

No. 17-35898

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FAIR HOUSING CENTER OF WASHINGTON, Plaintiff- Appellee,

v.

BREIER-SCHEETZ PROPERTIES, LLC, et al.,
Defendants-Appellants

On appeal from the United States District Court
for the Western District of Washington
Case No. 2:16-CV-0922 (Hon. Thomas S. Zilly)

AMICUS CURIAE BRIEF OF LEGAL VOICE, IN SUPPORT OF APPELLEE

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STATEMENT REGARDING CONSENT TO FILE

Per Federal Rule of Appellate Procedure 29(a), Legal Voice has requested the consent of both parties to file this brief. The Fair Housing Center of Washington has consented. Legal Voice counsel emailed counsel for Defendants-Appellants on May 16, 2018 at 6:06 am and requested that Defendants-Appellants consent to the filing of this brief. Counsel for Defendants-Appellants has not responded to that message. Accordingly, Legal Voice must presume that Defendants-Appellants have refused to consent.

Neither party's counsel had any part in authoring this brief. Neither of the parties, their counsel, nor any person other than the amicus curiae (or its counsel), contributed money that was intended to fund preparing or submitting this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, Legal Voice states that it is not a publicly held corporation, it does not issue stock, and it does not have a parent corporation. Legal Voice is a non-profit organization.

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INTEREST OF *AMICI CURIAE*

Legal Voice is a regional non-profit public interest organization that works to advance the rights of women and LGBTQ people through litigation, legislation, and public legal rights education. Since its founding in 1978 as the Northwest Women's Law Center, Legal Voice has been dedicated to protecting and ensuring women's legal rights, including the right to equality in housing. Toward that end, Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country. Legal Voice serves as a regional expert advocating for robust interpretation and enforcement of laws against gender discrimination.

INTRODUCTION & SUMMARY OF ARGUMENT

Housing instability represents a significant threat to the well-being of women and children in the United States. Women of color, domestic violence survivors, and their children are especially vulnerable to housing stability and homelessness. Housing instability is harmful not only to those who experience it, but to the community at large. Arbitrary occupancy restrictions that have a disparate impact on families with children exacerbate this already severe crisis. Congress passed the 1988 Fair Housing Act Amendments to protect against housing practices that unnecessarily limit families' access to quality, affordable housing.

Defendants urge the Court to adopt an interpretation of the Fair Housing Act that would allow a housing provider to engage in a practice that discriminates

against 100 percent of families as long as the provider can articulate a “reasonable” justification for that practice. Never mind the significance of the business interest at stake, or whether there is any objective evidence to support the provider’s claims. This interpretation runs contrary to the broad remedial purpose of the Fair Housing Act, the relevant case law, and U.S. Department of Housing and Urban Development (“HUD”) regulations. As the District Court properly concluded, the Fair Housing Act requires objective evidence of a compelling “business necessity” in order to justify an occupancy restriction that has a disparate impact on families with children. Were the law to require any less, the exception would swallow the rule, and the Fair Housing Act would have very little meaning.

Defendants further argue that it was improper for the District Court to award punitive damages in this case because Defendants subjectively believed that their occupancy policy was lawful. Even if that were true, ignorance of the law or an unreasonable interpretation of the law is not a defense to an award of punitive damages. The finding of the District Court that Defendants acted with reckless disregard for the rights of families with children under the Fair Housing Act is sufficient to support the award of punitive damages. Direct damages are often minimal in Fair Housing Act cases. Were punitive damages available only in cases involving intentional discrimination, there would be little incentive for housing providers to make any effort to learn and abide by the law.

Indeed, the decision of the District Court, consistent with the applicable HUD regulations and Ninth Circuit precedent, struck precisely the right balance between the rights of housing providers to pursue their business interests and the rights of families with children under the Fair Housing Act.

ARGUMENT

I. Arbitrary Occupancy Restrictions Exacerbate the Already Severe Lack of Affordable Housing — A Crisis That Disproportionately Harms Women and Children.

A. Housing Instability Among Women and Their Children in the United States Has Reached Epidemic Proportions.

Throughout the United States, there is a serious shortage of affordable housing for low and moderate income renters. Almost half of renter households pay more than thirty percent of their income for housing.¹

Families with children suffer disproportionately from rental cost burdens, and “single parents have the highest cost-burdened share (63 percent) of any household

¹ Joint Center for Housing Studies of Harvard University, *America’s Rental Housing 2017* 26-27 (Marcia Fernald ed., 2018), <http://www.jchs.harvard.edu/americas-rental-housing>; *see also*, Cary Moon & Charles Mudede, *Hot Money and Seattle’s Growing Housing Crisis: Part One*, *The Stranger*, April 20, 2017, <https://www.thestranger.com/slog/2016/08/08/24442014/hot-money-and-seattles-growing-housing-crisis-part-one> (“47 % of Seattle renters are . . . paying more than 30% of income for rent”).

type . . .”² Single-mother heads of households and their children bear the brunt of this burden as “single-mother families still account for the overwhelming majority of children living in single-parent homes. . . .”³ Since the likelihood of having a single mother is significantly higher among African American and Latino children,⁴ the situation is even worse for these populations.

Mothers who experience domestic violence (and their children) are also more likely to experience housing instability than other single mothers.⁵ “Domestic violence is one of the leading causes of homelessness for women and children. . . . In the HUD 2012 Continuum of Care Homeless Assistance Program Point-in-Time

² Joint Center for Housing Studies of Harvard University, *supra* at 29. *See also*, Diana Canzoneri & Barbara Wilson, *Family-Sized Housing: An Essential Ingredient to Attract and Retain Families with Children in Seattle* 19 (Seattle Planning Commission ed., 2014), http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/AffordableHousingAgenda/FamSizePC_dig_final1.pdf, (“[f]amilies with two or more children and single-parent families are among the Seattle household categories with the greatest likelihood of experiencing severe rent burdens”).

³ Mark Mather, *U.S. Children in Single-Mother Families* 1 (PRB ed., 2010), <https://assets.prb.org/pdf10/single-motherfamilies.pdf>. *See also*, Legal Momentum, *Single Parenthood in the United States* (2014 ed. 2014), <https://www.legalmomentum.org/sites/default/files/reports/SingleParentSnapshot2014.pdf>, (“Most single parents are single mothers. In 2013, 77% of single parents were single mothers, and 85% of the children living with a single parent were living with their mother”).

⁴ Mather, *supra* at 1.

⁵ Joanne Pavao et al., *Intimate Partner Violence and Housing Instability*, 32 *Am. J. Preventative Med.* 143 (2007), [https://www.ajpmonline.org/article/S0749-3797\(06\)00434-X/abstract?code=amepre-site](https://www.ajpmonline.org/article/S0749-3797(06)00434-X/abstract?code=amepre-site).

Count, the largest subpopulation of homeless persons in Washington State was victims of domestic violence.”⁶ Chief among the barriers that prevent survivors from securing a stable place to live is the lack of affordable housing.⁷ Domestic violence survivors may have limited resources to find stable housing away from an abusive partner. Many abusers maintain tight control of the financial resources of the household as a means of preventing victims from leaving. In addition, survivors may face large debts run up by the abuser.⁸ The lack of access to stable housing forces many victims to have to choose “between staying with or returning to their abusers, or becoming homeless because they cannot and or afford long-term permanent housing.”⁹

While this crisis facing women and children continues, rental property owners continue to enjoy “healthy increases in operating incomes and property values.”¹⁰

⁶ Linda Olsen et al., *The Intersection of Domestic Violence and Homelessness* 7 (Washington State Coalition Against Domestic Violence and the Volunteers of American Home Free Program ed., 2013).

⁷ Charlene K. Baker et al., *Domestic Violence, Housing Instability, and Homelessness: A Review of Housing Policies and Program Practices for Meeting the Needs of Survivors*, 15 *Aggression and Violence Behavior* 430, 431 (2010).

⁸ *Id.*

⁹ Monica McLaughlin, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, National Low Income Housing Coalition.

¹⁰ Joint Center for Housing Studies of Harvard University, *supra* at 3.

B. Housing Instability Poses a Significant Threat to the Overall Well-Being of Women and Their Families, Which Negatively Impacts the Whole Community.

Housing instability has far reaching consequences not just for women and their children, but for their children’s children and society as a whole. Housing instability causes economic harm, undermines school performance, and poses a significant risk to health and safety.

1. Housing Instability Seriously Undermines the Economic Well-Being of Women and Their Families.

Needless to say, when mothers are forced to pay a disproportionate amount of their income for rent, they often have little left over for other essentials, such as food, childcare, and healthcare.¹¹ According to a study by the Joint Center for Housing Studies of Harvard University, “[a]fter paying for their housing, the amount of money that lowest-income renters had left over for all other expenses fell 18 percent from 2001 to 2016.”¹²

¹¹ *Id.* at 4.

¹² *Id.* at 31. This same group “spends 17 percent of their annual incomes on utilities,” whereas “the highest-income households spend only 2 percent.”

Moreover, “[s]ome renter households make tradeoffs between housing they can afford and location, thus adding to their transportation costs.”¹³ Indeed, according to the Seattle Planning Commission, were families in the Seattle area able to live closer to work and other daily destinations, they could save hundreds of dollars on transportation costs every month.¹⁴

Having to live further away also affects mothers’ employment opportunities. “The high cost of buying and maintaining a car, as well as poor service by public transit systems . . . may pose enormous barriers to employment for parents.”¹⁵

2. Housing Instability Negatively Impacts School Performance and School Readiness.

Not only does housing instability impact families financially, it substantially interferes with children’s school performance and contributes to long lasting achievement gaps that are hard to erase, even across generations.¹⁶ “Numerous studies document that children who change schools, particularly if they change

¹³ *Id.*

¹⁴ Canzoneri, *supra* at 2.

¹⁵ Margery A. Turner et al., Tackling Persistent Poverty in Distressed Urban Neighborhoods 26 (Urban Institute ed., 2014), <https://www.urban.org/sites/default/files/publication/22761/413179-tackling-persistent-poverty-in-distressed-urban-neighborhoods.pdf>.

¹⁶ Amy Brisson et al., *Impact of Affordable Housing on Families and Communities: A Review of the Evidence Base 2* (Enterprise ed., 2014), <https://www.enterprisecommunity.org/download?fid=3335&nid=4547>.

schools often or at critical points in their education, experience declines in educational achievement.”¹⁷ Frequent moves can lead to “reduced academic performance . . . greater rates of high school dropout . . . and worse emotional and behavioral outcomes . . . often resulting in lower levels of educational attainment.”¹⁸

Of course, there are a multitude of reasons for this. Changing schools disrupts the continuity of the instruction that a child receives, as well as his or her peer networks.¹⁹ Compounding the problem, being forced to move into substandard housing may contribute to physical illness or exacerbate an already existing

¹⁷ Maya Brennan, *The Impacts of Affordable Housing on Education: A Research Summary 1* (Center of Housing Policy ed., 2010), https://www.mayorsinnovation.org/images/uploads/pdf/Insights_HousingAndEducationBrief.pdf.

¹⁸ Kathleen M. Ziol-Guest & Claire McKenna, *Early Childhood Housing Instability and School Readiness: Evidence from the Fragile Families and Child Wellbeing Study*, 85 *Child Development* 103, 4-5 (2013).

¹⁹ Sharon Vandivere et al., *How Housing Affects Child Well-Being 16* (Stephanie Jennings ed., 2006), http://www.fundersnetwork.org/files/learn/Housing_and_Child_Well_Being.pdf, (“When children change schools, they must adapt to new teachers, peers, and curricula, which could disrupt their educational progress”). *See also*, Robin Phinney, *Residential Mobility, Housing Problems, and Child Outcomes In the Women’s Employment Study 5* (Center for Housing Policy ed., 2009), http://robinphinney.com/wp-content/uploads/2013/09/Phinney_analysis_for_child_mobility.pdf, (“[Frequent involuntary] moves can disrupt relationships with teachers and peers, making it more difficult for children to perform well in school. . . . Studies consistently find that residential moves that are accompanied by school changes are associated with increased problems in school”).

medical condition, which can cause children to miss school.²⁰ Likewise, “the persistent presence of cockroaches, pesticides, and mold — contribute to the incidence of asthma, which can lead to absenteeism, even among children whose asthma is mild or moderate.”²¹ The stress of moving and the inability to find a quiet place to study may negatively impact children’s academic performance, as well.²²

Not surprisingly, there is also a significant association between housing instability and young children’s school readiness.²³ Indeed, “[t]he home environment is one of the most important influences on young children’s emotional, cognitive, and behavioral development.”²⁴

Notably, this is not just a problem for the women and children who are most likely to experience housing instability. The impacts of housing instability on educational performance affect the whole school community. “[T]he detrimental impact of moving also affects teachers and stable classmates — perhaps because

²⁰ Brennan, *supra* at 4.

²¹ *Id.*

²² *Id.* at 3. See also Ziolo-Guest, *supra* at 6-7 (Frequent moves are also a source of stress for mothers, which “can . . . negatively influenc[e] children’s own behavior and achievement.”).

²³ Ziolo-Guest, *supra* at 22. (“[R]esidential instability in a child’s early life is associated with significant reductions in behavioral school readiness at age five.”)

²⁴ Brennan, *supra* at 4.

the hyper-mobile students require a disproportionate share of teacher attention and school resources.”²⁵

3. Housing Instability Negatively Impacts the Health of Women and Their Families.

Housing instability also negatively impacts the health of both mothers and their children.²⁶ For example, one study that examined the effects of housing and food insecurity found that “[b]oth housing insecurity and food insecurity were independently associated with having barriers to health care and increased use of acute-care services.”²⁷

Again, families experiencing housing instability spend a disproportionate amount of their income on housing, leaving little left over for other necessities.²⁸ As noted above as well, “the physical quality of housing may lead to childhood diseases including asthma, lead poisoning, and respiratory distress, as well as accident, injury, or even death.”²⁹

²⁵ *Id.* at 2.

²⁶ Brisson, *supra* at 2.

²⁷ Margot B. Kushel et al., *Housing Instability and Food Insecurity as Barrier to Health Care Among Low-Income Americans*, 21 J. Gen. Internal Med. 71, 76 (2006), <https://escholarship.org/content/qt6df4b8g6/qt6df4b8g6.pdf>.

²⁸ Brisson, *supra* at 2. *See also*, Joint Center for Housing Studies of Harvard University, *supra* at 5.

²⁹ Vandivere, *supra* at 10.

Moreover, housing instability is linked to depression and generalized anxiety disorder in lower-income women, which could indirectly affect their children.³⁰

“Just as housing conditions can affect the well-being of children, they can also affect the well-being of adults. Problems for adults with health, emotional well-being, or with cognition can hinder parenting abilities, which in turn can harm children.”³¹

“Children also require time from their parents and other primary caregivers: time to form deep attachments, to be read to regularly, and to share new learning experiences. The quality of this time is as important as the quantity, and is also affected by parents’ psychological health and psychosocial skills.”³² Not surprisingly therefore, children in unstable housing experience increased rates of chronic and acute health issues, emotional and behavioral problems, and developmental delays.³³

³⁰ Shakira F. Suglia, *Housing Quality, Housing Instability, and Maternal Mental Health*, 88 J. Urb. Health 1105, 1110 (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3232414/pdf/11524_2011_Article_9587.pdf.

³¹ Vandivere, *supra* at 7. See also, Turner, *supra* at 25, (“Parents struggling with untreated physical or mental health issues are less able to maintain healthy relationships and to support and nurture their children”).

³² *Id* at 24.

³³ Roxanna Torrico, *From Poverty to Child Welfare Involvement: The Critical Role of Housing in Family Stability*, Children, Youth & Family Practice Update, Sept. 2009, at 2, <http://www.partnering-for-change.org/wp-content/uploads/2014/11/FROM-POVERTY-TO-CHILD-WELFARE->

C. The Epidemic of Housing Instability Among Women and Children Has Serious Consequences for Whole Communities.

Housing instability is not only a problem for women and children — it negatively impacts whole communities. With the rising cost of housing, residential segregation by income has increased steadily in recent years, which in turn “[has added] to the challenges posed by entrenched residential segregation by race and ethnicity in many cities.”³⁴ “Such segregation not only limits economic potential for individuals and society as a whole, but also reduces social cohesion and intergroup trust, increases prejudice, and erodes democratic participation.”³⁵

This should be a matter of concern to all communities, particularly given the history of discrimination that gave rise to the persistent racial segregation in housing in the first place. “Neighborhoods of concentrated poverty and distress are not the products of ‘natural’ or ‘normal’ housing market operations, . . . [d]iscriminatory policies and practices confining African Americans—who were

INVOLVEMENT-THE-CRITICAL-ROLE-OF-HOUSING-IN-FAMILY-STABILITY.pdf.

³⁴ Joint Center for Housing Studies of Harvard University, *supra* at 36. *See also*, Phinney, *supra* at 4 (“[I]nvoluntary moves . . . are more common among low-income households, racial minorities, women, and renters”).

³⁵ Joint Center for Housing Studies of Harvard University, *supra* at 36. Experts have identified this as a problem for Seattle, in particular. *See also* Torrico, *supra* at 2 (“Policies that support family-sized and family-friendly housing are key to enabling Seattle to remain attractive and affordable to our region’s growing communities of color”).

markedly more likely than whites to be poor—to certain city neighborhoods produced communities with much higher poverty rates than existed in white communities . . . These poor, minority neighborhoods were also starved of the resources and investments that communities need to thrive, such as financing for homeownership, business investment, and essential public-sector services, including schools. Nonpoor families fled these neighborhoods, further raising the poverty rate and accelerating disinvestment and distress.”³⁶ Of particular concern is that this racial segregation often condemns lower-income children to a cycle of poverty that spans generations.³⁷

These are just a few of the harms that flow from housing instability. Arbitrary occupancy restrictions that have a disparate impact on families with children exacerbate the problem. The free market produces a limited supply of safe and affordable housing units. Congress enacted the Fair Housing Act and the Fair Housing Act Amendments to prevent housing providers from arbitrarily excluding

³⁶ Turner, *supra* at 4.

³⁷ *Id.* at 24-25 (“[E]merging evidence suggests that living in a high-poverty neighborhood undermines some outcomes across generations In other words, neighborhood distress contributes to the persistence of poverty across generations.”). “Research points to four causal mechanisms through which conditions in distressed neighborhoods undermine outcomes for poor children and reduce the likelihood that they will escape poverty as adults. These are poor-quality services—from both public- and private-sector institutions; crime and violence; peer influences and social networks that undermine rather than supporting child and family well-being; and a lack of access to jobs (for both parents and teens).”

the most vulnerable in our society from accessing those units. The weak evidentiary framework that Defendants propose, however, would render the Fair Housing Act essentially meaningless in cases involving disparate impact discrimination. As the District Court concluded, the law requires more. The holding of the District Court is not only consistent with Ninth Circuit precedent and HUD regulations, it is the only interpretation that effectuates the broad remedial purpose of the Fair Housing Act.

II. As the District Court Properly Concluded, the Fair Housing Act Requires Evidence of a Compelling “Business Necessity” in Order to Justify an Occupancy Restriction That Has a Disparate Impact on Families with Children.

The District Court found (and Defendants do not dispute) that Defendants’ occupancy restriction has a disparate impact on families with children. Thus, the District Court properly held that the burden shifted to Defendants to provide proof of a “legitimate non-discriminatory business reason” sufficient to rebut Plaintiff’s prima facie case of disparate impact discrimination. The District Court further held that “a legitimate non-discriminatory business reason sufficient to rebut a prima facie case of disparate impact discrimination” means “a *business necessity* sufficiently compelling to justify the challenged practice . . . ,” and that “subjective judgments are insufficient” to make this showing. There must be “objective

evidence in support of those judgments.” ER 14-15 (emphasis added). This ruling is consistent with HUD regulations, other district court decisions within the Ninth Circuit, and the broad remedial goals of the Fair Housing Act.

In 2013, HUD added a new subpart G to 24 C.F.R. § 100, the rules governing the interpretation and implementation of the Fair Housing Act. The resulting rule is set forth at 24 C.F.R. § 100.500, which provides, in relevant part:

“Liability may be established . . . based on a practice’s discriminatory effect . . . even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if it is supported by *a legally sufficient justification*. . . .

- (b)(1) A legally sufficient justification exists where the challenged practice:
 - (i) *[i]s necessary to achieve one or more substantial, legitimate, nondiscriminatory interests . . . ; and*
 - (ii) *[t]hose interests could not be served by another practice that has a less discriminatory effect.*
- (b)(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. . . .”

24 C.F.R. 100.500(b) (emphasis added). This final rule clarifies a proposed rule from 2011 that provided: “A legally sufficient justification exists where the challenged housing practice: (1) has a necessary and manifest relationship to one or more *legitimate, nondiscriminatory interests* of the . . . defendant.” 78 FR 11470 (emphasis added). In response to concerns that the term “legitimate, nondiscriminatory interest” was ambiguous, HUD revised the rule to clarify that any interest justifying a practice with a discriminatory effect must be “substantial.” *Id.* Specifically, HUD explained the change as follows: “HUD agrees that, in order

to effectuate the Fair Housing Act’s broad, remedial goal, practices with discriminatory effects cannot be justified based on interests of an insubstantial nature. . . . A substantial interest is a core interest of the organization that has a direct relationship to the function of that organization. . . .” *Id.*

Likewise, HUD explained that the “substantial, legitimate, nondiscriminatory interest” standard is equivalent to the “business necessity” standard that courts across the country have used to interpret the Fair Housing Act.³⁸

This is the same standard that district courts in the Ninth Circuit have applied for decades. *See, e.g. Theodora Rescue Comm. v. Volunteers of Am. of Wash.*, 2014 U.S. Dist. Lexis 157279, *7 (W.D. Wash. 2014); *Mathews v. Arrow Wood LLC*, 2009 U.S. Dist. LEXIS 132168, at *17 (C.D. Cal. April 2, 2009); *United States v. Plaza Mobile Estates*, 273 F. Supp. 2d 1084, 1091 (C.D. Cal. 2003); and *Fair Housing. Congress v. Weber*, 993 F. Supp. 1286, 1292 (C.D. Cal. 1997), citing *Fair Housing Council v. Ayres*, 855 F. Supp. 315, 318-19 (C.D. Cal. 1994).³⁹

³⁸ As HUD further explained:

“The standard set forth in this rule is not to be interpreted as a more lenient standard than ‘business necessity.’ HUD chooses not to use the phrase ‘business necessity’ in the rule because the phrase may not be easily understood to cover the full scope of practices covered by the Fair Housing Act, which applies to individuals, businesses, nonprofit organizations, and public entities.” 78 FR 11470.

³⁹ *See also R.I. Comm’n for Human Rights v. Graul*, 120 F. Supp. 3d 110, 124 (D. Rhode Island 2015) (“In a disparate impact action under the FHA, the defendant’s response is sufficient if it shows ‘the valid interested served by their policies,’”

Accordingly, the District Court properly concluded that in order to rebut Plaintiff's prima facie case of disparate impact discrimination, Defendants were required to demonstrate a "business necessity sufficiently compelling to justify the challenged practice. . . ." Again, any lesser standard would create such a gaping exception to the Fair Housing Act as to render it virtually meaningless in cases involving allegations of disparate impact discrimination.

III. Where a Housing Provider Acts with Reckless or Callous Indifference to the Fair Housing Rights of Others, Punitive Damages May Be the Only Means of Discouraging Future Misconduct.

The District Court also applied the correct standard in awarding punitive damages against Defendants. As the Ninth Circuit has held, punitive damages may be awarded for a violation of the Fair Housing Act "when a defendant's conduct is shown to be motivated by evil motive or intent, or if it involves reckless or callous indifference to the federally protected rights of others." *Fair Hous. v. Combs*, 285 F. 3d 899, 906 (9th Cir. 2002) (upholding an award of \$74,400 in punitive damages, equal to the revenue from two apartments that the defendant landlord rented to white tenants, displacing the prior occupants, who were black), *citing Smith v. Wade*, 461 U.S. 30, 56, 103 S. Ct. 1625, 75 L.Ed. 2d 632 (1983). No

which is "analogous to the business necessity standard under Title VII"), *citing Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2522 (2015).

showing of malice or intent to harm is required. *United States v. Tropic Seas*, 887 F. Supp. 1347, 1365 (D. Haw. 1995).

There is no legal authority to support Defendants' claim that they cannot be liable for punitive damages because they subjectively believed their conduct to be lawful.⁴⁰ Since actual damages are often quite low relative to the net worth of the housing provider in cases involving disparate impact discrimination, exempting providers from punitive damages based on their unreasonable belief that their actions were lawful would remove the only incentive that many have to make any effort to understand and comply with the law.

CONCLUSION

Housing instability in the United States has reached epidemic proportions, particularly among women and children. Arbitrary occupancy restrictions that disparately impact families with children exacerbate the problem by further restricting access to affordable housing. This is precisely the harm that Congress

⁴⁰ Nor is there any support for Defendants' claim that the standard should be different in cases involving disparate impact versus disparate treatment discrimination. As the U.S. Supreme Court observed in *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2521-2522, 192 L. Ed. 2d 514 (2015), "[t]he FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation's economy. . . . Suits targeting such practices reside at the heartland of disparate-impact liability." (Citations omitted). Thus, it is equally important that housing providers understand their obligation not to engage in practices that have a disparate impact on a protected class, as it is that they understand their obligation not to engage in disparate treatment.

passed the Fair Housing Act Amendments to address. The requirement that a housing provider demonstrate “a business necessity” in order to justify a housing practice that has a disparate impact on families with children is essential to ensuring that such practices are the exception rather than the rule.

Likewise, there is little to encourage housing providers to make any effort to understand and abide by the law, absent the availability of punitive damages for conduct that amounts to recklessness or callous disregard for the requirements of the law.

Accordingly, Legal Voice urges the Court to affirm the trial court’s order granting summary judgment, and the award of punitive damages against Defendants.

Respectfully submitted this 21st day of May, 2018.

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**CERTIFICATE OF COMPLIANCE
PURSUANT TO FED. R. APP. P. 32(A)(7)(C) AND
CIRCUIT RULE 32-1 FOR CASE NUMBER 2:16-CV-0922**

I certify that:

Pursuant to Fed. R. App. P. 29(a)(5) and 9th Cir. R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more, and contains 4,299 words.

DATED this 21st day of May, 2018.

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STATEMENT OF RELATED CASES

I, Kim Clark, certify that per Circuit Rule 28-2.6, there are no known related cases pending in this Court.

DATED this 21st day of May, 2018.

/s Kim C. Clark

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CERTIFICATE OF SERVICE

U.S. Court of Appeals Docket Number: 17-35898

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 21st, 2018.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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