

In The
Supreme Court of the United States

TOWNSHIP OF MOUNT HOLLY, et al.,

Petitioners,

v.

MT. HOLLY GARDENS
CITIZENS IN ACTION, INC., et al.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Third Circuit**

**BRIEF OF LEGAL MOMENTUM, FUTURES
WITHOUT VIOLENCE, NATIONAL COALITION
AGAINST DOMESTIC VIOLENCE, NATIONAL
NETWORK TO END DOMESTIC VIOLENCE,
NATIONAL ORGANIZATION FOR WOMEN
FOUNDATION, AND NATIONAL RESOURCE
CENTER ON DOMESTIC VIOLENCE
AS *AMICI CURIAE* IN SUPPORT OF
MT. HOLLY GARDENS RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Legal Momentum, the nation's oldest legal advocacy organization for women, advances the rights of all women and girls by using the power of the law and creating innovative public policy. Founded in 1970, Legal Momentum was one of the leading advocates for passage in 1994 of the landmark Violence Against Women Act, as well as for its subsequent reauthorizations, all of which have sought to redress the historical inadequacy of the justice system's response to domestic and sexual violence. Legal Momentum has represented survivors of domestic and sexual violence in housing and employment discrimination-related cases, and provided technical assistance materials to the public on responding to such discrimination against victims. Legal Momentum is a partner in the National Resource Center on Workplace Responses to Domestic and Sexual Violence, a consortium funded by the U.S. Justice Department in order to help employers proactively adopt workplace violence-related policies and support employees who are experiencing domestic or sexual violence.

Futures Without Violence is a national nonprofit organization that has worked for over thirty years to prevent and end violence against women and children

¹ No counsel for a party authored this brief in whole or in part, and no one other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. All parties have filed blanket consents to the filing of *amicus* briefs with the Clerk of the Court.

around the world. Futures Without Violence mobilizes concerned individuals, children's groups, allied professionals, women's rights, civil rights, and other social justice organizations to join the campaign to end violence through public education/prevention campaigns, public policy reform, model training, advocacy programs, and organizing. Futures Without Violence has a particular interest in supporting the economic security of victims of domestic and sexual violence. For more than ten years, Futures Without Violence has worked with employers and unions to proactively address the workplace effects of violence and the resultant safety and economic costs. Access to employment and safe housing are critical to helping victims and their families stay safe and holding offenders accountable, and Futures Without Violence joins with *amici* in supporting the continued viability of disparate impact claims under the Fair Housing Act as an indispensable means of uncovering and redressing discrimination against victims of domestic and sexual violence.

The National Coalition Against Domestic Violence (NCADV), a nonprofit organization founded in 1978 and incorporated in the state of Oregon, is a national nonprofit that provides general information and referrals, and technical assistance to domestic violence service providers. NCADV serves as the primary representative of over 2,000 local programs, and of battered women and their children, in the public policy arena. NCADV also provides extensive information and resources to the general public

through our website at www.ncadv.org and our Facebook and Twitter accounts.

The National Network to End Domestic Violence (NNEDV), a 501(c)(3) organization, is the leading voice for domestic violence victims and their allies. NNEDV members include all 56 of the state and territorial coalitions against domestic violence, including over 2,000 local programs. NNEDV has been a premiere national organization advancing the movement against domestic violence for over 20 years, having led efforts among domestic violence advocates and survivors in urging Congress to pass the landmark Violence Against Women Act (VAWA) of 1994 and subsequent reauthorizations. NNEDV has expertise in the nature and dynamics of domestic violence and its impact on victims; in issues of financial abuse and economic security for survivors of domestic violence; and in the intersection of housing policy and domestic violence. In particular, NNEDV has substantial expertise in the VAWA housing protections, the McKinney-Vento homelessness program (HEARTH Act), implementation of housing programs through the U.S. Department of Housing and Urban Development, the Office on Violence Against Women transitional housing program, and other housing rights and protections for domestic violence survivors. Its member programs consistently report that a lack of housing options is one of the most pressing problems faced by survivors and that housing discrimination against victims contributes to their inability to escape abusive situations. For that reason, NNEDV

strongly advocates to improve housing opportunities for victims and to ensure that the law protects them against discrimination.

The National Organization for Women (NOW) Foundation is a 501(c)(3) organization devoted to furthering women's rights through advocacy, litigation and education. NOW Foundation's litigation activities have centered on initiatives to stop sex-based and race-based discrimination against women – in education, employment, housing and other areas. The Foundation has also undertaken multiple efforts to end violence against women. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist activist organization in the United States, with hundreds of thousands of members and contributing supporters with chapters in every state and the District of Columbia.

The National Resource Center on Domestic Violence (NRCDV) has been a comprehensive source of information for those wanting to educate themselves and help others on the many issues related to domestic violence since its founding in 1993. Through its key initiatives such as VAWnet (www.vawnet.org), the Women of Color Network (womenofcolor.org), the Domestic Violence Awareness Project (www.nrcdv.org/dvam), the Building Comprehensive Solutions to Domestic Violence Project (www.bcsdv.org), and the Domestic Violence Evidence Project (www.dvevidenceproject.org), NRCDV works to improve community response to domestic

violence and, ultimately, prevent its occurrence. NRCDV has a particular interest in ensuring that the judicial system adequately protects the rights of victims of sexual and domestic violence and their children. NRCDV works to advance laws and policies that recognize the special barriers faced by many domestic violence victims, and increase access to resources that are so important for these victims to escape domestic violence.



SUMMARY OF ARGUMENT

Amici agree with respondent Mt. Holly Gardens Citizens in Action that disparate impact claims are cognizable under the Fair Housing Act and urge this Court to affirm this longstanding interpretation of the Act. *Amici* submit this brief to bring to the Court's attention the importance of the disparate impact analysis in protecting domestic violence victims, and the harmful consequences for victims if this protection is eliminated.

1. Disparate impact is an indispensable legal protection for domestic violence victims. The homelessness so frequently experienced by victims is often caused or prolonged by landlord policies that discriminate against victims. Victims are often evicted in response to their batterers' violence, and many landlords refuse to rent to housing applicants with a history of victimization.

Disparate impact applies to policies that discriminate against victims because the overwhelming majority of domestic violence victims are women. These discriminatory policies consequently constitute sex discrimination against women in violation of the Fair Housing Act except in circumstances when they are justified by a substantial and legitimate business interest that cannot be served by a non-discriminatory or less discriminatory policy.

The Fair Housing Act disparate impact analysis is often the sole legal protection for victims against discriminatory housing policies. Only a minority of states have enacted housing protections specifically banning discrimination against victims, and these state law protections are often very limited. While the federal Violence Against Women Act does protect victims against both evictions and housing denials, these protections apply only to federally-assisted housing.

2. The elimination of the disparate impact legal tool would have the dire consequences of endangering victims and increasing their housing instability. Fear of eviction would deter victims from seeking the police assistance that has been proven to reduce future violence, and from seeking the cooperation from their landlords that is essential to the effective enforcement of protective orders. For victims who have separated from their abuser, this deterrence could increase the likelihood of the post-separation abuse that in many cases involves severe injuries.

The evictions resulting from the elimination of disparate impact would increase homelessness, and would increase the number of victims who must seek new housing in the face of several barriers that often are so difficult to overcome that some victims return to their abusers. Victims are disproportionately low-income and poor. Victims who do have jobs with decent pay may have no savings to pay the costs of securing new housing – security deposits, real estate broker fees, moving expenses – because of their batterers’ prior economic abuse. There is a shortage of affordable housing, of low-income rental assistance, and of beds in emergency shelters. Even when affordable housing is available, the landlord may refuse to rent it to the victim because of her history of victimization.



ARGUMENT

I. DISPARATE IMPACT ANALYSIS IS AN INDISPENSABLE PROTECTION FOR DOMESTIC VIOLENCE VICTIMS AGAINST THE “DOUBLE VICTIMIZATION” OF BEING REFUSED HOUSING OR EVICTED BECAUSE OF THEIR ABUSERS’ VIOLENCE AGAINST THEM.

A. Domestic Violence Victims Are Often Refused Housing Or Evicted Because Of Their Status As Victims.

The alarming and strong connection between homelessness and domestic violence has been

documented repeatedly by the annual surveys of hunger and homelessness in America's cities conducted by the U.S. Conference of Mayors since the 1980's. The most recent survey reported that on average 16 percent of homeless adults were victims of domestic violence, and that one third (32%) of the surveyed cities cited domestic violence as one of the three leading causes of family homelessness. U.S. CONF. OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: A 25-CITY SURVEY, 2-26 (Dec. 2012), *available at* <http://usmayors.org/pressreleases/uploads/2012/1219-report-HH.pdf>. *See also* 42 U.S.C. § 14043e(2) (congressional finding that 63 percent of homeless mothers have been victims of intimate partner violence as adults).

The homelessness experienced by domestic violence victims is often caused or prolonged by the "doubly victimizing"² discriminatory policies landlords employ against domestic violence victims. Some landlords refuse to rent to prospective tenants with a history of domestic violence victimization. *See* NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY & NATIONAL NETWORK TO END DOMESTIC VIOLENCE, LOST HOUSING, LOST SAFETY: SURVIVORS OF DOMESTIC VIOLENCE EXPERIENCE HOUSING DENIALS AND EVICTIONS ACROSS THE COUNTRY 7-9 (Feb. 2007), *available at* http://www.nlchp.org/content/pubs/NNEDV-NLCHP_

² *See* Lenora Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 J. Gender, Soc. Pol'y & L. 377 (2003).

Joint_Stories%20_February_20072.pdf (reporting that 28 percent of victims' housing denials were because of the violence that victims had suffered.) Landlords often seek to evict victims who have been battered in their home. See Brief *Amicus Curiae* of the American Civil Liberties Union et al. In Support of Respondents Mt. Holly Garden Citizens In Action et al. [hereinafter ACLU Brief]. Sometimes such evictions are pursuant to "zero-tolerance" or "one strike" policies, with the landlord citing the violence of another household member or visitor as a basis for evicting the victim. See U.S. Dep't of Housing & Urban Dev. (HUD) 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), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf> [hereinafter HUD Memorandum]. In other cases landlords evict victims for summoning police to their homes in reaction to "chronic nuisance" ordinances that threaten property owners with fines when police calls to their properties are deemed excessive. See Carl Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 Colum. L. Rev. 1181, 1182 (2008) (noting that "city councils across the country are passing chronic nuisance laws"); Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third Party Policing for Inner-City Women*, 78 Am. Soc. Rev. 117 (2012), available at <http://asr.sagepub.com/content/78/1/117> (estimating that between 2009 and 2011 in Milwaukee, battered women

constituted a third of all tenants who suffered eviction as the result of their landlords' response to the city's chronic nuisance ordinance).

B. Disparate Impact Analysis Applies to Policies That Discriminate Against Domestic Violence Victims.

At the heart of the disparate impact claim raised by a domestic violence victim who experiences either eviction or a refusal to rent under a facially neutral housing policy is the recognition that discrimination against victims "is almost always discrimination against women." HUD Memorandum at 2. Numerous studies establish that domestic violence is a crime that primarily affects women. The U.S. Dep't of Justice (DOJ) recently reported that "about 4 in 5 victims of intimate partner violence were female from 1994 to 2010." Shannan Catalano, *Special Report: Intimate Partner Violence, 1993-2010*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS 3 (2013), available at <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>. An earlier DOJ study that examined victims' housing circumstances found that among renters women were 7.4 times as likely as men to be subjected to domestic violence, and that women were 7.9 times as likely as men to be subjected to domestic violence in their homes. Callie Marie Rennison & Sara Welchans, *Intimate Partner Violence*, U. S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS (2002), available at <http://www.bjs.gov/content/pub/pdf/ipv.pdf>.

Responding to this overwhelming evidence that most domestic violence victims are women, HUD, the agency with primary responsibility for enforcing the Fair Housing Act (FHA), has recognized that the theory of disparate impact can be used to establish sex discrimination, and consequently a violation of the FHA, if a victim faces an unjustified denial of housing because of her status as a victim. *See* ACLU Brief. In 2001, HUD ruled in favor of Tiffani Alvera, a domestic violence victim who had been evicted under her landlord's zero-tolerance crime policy after notifying her landlord that she had obtained a restraining order against her violent husband, who was subsequently arrested and jailed for assaulting her.³ *See* Determination of Reasonable Cause, *Alvera v. Creekside Village Apartments*, No. 10-99-0538-8 (U.S. Dep't of Housing & Urban Dev. Apr. 13, 2001).⁴ In explaining the grounds for its conclusion that the victim had successfully established sex discrimination, HUD stated: "the evidence taken as a whole establishes that a policy of evicting innocent victims of domestic violence because of that violence has a

³ The HUD Memorandum summarizes the *Alvera* case at 6.

⁴ The HUD Determination of Reasonable Cause is appended to the HUD Memorandum, and is also *available at* http://www.nhlp.org/files/6a.%20Alvera%20reasonable%20cause%20finding_0.pdf.

disproportionate adverse impact on women. . . .” *Id.* at 6.⁵

HUD has maintained and repeated its recognition that disparate impact analysis is applicable to housing policies that unjustifiably penalize victims because of their status. In 2011 HUD issued a guidance on the housing rights of domestic violence victims specifically advising its enforcement staff that “disparate impact analysis is appropriate” to a policy that discriminates against victims.⁶ HUD Memorandum at 5. HUD approvingly cited this memorandum as “discussing how facially neutral housing policies addressing domestic violence can have a disparate impact on women in violation of the [Fair Housing] Act” in the preamble to its 2013 final rule on *Implementation of the Fair Housing Act’s Discriminatory Effects Standard*. 78 Fed. Reg. 11,460, 11,462 (Feb. 15, 2013).

⁵ The U.S. Dep’t of Justice subsequently brought a suit on behalf of Ms. Alvera. The case settled pursuant to a consent decree obliging the landlord not to evict or otherwise discriminate against victims of domestic violence. *See United States ex rel. Alvera v. The CBM Group, Inc.*, No. 01-857-PA (D. Or. Nov. 5, 2001); HUD Memorandum at 6.

⁶ The National Leased Housing Association et al. *amicus curiae* brief seems to suggest, incorrectly, that the HUD Memorandum restricts landlords’ ability to evict victims’ abusers. Brief of National Leased Housing Association et al. as *Amici Curiae* Supporting Petitioners at 12-13. The HUD memorandum expressly states that when the abuser and the victim are both resident, the landlord can “adopt a policy of evicting only the wrongdoer and not innocent victims.” HUD Memorandum at 6.

Courts have also recognized that disparate impact analysis is appropriate for housing policies penalizing domestic violence victims, as illustrated by *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005). As in *Alvera*, the victim in *Bouley* found herself facing eviction after she notified her landlord that she had obtained a restraining order against her abusive husband, who was arrested and subsequently pled guilty to assault. Further, like Ms. Alvera, Ms. Bouley argued that her eviction constituted sex discrimination in violation of the FHA. At the summary judgment stage, the court found that Ms. Bouley had “demonstrated a prima facie case.” *Id.* at 678. Subsequently, the case settled.⁷

C. Disparate Impact Is Often Victims’ Sole Protection Against Discriminatory Housing Policies.

State law protections against discriminatory refusals to rent to domestic violence victims are scarce.⁸ Only seven states (and the District of Columbia) have enacted specific bans on refusals to rent

⁷ See HUD Memorandum at 6 summarizing the *Bouley* case.

⁸ For a listing and description of state laws that regulate domestic violence victims’ housing rights, see Legal Momentum, *State Law Guide: Housing Protections for Victims of Domestic and Sexual Violence* (June 2013) http://www.legalmomentum.org/sites/default/files/reports/Housing.Disc_.05.2013.pdf [hereinafter *State Law Guide*].

based on a prospective tenant's status as a domestic violence victim,⁹ and four of these states limit this protection to circumstances where victims possess specified documentation of the abuse.¹⁰ One additional state, North Dakota, bans refusals to rent on the ground that the prospective tenant has previously terminated a lease early due to domestic violence.¹¹ Two additional states, California and Oregon, ban lease renewal refusals based on the tenant's status as a domestic violence victim.¹²

Twenty-four states (and the District of Columbia) do explicitly ban evictions grounded in domestic

⁹ The seven states are Arkansas, Indiana, Nevada, North Carolina, Rhode Island, Washington and Wisconsin. *See* State Law Guide.

¹⁰ *See* Ark. Code Ann. § 18-16-112 (specifying that the victim must be identified in a documented domestic violence incident within the last sixty days or sixty days following tenant's last lease termination); Cal. Civ. Proc. Code § 1161.3 (limiting its protections to encompass solely those victims whose abuse has been documented through a restraining order or a police report); Ind. Code § 32-31-9 (specifying that applicable protections against housing discrimination are limited to victims who have obtained orders of protection or no-contact orders); N.C. Gen. Stat. § 42-42.3 (stating that the violence must have been documented by the authorities, or a program or a professional from whom the victim has sought help).

¹¹ *See* N.D. Cent. Code § 47-16-17.1 (specifying that the lease must have been terminated because of the imminent threat of domestic violence by a person against whom the tenant has obtained a protective order or an order limiting contact).

¹² *See* Cal. Civ. Proc. Code § 1161.3; Or. Rev. Stat. § 105.128.

violence in at least some circumstances.¹³ However, five of those states limit their protections to victims who face eviction for seeking police or other necessary assistance, thereby leaving landlords free to initiate evictions based solely on a tenant's status as a victim of domestic violence.¹⁴ And in ten of the remaining nineteen states and the District of Columbia, the abuse must be documented in order for the protections to apply;¹⁵ indeed, six of these ten states and the

¹³ These twenty-four states are: Arizona, Arkansas, California, Colorado, Delaware, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, Rhode Island, Texas, Virginia, Washington, Wisconsin, and Wyoming. *See State Law Guide.*

¹⁴ *See* Ariz. Rev. Stat. Ann. § 33-1315; Del. Code Ann. tit. 25 § 5316; Mass. Gen. Laws ch. 186 §§ 23-29; Minn. Stat. § 504B.205; Tex. Prop. Code § 92.015.

¹⁵ *See* Ark. Code Ann. § 18-16-112 (requiring tenants to be identified in a documented incident of domestic violence within sixty days immediately preceding or following the lease termination date); Cal. Civ. Proc. Code § 1161.3 (stating that the abuse must be documented either through a restraining order or a police report); Colo. Rev. Stat. Ann. § 13-40-104(4) (mandating documentation in the form of a police report or a valid civil or emergency protection order); D.C. Code §§ 2-1401.01-02 (limiting courts' power to protect victims against eviction to the cases where the victim has a copy of a police report or has filed for a temporary or civil protection order mandating the abuser to vacate parties' home); 735 Ill. Comp. Stat. 5/9-106.2 (requiring victims to provide medical, court or police records, or a statement from an employee of a victim service agency); Ind. Code § 32-31-9-1 (prohibiting eviction only if the victim has obtained a civil order of protection or a criminal no-contact order); Iowa Code § 562A.27A (requiring victims to either seek protective

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District of Columbia limit the scope of the acceptable documentation by requiring the victim to either file a police report or take steps to obtain a protective order, steps that some victims may be afraid to take because of the threat of retaliation.¹⁶ Additionally, Louisiana limits its protection to tenants in public housing.¹⁷

The federal Violence Against Women Act (VAWA) was amended by the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006), (VAWA 2005) to prohibit both evictions and refusals to rent grounded in domestic violence. However, the VAWA protections apply only to federally-assisted housing.¹⁸

orders or report their abusers to the police as part of an effort to initiate criminal action); N.C. Gen. Stat. § 42-42.2 (requiring victim to provide documentation of the abuse from law enforcement, a court, a federal agency, a domestic violence or sexual assault program, or a religious, medical, or other professional); N.H. Rev. Stat. Ann. § 540:2 (prohibiting lease termination only where the victim provides her landlord with a written verification that she has obtained a valid protective order); N.M. Stat. Ann. § 47-8-33 (prohibiting eviction only if the victim has received or filed for a protective order); Va. Code Ann. § 55-248.31(D) (requiring tenants to provide written documentation of the abuse).

¹⁶ These six states are: California, Colorado, Indiana, Iowa, New Hampshire, and New Mexico. *See supra* note 15.

¹⁷ *See* La. Rev. Stat. Ann. § 40:506(D).

¹⁸ The Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013), extended the housing protections to some additional types of federally-assisted housing that had not been covered by the VAWA 2005

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By contrast, the Fair Housing Act encompasses nearly all dwellings.¹⁹ 42 U.S.C. § 3604(a).

As a consequence of scarce and limited state law protections, and the restricted scope of the VAWA protections, for many domestic violence victims disparate impact is the sole protection against facially neutral eviction and housing denial policies that unjustifiably discriminate against victims.

II. THE ELIMINATION OF DISPARATE IMPACT ANALYSIS WOULD ENDANGER VICTIMS AND INCREASE THEIR HOUSING INSTABILITY.

The profound harms engendered by the elimination of domestic violence victims' housing rights encompass: (1) a decreased likelihood that victims will seek help from the police, or seek help from their landlords in enforcing protective orders, consequences bound to further endanger them; and (2) an increased inability of evicted victims to secure future housing

provisions. See U.S. Dep't of Housing & Urban Dev., Notice, *The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs*, 78 Fed. Reg. 47,717 (Aug. 6, 2013).

¹⁹ Limited exceptions include: (1) dwellings with four or fewer units where the owner is one of the occupants; (2) single family homes whose owners own no more than three homes at once; (3) housing run by private clubs for the benefit of their members; and (4) certain housing that is either owned by religious organizations or designated as senior housing. 42 U.S.C. §§ 3603(b)(1)-(2), 3607.

owing to low income, lack of resources, the shortage of adequate housing alternatives, and landlord discrimination, with the consequence that some victims may be forced to reunite with an abuser from whom they had separated.

A. Fear of Eviction Would Deter Victims From Obtaining Protection Against The Abuse, Thereby Compromising Their Safety And Contravening The Public Interest In The Promotion Of An Effective Response To Domestic Violence.

Although the 1994 passage of the Violence Against Women Act has led to significant improvements in addressing the violence directed at women, findings on the prevalence of intimate partner violence remain sobering. According to the 2010 study by the Centers for Disease Control and Prevention, 1 in 3 women (32.9%) in the United States has been subjected to physical violence by her intimate partner, 1 in 4 (24.3%) has been subjected to severe physical violence by her intimate partner, and 1 in 10 (9.4%) has been raped by an intimate partner. M. C. Black, K. C. Basile, M. J. Breiding, S. G. Smith, M. L. Walters, M. T. Merrick, J. Chen & M. R. Stevens, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*, CENTERS FOR DISEASE CONTROL AND PREVENTION 38-44 (2010), available at http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf. The U.S. Dep't of Justice

reports that in 2010 alone, 1 in 10 (10.4%) women age 18-49 was subjected to intimate partner violence. Shannan Catalano, *Special Report: Intimate Partner Violence, 1993-2010*, *supra*, at 2-11.

Given this continued frequency of intimate partner violence, encouraging victims to seek help in ending the abuse remains crucial. The elimination of victims' housing rights is diametrically opposed to that goal.

1. Fear of eviction would deter victims from seeking the police assistance that has been shown to reduce future abuse.

For a variety of reasons, domestic violence victims are often reluctant to seek help from the police. See Andrew R. Klein, *Practical Implications of Current Domestic Violence Research for Law Enforcement, Prosecutors and Judges*, NATIONAL INSTITUTE OF JUSTICE 5 (June 2009), available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf> [hereinafter *Practical Implications of Current Research*]. Research has found that “victims typically suffer multiple assaults or related victimizations before they contact authorities.” Klein, *Practical Implications of Current Research*, *supra*, at 6.²⁰

²⁰ In some communities, women may have complicated relationships with law enforcement that make them reluctant to contact the police about the violence they are being subjected to
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Public policy should seek to reduce victim reluctance to contact the police, and should not increase it, because police involvement in responding to domestic violence has substantial and indeed critical benefits. Research has shown that “arrest deters repeat abuse,” and that police involvement “has a strong deterrent effect” even if the suspect is not arrested. *Id.* (“[A]ll actions taken by responding officers – including . . . providing victims with information pamphlets, taking down witness statements, and helping victims secure protective orders – [a]re associated with reduced reabuse. . . . [Indeed, such actions] significantly increase the likelihood that victims will secure protective orders.”) *Id.*

Because states now recognize the importance of stopping domestic violence and arresting and prosecuting its perpetrators, in nearly all states the laws and policies governing arrest of abusers have undergone a revolution in the past thirty years. In stark contrast to the once-prevalent belief that the police had little to no role to play in domestic disputes, all states now permit the police to make warrantless

by their intimate partner. *See, e.g.*, Sheetal Rana, *Addressing Domestic Violence in Immigrant Communities: Critical Issues for Culturally Competent Services* (2012), NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, available at http://www.vawnet.org/Assoc_Files_VAWnet/AR_DVImmigrantComm.pdf (noting at 3 that “studies have found that many immigrant survivors do not report domestic violence out of fear that their partners may go to jail and be deported, or that they and their children may be deported along with their partners”).

arrests of batterers; indeed, a majority of states now promote such arrests through either mandatory arrest or preferential arrest policies. See AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE ARREST POLICIES BY STATE (2011), *available at* [http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/Resources/statutorysummarycharts/Domestic%20Violence%20Arrest%20Policies%20by%20State%202011%20\(complete\).authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/Resources/statutorysummarycharts/Domestic%20Violence%20Arrest%20Policies%20by%20State%202011%20(complete).authcheckdam.pdf). The goals behind these laws cannot be achieved, however, if a victim hesitates to report domestic violence because she fears eviction.

2. Fear of eviction would deter victims from seeking the landlord cooperation that is essential to the effective enforcement of protective orders.

Many victims turn to the courts for civil protection orders, often prompted by an incident(s) of very serious abuse. See Klein, *Practical Implications of Current Research, supra*, at 57-58 (noting, *inter alia*, that one multi-state study found that over one third (36.8%) of victims seeking a protective order had been threatened or injured with a weapon, and that in a Massachusetts protective order study, 65 percent of victims reported having been threatened with death, and 35 percent reported that they had visited a hospital as a result of the abuser's violence against them).

As illustrated by the facts in *Alvera* and *Bouley*, where eviction actions were triggered by the victim's notice to her landlord that she had obtained a protective order, victims will usually want to notify their landlord that they have obtained a protective order so that the landlord can cooperate in the order's enforcement by, for example, changing the locks on the victim's apartment, advising building staff to deny the abuser entry, or calling the police if the abuser does enter or demand entry. Such cooperation is essential when abusers seek to violate the order, as they often do. While research findings vary, studies of protective order compliance have found violation rates ranging from 23 percent to 60 percent. See Klein, *Practical Implications of Current Research*, *supra*, at 57.

3. Deterring victims from seeking help would increase the risk of often-dangerous post-separation abuse.

It is well established that victims continue to be at risk even after they have separated from their abuser. A 1991 law review article coined the term "separation assault" in order to focus attention on batterers' tendency to use violence to retaliate for the separation or to attempt forcibly to end it. See Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 6 (1991). The 1995 National Violence Against Women Survey of over 8,000 women found that 31 percent of women who were raped by a current or former intimate

partner were raped after the relationship had ended, and that 22 percent of the women who were physically assaulted by a current or former intimate partner were assaulted after the relationship had ended. U.S. Dep't of Justice, Office of Justice Programs, National Institute of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence, Research Report, Finding From the National Violence Against Women Survey* (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

Post-separation abuse can often be extremely dangerous. In one study, 75 percent of the battered women's trips to the emergency room took place after they ceased cohabiting with their abusers. Evan Stark & Anne Flitcraft, *A Feminist Perspective on Child Abuse*, 18 Int'l J. of Health Servs. 1 (1988). Women who have separated from their abuser are also at a heightened risk of being murdered by their abuser. See Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. of Pub. Health 1089, 1090 (July 2003) (concluding that separating "from an abusive partner after living together [is] associated with a higher risk of femicide"); Margo Wilson & Martin Daly, *Spousal Homicide Risk and Estrangement*, 8 Violence & Victims 271 (1993) (identifying separation and estrangement as one of the most accurate predictors of intimate partner killings).

The frequency and potential dangerousness of post-separation abuse underscore the grave harm

that might result if victims who have separated from their abusers are deterred from seeking police assistance or from seeking their landlord's cooperation.

B. Evicted Victims Face Difficult Barriers To Securing New Housing That May Cause Or Prolong Homelessness Or Force Them To Remain With Or Return To Their Abuser.

As Congress has found, "victims of domestic violence often return to abusive partners because they cannot find long-term housing." 42 U.S.C. § 14043(e)(7). The barriers to victims' effort to secure new housing include: (1) poverty and low income; (2) a lack of financial resources due to economic abuse perpetrated by their batterers; (3) a shortage of affordable housing, of rental assistance, and of beds in emergency shelters; and (4) landlord discrimination.

1. Victims are disproportionately low-income and poor.

While domestic violence affects women of all income levels, research has consistently demonstrated that domestic violence is exceptionally prevalent among low-income women. In 1995, DOJ reported that women with annual family income less than \$10,000 were more than four times as likely, and women with annual family income between \$10,000 and \$19,999 more than twice as likely, to experience

intimate partner violence as women with annual family income of \$50,000 or more. Ronet Bachman & Linda Saltzman, *Violence Against Women: Estimates from the Redesigned Survey*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS 4 (Aug. 1995), *available at* <http://www.bjs.gov/content/pub/pdf/FEMVIED.PDF>. Recently, DOJ reported that intimate partners were responsible for about 30 percent of the sexual violence perpetrated against women between 1994 and 2010, and that women with a household income less than \$25,000 were substantially more likely to experience sexual violence than women with a household income of \$50,000 or more. Michael Planty et al., *Special Report: Female Victims of Sexual Violence, 1994-2010*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS 4 (Mar. 2013), *available at* <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> (noting that “consistently across all time periods, females living in households in the lowest income bracket experienced rape or sexual assault victimization at higher rates than females in higher income brackets”).

The relationship between domestic violence and poverty is likewise borne out by research findings on the prevalence of domestic violence among welfare recipients. “Nearly all of the studies that have investigated the issue have found that over half of the women receiving welfare said they had experienced physical abuse . . . by an intimate male partner at some point during their adult lives.” Eleanor Lyon, *Welfare, Poverty, and Abused Women: New Research and Its Implications*, NATIONAL RESOURCE CENTER ON

DOMESTIC VIOLENCE, 1-2 (Oct. 2000), *available at* http://www.vawnet.org/Assoc_Files_VAWnet/BCS10_POV.pdf (emphasizing that “in contrast, about 22% of women in the general population have reported experiencing domestic violence at some time in adulthood”). Some estimates suggest that “almost two-thirds [of women enrolled in the TANF welfare program] have experienced domestic violence” in their lifetimes, a figure “two to three times larger than the national prevalence rates.” Martha Coulter, *The Impact of Domestic Violence on the Employment of Women on Welfare*, NATIONAL INSTITUTE OF JUSTICE 1 (May 2004), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/205294.pdf>. *See also* Amy Solomon, Ellen Bassuk, Angela Browne, Shari S. Bassuk, Ree Dawson & Nick Huntington, *Secondary Data Analysis on the Etiology, Course, and Consequences of Intimate Partner Violence Against Extremely Poor Women*, NATIONAL INSTITUTE OF JUSTICE 3 (2004), *available at* <https://www.ncjrs.gov/pdffiles1/nij/199714.pdf> (finding that “nearly two-thirds of impoverished women, most on public assistance, reported at least one episode of severe partner violence”).

2. Victims may lack the financial resources needed to secure new housing due to prior economic abuse by their batterers.

Securing new housing can be expensive due to costs such as hiring a mover, making a security deposit, and paying a real estate broker fee. The lack

of funds to pay such costs was cited as a housing barrier for victims by 67 percent of the responding domestic violence programs in an Iowa survey. Amy Correia, *Housing and Battered Women: A Case Study of Domestic Violence Programs in Iowa*, NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE 7 (Mar. 1999), available at http://www.vawnet.org/Assoc_Files_VAWnet/BCS3_IA.pdf.

Many victims may lack the means to pay these costs because, as Congress has found, “abusers frequently manipulate finances in an effort to control their partners.” 42 U.S.C. § 14043(e)(10). This congressional finding is corroborated by studies identifying economic abuse as one of the key features of abusive relationships. Kerry Healey, Christine Smith & Chris O’Sullivan, *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, NATIONAL INSTITUTE OF JUSTICE 1 (Feb. 1998), available at <https://www.ncjrs.gov/pdffiles/168638.pdf> (listing “total economic control” as one of the strategies in the “constellation of . . . abuses” comprising domestic violence); Mary A. Dutton, Lisa Goodman & R. James Schmidt, *Development and Validation of a Coercive Control Measure for Intimate Partner Violence*, NATIONAL INSTITUTE OF JUSTICE 3-6 (June 2006), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/214438.pdf> (including batterers’ control over victims’ material resources in the list of coercive behaviours that frequently characterize intimate partner abuse).

Batterers keep victims financially dependent “by controlling how resources are distributed and by

monitoring how they are used.” Adrienne E. Adams, Cris M. Sullivan, Deborah Bybee & Megan R. Greeson, *Development of the Scale of Economic Abuse*, 14 *Violence Against Women* 563, 566 (May 2008). Batterers “limit their [partners’] access to household resources, . . . [establish] an allowance and make [victims] ask for [additional] money when it is needed, . . . hide jointly earned money, . . . [limit victims’] access to joint bank accounts, lie about shared assets, and withhold information about their finances.” *Id.* In addition, “some batterers intentionally deplete women’s available resources, as a means of limiting their options [and] [t]his can occur in a variety of ways, including stealing their partners’ money, creating costs, and generating debt.” *Id.* at 567. One study of 485 battered women who sought services from a domestic abuse advocacy program found that 38 percent reported having had their money stolen by their abuser. *Id.*

3. There is a shortage of affordable housing, of low-income rental assistance, and of beds in emergency shelters.

There is an acute shortage of affordable rental housing. The most recent report of the Bipartisan Policy Center’s Housing Commission indicates that in 2009 there were only 3.7 million affordable rental units available for the nation’s 10.3 million extremely low-income renter households, with “affordable” defined as a rent less than 30 percent of household

income. BIPARTISAN POLICY CENTER HOUSING COMMISSION [hereinafter Housing Commission], HOUSING AMERICA'S FUTURE: NEW DIRECTIONS FOR NATIONAL POLICY 82 (Feb. 2013), *available at* http://bipartisanpolicy.org/sites/default/files/BPC_Housing%20Report_web_0.pdf. The Housing Commission projects that “[i]n the coming decade, the number of renters is likely to grow significantly,” with the “growing pressure for rental housing . . . push[ing] rents further out of reach for the low-income households that are least able to afford it.” *Id.* at 10-11.

While many evicted victims are financially eligible for low-income rental assistance programs, the demand for assisted housing far exceeds the supply. As explained in the Housing Commission report, only a quarter of eligible low-income renter households actually receive assistance, and the assisted units are frequently allocated through lengthy waiting lists. Housing Commission, HOUSING AMERICA'S FUTURE: NEW DIRECTIONS FOR NATIONAL POLICY, *supra*, at 10-11. *See also* 42 U.S.C. § 14043e(8) (congressional finding that “there are not enough Federal housing rent vouchers available to accommodate the number of people in need of long-term housing” and that “[s]ome people remain on the waiting list for Federal housing rent vouchers for years, while some lists are closed”).

While many battered women seek refuge in shelters when they are forced to leave their homes, a space in a shelter is frequently unavailable. The most recent Hunger and Homelessness Survey by the U.S.

Conference of Mayors found that in 60 percent of the 25 survey cities the emergency shelters sometimes turned away homeless individuals because of lack of beds, and that in 64 percent of the survey cities the emergency shelters sometimes turned away homeless families with children due to lack of beds. U.S. CONF. OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: A 25-CITY SURVEY, *supra*, at 28 (discussing unmet need for shelter in the 25 surveyed cities). A recent survey of the nation's domestic violence shelters and programs found that on a single day the programs could not meet over 10,000 requests for services, and that 65 percent of unmet requests were for emergency shelter and transitional housing. NATIONAL NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2012, A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES 6 (2013), *available at* <http://www.nnedv.org/resources/census/3418-2012-report.html>.²¹ *See also* 42 U.S.C. § 14043e(5) (noting the "lack of adequate emergency options for victims" and emphasizing that this deficiency "presents a serious threat to their safety and the safety of their children").

²¹ *See also* Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 Wm. & Mary J. of Women & L. 597, 615 (2001), *available at* <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1206&context=wmjowl> (noting that "in Boston, for every two women and children that have access to shelter, there are five battered women and eight children turned away").

4. Some landlords discriminate against housing applicants with a history of domestic violence victimization.

Victims' attempts to obtain new housing are also frustrated by the discriminatory practices many landlords employ against women who have suffered domestic violence. Studies have found that housing discrimination significantly impedes battered women's efforts to secure new housing. A survey of 76 legal and social services programs around the country who assist victims to meet their housing needs found that 28 percent of housing denials experienced by victims were because of the violence that victims had suffered, and that these denials occur when a prospective landlord learns, for example, that a victim's former residence was a domestic violence shelter, or that the victim has a history of obtaining a civil protection order, or that a prior landlord has stated that the housing applicant had been a domestic violence victim. NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY & NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *LOST HOUSING, LOST SAFETY: SURVIVORS OF DOMESTIC VIOLENCE EXPERIENCE HOUSING DENIALS AND EVICTIONS ACROSS THE COUNTRY 7-9* (Feb. 2007), *available at* http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20_February_20072.pdf. Sixty-seven percent of respondent domestic violence service providers in an Iowa survey identified landlord discrimination as a barrier to victims' efforts to secure new housing. Amy Correia, *Housing and Battered Women: A Case Study of*

Domestic Violence Programs in Iowa, supra, at 7. In a District of Columbia study, 65 percent of test applicants seeking housing on behalf of a domestic violence survivor were either denied housing or offered less advantageous terms and conditions than a test applicant not associated with domestic violence. EQUAL RIGHTS CENTER, NO VACANCY: HOUSING DISCRIMINATION AGAINST SURVIVORS OF DOMESTIC VIOLENCE IN THE DISTRICT OF COLUMBIA 9 (April 2008), available at http://www.equalrightscenter.org/site/DocServer/DV_Report_FINAL_COPY.pdf?docID=152. See also 42 U.S.C. § 14043e(3) (VAWA 2005 congressional finding that “women and 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”).



CONCLUSION

This Court should hold that disparate impact claims are cognizable under the Fair Housing Act and affirm the judgment of the Court of Appeals.

Respectfully submitted,

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