Aug. 10, 2017); *see also Watson v. City of Maplewood, Missouri*, No. 4:17-cv-1268 (E.D. Mo. filed Apr. 7, 2017).

irrelevant to the person's ability to be a successful tenant, yet landlords frequently use them to justify terminating the lease of an otherwise good tenant. Practices such as these, which do not take into account a tenant's particular circumstances, have a disparate impact on African Americans and Hispanics because these groups experience disproportionate rates of arrest and incarceration.¹⁶ For example, in 2014, while 30.5% of Georgia's population was African American, 62% of those incarcerated in its prisons were African American.¹⁷

HUD has recognized that landlords—both private and government—who make adverse housing decisions based on old or irrelevant criminal records risk violating the FHA's prohibition against disparate impact discrimination.¹⁸ Under this analysis, a facially neutral policy which punishes renters for criminal histories,

¹⁶ U.S. Dep't of Hous. and Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* 3 (Apr. 4, 2016) ("2016 HUD FHA Guidance").

¹⁷ The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* 16, Table A (2016) (citing U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Prisoner Statistics*, 1978-2014 (2014)).

¹⁸ 2016 HUD FHA Guidance at 3; *see also Sams v. Georgia W. Gate, LLC*, No. 4:15-cv-00282, 2017 WL 436281, at *5 (S.D. Ga. filed Jan. 30, 2017) (denying motion to dismiss plaintiff's FHA disparate impact claim based on barring individuals with criminal records from housing).

without any consideration of individual circumstances, can constitute illegal discrimination if there is not sufficient legal justification for the eviction.¹⁹

One Georgia Legal Services office represented numerous African American tenants who were victims of a subsidized landlord's new policy of barring all tenants and occupants with a record of conviction—misdemeanor or felony—in the past 99 years.²⁰ A recently settled lawsuit challenging the policy alleged post-acquisition disparate impact FHA claims against the owners of the complex as well as the municipality which helped to enforce the illegal policy.²¹ If the District Court's narrow interpretation of 42 U.S.C. § 3604(b) were to stand, these claims for criminal records policies would be untenable under the FHA.

II. The City of LaGrange's utility policies, if replicated throughout the state, would have devastating impacts on already vulnerable tenants in Georgia.

Tenants with low incomes throughout the United States have limited access to affordable, safe, and decent housing. The dearth of affordable housing is particularly pronounced for renters in Georgia, where three quarters of the families with income low enough to qualify for federal housing assistance do not actually

¹⁹ 2016 HUD FHA Guidance at 2.

²⁰ Complaint at 15, *Sams*, No. 4:15-cv-00282.

²¹ *Id.* at 3-4, 37-38 (Judgment issued Nov. 20, 2017).

receive it due to limited funding.²² In Troup County, where the City of LaGrange is located, there are an estimated 3,565 renter households with extremely low incomes, and only 1,873 adequate, affordable, and available units.²³ If other communities in Georgia were to adopt utility policies similar to the City's, residents with low incomes—many of whom are members of protected classes—throughout the state risk displacement and possible homelessness.

The majority of United States families with low incomes, who do not have federal subsidies, face extreme housing insecurity. The families with the lowest incomes pay more than 50% of their monthly income for housing.²⁴ Despite the federal government's determination that paying more than half of disposable income per month is a “severe rent burden,”²⁵ rent burdens are only increasing for low-income renters. From 2000 to 2015, the rent burden on families with low

²² Ctr. on Budget and Policy Priorities, *Georgia Fact Sheet: Federal Rental Assistance 2* (2017), <https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data> (“Federal Rental Assistance”).

²³ Urban Institute, *Mapping America's Rental Housing Crisis* (last updated Apr. 27, 2017), <http://apps.urban.org/features/rental-housing-crisis-map/>.

²⁴ Federal Rental Assistance at 2.

²⁵ Jeff Larrimore and Jenny Schuetz, *Assessing the Severity of Rent Burden on Low-Income Families* (Dec. 22, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.htm> (“Severity of Rent Burden”).

incomes increased by more than ten percent.²⁶ In Georgia, 73 percent of unassisted families pay more than half of their income on housing.²⁷ Because Amici's clients with low incomes have difficulty finding affordable housing, they are increasingly likely to experience an eviction and forced transience or homelessness. Social scientists have identified the various harms that come from evictions in low-income communities, including poor health, depression, and parenting stress, higher rates of job loss, and loss of cohesion in neighborhoods, which can lead to an increase in violent crime.²⁸

A. Georgia families with low incomes who are unable to pay court debt cannot live without essential utilities.

By enacting its court debt policies, the City of LaGrange has prioritized the City's own budget shortfalls over the safety of families with incomes already too low to afford basic necessities. As the Federal Reserve has noted, "[h]ouseholds that have little income left after paying rent may not be able to afford other

²⁶ *Id.*

²⁷ Federal Rental Assistance at 2.

²⁸ Matthew Desmond and Carl Gerhenson, *Housing and Employment Insecurity Among the Working Poor*, 63 *Social Problems* 46, 51 (2016); Matthew Desmond and Rachel Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295, 296 (2015); Jeffrey Morenoff, Robert Sampson, and Stephen Raudenbush, *Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence*, 39 *Criminology* 517, 550-53 (2001).

necessities, such as food, clothes, health care, and transportation.”²⁹ Renters in LaGrange, including families with children, who are too poor to pay for basic necessities, do not have disposable income to make court debt payments required under the City’s utility policy. As a result, LaGrange’s court debt policy prevents the lowest income families from obtaining essential utility services that only the City provides.

In Georgia, a landlord who cuts off utilities may be liable for constructive eviction of a tenant and may be prosecuted criminally—a recognition that not having utilities prevents a person from living in a home.³⁰ The U.S. Supreme Court also recognizes that utilities are critical: “utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.”³¹ If other communities in Georgia were allowed to adopt similar policies, families with low incomes throughout the state would be displaced or made homeless simply because of their inability to pay debt.

²⁹ Severity of Rent Burden, *supra* note 25.

³⁰ *See, e.g., Roberts v. Roberts*, 422 S.E.2d. 253, 254 (Ga. App. Ct. 1992); O.C.G.A. § 44-7-14.1.

³¹ *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1, 18 (1978).

B. Georgia families with low incomes face barriers to obtaining state-issued identification.

Georgians with low incomes, many of whom are minorities, are also more likely to lack the state-issued identification the City's policy requires. As Georgia has tightened restrictions on requirements for state-issued IDs, some Georgia Amici clients have faced barriers to obtaining or renewing their identification, requiring legal representation to resolve. To the extent a utility policy disproportionately affects members of protected classes, these individuals should be able to bring FHA claims for discrimination.

Some Georgia Amici clients have a birth certificate, license, or social security card with information that does not match because of a decades-old bureaucratic error. It is not uncommon for a client to have mismatched identification for years, but only recently face difficulty renewing their state-issued ID without all the documents matching perfectly. Fixing these records often requires initiating a name change in court or amending a birth certificate, as well as having the money to pay for it.

African Americans in particular are more likely to face problems obtaining an ID because some lack a birth certificate all together. One study found that 20%

of African Americans born from 1930-1940 were never issued a birth certificate.³² The problem transcends statistics for Georgia Amici's clients, some of whom include African Americans born in rural southern communities who lack birth certificates. In particular, some elderly African American clients were born at home during a time when it was not common to record the births of African-American children – particularly in the South. Yet, without a birth certificate, Georgia residents face barriers to obtain state-issued identification. It is not surprising then, that one in four African Americans lack identification, and African Americans are 2.5 times more likely to lack photo ID than the overall adult population.³³ Rooted in historic discrimination, African-Americans have disproportionately significant obstacles in obtaining state issued identification.

Georgia Amici represented one recent African American, U.S. citizen client who faced incredible difficulties obtaining a Georgia driver's license. She was born to U.S. parents, including a father who served in the Vietnam War, in a

³² S. Shapiro, *Development of Birth Registration and Birth Certificates in the United States*, 4 *Population Studies* 86 (1950) (cited in Ira Rosenwaike and Mark E. Hill, *The Accuracy of Age Reporting Among Elderly African-Americans: Evidence of a Birth Registration Effect* 3 (Population Aging Research Center, Univ. of Penn., Working Paper No. 95-04 (1995), http://parc.pop.upenn.edu/sites/parc.pop.upenn.edu/files/parc/PARCwps_95-04.pdf).

³³ Keesha Gaskins and Sundeep Iyer, Brennan Ctr. For Justice, *The Challenges of Obtaining Voter Identification* 2, n.11 (2012).

military base overseas. Although she had a copy of her birth certificate, Georgia considered it a “foreign birth” and required other proof of citizenship. An Atlanta Legal Aid office represented her for three years before she was able to get her proof of citizenship and finally obtain a Georgia ID. Clients like these would be unable to open a utility account—and would be unable to live—in any community adopting the LaGrange policy.

Georgia Amici’s lawfully present Hispanic clients face additional barriers because of their ethnicity and language. Because Hispanic names often do not follow the same format as non-Hispanic ones, these clients can have birth records with mistakes or misspellings, and which do not match other documents like Social Security cards. Many Hispanic clients who attempt to resolve the mistake at Georgia’s Vital Records offices face discrimination and language barriers, which can make navigating the bureaucratic process of obtaining an ID nearly impossible.

C. Low-income families with housing subsidies risk losing them because of the City’s utility policies.

Those residents who have federally-subsidized housing also risk losing their subsidies because of utility policies that limit access to basic services. Individuals who have Housing Choice Vouchers (commonly referred to as “Section 8 vouchers”) can be terminated from the program for failing to maintain utility

services.³⁴ In other federal housing programs, as well, tenants can be evicted for failing to obtain or maintain utility services.³⁵ Georgia Amici have represented participants in various federal housing programs who lost their subsidized housing because they failed to maintain utilities at the home. Families with federal housing subsidies—with court debt or without a state-issued ID—risk becoming homeless as a result of utility policies like the one in LaGrange.

D. Policies which limit access to housing have a disparate impact on particularly vulnerable groups of low-income tenants.

The families Georgia Amici represent, aside from facing poverty, often come from the most vulnerable communities, and they are particularly impacted by policies that limit access to housing. Georgia Amici clients—African Americans, Hispanics, and women—are members of the very groups the FHA was passed to protect. Any policies which have a disparate impact on these protected classes, even if they do not reduce the “bottom line” availability of housing to these groups,

³⁴ 24 C.F.R. §§ 982.551(c), 982.552(c)(1)(i), 982.404(b).

³⁵ U.S. Dep’t of Hous. and Urban Dev., *Handbook: Occupancy Requirements of Subsidized Multifamily Housing Programs* 4350.3, 8-13 (updated 6/2007).

still violate the FHA because “the goal is the protection of individuals, not just minority groups as a whole.”³⁶

In Georgia, the rate of women in poverty is one of the worst in the nation.³⁷ The poverty rates for Georgia’s African American and Hispanic residents are more than twice the poverty rate for White residents.³⁸ And although African Americans make up approximately 30% of the state’s population, they account for 65% of the state’s homeless population.³⁹

Georgia’s history of state-sponsored segregation—in housing and elsewhere—has impacts that are felt in Georgia communities decades after Jim Crow laws were abolished. For example, nearly half (47 percent) of Atlanta’s African American population still lives in majority-minority or segregated-

³⁶ *Alexander v. Edgewood Mgmt.*, No. 15-01140, 2016 U.S. Dist. LEXIS 145787 (D.D.C. 2016) (affirming that a policy can have a disparate impact, even if the resulting percentage of minorities exceeds a certain baseline).

³⁷ Ctr. for Amer. Progress, *Talk Poverty* (2017), <https://talkpoverty.org/state-year-report/georgia-2017-report> (source: U.S. Census Bureau, *2016 American Communities Survey 1-Year Estimates*) (Georgia ranks 40th in the nation for the percentage of working-age women living below the poverty line).

³⁸ *2016 American Community Survey 1-Year Estimates, Poverty Status in the Past 12 Months*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S1701&prodType=table (White poverty rate is 11.9%, African American is 22.5% and Hispanic is 24.3%).

³⁹ Georgia Dep’t of Cmty. Affairs, *Report on Homelessness* (2015).

minority tracts.⁴⁰ Beyond adversely affecting housing stability, residential segregation has had a profound negative impact on educational opportunities for these children. Segregation in neighborhoods and schools intensifies “group stratification by creating resource-rich educational environments for white students and resource-poor educational environments for black students.”⁴¹

Consequentially, black students are more likely to have teachers with fewer years of teaching experience and attend schools with higher student turnover rates and higher poverty rates.⁴² Resource-poor schools, where minority students and lower income students are concentrated, are less able to help students achieve and succeed.⁴³ If other municipalities follow LaGrange’s lead, Georgia residents with

⁴⁰ Karen Pooley, *Segregation’s New Geography: The Atlanta Metro Region, Race, and the Declining Prospects for Upward Mobility*, Southern Spaces (Apr. 15, 2015), <https://southernspaces.org/2015/segregations-new-geography-atlanta-metro-region-race-and-declining-prospects-upward-mobility>.

⁴¹ Dennis Condrón, Daniel Tope, Christina Steidl, and Kendralin Freeman, *Racial Segregation and the Black/White Achievement Gap*, 54 *Sociological Quarterly* 130, 132 (2013).

⁴² Eric A. Hanushek and Steven G. Rivkin, *School Quality and the Black–White Achievement Gap*, Working Paper 12651 (Cambridge: National Bureau of Economic Research, 2006), <http://www.nber.org/papers/w12651.pdf>; Richard J. Murnane, John B. Willett, Kristen L. Bub, and Kathleen McCartney, *Understanding Trends in the Black-White Achievement Gaps During the First Years of School*, Brookings-Wharton Papers on Urban Affairs 97, 126-27 (2006).

⁴³ Hanushek and Rivkin at 28.

low incomes, many of whom are African American and Hispanic, risk being pushed out of communities across the state.

Rural Georgians, as well, are more likely to live in poverty than residents living in non-rural communities.⁴⁴ Because of their isolation and poverty, rural families face increased barriers to housing, healthcare, education, and employment.⁴⁵ They are more likely to be displaced by policies aimed at residents with low incomes, such as the LaGrange utility policy. Some of these displaced individuals will undoubtedly become homeless. Others will be forced to move to rural areas outside the city limits where they will have a more difficult time obtaining necessary social services, quality education, landlords willing to accept Section 8 vouchers, access to code enforcement agencies, and access to quality, safe and affordable housing. Their limited access to resources and opportunities will deny them a credible chance to escape the cycle of poverty.

⁴⁴ U.S. Census Bureau, *2016 American Community Survey 1-Year Estimates, Poverty Status in the Past 12 Months* (overall rate of poverty in Georgia is 16%), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S1701&prodType=table; Hous. Assistance Council, *Taking Stock: Rural People, Poverty and Housing in the 21st Century* 28 (2012), www.ruralhome.org/storage/documents/ts2010/ts_full_report.pdf.

⁴⁵ *Taking Stock* at 24, 68, 88; A. Clinton MacKinney, et al., *Access to Rural Health Care: A Literature Review and New Synthesis* 4, 14 (2014), www.rupri.org/Forms/HealthPanel_Access_August2014.pdf.

Survivors of domestic violence also face an increased risk of homelessness and other harms because of a policy which limits access to housing and essential utility services. Survivors and their families often live below or at the poverty line due to a variety of factors, including but not limited to unemployment, lack of emotional and financial support, lack of education, and homelessness. A threat to shut off utilities and the fear of an imminent shut off would negatively affect a survivor's housing stability. An actual shut off may constructively evict a domestic violence survivor and her family, devastate the family's security, and lead to other legal issues including child custody issues. For these clients, obtaining stable housing with utility services can make the difference between a victim staying safe and economically independent, and having to return to an abuser or becoming homeless for no other options.

CONCLUSION

Housing is one of the most important stepping stones out of poverty, and the Fair Housing Act, including its application to post-acquisition issues, is crucial in combatting the cycle of poverty perpetuated by segregation and discrimination in housing. Georgia Amici urge this Court to reverse the District Court's dismissal of Appellants' discrimination claims under the Fair Housing Act.

Respectfully submitted this 6th day of March, 2018.

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CERTIFICATE OF COMPLIANCE WITH FRAP 32(g)(1)

The undersigned certifies that this Brief complies with the applicable type volume limitations in Rule 32(a)(7). This brief contains 6097 words, exclusive of the components that are excluded from the word count limitation in Rule 32(f). This certificate was prepared in reliance upon the word-count function of the word processing system (Microsoft Word) used to prepare this brief. This brief complies with the typeface and type style requirements of Rule 32(a)(5) because it has been prepared in a proportionally spaced typeface using font size 14 Times New Roman.

Dated: March 6, 2018

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CERTIFICATE OF SERVICE

In accordance with Rule 25(d) of the Federal Rules of Appellate Procedure, I hereby certify that on March 6, 2018, I electronically filed the Amici Curiae Brief in Support of Appellants by Atlanta Legal Aid Society, Atlanta Volunteer Lawyers Foundation, and Georgia Legal Services Program Seeking Reversal using the Court's CM/ECF system, which will automatically send electronic copies to the following counsel of record:

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