

13-1371

IN THE

Supreme Court of the State of Texas

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS, et al.,

Petitioners,

—v.—

THE INCLUSIVE COMMUNITIES PROJECT, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

***AMICI CURIAE* BRIEF OF THE AMERICAN CIVIL
LIBERTIES UNION, THE NATIONAL CONSUMER LAW
CENTER, AND LEGAL MOMENTUM, *ET AL.*,
IN SUPPORT OF RESPONDENT**

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STATEMENT OF INTEREST¹

Amici curiae are organizations that provide representation, advocacy, and services on behalf of victims of housing discrimination, as well as victims of domestic and sexual violence. In furtherance of their respective missions, each organization has direct experience with the importance of maintaining disparate impact claims under the Fair Housing Act, and thus each organization has a direct interest in the proper resolution of the question presented in this case. A full statement of interest for each of the *amici* is set forth in an appendix to this brief.

SUMMARY OF ARGUMENT

The Fair Housing Act (FHA), interpreted for forty years by federal appellate courts to authorize disparate impact claims, has proven transformative in combating housing discrimination. Nonetheless, discriminatory barriers to equal housing opportunity remain deeply entrenched. This brief focuses on two contemporary forms of housing discrimination that have had particularly devastating consequences: race discrimination in subprime mortgage lending and sex discrimination against victims of domestic and sexual violence. For the same reasons that disparate impact analysis has been a critical weapon in the statute's anti-discrimination arsenal for over forty years, it remains indispensable today in fulfilling

¹ The parties have submitted blanket letters of consent to the filing of *amicus curiae* briefs. This brief was not authored in whole or in part by counsel for any party, and no party paid for the preparation or submission of this brief other than *amici*, their members, or their counsel.

Congress' promise to eradicate discrimination in housing.

1. The foreclosure crisis, which continues to batter communities across the country, was precipitated and exacerbated by widespread abuses on the part of subprime lenders. These abuses were inextricably linked to racial discrimination. A history of lending discrimination created lasting disparities in access to credit opportunities, leaving a vacuum in predominantly African American and Latino communities that was filled by subprime specialists who operated without competition. Subprime lenders set up alternative business channels, through which minority communities had access only to the riskiest and most expensive loan products. Recipients of those products, in turn, faced a severely increased risk of foreclosure. Rigorous economic and statistical analyses have repeatedly

impact analysis, because lenders collect extensive financial data from borrowers. Lending decisions typically reflect algorithmic analysis of objective financial information, so disparities that persist when controlling for legitimate factors expose unlawful discrimination. Disparate impact analysis is thus uniquely powerful as a means to smoke out illegitimate discrimination that would otherwise remain unredressed.

2. Disparate impact analysis has also been critical in addressing housing discrimination against women who have been victims of domestic and sexual violence. The problem arises in a number of contexts, including zero tolerance policies that subject every member of a household to eviction if any member of

rating system purporting to assess risks associated with lending in specific neighborhoods. On rating system maps, integrated or predominately black neighborhoods were marked in red.

neighborhoods always received the most bank loans per 1,000 single family homes,” while black neighborhoods “always received the fewest.” Bb9s

disparities persisted even after controlling for credit score. *Id.*

Disparities in subprime lending have led to high levels of foreclosure among borrowers of color, devastating black and Latino communities. As of

“Recovery” is Bypassing Many American Communities 6 (May 2014) (finding African Americans and Latinos are disproportionately represented in communities still struggling with foreclosure crisis).

B. Disparate Impact Analysis Plays a Vital Role in Combating Lending Discrimination

Disparate impact analysis provides an indispensable framework for remedying discriminatory lending practices. When focusing on individual lending transactions, disparities in the availability and terms of credit are easily masked by the complexity of the loan process.² Yet lenders collect highly detailed data relevant to the creditworthiness of individual loan applicants. Disparate impact doctrine sets out a method for

² This was particularly true in the years leading up to the housing market collapse. For borrowers offered prime loans, published rates and terms were readily available, lenders gave free quotes, and lock-in commitments were common, enabling borrowers to shop for the best deal. Patricia A. McCoy, *Rethinking Disclosure in a World of Risk-Based Pricing*, 44 Harv. J. on Legis. 123, 124 (2007). In contrast, although subprime lenders had the technology and information needed to provide firm price quotes to customers at minimal cost, these lenders typically “entice[d] customers with rosy prices that [were] not available to weaker borrowers, hike[d] the price after customers [paid] a hefty applicatio

examining that data on a large scale and determining whether racial disparities exist that cannot be accounted for by credit risk or any other legitimate business considerations. For that reason, disparate impact analysis can root out harmful patterns of discrimination that might otherwise remain invisible and go unredressed.

Since it was first articulated by this Court in the employment context, disparate impact analysis has provided a means to combat “practices that are fair in form, but discriminatory in operation.” *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). In effectuating that standard, this Court has explained that the evidence in disparate impact cases “usually focuses on statistical disparities, rather than specific incidents, and on competing explanations for those disparities” because this mode of analysis exposes practices that, while “adopted without a deliberately discriminatory motive, may in operation be functionally equivalent to intentional discrimination.” *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 987 (1988). Aggregate analysis is at times necessary to achieve the purpose of the civil rights laws, which are directed foremost at “the consequences of [] practices, not simply the motivation.” *Griggs*, 401 U.S. at 432. As Congress found and this Court has recognized, discrimination is a “complex and pervasive phenomenon” most accurately described “in terms of ‘systems’ and ‘effects’ rather than simply intentional wrongs.” *Connecticut v. Teal*, 457 U.S. 440, 447 n.8 (1982) (quoting S. Rep. No. 92-415, at 5 (1971)).

In the mortgage lending context, the key question is whether the availability or terms of credit

vary according to race in a manner that cannot be justified by credit risk or any other legitimate business consideration. *See* 24 C.F.R. 100.500 (providing that disparities are not unlawful if a legally sufficient justification is demonstrated). Typically, this inquiry proceeds by applying statistical regression analysis to a large sample of a defendant's loans, comparing the availability or terms of credit to borrowers of different races while controlling for factors that would legitimately affect lending outcomes. The critical ingredient in making this analysis probative of discrimination is selecting the right control variables. "[L]egitimate controls are those associated with a person's qualifications to rent or buy a house." John Yinger,

e.g., credit score, the ratio of a loan to a home's value,
an applicant's total debt obligations, etc.
See generally

race or national origin.”); Apgar & Calder, *supra*, at 111-15 (summarizing research of subprime lending designed to “control[] for neighborhood and borrower characteristics, including several measures of risk”

2010) (“even when a comprehensive list of risk-based characteristics are controlled for, African Americans’ APRs are 9.4 basis points greater than whites’ APRs, and Hispanics’ APRs are 7.6 basis points greater than whites’ APRs”).⁴

Given the effectiveness of disparate impact analysis in identifying unjustified disparities, it is unsurprising that the federal agencies charged with enforcing the Fair Housing Act have embraced the disparate impact standard in combating discriminatory lending. Most recently, HUD promulgated a rule codifying the disparate impact

18,269 (Dep't of Hous. & Urban Dev. et al. Apr. 15, 1994).

An *amicus* brief filed by the lending industry asserts that the disparate impact standard impedes legitimate business practices, but those arguments ignore the fact that disparate impact liability will not attach to policies that are shown to be legitimate and necessary to originate safe loans.⁵ For example, those *amici* point to government data showing that, in 2013, “African-American applicants for conventional home-purchase loans were rejected at a rate more than twice the rate at which white applicants were rejected . . . [and] Hispanic applicants were rejected at a rate more than 1.7 times the rate at which white applicants were rejected.” Br. for Am. Fin. Servs. Ass’n et al. as *Amici Curiae* in Supp. of Pet’r at 28 n.19. But if such disparities arise from facially neutral policies that are legitimate and necessary to originate safe loans, there is no threat of disparate impact liability. Conversely, in the absence of such justification, it is hard to see how the disparities cited by *amici* operate as an argument *against* the disparate impact standard – to the contrary, they

⁵ Petitioners similarly invoke the application of the FHA to the lending industry. See Pet’r Br. at 15 (“If a mortgage lender establishes borrowing standards that some racial groups are less likely to meet than others, the lender has not discriminated ‘because of race,’ but because of some factor that happens to correlate with race.”). This argument simply ignores the disparate impact burden-shifting scheme. Under a disparate impact analysis, a lender has discriminated “because of race” (or any other protected characteristic) not when its practice results in a disparity, but when it causes a disparity that cannot be explained by a legitimate business justification.

provide evidence of the problem that the disparate impact standard is designed to address.⁶ Those *amici* also argue that disparate impact “engenders a ‘Catch-22’ paradigm” in which lenders must “affirmatively consider[] race in lending decisions” in a manner that constitutes intentional discrimination. *Id.* at 34. But that risk is illusory. Disparate impact claims against lenders have targeted policies that create different outcomes for similarly situated borrowers – *i.e.*, borrowers with equivalent creditworthiness. *See supra* at 13 n.5, 16-17. It is farfetched for *amici* to suggest that avoiding such unjustified disparities, and treating similarly situated borrowers equ

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lending practices is contradicted by its own description of how the lending market operates. Its brief emphasizes that lenders “sell the great majority of loans that they originate to secondary-market investors, including private investors and the government-sponsored enterprises (‘GSEs’), Fannie Mae and Freddie Mac.” *Id.* at 24. Fannie Mae and Freddie Mac impose underwriting guidelines, which the industry’s brief presents as the basic parameters for sound lending. *Id.* at 24-26. But federal law has long required HUD to promulgate regulations ensuring that those entities do not purchase loans “in a manner that has a discriminatory effect.” 12 U.S.C. § 4545(1). Longstanding practice, in other words, confirms that the industry’s underwriting gold standard

II. DISPARATE IMPACT ANALYSIS IS A CRUCIAL TOOL FOR ADDRESSING HOUSING DISCRIMINATION AGAINST DOMESTIC AND SEXUAL VIOLENCE VICTIMS

Disparate impact analysis under the FHA offers crucial legal protection to women who face eviction or housing denials based on domestic and sexual violence perpetrated against them. Domestic and sexual violence is a primary cause, and consequence, of homelessness and housing instability for women and girls. *See, e.g.*, 42 U.S.C. § 14043e (congressional finding that domestic violence causes homelessness and that an estimate of 92 percent of homeless mothers have experienced severe physical and/or sexual assault at some time, 60 percent of all homeless women and children have been abused by age 12, and 63 percent have been victims of intimate partner violence as adults); U.S. Conf. of Mayors, Hunger and Homelessness Survey 31 (Dec. 2013)(reporting that cities surveyed in 2012-2013 stated that 16% of homeless adults were victims of domestic violence); Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, Special Report: Intimate Partner Violence 5 (revised Jan 31, 2002) (finding the intimate partner victimization rate among women in rental housing to be “more than 3 times the rate of women living in owned housing”).

Discriminatory housing policies contribute to and exacerbate the housing crises faced by victims. 42 U.S.C. § 14043e(3) (congressional finding that “[w]omen 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”). However, many of the housing policies that can punish victims – such as zero tolerance-for-crime policies (sometimes referred to as one-strike policies), or policies that explicitly target victims of domestic and sexual violence – are facially neutral. Disparate impact analysis reveals how these policies adversely affect women and girls, who make up the vast majority of victims of domestic and sexual violence. It also allows survivors to challenge housing policies that, when enforced against them, eliminate housing options and endanger their safety.

The legal protection offered to survivors by disparate impact analysis under the FHA was first established in 2001, after Tiffani Ann Alvera sought redress when she faced eviction from her Seaside, Oregon apartment pursuant to a zero tolerance policy. *See* Determination of Reasonable Cause, *Alvera v. Creekside Village Apartments*, No. 10-99-0538-8 (Dep’t of Hous. & Urban Dev. Apr. 13, 2001).⁷ After she was assaulted by her husband and he was imprisoned, Ms. Alvera provided a copy of the restraining order she obtained to her property manager. *Id.* at 1-2. She was then served with a 24-hour eviction notice based on the incident of domestic violence she had experienced. It stated: “You, someone in your control, or your pet, has seriously threatened to immediately inflict personal injury, or has inflicted personal injury upon the landlord or other tenants.” *Id.*

⁷ HUD’s Determination of Reasonable Cause is available at http://www.nhlp.org/files/6a.%20Alvera%20reasonable%20cause%20finding_0.pdf.

Ms. Alvera filed a complaint with HUD, which found that taking action against all members of a household after an incident of domestic violence “has an adverse impact based on sex, because of the disproportionate number of women victims of domestic violence.” *Id.* at 4. After reviewing the available statistics on intimate partner violence and

provision in the lease that stated: “Tenant will not use or allow said premises or any part thereof to be used for unlawful purposes, in any noisy, boisterous or any other manner offensive to any other occupant of the building.” *Id.* In other words, violence directed *against* Ms. Bouley was cited as a predicate for evicting her pursuant to a facially neutral policy. Ms. Bouley filed a federal lawsuit, including allegations that the landlord’s policy of evicting the victims of domestic violence had an adverse, disparate impact on women. Complaint at ¶¶ 26-28, *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. Nov. 24, 2003) (No. 1:03-cv-320). The case settled after the court denied the defendants’ motion for summary judgment. *Bouley*, 394 F. Supp. 2d at 678.

In 2006, Tanica Lewis and her two daughters were evicted from their Detroit home after her abusive ex-partner, who had never lived at the residence, broke through the windows, kicked in her door, and was arrested for home invasion. Complaint, *Lewis v. North End Village*, No. 2:07-cv-10757 (E.D. Mich. Feb. 21, 2007). Although Ms. Lewis previously had provided a copy of a current protection order to her management company, she received a 30-day notice of Tc 0.106 Tw 0 -1.2 T1-1(TD-(a)-4(n)1

required the management company to adopt a policy prohibiting discrimination based on domestic and sexual violence and compensated her for the financial losses she had suffered. Stipulated Order of Dismissal as to Tanica Lewis, *Lewis v. North End Village*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008).

In 2007, Kathy Cleaves-Milan was evicted from her Elmhurst, Illinois apartment complex after calling the police to remove her fiancé, who was threatening to shoot her and himself with a gun. Complaint, *Cleaves-Milan v. AIMCO Elm Creek LP*, No. 1:09-cv-06143 (N.D. Ill. Oct. 1, 2009). She explained the circumstances and provided her protective order to the management company, yet was told that “anytime there is a crime in an apartment the household must be evicted.” *Id.* at ¶ 31. She was compelled to move, forcing her daughter to transfer to a substandard school, and was charged a \$3180 lease termination fee by the management company. *Id.* at ¶¶ 34-35, 37; *see also* Sara Olkon, *Tenant Reported Abuse – Then Suffered Eviction*, Chi. Trib., Oct. 13, 2009 (quoting Cleaves-Milan as stating, “I was punished for protecting myself and my daughter”).

In 2012, after police arrested the ex-boyfriend of Lakisha Briggs for physically assaulting her, an officer warned that she could be evicted for more calls to police. Second Am. Compl. ¶¶ 51-56, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. Oct. 10, 2013). Under a local ordinance adopted in Norristown, PA, police response to a property three times in four months, including for domestic disturbances, would result in revocation of the landlord’s license unless the landlord evicted the

tenants. Norristown, Pa., Municipal Code § 245-3 (Jan. 5, 2009) (repealed Nov. 7, 2012). This law applied even to tenants who legitimately sought police assistance as victims of crime.⁸ Ms. Briggs was left vulnerable to escalating violence – including a near-fatal stabbing to her neck – because she could no longer call the police without risking the loss of her home. Erik Eckholm, *Victims' Dilemma: 911*

⁸ Norristown is not alone. Local governments across the country are increasingly passing similar ordinances, often known as chronic nuisance ordinances, that penalize landlords based on a tenant's repeated calls to the police. Cari Fais, Note, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 Colum. L. Rev. 1181, 1187-95 (2008).

Many landlords seek to avoid these sanctions and eliminate the “nuisance” by evicting the unit’s tenants, including victims of domestic violence who may need to reach out to police repeatedly due to the conduct of their abusers. See Emily Werth, Sargent Shriver Nat’l Ctr. on Poverty Law, *The Cost of Being “Crime Free”: Legal and Political Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* 8-9 (2013); Andrew Klein, Nat’l Inst. of Justice, *Practical Implications of Current Domestic Violence research: For Law Enforcement, Prosecutors and Judges* 1 (2009) (calls related to domestic violence are “the single largest category of calls received by police”). Indeed, a study by scholars from Harvard and Columbia established that survivors of domestic violence

Calls Can Bring Eviction, N.Y. Times, Aug. 17, 2013, at A1. While Norristown officials were well aware that Ms. Briggs was the victim of severe domestic abuse, they nonetheless pressured her landlord to evict her after the stabbing. Second Am. Compl. ¶¶ 104-106, *Briggs*, No. 2:13-cv-02191-ER (E.D. Pa. Oct. 10, 2013). She filed suit, citing disparate impact of the ordinance on women among other claims; the Secretary of HUD also initiated his own disparate impact complaint against Norristown. *Id.* at ¶¶ 45, 136(d), 218, 222, 226, 228; Housing Discrimination Compl., *Assistant Secretary for Fair Housing & Equal Opportunity v. Borough of Norristown, PA*, No. 03-13-0277-8 (Dep't of Hous. & Urban Dev. June 5, 2013).⁹ Both complaints settled, with the complete repeal of the ordinance and compensation for Ms. Briggs. Release and Settlement Agreement, *Briggs*, No. 2:13-cv-02191-ER (signed Sept. 18, 2014);¹⁰ Conciliation Agreement between Assistant Secretary of the Office of Fair Housing and Equal Opportunity and Municipality of Norristown, Nos. 03-13-0277-8 and 03-13-0277-9 (Dep't of Hous. & Urban Dev. Sept. 17, 2014).¹¹

⁹ HUD's Housing Discrimination Complaint No. 03-13-0277-8 is available at https://www.aclu.org/sites/default/files/assets/hud_complaint.pdf.

¹⁰ The settlement agreement in *Briggs* is available at https://www.aclu.org/sites/default/files/assets/2014.09.18_-_release_and_settlement_agreement_-_fully_executed.pdf.

¹¹ HUD's Conciliation Agreement is available at <http://portal.hud.gov/hudportal/documents/huddoc?id=HUDSecMunicipality.pdf>.

This recurring fact-pattern places the importance of the disparate impact standard in stark relief. As in *Alvera*, the seminal challenge to a zero tolerance policy disproportionately affecting women, the lawsuits discussed above have challenged facially neutral policies that are applied overwhelmingly against women. Without disparate impact analysis, even the most extreme disparities in the effect of policies that punish survivors for the violence perpetrated against them would likely lie beyond the reach of anti-discrimination law, and survivors of domestic and sexual violence deprived of housing would lack legal redress.

HUD embraced the reasoning asserted in these cases in guidance issued to all fair housing staff addressing the applicability of disparate impact analysis in situations involving domestic violence. See Sara K. Pratt, U.S. Dep't of Hous. & Urban Dev., Office of Fair Hous. & Equal Opportunity, *Assessing Claims of Housing Discrimination Against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (2011)* [hereinafter HUD Memo]. The guidance notes that an estimated 1.3 million women are the victims of assault by an intimate partner each year, that about one in four women will experience intimate partner violence in her lifetime, and that 85 percent of victims of domestic violence are women. *Id.* at 2 (citing U.S. Dep't of Health & Huma

Violence, 1993-2001 (2003)).¹² Because “statistics show that discrimination against victims of domestic

¹² More recent statistics confirm that although the prevalence of domestic violence against men has increased, women still experience extremely high, and disproportionate, rates of domestic and sexual violence. M.C. Black et al., Centers for Disease Control and Prevention, National Intimate Partner and Sexual Violence Survey: 2010 Summary Report 18, 38-39, 54-55 (2011) (reporting that more than one in three women has experienced rape, physical violence, and/or stalking by an intimate partner in her lifetime, that nearly five times more women, compared to men, need medical care from domestic violence, and that thirteen times more women than men have been raped). Intimate partner violence, rape, and stalking are ev2(l)]TJ,ef

violence is almost always discrimination against women,” the HUD Memo stated that a disparate impact analysis is appropriate when a facially neutral housing policy disproportionately affects victims. *Id.* at 2, 5.

Only a handful of states have enacted laws specifically prohibiting discrimination against victims of domestic or sexual violence when they both apply for and live in rental housing. See Nat'l Housing Law Project, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (May 2014) (including Arkansas, District of Columbia, Indiana, North Carolina, Oregon, Rhode Island, Washington, Wisconsin); Nat'l Law Ctr. on Homelessness & Poverty, *There's No Place Like Home: State Laws That Protect Housing Rights for Survivors of Domestic and Sexual Violence* 18-20 (2012); Legal Momentum, *State Law Guide: Housing Protections for Victims of Domestic and Sexual Violence* (2013). Moreover, the few states that have interpreted how their state fair housing laws apply when victims face housing discrimination have relied, in part, on their understanding that the federal FHA allows for disparate impact claims. 1985 N.Y. Op. Att'y Gen. 45 (1985), 1985 WL 194069 at *3-4 (citing the FHA in finding that the practice of denying housing to domestic violence victims has a disparate impact on women in violation of state human rights law); *Winsor v. Regency Prop. Mgmt., Inc.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995) (holding that the state fair housing law, which is modeled on the federal FHA, prohibits housing discrimination against victims, using a disparate impact theory). A ruling that disparate impact

prohibit evictions of victims based on the violence perpetrated

claims are foreclosed under the FHA would mean that most survivors of domestic and sexual violence would have severely limited recourse when subjected to eviction or housing denials simply because they were victimized by violence.

The persistence of housing discrimination against victims of domestic and sexual violence only reinforces the importance of disparate impact analysis as a legal tool. The practice of evicting victims based on their abusers' criminal activity, or the noise disturbance and property damage they cause, is widespread.¹⁵

[hereinafter Insult to Injury]; Lost Housing, Lost Safety, *supra*, at 2-4, 7-9.

Domestic and sexual violence survivors are also frequently subjected to discrimination when they apply for housing, simply because they have experienced violence. This can occur when, for example, their past history of victimization may become known to landlords because they are applying for housing while residing in domestic violence or emergency shelters. See Equal Rights Ctr., No Vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia (2008) (finding significant discrimination against victims applying for housing, despite the District's anti-discrimination law); Lost Housing, Lost Safety, *supra*, at 3, 5, 9-10; Anti-Discrimination Ctr. of Metro NY, Adding Insult to Injury: Housing Discrimination Against Survivors of Domestic Violence (2005); see also Insult to Injury, *supra*, at iv, 10 (reporting that more than a third of surveyed advocates had worked with victims who were denied housing for reasons directly related to domestic violence, dating violence, or stalking).

Discriminatory evictions and denials thus give rise to a double victimization, imperiling the housing options and safety of a victim when she is most in need of secure housing.¹⁶ Housing discrimination

¹⁶ Many victims already lose their homes due to violence. See, e.g.,

based on violence compounds the safety risks because it can further trap victims, who often have few resources due to their abuse and isolation, in dangerous situations. Mary A. Dutton et al., U.S. Dep't of Justice, Development and Validation of a Coercive Control Measure for Intimate Partner Violence Final Technical Report 1, 3-6 (2005) (including batterers' control over victims' material resources in the list of coercive behaviors that frequently characterize intimate partner abuse); Kerry Healey et al., U.S. Dep't of Justice, Batterer Intervention: Program Approaches and Criminal Justice Strategies 1 (1998) (listing "total economic control" as one of the strategies comprising domestic violence).

Congress has recognized that "[v]ictims of domestic violence often return to abusive partners because they cannot find long-term housing." 42 U.S.C. § 14043e(7); *see also* Wilder Research, 2012 Minnesota Homeless Study Fact Sheet Initial Findings: Characteristics and Trends, People Experiencing Homelessness in Minnesota 2 (2013) (48 percent of homeless women reported staying in an abusive situation due to lack of housing alternatives); TK Logan et al.,

Rural and Urban Survivors of Rape, 20 J. Interpersonal Violence 591, 600, 611 (2005) (rural women who had been sexually assaulted stated that, without housing, other services were not likely to be helpful); Am. Bar Assoc., Comm'n on Domestic Violence Young Lawyers Div., Report to the House of Delegates 2 (2003); Amy Correia & Jen Rubin, VAWnet Applied Research Forum, Housing and Battered Women 1-3 (2001); Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 Clearinghouse Rev. 420 (1991). Tragically, the shortage of housing alternatives has been found to be a major contributing factor to fatalities. See, e.g., Jake Fawcett, Washington State Coalition Against Domestic Violence, Up to Us: Lessons learned and goals for change after thirteen years of the Washington State Domestic Violence Fatality Review 44-45 (2010).

Disparate impact analysis is therefore a crucial tool for preserving the housing and enhancing the safety of survivors of domestic and sexual violence that would otherwise be jeopardized by facially neutral policies that discriminate against victims. The eradication of that legal remedy would escalate both the risk of homelessness for victims and their children and the likelihood that they are forced to remain in dangerous living situations.

APPENDIX

INTEREST OF AMICI CURIAE

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. **The American Civil Liberties Union of Texas** is one of its statewide affiliates. Since its founding in 1920, the ACLU has appeared before this Court in numerous cases, both as direct counsel and *amicus curiae*. Of particular relevance to this case, the ACLU's Racial Justice Program engages in a nationwide program of litigation and advocacy on behalf of people who have been historically denied their constitutional and civil rights on the basis of race in housing and other areas. The ACLU's Women's Rights Project has, among other things, worked to improve access to housing for survivors of domestic and sexual violence and their children, including litigating cases on behalf of battered women who faced eviction based on the abuse they experienced.

Americans for Financial Reform (AFR) is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR works to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole. Through policy analysis, education, and outreach to our members and others, AFR seeks to build public will for substantial reform of the American financial system.

The Center for Responsible Lending is a
nonprofit, non-

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.

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.

MFY Legal Services, Inc. (MFY), a nonprofit organization, envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and underserved populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. MFY provides advice and representation to more than 8,500 New Yorkers each year. In September 2008, with the implosion of the housing market, MFY created its Foreclosure Prevention Project. Over the past five years, MFY has been on the frontlines of the foreclosure crisis, providing services to more than 2,700 individuals, saving hundreds of homes from unnecessary foreclosures. MFY attorneys have witnessed first-hand the devastating and discriminatory impact of predatory mortgage lending, and, through both defensive and affirmative litigation, MFY has sought to combat its effects and preserve homeownership in New York City. MFY's Mental Health Law Project and Disability and Aging Rights Project also regularly litigates Fair Housing Act claims on behalf of people with disabilities who live in private apartments, public housing, and facilities such as adult homes.

The National Coalition Against Domestic Violence (NCADV), based in Colorado since 1992, was formed in 1978 to create a national network of programs serving victims of domestic violence. There are over 2,000 domestic violence programs currently in the United States. NCADV provides technical assistance, general information and referrals, and

community awareness campaigns, and does public policy work at the national level. NCADV has participated in many *amicus* briefs over the years on issues relating to domestic violence victims, for whom obtaining and keeping safe housing is a major and pressing concern. It is critical that survivors

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

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 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 responses 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

the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women, and has participated as counsel or *amicus curiae* in a range of cases before this Court to secure the equal treatment of women under the law, including cases challenging practices that h