No. 24-3395

IN THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ALBERT PICKETT, JR., *ET AL.*,
Plaintiffs-Appellees,
v.
CITY OF CLEVELAND, OH,
Defendant-Appellant,

On Appeal from the United States District Court for the Northern District of Ohio,
No. 1:19-cv-02911

BRIEF OF AMICUS CURIAE CENTER FOR RURAL ENTERPRISE AND ENVIRONMENTAL JUSTICE, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, OHIO STATE CONFERENCE OF THE NAACP, CLEVELAND BRANCH OF THE NAACP, NATIONAL FAIR HOUSING ALLIANCE, NATIONAL HOUSING LAW PROJECT, AND THE SOUTHERN POVERTY LAW CENTER IN SUPPORT OF PLAINTIFFS-APPELLEES

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October 11, 2024

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DISCLOSURE STATEMENT OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Fed. R. App. Proc. 26.1 and 6 Cir. R. 26.1, Amici Curiae Center for Rural Enterprise and Environmental Justice, Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People ("NAACP"), the Ohio State Conference of the NAACP, the Cleveland Branch of the NAACP, National Fair Housing Alliance, National Housing Law Project, and the Southern Poverty Law Center make the following disclosures:

1. Are any of said parties a subsidiary or affiliate of a publicly owned corporation?

   NO.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome?

   NO.

Date: October 11, 2024

/s/ Katherine E. Walz
Katherine E. Walz
Counsel for Amici Curiae

INTERESTS OF AMICI CURIAE

Amici are organizations devoted to ensuring that all individuals have access to and can maintain housing free from discrimination.[1] Collectively, they share a strong and unique interest in ensuring that homeowners do not face unnecessary, unlawful, and discriminatory barriers to securing and maintaining housing.

This case is particularly important to Amici, because municipal and state policies that financially burden a person's home and increase the risk of foreclosure or constructive eviction directly stem from historic patterns of residential segregation and undermine efforts to create balanced and integrated living patterns in the United States. Amici strongly support Appellees' position that the use of municipal liens with discriminatory effect is within the heartland of Fair Housing Act ("FHA") cases and that 42 U.S.C. § 3604(a) covers such post-acquisition conduct.

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[1] No party's counsel authored any part of this brief, and no party or party's counsel, other than *amici*, their members, or their counsel made any monetary contribution intended to fund preparation or submission of this brief. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2), (4)(E).

The **Center for Rural Enterprise and Environmental Justice** ("CREEJ"), founded in 2002 by Catherine Flowers, a native of Lowndes County, Alabama, is a non-profit organization that advocates for rural communities that face compounding air, water, and soil contamination and seeks to address the root causes of poverty. CREEJ focuses primarily on infrastructure, particularly wastewater infrastructure, necessary for sustainable economic development. CREEJ's mission is to reduce health and economic disparities and improve access to clean air, water, and soil in marginalized rural communities.

The **Lawyers' Committee for Civil Rights Under Law** ("Lawyers' Committee") is a nonprofit civil rights organization founded in 1963 to secure equal justice for all through the rule of law, targeting, in particular, the inequities confronting Black Americans and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. The Lawyers' Committee has for decades sought to ensure that Black families are able to exercise true

fair housing choice, including by combatting involuntary displacement resulting from local government policies and practices.

The **National Association for the Advancement of Colored People** ("NAACP") and the **Ohio State Conference of the NAACP** and the **Cleveland Branch of the NAACP** (collectively, "NAACP") is a national non- profit organization with a mission to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The NAACP advocates for racial and environmental justice in all communities and a nation free from discriminatory housing practices.

The **National Fair Housing Alliance** ("NFHA") is a national organization dedicated to striving for equal opportunity in housing for all people. Founded in 1988, NFHA is a consortium of 250 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals. Relying on the federal, state, and local fair housing laws, NFHA undertakes important initiatives to further fair housing in cities and states across the country through education and outreach, member

services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs and participates as amicus curiae in cases to further its goal of achieving equal housing opportunities for all.

The **National Housing Law Project** ("NHLP") is a nonprofit organization that advances housing and racial justice for poor people and communities through technical assistance, policy advocacy, and litigation. NHLP works to strengthen and enforce tenant and homeowner rights, including to ensure that homeowners and tenants can fully use their homes free from local policies that discriminate against them and limit the use and enjoyment of their homes.

The **Southern Poverty Law Center** ("SPLC") is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC works to address ongoing harms from racial residential segregation and discriminatory policies that disproportionately deny Black, Brown, and Indigenous communities the opportunity to access safe, secure, and

affordable housing and essential housing-related services like water and sanitation.

SUMMARY OF ARGUMENT

Throughout this country, Black Americans face significant discriminatory barriers to buying and keeping their homes. Due to the City of Cleveland's policy of imposing water liens on homeowners for unpaid water bills, Black homeowners in Cleveland are at even greater risk. Discriminatory water liens, and similar actions taken by other local governments, disproportionately increase the risk of foreclosure or constructive eviction for Black-led households and are actionable under the broad remedial framework of the FHA. The trial court correctly found that Appellees could bring their claims under 42 U.S.C. § 3604(a) against the City of Cleveland for its policy of imposing water liens that disproportionately increases the risk of foreclosure for Black households. Contrary to Appellant's arguments, post-acquisition conduct claims are cognizable under § 3604(a).

Racial discrimination in the provision of municipal utilities both causes and is caused by residential segregation. Utility discrimination—

including the City of Cleveland's practice in this case of disproportionately placing water liens on the properties of protected class members with overdue bills—is a form of housing discrimination that Congress intended the FHA and § 3604(a) specifically to prohibit.

ARGUMENT

I. Congress Intended the FHA to Be a Remedial Statute That Provides Broad Relief.

The broad remedial scope of the FHA generally rebuts Appellant's incorrect argument, *see* Appellant's Br. 15–16, that 42 U.S.C. § 3604(a) does not prohibit the challenged water lien policy because no sale or rental of a home is involved. Congress's goal in passing the Fair Housing Act was "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. Congress deemed this policy "to be of the highest priority." *Trafficante v. Metro. Life Ins., Co.*, 409 U.S. 205, 211 (1972) (citation omitted). The Supreme Court has held that the "broad and inclusive" reach of the FHA requires that its provisions be afforded a "generous construction." *Id.* at 209, 212 (holding the FHA's complaint-filing provision must be read "broadly"); *see also City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731–32 (1995) (applying *Trafficante* to conclude that, given the FHA's express general

policy of providing for fair housing, exceptions to that policy should be "read narrowly" (citation and internal quotation marks omitted)).

The Sixth Circuit and other circuits have also recognized that "[c]ourts have given a broad reading to the FHA in order to fulfill its remedial purpose." *Hous. Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.*, 943 F.2d 644, 646 (6th Cir. 1991) (citing *Trafficante*, 409 U.S. at 205); *see, e.g.*, *Fair Hous. Advocs. Ass'n, Inc. v. City of Richmond Heights*, 209 F.3d 626, 633–34 (6th Cir. 2000) ("[C]ourts must remain 'mindful of the Act's stated policy to provide, within constitutional limitations, for fair housing throughout the United States.'" (quoting *City of Edmonds*, 514 U.S. at 731)); *Mich. Protect. & Advoc. Serv., Inc. v. Babin*, 18 F.3d 337, 344 (6th Cir. 1994) ("Congress intended § 3604 to reach a broad range of activities that have the effect of denying housing opportunities[.]"); *City of Miami v. Wells Fargo & Co.*, 923 F.3d 1260,1264 (11th. Cir. 2019), *vacated as moot sub nom. Wells Fargo & Co. v. City of Miami*, 140 S. Ct. 1259 (2020) (recognizing that "later Congresses amended the FHA with full knowledge of the [Supreme] Court's broad readings and without changing the language the Court had construed so broadly"). Municipal use of water liens that have the same effect as other

types of housing discrimination—the loss of the housing—can potentially violate the FHA.

II. Section 3604(a)'s Prohibition on Otherwise Making Unavailable a Dwelling Because of Race Protects Current and Prospective Residents.

The FHA—and § 3604(a) specifically—bars discrimination because of race occurring after the sale or rental of a dwelling. Section 3604(a) makes it illegal "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or *otherwise make unavailable or deny*, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. 3604(a) (emphasis added). The provision includes no restriction limiting its application to sales or rental transactions; quite the contrary, it includes what the Supreme Court has called the "catchall phrase[]" "otherwise make unavailable." *See Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 534–35 (2015). "'[M]ake unavailable' means not just preventing access to new housing by prospective buyers and renters but also the loss of housing to those who already occupy it." *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't Hous. & Urb. Dev.*, 723 F. Supp. 2d 14, 23 (D.D.C. 2010) (citing *2922 Sherman Ave.*

Tenants' Ass'n v. Dist. of Columbia, 444 F.3d 673, 685 (D.C. Cir. 2006)); *see also Mich. Prot. & Advoc. Serv.*, 18 F.3d at 344.

Appellant argues that this Court should nonetheless limit the application of § 3604(a) to conduct involved in the acquisition of a dwelling. Appellant's Br. 19–20. Appellant's argument cannot be reconciled with the plain language of the statute, the requirement that the FHA be broadly construed, the regulations implementing the FHA, and precedent from other circuits.

HUD, the federal agency authorized by Congress in 1988 to enforce the FHA and promulgate regulations, *see* 42 U.S.C. § 3614a, has applied the statute to post-acquisition discrimination. In 1989, HUD adopted the rule that § 3604(a) protects against "[r]efusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race." 24 C.F.R. § 100.70(d)(4). HUD thus concluded that refusing to provide municipal services to dwellings, which occurs after the acquisition of housing, violates § 3604(a). Other HUD regulations similarly make clear that discriminatory actions after the sale or rental of a home are prohibited. *See, e.g.*, 24 C.F.R. § 100.60(b)(5) (prohibiting "[e]victing tenants because

of their race, color, religion, sex, handicap, familial status, or national origin or because of the race . . . of a guest"). HUD's interpretation of the FHA is entitled to "great weight" in construing the statute. *Trafficante*, 409 U.S. at 210.

Although the Sixth Circuit has not addressed the issue, the Seventh Circuit expressly applied § 3604(a) to current residents of housing. In *Bloch v. Frischholz*, the Seventh Circuit, sitting *en banc*, found that § 3604(a) applies to post-acquisition discriminatory conduct. 587 F.3d 771, 776 (7th Cir. 2009) (en banc). The court also clarified its prior panel decision in *Halprin v. Prairie Single Fam. Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004), holding that, even "[a]s a purely semantic manner" "§ 3604(a) may reach post-acquisition discriminatory conduct that makes a dwelling unavailable to the owner or tenant, somewhat like a constructive eviction." 587 F.3d at 776 (explaining that the statutory language "'otherwise make unavailable or deny' . . . is not tethered to the words 'sale or rental'" (citations omitted)). Further, it reasoned that because "[a]vailability of housing is at the heart of § 3604(a)" and "[s]ection 3604(a) is designed to ensure that no one is denied the right to live where they choose for discriminatory reasons[,] [t]here could be

situations where a person is denied that right after he or she moves in." *Id.* (citations omitted). The court held that interpreting § 3604(a) to exclude claims of post-acquisition discrimination would contravene the intention of the FHA:

> Prohibiting discrimination at the point of sale or rental but not at the moment of eviction would only go halfway toward ensuring availability of housing. A landlord would be required to rent to an African-American but then, the day after he moves in, could change all the locks and put up signs that said 'No blacks allowed.' That clearly could not be what Congress had in mind when it sought to create 'truly integrated and balanced living patterns.'

Id. (citations omitted).

Other circuits have acknowledged, explicitly or implicitly, that § 3604(a) encompasses post-acquisition claims that make housing unavailable. *See, e.g.*, *2922 Sherman Ave. Tenants' Ass'n*, 444 F.3d at 685 (holding that city's discriminatory code enforcement and condemnation policies made housing unavailable); *Cox v. City of Dallas*, 430 F.3d 734, 742 (5th Cir. 2005) (recognizing that "current owner or renter evicted or constructively evicted from his house" may have a claim under § 3604(a)); *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 986–88 (4th Cir. 1984) (allowing a disparate-impact claim to proceed where a private landlord

issued eviction notices to predominately Black families with children in an effort to institute an all-adult rental policy); *Clifton Terrace Assocs., Ltd. v. United Techs. Corp.*, 929 F.2d 714, 719–20 (D.C. Cir. 1991) (explaining that "the denial of certain essential services relating to a dwelling, such as . . . basic utilities, might result in the denial of housing" under § 3604(a)); *see also Hargraves v. Cap. City Mortg. Corp.*, 140 F. Supp. 2d 7, 20 (D.D.C. 2000) (holding predatory lending practices "can make housing unavailable by putting borrowers at risk of losing" their homes through foreclosure). To find otherwise would lead to the perverse results *Bloch* warned of and place members of protected groups at great risk of discriminatory harm, including by foreclosure.

Thus, the statute's plain language, the requirement that the FHA be broadly construed, HUD's regulations, and precedent lead to the conclusion that § 3604(a) covers post-acquisition conduct that makes housing unavailable.

III. Discriminatory Utility Policies That Result in a Loss of Housing Stem From and Perpetuate Racial Segregation in Housing.

Caselaw, academic research, and contemporary crises in Black communities that are unable access basic water and sewage services

show that racial discrimination in the provision of municipal utilities both causes and is caused by racial residential segregation. Utility discrimination—including the City of Cleveland's practice in this case of placing water liens on the properties of class members with overdue bills—is a form of housing discrimination that the FHA was designed to prohibit. *See supra* Sections I and II.

A. Residential Segregation and Discrimination in Municipal Services Through Water Liens and Other Policies Are Mutually Reinforcing.

Consistent with the broad purpose of the FHA, the prohibition in § 3604(a) against making housing "unavailable" "reach[es] a wide variety of discriminatory housing practices, including . . . the refusal to permit tying into a city's water and sewer systems through the denial of permits and/or the denial of annexation." *Luckett v. Town of Bentonia*, No. 5:05-CV-144, 2007 WL 1673570, at *3 (S.D. Miss. June 7, 2007) (collecting cases); *see, e.g.*, *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108, 110, 114 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971) (holding that municipality's neglect of sewer system and related permit denial in racially segregated community violated the Fair Housing Act and Equal Protection Clause); *see also Lopez v. City of Dallas*, No. Civ.A.

303CV2223M, 2005 WL 1131181, at *1–2 (N.D. Tex. May 12, 2005) (denying motion to dismiss in case alleging that discriminatory denial of municipal flood protection was "directly traceable to the City's past overt racial segregation" in violation of equal protection and rendered housing unavailable under § 3604(a) of the FHA).

In race discrimination cases brought under the Equal Protection Clause or other civil rights statutes, courts have likewise found that the denial of municipal utilities perpetuates racial residential segregation. *See, e.g.*, *Dowdell v. City of Apopka*, 698 F.2d 1181, 1185–86 (11th Cir. 1983) (finding equal protection violation where a city deprived a segregated, all-Black neighborhood of water distribution, stormwater drainage, and street paving); *United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 810–811 (5th Cir. 1974) (finding equal protection violation where a city refused to permit proposed housing for migrant farmworkers to connect to existing municipal water and sewer systems); *Hawkins v. Town of Shaw*, 437 F.2d 1286, 1288 (5th Cir. 1971), *aff'd en banc*, 461 F.2d 1171 (5th Cir. 1972) (finding equal protection violation where a city denied the segregated "[B]lack portion of town" water mains, sewage, and stormwater

drainage). These courts have identified the racially discriminatory denial of municipal services as a cause and consequence of historical residential segregation. *See Dowdell*, 698 F.2d at 1186 (explaining how the city's "systematic pattern of municipal expenditures in all areas of town except the black community" reinforced racial segregation); *United Farmworkers of Fla. Hous. Project*, 493 F.2d 799, 810–811 (finding that residential segregation was both the "historical context" and "ultimate effect" of the denial of water and sewage utilities); *Hawkins*, 437 F.2d at 1288, 1293 (observing that city's racial segregation was "almost total" and part of a "long history of racial discrimination").

Historical and social science research also confirm that residential segregation and denial of utilities are mutually reinforcing, with each perpetuating and intensifying the impact of the other. In the first half of the twentieth century, cities adopted zoning laws to segregate communities and "reinforce existing racial hierarchies." Jessica Trounstine, *Segregation by Design: Local Politics and Inequality in American Cities* 91 (2018). Residential segregation made it easier to target public goods—especially water and sewer systems—to white homeowners, *id.* at 85, 106, while bypassing or allocating lower-quality

services to Black neighborhoods, *id.* at 100. *See generally* Coty Montag, *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities* (2019).

The resulting inequality in municipal services set off a cascade of consequences that entrenched segregation for decades. By underproviding services in segregated Black neighborhoods, local governments further depressed property values and produced blight. Trounstine, *supra*, at 122. Along with redlining, this government-produced blight was used to justify denying Black homebuyers mortgage financing on fair terms and, later, to justify designating Black neighborhoods for eradication ("slum clearance") and interstate highway construction, all tools that resulted in the hardening of lines of segregation. *See id.* at 122–26.

The City of Cleveland's actions here with respect to water liens perfectly exemplify these twin prongs of harm: they act both as a denial of municipal services and a driver of racial segregation.

B. Discriminatory Access to Safe and Affordable Municipal Utilities Continues to Perpetuate Housing Segregation.

The Black homeowners of Cleveland are unfortunately not alone in their fight against racially discriminatory water liens, displacement, and loss of their homes. Many Black communities throughout the United States have similarly suffered under the weight of discriminatory utility policies, including water liens. *See* Sharmila L. Murthy, *Disrupting Utility Law for Water Justice*, 76 Stan. L. Rev. 597, 601 (2024) ("Communities of color disproportionately experience increases in water rates and disconnections. The most well-known examples of water shutoffs have been in older cities with large African American neighborhoods[.]").

Mobile County, AL – Mobile County, Alabama, is among the country's most segregated counties.[2] In 1980, the U.S. District Court for the Southern District of Alabama found that the Mobile County town of Chickasaw engaged in housing discrimination by intentionally excluding Black people from public housing. *See United States v. Hous. Auth. of City of Chickasaw*, 504 F. Supp. 716, 721, 732 (S.D. Ala. 1980) (noting that no

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[2] *See* Michael B. Sauter, *The Most Segregated Cities in America,* 247wallst.com (Feb. 16, 2022), https://247wallst.com/special-report/2021/08/31/the-most-segregated-cities-in-america-3/.

Black people had lived there since World War II). Although majority-Black today, housing inequities remain in Chickasaw, with a stark gap in homeownership between Black and white residents driven, in part, by access to home loans.[3]

Until recently, Chickasaw maintained policies of suspending access to municipal garbage utilities and criminally prosecuting residents who fall behind on their garbage and sewage bills—policies that exacerbated housing discrimination and jeopardized Black residents' ability to maintain housing. Between 2021 and 2024, the City suspended garbage services and prosecuted nearly 200 residents who were unable to pay their utility bills,[4] which disproportionately impacted Black women in

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[3] *See* Margaret Kates, *Gap between Black homeownership and white homeownership rates grew in Mobile, new report says*, AL.com (Feb. 27, 2023, 12:00 PM), https://www.al.com/news/mobile/2023/02/gap-between-black-homeownership-and-white-homeownership-rates-grew-in-mobile-new-report-says.html.

[4] Dwayne Fatherree, *Alabama Town Stops Prosecutions for Late Garbage Bills After SPLC Advocacy*, S. Poverty L. Ctr. (Sept. 27, 2024), https://www.splcenter.org/news/2024/09/27/alabama-town-stops-prosecutions-late-garbage-bills.

particular.[5] Without access to garbage services, housing has become uninhabitable for many of Chickasaw's Black residents.[6]

In the nearby City of Prichard, which is over 90% Black, historic disinvestment from the municipal water system has also made housing unavailable to many residents. Between 2019 and 2022, the Prichard Water and Sewer Board lost about 60% of its water because of leaking and decaying pipes.[7] As a result, residents faced monthly water bills exceeding $2,000.[8] Some who could not pay their water bills faced shut offs; others left Prichard altogether.[9] And Prichard has threatened to condemn—through eminent domain—Alabama Village, one of the neighborhoods most affected by water loss.[10]

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[5] *Id.* SPLC analyzed all criminal court files in which demographic information was available.

[6] Lee Hedgepeth, *In Alabama, a Small Town's Trash Policy Has Left Black Moms and Disabled Residents Criminally Charged Over Unpaid Garbage Fees*, Inside Climate News (Sept. 24, 2024), https://insideclimatenews.org/news/24092024/chickasaw-alabama-unpaid-garbage-fees-criminal-charges/.

[7] Henry Carnell, *Are These $2,000 Water Bills Racist?*, Mother Jones (Sept. 21, 2023), https://www.motherjones.com/environment/2023/09/prichard-alabama-water-board-bill-crisis/.

[8] *See id.*

[9] *See id.*

[10] *See id.*

Lowndes County, AL – In Lowndes County, Alabama, the local government's failure to provide vital sanitation services disproportionately impacted Black residents by jeopardizing their health and housing.[11] For decades, failing sewage treatment systems have released raw sewage into the backyards of Black residents, making it impossible for them to use their homes and exposing them to hookworm, which is commonly caused by exposure to fecal matter.

Black residents were hit the hardest by the local government's actions, as poverty in Lowndes County is starkly divided along racial lines, with only 4% of white residents but 37% of Black residents living below the poverty line.[12] The state government also weaponized sanitation laws to criminalize and threaten to jail residents who could not pay for the sanitation improvements themselves. After CREEJ filed

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[11] *See* Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 45 C.F.R. Part 80, Earthjustice (Sept. 28, 2018), https://earthjustice.org/wp-content/uploads/acre20title20vi20complaint20with20exhibits_09-28-2018.pdf. State-wide, Black residents are more likely to lack plumbing, and although Black residents make up only approximately 25% of the total state population, they make up more than half of all people lacking plumbing in the state. *Id.* at 22 (citations omitted).

[12] *See id.* at 9 (citation omitted).

an administrative complaint with the U.S. Department of Health and Human Services alleging violations of Title VI of the Civil Rights Act of 1964, a federal investigation "revealed that [the state's] enforcement of sanitation laws threatened residents of Lowndes County with criminal penalties and even potential property loss for sanitation conditions they did not have the capacity to alleviate."[13]

Jackson, MS – Residents in Jackson, Mississippi, over 80% of whom are Black,[14] also suffer from the same historic, interconnected patterns of residential segregation and discriminatory municipal water service.[15] For years, Jackson residents have been experiencing an acute crisis of access to potable water, a crisis rooted in disinvestment following

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[13] Dep't of Just., Departments of Justice and Health and Human Services Announce Interim Resolution Agreement in Environmental Justice Investigation of Alabama Department of Public Health (May 4, 2023), https://www.justice.gov/opa/pr/departments-justice-and-health-and-human-services-announce-interim-resolution-agreement.

[14] *See Quick Facts: Jackson City, Mississippi*, U.S. Census Bureau, https://census.gov/quickfacts/fact/table/jacksoncitymississippi,MS/PST045221.

[15] Emily Le Coz et al., *Jackson water crisis stems from century of poverty, neglect and racism,* Miss. Today (Nov. 7, 2022), https://mississippitoday.org/2022/11/07/jackson-water-crisis-poverty-neglect-racism/.

decades of white flight to the suburbs.[16] *See also* Murthy, *supra*, at 601. Remaining Jackson residents—26% of whom live in poverty—have limited ability to pay increasingly high bills for water, sewer, and garbage service.[17] Residents face water shutoffs, boil water advisories, and possible lead poisoning from contaminated water and cannot afford to buy safe bottled water for their daily hydration and hygiene needs.[18]

Cahokia Heights, IL – Though millions in federal and state funding have been promised and over a dozen articles have highlighted their plight, the poor, predominantly Black residents of Cahokia Heights, IL (formerly Centreville), remain trapped in a devastating water

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[16] *See id.*; Harvey Johnson, Jr., *Challenges of an Aging Water System: The Jackson Water Crisis – A Research Commentary*, Online J. Rural & Urb. Rsch. 11 (2022), https://www.jsums.edu/education/files/2022/03/2022.OJRUR_JacksonWaterCrisis_Special.Issue_.Final_.pdf; *see* also Murthy, *supra*, at 6.

[17] *See Jackson City, Mississippi*, U.S. Census Bureau, https://data.census.gov/profile/Jackson_city,_Mississippi?g=160XX00US2836000; Johnson, *supra* note 16.

[18] Le Coz, *supra* note 15; Emmanuel Felton, *Living in a city with no water*, Wash. Post (Sep. 3, 2022), https://www.washingtonpost.com/nation/2022/09/03/jackson-mississippi-water-crisis/.

infrastructure crisis.[19] Decades of neglect and targeted disinvestment have condemned these residents to endure relentless flooding and an almost unworkable sewer system. Residents now confront contaminated drinking water, and the near-total destruction of their homes. Over 40% of local adults are infected by Helicobacter pylori (H. pylori), a severe bacterial infection linked to ulcers and gastric cancer.[20]

Flint, MI – Flint, Michigan's majority Black residents faced a horrific water crisis when, in April 2014, the City of Flint switched its water source from Lake Huron to the Flint River.[21] Researchers found that the switch resulted in elevated blood lead levels in children doubling citywide and nearly tripling in certain neighborhoods, as well as an outbreak of Legionnaires disease and exposure to E. coli and carcinogenic

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[19] Flooded and Forgotten, *Summary of the Centreville Sewage Crisis* (July 2020), https://www.floodedandforgotten.com/summary-of-the-centreville-sewage-crisis; *see* Third Am. Compl., ECF 59, *Centreville Citizens for Change v. City of Cahokia Heights*, No. 3:21-cv-00842-DWD (S.D. Ill. March 10, 2022).

[20] Lexi Cortes, *Bacteria,* parasites *are making people sick in Cahokia Heights*, Belleville News-Democrat (Aug. 6, 2023), https://www.bnd.com/news/local/article278008848.html.

[21] *Flint Water Crisis: Everything You Need To Know*, Nat. Res. Def. Council (Oct. 8, 2024), https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know.

byproducts. The Michigan Civil Rights Commission found that the government response to the Flint water crisis was caused by systemic racism.[22] Despite the water being extremely hazardous to residents and their children and multiple declarations of a state of emergency, the City of Flint continued to charge them for water—at some of the highest rates for water in the country—that they could not safely use or drink.[23] In 2016, when residents failed to pay those water bills, the City began threatening them with property liens on their homes.

After a public outcry over the water liens and the resulting increased threat of foreclosure among Black households in particular, the City retracted its efforts to impose liens due to delinquent water bills. But in 2017, 2019, and 2024, the City of Flint again sought to impose property liens on homes for unpaid water bills.[24]

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[22] *See id.*

[23] *The State of Public Water in the United States*, Food & Water Watch (2016), https://foodandwaterwatch.org/wp-content/uploads/2021/03/report_state_of_public_water.pdf.

[24] ACLU Michigan, *Paying For Poisoned Water,* https://www.aclumich.org/en/cases/paying-poisoned-water (last visited Oct. 10, 2024); Carrie Cochran, *Michigan residents plagued by Flint water crisis face mounting bills for water they are afraid to use*, Scripps News (May 23, 2024), https://www.scrippsnews.com/scripps-news-investigates/michigan-residents-plagued-by-flint-water-crisis-face-

mounting-bills-for-water-theyre-afraid-to-use#:~:text=For%20many%20in%20Flint%2C%20including,the%20tab%20accumulate%20for%20years.

CONCLUSION

For all these reasons, as well as the reasons stated in Appellees' brief, Amici submit that this Court should affirm the district court's ruling.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 32(g)(1), I certify that:

This brief complies with Rule 29(a)(5) and 32(a)(7)(B)'s type-volume limitation because it contains 4,522 words, as determined by the Microsoft Word 2016 word-processing system used to prepare the brief, excluding the parts of the brief exempted by Rule 32(f).

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/s/ Katherine E. Walz
Katherine E. Walz

Dated: October 11, 2024

CERTIFICATE OF SERVICE

I certify that I caused this document to be electronically filed with the Clerk of the Court using the appellate CM/ECF system on October 11, 2024. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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