

# No. 15-1823

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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**DONAHUE FRANCIS,**  
*Plaintiff – Appellant,*

v.

**KINGS PARK MANOR, INC., AND CORRINE DOWNING,**  
*Defendants – Appellee.*

and

**RAYMOND ENDRES,**  
*Defendant.*

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On Appeal from the United States District Court for the  
Eastern District of New York  
The Honorable Arthur D. Spatt, District Judge, Presiding

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**EN BANC BRIEF OF *AMICI CURIAE* PARALYZED VETERANS OF  
AMERICA AND PUBLIC JUSTICE CENTER,  
IN SUPPORT OF PLAINTIFF-APPELLANT, URGING REVERSAL AND  
REMAND OF THE DISTRICT COURT’S JUDGMENT**

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**STATEMENTS OF INTEREST OF AMICI CURIAE<sup>1</sup>**

The **Paralyzed Veterans of America** (PVA) is a national, congressionally-chartered veterans service organization headquartered in Washington, DC. PVA's mission is to employ its expertise, developed since its founding in 1946, on behalf of armed forces veterans who have experienced spinal cord injury or a disorder (SCI/D). PVA seeks to improve the quality of life for veterans and all people with SCI/D through its medical services, benefits, legal, advocacy, sports and recreation, architecture, and other programs. PVA advocates for quality health care, for research and education addressing SCI/D, for benefits based on its members' military service and for civil rights, accessibility, and opportunities that maximize independence for its members and all veterans and non-veterans with disabilities.

PVA has nearly 17,000 members, all of whom are military veterans living with catastrophic disabilities. To ensure the ability of our members to participate in their communities, PVA strongly supports the opportunities created by and the protections available through the Americans with Disabilities Act, the Fair Housing Act, and other federal and state disability and civil rights laws.

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<sup>1</sup> No person or party other than *Amici* contributed money for or participated in the preparation or submission of this brief. Appellants consented in writing to the filing of this brief. Appellees declined to consent to the filing of this brief.

The **Public Justice Center (PJC)**, a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting the rights of individuals with disabilities. PJC has represented individuals or submitted *amicus curiae* briefs in cases involving the rights of individuals with disabilities. *See, e.g., Daniels v. Arcade, L.P.*, 477 F. App'x 125 (4th Cir. 2012); *Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty.*, 673 F.3d 333 (4th Cir. 2012); *Meade v. Shangri-La P'ship*, 424 Md. 476 (2012); *Dep't of Health & Mental Hygiene v. Kelly*, 397 Md. 399 (2007); *Harrison-Solomon v. Maryland*, 442 Md. 254 (2015). PJC has also submitted numerous briefs in appeals involving the ADA and other civil rights laws. *See, e.g., Toledo v. Sanchez-Rivera*, 454 F.3d 24 (1st Cir. 2006); *Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325 (4th Cir. 2003); *Amos v. Maryland Dep't of Pub. Safety & Corr. Servs.*, 205 F.3d 687 (4th Cir. 2000). PJC has an interest in this case because landlord liability for failing to address tenant-on-tenant harassment will secure integrated housing for people with disabilities.

### **SUMMARY OF THE ARGUMENT**

We are currently in the throes of an unprecedented global pandemic that has turned homes across the country into workplaces, schools, and places of worship. The home as a refuge from the dangers of the outside world has never been more relevant. The home is central to cementing an individual's sense of safety,

security, and self-actualization. *See* Abraham H. Maslow, *A Theory of Human Motivation*, 50 *Psychol. Rev.* 370 (1943). Tenant-on-tenant harassment, such as the racial harassment in this case, causes long-lasting psychic damage and undermines the safety of the home. While this case addresses race-based tenant-on-tenant harassment, people with disabilities, including veterans, also experience pervasive tenant-on-tenant harassment.

People with disabilities, including veterans, have experienced a long history of societal discrimination, exclusion, and segregation. Congress enacted the Fair Housing Act to create a free and integrated society. Yet, veterans and others with disabilities are disproportionately more likely to suffer harassment and discrimination in housing than people without disabilities, and even more so if they have other intersecting identities like race, gender, sexual orientation, or national origin. Tenant-on-tenant harassment perpetuates the very segregation and exclusion that Congress sought to extinguish when enacting the Fair Housing Act (FHA). Pub. L. No. 90-284, 82 Stat. 73 (1968) (codified as amended at 42 U.S.C. §§ 3601-3619 (2006)). As the Appellant argues, a ruling requiring landlords to address such conduct is consistent with the FHA's remedial purposes.

Victims of tenant-on-tenant harassment should not bear the sole burden of both the trauma of harassment and holding their harassers accountable. Landlords are better situated to prevent these wrongs, as they already have a variety of tools

at their disposal to address tenant-on-tenant harassment. This reasonable rule, merely requiring landlords to use these existing tools appropriately, if upheld, will be one significant step towards ensuring that this country can finally achieve a free and integrated society.

## ARGUMENT

- I. A Landlord’s Duty to Address Tenant-on-Tenant Harassment Is Consistent With Congressional Intent to End Harassment and Segregation Against Individuals With Disabilities**
  - a. The FHA’s Purpose Was to Create a More Integrated and Free Society**

Before the passage of the FHA, Black families experienced “move-in violence” as they integrated white neighborhoods:

Though in this early era of widespread minority integration organized civil disorder was a powerful weapon used by white opponents of minority integration, individualized threats directed at minority homeowners were also used. Such resistance against African-American integration occurred as thousands of small acts of terrorism. Newcomers suffered harassment in the form of broken windows, anonymous threats, fire bombings and other types of vandalism designed to drive them out.

Jeannine Bell, *Hate Thy Neighbor: Violent Racial Exclusion and the Persistence of Segregation*, 5 Ohio St. J. Crim. L. 47 (2007) (defining “move-in violence” as “acts of violence and intimidation directed at racial and ethnic minorities integrating white neighborhoods.”). *Id.* at 51.

“Move-in violence” and the enactment of the FHA occurred at a unique time in American history. Government-sanctioned redlining and *de jure* segregation prevented Black people, and other marginalized groups, from attaining homeownership and upward mobility. *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2515-16 (2015). White supremacists, frightened by the promise of a more progressive and just world, assassinated Robert F. Kennedy and Dr. Martin Luther King, Jr. And in response, cities burned. *See generally* Mark Kurlansky, *1968: The Year That Rocked the World* (2004) (discussing the importance of 1968 in American history). Against this historical backdrop, a week after Dr. King was murdered, President Lyndon B. Johnson signed the FHA into law.

Congress enacted the FHA to remedy this nation’s past by moving towards a more integrated future. Senator Walter Mondale stated that the FHA represented “an absolutely essential first step” toward reversing the pattern of “two separate Americas constantly at war with one another.” 114 Cong. Rec. 2274 (1968).

**b. Amendments to the FHA ushered in a new era of civil rights protections for people with disabilities**

Congress amended the FHA in 1988 to ban housing discrimination against people with disabilities. Fair Housing Amendments Act (FHAA) of 1988 § 6, 102 Stat. 1619 (current version at 42 U.S.C. § 3604 (b) (2013)). The FHAA granted rights not originally included in the FHA, such as provisions addressing

architectural accessibility and reasonable modifications. 42 U.S.C. § 3604

(f)(3)(C)(i)-(iii). The FHAA also made it possible for people with disabilities to live independently in the community. Robert G. Schwemm, *Barriers to Accessible Housing: Enforcement Issues in “Design and Construction” Cases Under the Fair Housing Act*, 40 U. Rich. L. Rev. 753, 755-56 (2006). The FHAA paved the way for the Americans with Disabilities Act (ADA), which prohibits discrimination in all areas of public life, including employment, schools, transportation, and public accommodations. 42 U.S.C. § 12116 (2012).

Almost a decade later, our society took another major step towards integration for people with disabilities. The U.S. Supreme Court affirmed the importance of independent living and community integration for people with disabilities in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), holding that the unnecessary institutionalization of people with disabilities constituted discrimination in violation of the ADA. This fulfilled the FHA’s core purpose and ensures that people with disabilities are not “precluded from experiencing the full fabric of community living.” Mary C. Cerreto, *Olmstead: The Brown v. Board of Education for Disability Rights: Promises, Limits, and Issues*, 3 Loy. J. Pub. Int. L. 47, 62 (2001).

**c. Despite these critical protections, people with disabilities have experienced and continue to experience pervasive societal harassment, discrimination, and violence**

Individuals with disabilities have experienced a “lengthy and tragic history” of harassment and discrimination. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 461 (1985) (J. Marshall, dissenting) (quoting *University of California Regents v. Bakke*, 438 U.S. 265, 303 (1978)). Our society blamed people with disabilities for societal ills and labeled them as dangerous and criminal. *Cleburne*, 472 U.S. at 461. We institutionalized and segregated them from the rest of the population in the late 1800s and early 1900s. Jeryn Crabb, *Texas Can’t Hold ‘Em Anymore: Why Individuals with Intellectual and Developmental Disabilities Committed to State Supported Living Centers Need Judicial Review of Their Commitment Orders*, 48 Tex. Tech. L. Rev. 931, 935 (2016). The forced sterilization of people with disabilities cemented their othering.<sup>2</sup> In the 1930s, 29 states enacted compulsory eugenic sterilization laws aimed at limiting the rights of people with disabilities to marry and procreate. *Cleburne*, 472 U.S. at 463. As Justice Marshall described, the “lengthy and continuing isolation of [people with disabilities] has perpetuated the ignorance, irrational fears, and stereotyping that long have plagued them.” *Id.*

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<sup>2</sup> Othering is “a process by which individuals and society view and label people who are different in a way that devalues them.” Susan J. Stabile, *Othering and the Law*, 12 U. St. Thomas L.J. 381, 382 (2016).



Sixty-one million adults (one in four) living in the United States have a disability. Catherine A. Okoro et al., *Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults -- United States, 2016*, 67 Ctrs. For Disease Control & Prevention Morbidity Mortality Wkly. Rep. 882, 882 (2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6732a3-H.pdf>. People with disabilities continue to face discrimination at work, school, and healthcare settings. See, e.g., Wendy Lu, *This Is How Employers Weed Out Disabled People From Their Hiring Pools*, Huffington Post (last updated June 18, 2019), [https://www.huffpost.com/entry/employers-disability-discrimination-job-listings\\_1\\_5d003523e4b011df123c640a](https://www.huffpost.com/entry/employers-disability-discrimination-job-listings_1_5d003523e4b011df123c640a) (discussing employment discrimination); Jasmine E. Harris, *The Aesthetics of Disability*, 119 Colum. L. Rev. 895 (2019) (describing the prevalence of sheltered workshop programs and subminimum wages); Sarah H. Ganley, *Bullying and the Individuals with Disabilities Education Act (IDEA): A Framework for Providing Relief to Students with Disabilities*, 38 Cardozo L. Rev 305 (2016) (discussing disability harassment in schools); Rachel Bluth, *For the Disabled, a Doctor's Visit Can Be Literally An Obstacle Course-And the Laws Can't Help*, Washington Post (Oct. 28, 2018, 9:00 AM), [https://www.washingtonpost.com/national/health-science/for-the-disabled-a-doctors-visit-can-be-literally-an-obstacle-course--and-the-laws-cant-help/2018/10/26/1917e04c-d628-11e8-aeb7-ddcad4a0a54e\\_story.html](https://www.washingtonpost.com/national/health-science/for-the-disabled-a-doctors-visit-can-be-literally-an-obstacle-course--and-the-laws-cant-help/2018/10/26/1917e04c-d628-11e8-aeb7-ddcad4a0a54e_story.html) (describing the obstacles people with disabilities face when visiting doctor's off

ices). Students with mobility impairments are targeted due to their use of assistive devices. *See* Debra McKinney, *The Invisible Hate Crime*, Southern Poverty Law Center (Aug. 5, 2018), <https://www.splcenter.org/fighting-hate/intelligence-report/2018/invisible-hate-crime> (discussing case of a transgender student who was harassed by his classmates because he used a wheelchair).<sup>3</sup>

People with disabilities are often targets of violent crime. In 2010, three white men lured a 22-year-old Navajo man with mental disabilities to an apartment and branded a swastika into his arm. They shaved a swastika into the back of his head and wrote “KKK” and “White Power” on his body. They also drew horns on his forehead and an ejaculating penis on his back, calling it his “Native pride feathers.” McKinney, *supra*. The U.S. Attorney’s Office later charged the men under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (2009), Pub. L. No. 111-84, Div. E, § 4701, 123 Stat. 2841 (codified at 18 U.S.C. § 249). *See also* Camila Domonoske, *No Jail Time For 19-Year-Old In Idaho Coat-Hanger Assault Case*, NPR (Feb. 27, 2017), <https://www.npr.org/sections/the-two-way/2017/02/27/517510627/no-jail-time-for-19-year-old-in-idaho-coat-hanger-assault-case> (detailing the vicious racialized assault of a Black student with mental disabilities by his teammates). In 2014, people with disabilities were 2.5 times more likely to experience violent victimization than similarly aged persons

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<sup>3</sup> For the significance of his transgender identity, *see* fn. 4, *infra*.

without disabilities. U.S. Comm’n on Civil Rights, *In the Name of Hate, Examining the Federal Government’s Role in Responding to Hate Crimes* 113 (2019), <https://www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

This history underscores why it is essential for the home to be a site of safety, not harm, for people with disabilities. Harassment in the home, including tenant-on-tenant harassment, erodes the very rootedness, privacy, and safety that the home provides, especially for people with disabilities. Aric Short, *Post-Acquisition Harassment and the Scope of the Fair Housing Act*, 58 Ala. L. Rev. 203, 254 (2003). Tenant-on-tenant harassment also perpetuates segregation in violation of the FHA.

## **II. Tenant-on-Tenant Harassment undermines the FHA’s integrationist aims**

### **a. Segregation and Harassment in Housing Against People with Disabilities Is Pervasive and Intersectional**

The segregation and harassment that people with disabilities experience in housing is pervasive and intersectional.<sup>4</sup> The “move-in violence” of the past has

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<sup>4</sup> See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Legal F. 139, 140 (defining intersectionality). People with disabilities may face an increased risk of harassment and discrimination based on other identities they hold. For instance, a Black woman with a disability may face multiple marginalization (as a Black person, a woman, and a person with a disability) that makes it disproportionately more likely that she will suffer from disability-based harassment. Alyssa Clutterbuck, *Rethinking Baker: A Critical Race Feminist Theory of Disability*, 20 Appeal 51, 57 (2015) (“Generally, being

become “death by a thousand cuts.” Bell, *supra*, at 54. That is, “small acts directed at families in their new homes—slashed tires . . . broken windows, and racial slurs.” *Id.* People with disabilities experience these “thousand cuts” and live in “two separate Americas constantly at war with one another.”

In 2018, the U.S. Department of Housing and Urban Development (HUD) received 31,202 complaints of housing discrimination. Nat’l Fair Hous. Alliance, *2019 Fair Housing Trends Report* 41 (2019), <https://nationalfairhousing.org/wp-content/uploads/2019/10/2019-Trends-Report.pdf>. Of those, 897 involved harassment. *Id.* at 18. 391 of these complaints were disability-based. *Id.* These numbers may not reflect the full scope of harassment, because harassment “victimize[s] persons with elevated housing insecurity[,]” including LGBTQ people, women, and people with disabilities, who are all disproportionately low-income. Nat’l Fair Hous. Alliance, *2017 Fair Housing Trends Report* 82 (2017), <https://nationalfairhousing.org/wp-content/uploads/2017/07/Trends-Report-2017-Final.pdf>. Thus, targets of disability harassment may be reluctant to complain, and are especially susceptible if they have other intersecting identities.

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female, being older, having a behavioral disability, and racial minority status placed individuals at higher risk of experiencing disability harassment.”).

*i. Mental Illness*

People with PTSD and other mental impairments are often targets of tenant-on-tenant harassment. *See, e.g., Shaud v. Sugarloaf Twp. Supervisors*, No. 3:07cv1212, 2011 U.S. Dist. LEXIS 25229 (M.D. Pa. Mar. 11, 2011) (plaintiff faced continuous harassment from a neighbor related to his PTSD, including being shot with a pellet gun, having weapons brought to his home, and the neighbor suggesting he kill himself). Neighbors may also call the police on people with mental illnesses or impairments. *See Cain v. Rambert*, No. 13-CV-5807, 2014 U.S. Dist. LEXIS 74188 (E.D.N.Y. May 30, 2014) (landlord disclosed the plaintiff's PTSD diagnosis to another tenant; tenants began spreading lies about the plaintiff's mental capacity and called 911 to say he was emotionally disturbed).

Landlord inaction can invite campaigns of harassment against people with disabilities. Michael Neudecker, a man with obsessive-compulsive disorder, sued his apartment management company for disability harassment. *Neudecker v. Boisclair Corp.*, No. 02-4099, 2005 U.S. Dist. LEXIS 13854 (D. Minn. July 7, 2005). Mr. Neudecker's fellow tenants, including the children of the building's management employee, harassed him by making unwanted and repeated telephone calls to him, rang his doorbell or knocked on his door and ran away, called him a "psycho", posted a note on his door stating "The Demon that will haunt you," and looked into his window. *Id.* at \*4. He alleged that he reported the harassment, but

his landlord took no action, allowing the campaign to continue, which forced him to endure a hostile housing environment. *Id.*

*ii. Race*

Neighbors and co-tenants may harass people with disabilities because of their race. Sandra Prugh, a woman with two Black adult adopted children with developmental disabilities, a son with paralysis, and a husband with dementia, was harassed by her white neighbor for over a decade. When Ms. Prugh's children were young, her neighbor called Ms. Prugh a "monkey momma" while she held her two Black children. He also smeared feces on her children's wheelchair ramp. Adam Ferrise, *Accused bully says judge who sentenced him to hold sign in public 'destroyed' his life*, cleveland.com (last updated Jan. 12, 2019), [https://www.cleveland.com/metro/2014/04/accused\\_bully\\_says\\_judge\\_who\\_s.html](https://www.cleveland.com/metro/2014/04/accused_bully_says_judge_who_s.html); Ryan Broderick, *Judge Ordered A Man To Carry This "I'm A Bully" Sign After Harassing A Neighbor's Disabled Children*, BuzzFeed (Apr. 14, 2014, 10:48 AM), <https://www.buzzfeednews.com/article/ryanhatesthis/judge-ordered-a-man-to-carry-this-im-a-bully-sign-after-hara>.

People who are "regarded as having a disabling impairment" are also at risk. *See* 42 U.S.C. § 3602 (h)(3). Currently, people are targeting and attacking Asian-Americans based on an erroneous belief that they have COVID-19. This targeting demonstrates a particularly pernicious form of harassment based on intersectional

identities, since it stems from longstanding xenophobia, fear, and biases against Asian-Americans. Li Zhou, *How the coronavirus is surfacing America's deep-seated anti-Asian biases*, VOX (Apr. 21, 2020, 7:50 AM), <https://www.vox.com/identities/2020/4/21/21221007/anti-asian-racism-coronavirus>; *see also* Dylan Scott, *Trump's new fixation on using a racist name for the coronavirus is dangerous*, VOX (Mar. 18, 2020, 3:40 PM), <https://www.vox.com/2020/3/18/21185478/coronavirus-usa-trump-chinese-virus> (discussing President Trump's labeling of COVID-19 as the "Chinese virus" and "Kung Flu."). Recently, a man's neighbors, armed with guns, cut down a tree to block his driveway because they suspected he had COVID-19. Anagha Srikanth, *Armed neighbors cut down a tree to block man's driveway because they thought he had coronavirus*, The Hill (Mar. 31, 2020), <https://thehill.com/changing-america/respect/diversity-inclusion/490475-a-man-reports-armed-neighbors-cut-down-a-tree>.

### *iii. Sexual Orientation and Gender Identity*

People with disabilities, including veterans, frequently experience harassment based on gender identity or sexual orientation. Sejal Singh & Laura E. Durso, *Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways*, Center for American Progress (May 2, 2017, 8:10 AM), <https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle->



significant-ways/. See *Lopez v. City of New York*, 186 F. Supp. 3d 304, 309 (2016) (A transgender woman moved into a building for individuals with disabilities, where her neighbors constantly misgendered her, calling her “he” and “man,” and threatened her with violence. She reported this harassment to the police, but they ignored her concerns.).

Marsha Wetzel, who had a mobility impairment, moved into a residential community for older adults after her partner died. *Wetzel v. Glen St. Andrew Living Cmty., LLC*, 901 F.3d 856, 859 (7th Cir. 2018). Ms. Wetzel’s neighbors targeted her for being openly lesbian. *Id.* at 860. Other residents repeatedly called her a “fucking dyke,” “fucking faggot,” and “homosexual bitch.” *Id.* They threatened to rip Ms. Wetzel’s breasts off and told her she would “burn in hell.” *Id.* A resident rammed his walker into Ms. Wetzel’s scooter, knocking her off a ramp. *Id.* Another bashed her wheelchair into a table that Ms. Wetzel was sitting at, flipping the table onto her. *Id.* A resident also struck Ms. Wetzel at the back of her head. *Id.* When Ms. Wetzel reported this to the staff at the residential community, she was met with retaliation instead of assistance. *Id.* Ms. Wetzel’s fellow tenants harassed her because of her sexual orientation, but her disability made the harassment possible.

Tenant-on-tenant harassment based on sexual orientation or gender identity also impacts the estimated one million LGBTQ veterans in the United States.

Andrea K. McDaniels, *Baltimore VA works to embrace LGBT veterans who have long felt unwelcome by military*, Baltimore Sun (June 12, 2018, 11:45 AM), <https://www.baltimoresun.com/health/bs-hs-baltimore-va-lgbt-20180604-story.html>. Ryan Gierach, an Air Force Veteran, faced verbal harassment due to his sexual orientation. After Gierach moved into his apartment, his neighbors began calling him names “revolving around gay epithets.” Timothy Rawles, *Veteran living in L.A. says he’s being targeted by homophobic neighbors*, SDGLN (June 12, 2018), <https://sdgln.com/news/2018/06/12/veteran-living-la-says-hes-being-targeted-homophobic-neighbors>. When Gierach displayed a rainbow flag during Pride month, his neighbors’ verbal abuse escalated and they began throwing garbage at him. *Id.*

*iv. Gender*

Women with disabilities may also experience pervasive tenant-on-tenant sexual harassment. Indeed, most tenant-on-tenant and hostile housing environment claims are about sexual harassment. *See Fahnbulleh v. GFZ Realty, LLC*, 795 F. Supp. 2d 360, 364 (D. Md. 2011) (detailing relentless tenant-on-tenant sexual harassment). Women with intellectual disabilities are seven times more likely to experience sexual assault than those without intellectual disabilities. Joseph Shapiro, *The Sexual Assault Epidemic No One Talks About*, NPR: All Things Considered (Jan. 8, 2018, 5:00 AM), <https://www.npr.org/2018/01/08/5702>

24090/the-sexual-assault-epidemic-no-one-talks-about. Because of systemic housing instability and fears of retaliation, sexual harassment is severely underreported. See Regina Cahan, *Home Is No Haven: An Analysis of Sexual Harassment in Housing*, 1987 Wis. L. Rev. 1061, 1066-67 (1987).

Women in the military are more likely to be assaulted by a fellow service member than to be killed by enemy fire. Lisa M. Schenck, *Informing the Debate About Sexual Assault in the Military Services: Is the Department of Defense Its Own Worst Enemy?*, 11 Ohio St. J. Crim. L. 579, 581 n.6 (2014). This is known as military sexual trauma (MST) and increases the likelihood that a woman veteran will have PTSD. California Women's Law Center, *Women Veterans Must Have Equal Access to Veteran-Only Permanent Housing Facilities Under The Fair Housing Laws* 1, 4 (2015), available at <http://cwlc.org/web/wp-content/uploads/2015/03/Housing-Policy-Brief-Mar2015.pdf> (explaining the connection between PTSD and MST).

Female veterans with disabilities are thus even more at risk for tenant-on-tenant sexual harassment. Female veterans are 12 times more likely to experience sexual assault after their military service than the general civilian female population. The National Center on Family Homelessness, *Understanding the Experience of Military Families and Their Returning War Fighters: Military Literature and Resource Review* 12 (Jan. 2010). Taken together, this is devastating

for women veterans. *See Sharon T. v. New Directions, Inc.*, No. 2:15-cv-04239, 2016 U.S. Dist. LEXIS 5646 (C.D. Cal. Jan. 12, 2016)) (U.S. Army veteran with PTSD and depression from military sexual trauma, who had experienced bouts of homelessness and unemployment, subjected to pervasive sexual harassment and assault by property manager).

**b. Calling the Police is Not an Adequate Solution**

Defendants' argument that targets of tenant-on-tenant harassment should rely on the police is definitively *not* the answer. The police can be weaponized against people with disabilities, the police often do not take tenant-on-tenant harassment against people with disabilities seriously, and people with disabilities are disproportionately more likely to be physically harmed by the police.

*i. People with Disabilities Are Disproportionately Harmed by the Police*

In addition to the police not taking instances of tenant-on-tenant harassment seriously, people with disabilities run the risk of disproportionate harmful contact with the police. In fact, “half of the people who die at the hands of the police have some kind of disability[.]” Marti Hause and Ari Melber, *Half of People Killed by Police Have a Disability: Report*, NBC News (last updated Mar. 14, 2016, 9:13 PM), <https://www.nbcnews.com/news/us-news/half-people-killed-police-suffer-mental-disability-report-n538371>; *see also*, David M. Perry & Lawrence Carter-Long, *How Misunderstanding Disability Leads to Police Violence*, The Atlantic (May

6, 2014), <https://www.theatlantic.com/health/archive/2014/05/misunderstanding-disability-leads-to-police-violence/361786/> (discussing how the police often misinterpret and fail to understand a person's disability); Talila A. Lewis, *Police Brutality and Deaf People*, Am. C.L. Union (Mar. 21, 2014, 1:13 PM), <https://www.aclu.org/blog/national-security/police-brutality-and-deaf-people?redirect=blog/criminal-law-reform-free-speech/police-brutality-and-deaf-people> (describing police violence against deaf or hard of hearing people). Ultimately, calling the police may also negatively impact veterans with disabilities who have been discharged with "bad papers,"<sup>5</sup> Michael J. Wishnie, "A Boy Gets Into Trouble": *Service Members, Civil Rights, and Veterans' Law Exceptionalism*, 97 B.U.L. Rev. 1709, 1724 (2017), or those who have mental illnesses like PTSD.<sup>6</sup>

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<sup>5</sup> "Veterans with 'bad papers,' which are Other Than Honorable and Bad Conduct discharges, are generally ineligible for VA benefits such as education, housing, employment, pension, disability, burial benefits, and even healthcare in many cases." Claire Voegelé, "Never Again": *Correcting The Administrative Abandonment of Vietnam Veterans With Other Than Honorable Discharges Induced by Post-Traumatic Stress Disorder*, 68 S.C. L. Rev. 245, 246 (2016).

<sup>6</sup> Approximately 300,000 veterans have PTSD. Chad Lennon, *The Growth and Need for Veterans Treatment Courts*, 35 Touro L. Rev. 1171, 1186 (2020). PTSD places veterans at an increased risk of involvement with the criminal justice system and homelessness. *Id.* at 1174.

ii. *Unconscious bias and animus can drive neighbors to weaponize the police against people with disabilities*

Neighbors can make repeated calls to the police to label the home of a person with a disability as a nuisance under a chronic nuisance ordinance (CNO). CNOs have thus been weaponized against women with disabilities, who have a 40 percent greater chance of experiencing domestic violence than women without disabilities. Alisha Jarwala and Sejal Singh, *When Disability is a “Nuisance”:* *How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes*, 54 Harv. C.R.-C.L. L. Rev. 875, 883 (2019). Domestic violence is a frequent cause of neighbor nuisance complaints regarding noise, disturbance, and police visits to a home, and most nuisance ordinances do not provide exceptions for domestic violence. *Id.* Thus, a woman with a disability experiencing domestic violence faces a constrained choice between calling 911 for help and risking eviction (if her home be labeled a nuisance) or declining needed assistance to escape the violence. *Id.* at 876.

Neighborhoods may use CNOs to exclude individuals with disabilities from their communities because of stereotypes, animus, or unconscious bias. Addie C. Rolnick, *Defending White Space*, 40 Cardozo L. Rev. 1639, 1706 (2019). CNOs are broad and vary in the behaviors labeled as nuisances across jurisdictions. Jarwala & Singh, *supra*, at 878. Nuisance definitions can range from excessive noise and “annoyance” to failing to maintain one’s lawn. *Id.* The vagueness of

CNOs make them ripe for discriminatory enforcement rooted in implicit biases, animus, or stereotyping. *Id.* at 879.

*iii. The Police Cannot Adequately Address Tenant-on-Tenant Harassment*

Often, the police do not take instances of tenant-on-tenant harassment seriously. *See Lopez, supra*, at 16. The inadequacy of the police's response may also lead to death or bodily harm for people with disabilities.

Bijan Ebrahimi, a refugee from Iran with a disability, came to England and moved to a home where his neighbor, Lee James, began a campaign of harassment against him. James racially abused Ebrahimi, threatened to kill him, committed arson attacks against his home, hit Ebrahimi with his car, and falsely labeled him a pedophile. Ebrahimi made 85 calls to the police over six years. However, the police believed Ebrahimi was "a liar, a nuisance and an attention seeker." Steven Morris, *Police failed to protect Bijan Ebrahimi prior to his murder, IPCC says*, *The Guardian* (July 5, 2017), <https://www.theguardian.com/uk-news/2017/jul/05/police-failure-protect-bijan-ebrahimi-murder-ipcc>. In 2013, Ebrahimi called the police and reported that James had burst into his home and threatened him. When the police arrived on the scene, they arrested Ebrahimi himself for breaching the peace. Three days later, James kicked and punched Ebrahimi to death outside his home. Hannah Al-Othman, *A Disabled Man Who Was Beaten To Death By His Neighbour Asked The Police For Help For Seven Years*, *Buzzfeed* (July 4, 2017),



<https://www.buzzfeed.com/hannahalothman/a-disabled-man-who-was-beaten-to-death-by-his-neighbour>. For many individuals with disabilities, calling the police is far from the best course of action.

The home is critical to providing people with disabilities a refuge from the psychic and even physical harms of societal discrimination, humiliation, and exclusion. See Chan Tov McNamarah, *White Caller Crime: Racialized Police Communication and Existing While Black*, 24 Mich. J. Race & L. 335, 376 (2019) (discussing the concept of dignity). See Margaret E. Johnson, *A Home With Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U.L. Rev. 1, 15 (2014) (discussing bell hooks' theory that the home can provide a respite from societal pressures, stigmatization, and can serve as a situs for personal development). However, the home cannot offer people with disabilities safety if they risk being targeted by tenant-on-tenant harassment. The police alone cannot solve this problem. Landlords must also address tenant-on-tenant harassment to further the FHA's promise of community integration for individuals with disabilities.

### **III. A Holding Affirming a Landlord's Duty To Address Tenant-on-Tenant Harassment Is Consistent With the FHA**

Holding landlords accountable for failing to address tenant-on-tenant harassment is neither unreasonable nor burdensome, because landlords may legally exert control over their tenants and are best positioned to end and prevent tenant-

on-tenant harassment.<sup>7</sup> Because such harassment can perpetuate housing segregation, a landlord's duty to respond appropriately to such harassment is consistent with the FHA.

When a tenant brings a hostile housing environment claim against a landlord, the crux of that claim is whether the landlord had knowledge of the harassment and failed to act. *See Neudecker v. Boisclair Corp.*, 351 F.3d 361, 365 (8th Cir. 2003) (plaintiff alleged that "he repeatedly complained to [the landlord] about the harassment to no avail"); *Fahnbulleh*, 795 F. Supp. 2d at 364 (finding landlord had a duty but failed to act); *Wetzel*, 901 F.3d at 859 (finding landlord duty where landlord knew about tenant-on-tenant harassment but failed to take any reasonable steps within its control to stop that harassment).

Landlords already have a variety of tools at their disposal to prevent or stop harassing conduct. *See Kline v. 1500 Mass. Ave. Apartment Corp.*, 439 F.2d 477, 481 (D.C. Cir. 1970) ("The duty is the landlord's because by his control of the areas of common use and common danger he is the only party who has the power to make the necessary repairs or to provide the necessary protection."). Private landlords can include and enforce anti-discrimination and harassment clauses in

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<sup>7</sup> This duty to act reasonably will of course depend upon the particular facts. For example, it will require more from a landlord operating a large multi-unit apartment complex than from a landlord operating a few single-family rental homes in separate locations.

rental agreements. They can issue verbal and written warnings, enforce lease provisions, move or evict tenants (in serious, repeated instances of harassment), or report the conduct to the police. *See Muros v. Morales*, 634 A.2d 146, 147-48 (N.J. Super. Ct. App. Div. 1993) (noting that disorderly behavior and violation of landlord's reasonable rules are grounds for eviction). *See also*, Fair Housing Partners of Washington State, *Top 100 FAQs for Property Owners and Managers* 17 (Oct. 2013), [https://www.seattle.gov/Documents/Departments/CivilRights/FH-FAQ-Property\\_Owners\\_Managers.pdf](https://www.seattle.gov/Documents/Departments/CivilRights/FH-FAQ-Property_Owners_Managers.pdf). After a tenant has reported harassment, landlords can monitor for ongoing harassment or retaliation. *Id.*

Landlords can act *before* harassment occurs to create “safe, welcoming, and responsive” housing environments. *See Final Rule: Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, 81 Fed. Reg. 63054 (Sept. 14, 2016) (codified at 24 C.F.R. pt. 100). Landlords can train staff and residents on recognizing tenant-on-tenant harassment and can make this information accessible and posted publicly. *See Kevin Davis Insurance Services, How Your Association Can Stop Resident-to-Resident Harassment* (Apr. 2, 2018), <https://www.kdisonline.com/how-your-association-can-stop-resident-to-resident-harassment/>.

Landlords may also implement a mechanism for mediating residential disputes. *Id.* Landlords can empower their tenants to recognize and report

harassment. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 806 (1998) (discussing how the EEOC advised employers to inform employees of their right to raise and how to raise the issue of harassment).<sup>8</sup> Landlords that fail to take such action, either reactive or proactive, encourage harassment by condoning a harassing tenant's actions. A landlord's silence coupled with their inaction undermines the FHA's integrationist purpose.

A landlord's duty to address tenant-on-tenant harassment is essential to ensuring the promise of fair housing for individuals, including veterans, with disabilities. When landlords explicitly discourage harassment and take corrective action, they help to create secure environments for people of disabilities where they do not face an increased risk of harm or death in their own homes. In short, landlords, just by taking reasonable action, can promote the inclusion of people with disabilities in mainstream society.

### **CONCLUSION**

*Amici* respectfully request that this Court uphold a landlord's duty to address tenant-on-tenant harassment under the FHA, and reverse and remand this case. It

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<sup>8</sup> Public housing authorities provide grievance procedures for tenants and can follow their existing grievance procedures to hold tenants accountable for harassment just as they do for other common lease violations like excessive noise or other disturbance of neighbors. *See Housing and Urban Development, Sample Public Housing Authority Lease Agreement*, [https://www.hud.gov/sites/documents/DOC\\_10768.PDF](https://www.hud.gov/sites/documents/DOC_10768.PDF).

will not erase the psychological trauma and harm that Mr. Francis endured in his home, but it will provide respite for individuals, including those with disabilities, who may endure such harm in the future. This is consistent with the purpose of the FHA. Most importantly, such a ruling will help to ensure the promise of fair housing for all, including veterans and other individuals with disabilities.

Respectfully submitted,

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Dated: May 7, 2020

**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 5,368 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point type.

Dated: May 7, 2020

/s/ Dena Robinson  
Dena Robinson

**CERTIFICATE OF SERVICE**

I certify that on May 7, 2020, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Dena Robinson  
Dena Robinson