No. 06-3376

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LYNNE BLOCH, et al.,

Plaintiffs-Appellants,

v.

EDWARD FRISCHHOLZ, et al.,

Defendants-Appellees.

U.S.C.A. — 7th Circuit
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**On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 1:05-cv-05379
The Honorable Judge George W. Lindberg**

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC., LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION, INC., PUBLIC INTEREST LAW CENTER OF PHILADELPHIA, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, THE MISSISSIPPI CENTER FOR JUSTICE, NATIONAL FAIR HOUSING ALLIANCE, AND CHICAGO FAIR HOUSING ALLIANCE AS *AMICI CURIAE* SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL AND REMAND ON FAIR HOUSING ACT CLAIMS

Elizabeth Shuman-Moore
Matthew Ginsburg
CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC.
100 North LaSalle St.
Suite 600
Chicago, Illinois 60602
Phone: (312) 630-9744
Fax: (312) 630-1127

Jonathan K. Baum
David F. Benson
Gail H. Kim
Aaron M. Chandler
KATTEN MUCHIN ROSENMAN LLP
525 West Monroe St.
Chicago, Illinois 60661
Phone: (312) 902-5200
Fax: (312) 577-8672

Joseph D. Rich
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Ave., NW
Suite 400
Washington, DC 20005
Phone: (202) 662-8600
Fax: (202) 783-0857

Counsel For Amici

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FEDERAL CASES

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Rigel C. Oliveri, *Is Acquisition Everything? Protecting The Rights Of Occupants Under The Fair Housing Act*, 43 Harv. C.R.-C.L. L. Rev. 1 (2008) 8

Robert G. Schwemm, *Cox, Halprin and Discriminatory Municipal Services Cases Under the Fair Housing Act*, 41 Ind. L. Rev. 717 (2008) 10, 15

NON-PERIODICAL PUBLICATIONS

Lorraine Hansberry, A RAISIN IN THE SUN (Vintage Books 1994) (1958) 5-6

Lorriane Hansberry adopted by Robert Nemiroff, TO BE YOUNG, GIFTED, AND BLACK (Prentice-Hall 1969) (1969) 6

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S. Rep. No. 90-721 (1967), reprinted in 1968 U.S.C.C.A.N. 1837, 1839 7

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INTEREST OF *AMICI CURIAE*

I. The Lawyers' Committee For Civil Rights Under Law And Its Local Affiliates

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonprofit civil rights organization that was founded in 1963 by the leaders of the American bar, at the request of President Kennedy, to help defend the civil rights of racial minorities and the poor. The Lawyers' Committee works with communities across the nation to combat, protest, and remediate discriminatory housing practices, many of which occur after a person acquires or rents a dwelling. The Lawyers' Committee has litigated a number of post-acquisition discrimination claims under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (the "Act" or "FHA").[1]

The Lawyers' Committee has eight independently governed local affiliates around the country that share its interest in promoting fair housing. Six of these affiliates also litigate fair housing cases, and they join the Lawyers' Committee as *amici* here. These six affiliates are: (i) Chicago Lawyers' Committee for Civil Rights Under Law, Inc.; (ii) Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, Inc.; (iii) Public Interest Law Center of Philadelphia; (iv) Lawyers' Committee for Civil Rights of the San Francisco Bay Area; (v) Washington Lawyers' Committee for Civil Rights and Urban Affairs; and (vi) Mississippi Center for

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[1] For the sake of brevity, throughout this brief, *amici* refer to post-purchase and post-rental discrimination alike as "post-acquisition discrimination."

Justice. Each of these affiliates also has litigated fair housing cases involving post-acquisition discrimination.

II. National Fair Housing Alliance

The National Fair Housing Alliance ("NFHA") is a consortium of private, non-profit, fair housing organizations, state and local civil rights groups, and individuals. Its mission is to identify and eliminate housing discrimination throughout the United States. NFHA was founded twenty years after passage of the FHA. In conjunction with its members, NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. As part of its enforcement activities, NFHA assists its members and participates itself in federal and state court litigation brought under the Act.

With its extensive involvement in post-acquisition housing discrimination cases across the country, NFHA stands in a unique position to address this important policy issue regarding the scope of the FHA, and respectfully submits that its views may prove of substantial assistance to the Court in its resolution of this appeal.

III. Chicago Area Fair Housing Alliance

The Chicago Fair Housing Alliance ("CAFHA") is a non-profit membership association of organizations, governmental bodies, and individuals concerned with combating housing discrimination and promoting integrated communities. Through research, education, and advocacy, CAFHA seeks to further fair housing rights and equal opportunity in housing; develop strategies to promote long-term diversity in

neighborhoods and communities; and combat discrimination and harassment. Many of CAFHA's members, including Chicago Lawyers' Committee for Civil Rights Under Law, Inc. and South Suburban Housing Center, have received numerous complaints of post-acquisition housing discrimination.

SUMMARY OF ARGUMENT

Amici file this brief in support of Plaintiffs-Appellants Lynne, Helen, and Nathan Bloch (the "Blochs"), urging reversal of the panel majority's decision and a remand of the Blochs' FHA claims. *Amici* are national and local non-profit organizations dedicated to enforcing the FHA with the goal of ending housing discrimination. *Amici* have collectively litigated dozens of cases involving post-acquisition discrimination that, if the panel majority's decision is affirmed, would no longer be permitted under the FHA in this Circuit.

Amici concur in the interpretation of the relevant statutory and regulatory language set forth in Judge Wood's dissenting opinion in the panel decision, in the United States' *amicus curiae* brief offered in support of Plaintiffs-Appellants, and in Plaintiffs-Appellants' panel brief filed on October 17, 2007. *Amici* offer this brief based on their own experience in litigating post-acquisition FHA cases to explain that: (i) from the passage of the FHA in 1968 until this Court's decision in *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004), courts routinely and uniformly gave effect to Congress's intent by interpreting the Act as prohibiting post-acquisition discrimination; (ii) adopting the restrictive interpretation of the Act advanced in *Halprin* and extended by the panel majority would ignore long-standing precedent and would countenance egregious

post-acquisition conduct, such as the sexual harassment of tenants by landlords, the bombing of an African American homeowner's car or the burning of a cross on his front lawn, and the wholesale denial of municipal services to communities based on their racial composition; and (iii) more than forty years after the passage of the FHA, post-acquisition discrimination remains a serious and all-too-common problem.

Based on *amici*'s experience in litigating post-acquisition cases under the FHA and current work assisting tenants and homeowners with post-acquisition discrimination issues, *amici* strongly urge the *en banc* Court to reverse the panel majority's decision and remand this case to the district court.

ARGUMENT

I. The Long-Settled Interpretation That The FHA Prohibits Discrimination Against Owners, Tenants, And Occupants Of Dwellings Fulfills Congress's Intent To Provide A Necessary Remedy And Deterrent To Egregious Discriminatory Conduct.

In the panel decision in this case, a divided Court concluded that section 804(b) of the FHA "does not address discrimination after ownership has changed hands." *Bloch v. Frischholz*, 533 F.3d 562, 563 (7th Cir. 2008). In reaching this conclusion, the panel majority adopted and, indeed, extended the reasoning of *Halprin*, stating:

> [w]e observed in *Halprin* that § 804(b) forbids discrimination in the 'terms, conditions, or privileges of sale or rental of a dwelling,' but does not address discrimination after ownership has changed hands – and that § 817, on which the regulation rests, makes it unlawful to interfere with a person in the enjoyment of rights under § 804 (and some other sections) but does not enlarge any of those rights. This means, *Halprin* held, that religiously motivated harassment of owners or tenants does not violate the [FHA] *or its regulations*.

Bloch, 533 F.3d at 563-64 (emphasis added).

In *Halprin*, this Court stated that because plaintiffs "are complaining not about being prevented from acquiring property but about being harassed by other property owners . . . it is difficult to see how they can have been interfered with in the enjoyment of any right conferred on them by section 3604," thus suggesting that the FHA was intended only to protect *access* to housing. 388 F.3d at 329. The Court reasoned that, since "[b]ehind the Act lay the widespread practice of refusing to sell or rent homes in desirable residential areas to members of minority groups[, and s]ince the focus [of the Act] was on their exclusion, the problem of how they were treated when they were included, that is, when they were allowed to own or rent homes in such areas, was not at the forefront of congressional thinking." *Id.* However, the historical backdrop against which the FHA was written belies such a parsing of the problem of housing discrimination in America.

As illustrated in Lorraine Hansberry's landmark play, *A Raisin in the Sun*, housing discrimination against owners, tenants, and occupants of dwellings – what *Halprin* characterized as "post-acquisition" housing discrimination – was a grave evil in the America in which the FHA was enacted in 1968. *Raisin* reflects the plight of a fictional African American family, the Youngers, who, even after being fortunate enough to *purchase* a home, suffer egregious acts of discrimination once they attempt to *live* in that home. At the time the FHA was enacted, post-acquisition housing discrimination took various forms, including the two depicted in *Raisin* where: (i) white neighbors offer to pay African American families *not* to move in, even though they had already purchased their home, *see* Lorraine Hansberry, A

RAISIN IN THE SUN 116 (Vintage Books 1994) (1958); and (ii) white neighbors threaten violence against African American families once they move in to their home. *Id.*[2] A rhetorical question posed by the threatening white neighbor in *Raisin* – "What do you think you are going to gain by moving into a neighborhood where you just aren't wanted and where some elements – well – people can get awful worked up when they feel that their whole way of life and everything they've ever worked for is threatened," *id.* at 119 – illustrates how post-acquisition discrimination, if left unchecked, can render the FHA's robust guarantee of equal housing opportunity an empty promise.

Congress's intent to ensure that the FHA extended to post-acquisition discrimination like that in *Raisin* is apparent in the language of the Act itself, as well as in its legislative history. For instance, the language of Section 804(b) of the Act is not limited to prohibiting discrimination in the "terms and conditions" of housing, but extends to both the "*privileges of* sale or rental of a dwelling" and "the provision of *services and facilities* in connection therewith." (emphasis added). A plain reading of the Act thus demonstrates that Congress did not intend to restrict the Act solely to the actual sale or rental of a dwelling, but wished to ensure that the FHA's protections extend to the "privileges" and "services and facilities" that flow from real estate transactions. Additionally, the legislative history of the FHA, while limited, reflects an intent to cover the post-acquisition discrimination

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[2] The events depicted in *Raisin*, while fictional, are based on Ms. Hansberry's actual experience in Chicago living in "a hellishly hostile 'white neighborhood' in which, literally, howling mobs surrounded [her] house." Lorraine Hansberry adapted by Robert Nemiroff, TO BE YOUNG, GIFTED, AND BLACK 20 (Prentice-Hall 1969) (1969).

illustrated in *Raisin*, as the preamble to the Senate's first draft of the FHA declared that it was "the policy of the United States to prevent discrimination on account of race, color, religion, or national origin in the purchase, rental, financing, and *occupancy* of housing throughout the United States." 114 Cong. Rec. 2270 (1968) (emphasis added).[3] Indeed, Congress acknowledged in a 1967 Senate report that race-based violence against people exercising their civil rights was a real problem, not simply a matter of fiction:

> a small minority of lawbreakers has resorted to violence in an effort to bar Negroes from exercising their lawful rights. Brutal crimes have been committed not only against Negroes exercising Federal rights but also against whites who have tried to help Negroes seeking to exercise these rights. Acts of racial terrorism have sometimes gone unpunished and have too often deterred the free exercise of constitutional and statutory rights.

See S. Rep. No. 90-721 (1967), reprinted in 1968 U.S.C.C.A.N. 1837, 1839.

The Supreme Court, in interpreting the FHA for the first time in *Trafficante v. Metropolitan Life Insurance Co.*, observed that the "language of the Act is broad and inclusive," and, thus, Congress's chosen words are entitled to "a generous construction." 409 U.S. 205, 209, 212 (1972). The Supreme Court then interpreted the Act as conferring standing upon *existing* tenants to vindicate housing discrimination under the FHA. *Id.* at 209. In light of the Act's language,

[3] The FHA initially prohibited housing discrimination on the basis of "race, color, religion, or national origin." Pub. L. 90-284 § 804, 82 Stat. 81, 83 (1968). The Act was amended in 1974 to prohibit housing discrimination on the basis of sex. Pub. L. 93-383 § 808, 88 Stat. 633, 729 (1974). Congress again amended the Act in 1988 to prohibit housing discrimination on the basis of handicap and familial status. Pub. L. 100-430, 102 Stat. 1619-39 (1988).

legislative history, and the Supreme Court's pronouncement in *Trafficante*, it is thus not surprising that for almost thirty-five years, the Act provided a much needed remedy and deterrent to unfair, ugly, egregious, and even dangerous behavior in the form of post-acquisition conduct. *See, e.g., Krueger v. Cuomo*, 115 F.3d 487, 491 (7th Cir. 1997) (deciding that post-acquisition "harassment in the housing context can violate the [FHA]"); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1289 (7th Cir. 1977) (permitting existing property owners to challenge zoning restrictions under the FHA).[4] In fact, before this Court suggested in *Halprin* that the FHA applies only to "activities . . . that prevent people from acquiring property," 388 F.3d at 328, this Court had never read the Act so narrowly.

Indeed, from 1968 until *Halprin* was decided in 2004, courts in this Circuit consistently extended FHA protections to *existing* tenants and homeowners, as well as their guests, and found that the Act prohibited a wide range of post-acquisition discrimination. *See, e.g., Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845, 852 (N.D. Ill. 2003) ("As the Seventh Circuit and other courts have concluded, the prohibitions of section 3604 [of the FHA] extend beyond mere sales and rentals of real estate."). To illustrate, before this Court approved a narrow reading of the FHA in *Halprin*, the Act had been found to prohibit: **(i) sexual harassment of tenants**, *Krueger*, 115 F.3d at 491 (landlord repeatedly engaged in unwanted touching of tenant, sometimes in front of her children, and requested to engage in

[4] A list of more than five dozen pre-*Halprin* decisions recognizing that post-acquisition discrimination is prohibited under the Act is attached as Exhibit A. *See, also,* Rigel C. Oliveri, *Is Acquisition Everything? Protecting The Rights Of Occupants Under The Fair Housing Act*, 43 Harv. C.R.-C.L. L. Rev. 1, 1 (2008).

provided by governmental units such as police and fire protection or garbage collection"); *Campbell v. City of Berwyn*, 815 F. Supp. 1138 (N.D. Ill. 1993) (city terminated additional police protection for African American family after family refused to move in response to racial violence and harassment).[6]

Tellingly, none of these pre-*Halprin* decisions placed members of protected groups in the untenable situation where they "win the battle (to purchase or rent housing) but lose the war (to live in their new home free from invidious discrimination)." *See Bloch*, 533 F.3d at 571 (Wood, J., dissenting). Nor do any of these decisions hold or even suggest, as the panel majority did in this case, that a plaintiff must allege a constructive eviction to state a claim under the Act. Such a heightened standard would uproot settled Seventh Circuit precedent which holds that a current tenant can bring a "hostile housing environment cause of action" against a landlord where sexual harassment "unreasonably interferes with use and enjoyment of the premises." *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996) (quoting *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993)); *see also Wilstein v. San Tropai Condo. Master Ass'n*, No. 98 C 6211, 1999 WL 262145, at *11 (N.D. Ill. Apr. 22, 1999) (recognizing hostile housing environment claim based on religion and disability). It also would conflict with the Supreme Court's holding in the employment context that harassment violates Title VII where it is "sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create[s]

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[6] For a full analysis and discussion of the Act's coverage of discriminatory municipal services, see Robert G. Schwemm, *Cox, Halprin and Discriminatory Municipal Services Cases Under the Fair Housing Act*, 41 Ind. L. Rev. 717 (2008).

an abusive work environment," regardless of whether the employee can show a constructive termination. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (quotations omitted).[7] Requiring a tenant or homeowner to first leave a discriminatory housing situation before filing suit also would place a severe and unwarranted burden on victims who, in many cases, may lack the resources to flee even a severely discriminatory housing situation. *See, e.g., Krueger*, 115 F.3d at 489-90 (single mother of two children receiving federal housing assistance remained in an apartment owned by harassing landlord because she "felt she had few alternatives); *Woods*, 884 F. Supp. at 1171 (single mothers residing at "residential facility for otherwise homeless families" with their children were sexually harassed by facility managers). In short, the FHA does not require victims of discrimination to tolerate unlawful practices so severe that tenants must sacrifice their housing to state a valid claim under the Act.

All courts in this Circuit, prior to *Halprin*, followed the Supreme Court's direction to interpret the Act "broadly," *Trafficante*, 409 U.S. at 209, and gave effect to Congress' sweeping goal of preventing discrimination on account of race, color, religion, sex, national origin, handicap, and familial status "in the purchase, rental, financing, and *occupancy* of housing throughout the United States." 114 Cong. Rec. 2270 (1968) (emphasis added). *Amici* urge this Court to uphold more than thirty-

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[7] This Court has "recognized that [the FHA] is the functional equivalent of Title VII, and so the provisions of these two statutes are given like construction and application." *Kyles v. J.K. Guardian Sec. Serv., Inc.*, 222 F.3d 289, 295 (7th Cir. 2000) (internal citations omitted); *see also DiCenso*, 96 F.3d at 1008 (relying on Title VII cases to interpret the FHA).

five years of precedent by reversing the trend to narrowly interpret the FHA started in *Halprin* and followed by the panel majority in this case, and thereby allow owners, tenants, and occupants of dwellings to once again remedy post-acquisition discrimination in this Circuit through the Act.

II. The Narrow Interpretation Of The FHA Relied Upon By The Panel Majority Permits Post-Acquisition Housing Discrimination To Go Unchecked By Federal Anti-Discrimination Law.

The practical effect of this Court's decision in *Halprin* and the panel majority's decision in this case has been immediate and severe both in this Circuit and in other jurisdictions where *Halprin* has been recognized as persuasive authority. The shortcomings of the narrow interpretation of the FHA relied upon by the panel majority are highlighted by the following incongruous results it has yielded:

- a landlord could not refuse to rent an apartment to an African American, but that same landlord could refuse to provide heat and water mid-tenancy because the tenant is African American, *see Farrar v. Eldibany*, No. 04 C 3371, 2004 WL 2392242, at *4 (N.D. Ill. Oct. 15, 2004) (relying upon *Halprin*, 208 F. Supp. 2d 896);

- neighbors could not prevent an African American woman from purchasing a home, but they could harass her on the basis of her race or color with impunity after she bought the house, *see King v. Metcalf 56 Homes Ass'n, Inc.*, No. 04-2192-JWL, 2004 WL 2538379, at *2 (D. Kan. Nov. 8, 2004) (citing *Halprin*, 208 F. Supp. 2d at 900-01); *see also Lawrence v. Courtyards at Deerwood Ass'n., Inc.*, 318 F. Supp. 2d 1133, 1143 (S.D. Fla. 2004) (citing *Halprin*, 208 F. Supp. 2d 896); and

- African American homeowners who had lived in their neighborhood for decades could not sue a local government to obtain water and sewer services or facilities that were being withheld on a discriminatory basis, but any individual who wished to move into that same neighborhood – and likely had no knowledge of the level of services or facilities that the local government actually provided – could bring such a claim. *See Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. March 17, 2008) (relying on *Halprin*'s progeny).

("Plaintiff alleges that defendants violated the [FHA] by denying her heat and hot water – a service associated with the maintenance of her apartment and therefore outside the scope of the statute."); *see also Reule v. Sherwood Valley I Council of Co-Owners, Inc.*, No. Civ. A. H-05-3197, 2005 WL 2669480, at *4 (S.D. Tex. Oct. 19, 2005) (dismissing homeowner's FHA claim against homeowners' association after noting that the Act "relates to discriminatory activities that prevent people from acquiring property" (citation omitted)).

Not only does such a narrow reading of the FHA leave many tenants and homeowners without a meaningful remedy to redress egregious discriminatory conduct, it runs the risk of granting local governments virtual immunity from claims that they failed to provide neighborhoods and communities essential government services on the basis of race or any other protected characteristic. As an example, in *Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. March 17, 2008), pending appeal as No. 08-11958-DD (11th Cir.), a district court entered summary judgment in favor of the City of Port Wentworth and against members of an African American community that, for decades, had not received water, sewer, and drainage services from the city. Rather than considering the merits of the lawsuit, the court reasoned that the FHA claim was barred under *Halprin*'s progeny because "the alleged discrimination in the provision of services is wholly *unrelated to the sale or rental of the subject properties, which many Plaintiffs have owned since before the City annexed the area.*" *Id.* at *12 (emphasis added). Since only current residents (as opposed to prospective residents) of a community

will ordinarily have the knowledge and motivation to challenge a local government's discriminatory provision of municipal services or facilities, the application of the narrow view of the FHA adopted by the panel majority in this case likely would have the practical effect of wiping out most, if not all, cases involving the discriminatory denial of services, no matter the severity of the discrimination at issue. *See* Schwemm, 41 Ind. L. R. at 794 (explaining why "§ 3604(b)'s guarantee of nondiscrimination in housing-related 'privileges' and 'services' – even if limited to those connected with the 'sale or rental of a dwelling' – should apply, as to 'rentals,' throughout a tenant's residency and, as to 'sales,' to privileges and services that are tied to homeownership").

In light of the anomalous results that the panel majority's restrictive view of the Act creates – whereby individuals are left without an essential remedy for egregious discriminatory intimidation and harassment, local governments are effectively immune from FHA lawsuits, and the practical value of the Act is limited at best – it is not surprising that at least two courts have refused to interpret the Act so narrowly. *See U.S. v. Koch*, 352 F. Supp. 2d 970, 973-79 (D. Neb. 2004) (criticizing the reasoning of *Halprin* and noting "that the court's analyses are questionable in two key respects: they counsel that a narrow interpretation ought to be given to the language of section 3604, and they depend greatly upon a narrow view of the FHA's legislative history"); *Richards v. Bono*, No. 5:04CV484, 2005 WL 1065141, at *3 (M.D. Fla. May 2, 2005) (deteriming that the reasoning of *Halprin*'s progeny "does not extend to cases of post-acquisition discrimination in a rental

context"). This Court likewise should, in deciding this case, reject the restrictive interpretation of the FHA espoused in *Halprin* and extended by the panel majority.

III. In The Experience Of *Amici*, Egregious Post-Acquisition Conduct Continues To Be A Pervasive Problem.

Amici have extensive experience litigating post-acquisition discrimination cases. (*See* Declarations on behalf of *Amici*, attached as Exhibits B through D; *see also* Declaration of John R. Petrusak on behalf of South Suburban Housing Center, attached as Exhibit E.) Each *amicus* regularly receives complaints alleging post-acquisition discrimination, including sexual harassment, racial threats and violence, and discriminatory practices by landlords. For example, more than 30% of the housing discrimination complaints that the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. ("CLC") received during the past two years involved claims for post-acquisition discrimination. (Ex. B at ¶ 5.)

This experience demonstrates that post-acquisition discrimination not only has been, but continues to be, a pervasive problem both in this Circuit and nationwide.[8] The post-acquisition cases *amici* recently have litigated reveal discriminatory

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[8] *Amici* have brought post-acquisition claims under the FHA for more than 35 years. *See, e.g., Trafficante*, 409 U.S. 205 (1972) (plaintiffs represented by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area); *Woods-Drake v. Lundy*, 667 F.2d 1198 (5th Cir. 1982) (plaintiffs represented by the Lawyers' Committee then located in Jackson, Mississippi); *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, No. CIV.A.96-2495RMU, 1997 WL 1877201 (D.D.C. Dec. 18, 1997) (plaintiffs represented by Washington Lawyers' Committee for Civil Rights and Urban Affairs); *Lane v. Cole*, 88 F. Supp. 2d 402 (E.D. Pa. 2000) (plaintiffs represented by Public Interest Law Center of Philadelphia); *Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845 (N.D. Ill. 2003) (plaintiffs represented by CLC); *Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. Mar. 17, 2008) (plaintiffs represented by the Lawyers' Committee).

conduct against tenants and homeowners that, if not covered by the Act, render the FHA a nullity in redressing some of society's most reprehensible conduct. For example, CLC is currently handling the following cases involving egregious post-acquisition discrimination:

- White neighbors of an African American homeowner, from 2002 until 2006: (i) routinely stalked and videotaped her; (ii) threatened her verbally and in writing with racial epithets, including "nigger" and "black bitch"; (iii) falsely reported her son to the police as a murder suspect; and (iv) placed tacks and nails around her automobile at both her home and work. (*Id.* at ¶ 6.d.)
- A white neighbor of a Puerto Rican man: (i) threatened to kill him and rape his wife; (ii) referred to him and his friends as "spic" and "pork chop"; and (iii) told him and his family to "move out and go back to their people." (*Id.* at ¶ 6.e.)
- A townhome association enacted a rule that essentially bans all children from playing anywhere outdoors and further prohibits any children under the age of eighteen from even appearing outside their homes without parental supervision. (*Id.* at ¶ 6.l.)

The Lawyers' Committee also is currently litigating a significant post-acquisition housing discrimination case, *Steele v. City of Port Wentworth*. (Ex. C at ¶ 6.a.) As discussed, *supra*, *Steele* was dismissed after a district court concluded, relying on *Halprin*'s progeny, that the FHA does not prohibit post-acquisition discrimination. *See* 2008 WL 717813, at *12. *Steele* is currently pending in the Eleventh Circuit Court of Appeals under case number 08-11958-DD. (Ex. C. at ¶ 6.a.)

Similarly, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area is counsel in *Committee Concerning Community Improvement v. City of Modesto*, No. 1:04cv6121, 2006 WL 3834171 (E.D. Ca. Dec. 29, 2006), where several Latino homeowners and renters sued the City of Modesto and other defendants

under the FHA for discriminatory provision of services and facilities on the basis of race. The court dismissed the FHA claim on the basis that the services at issue were not provided in connection with the acquisition of a dwelling and, thus, did not state a claim under the FHA. *See id.* at *1. The court also prevented plaintiffs from adding a new FHA claim in their Third Amended Complaint because "Plaintiffs already own their homes" and, thus, any alleged housing discrimination could not have resulted "from a denial of housing." *Id.* at *8. This case is currently pending in the Ninth Circuit Court of Appeals under case numbers 07-16715 and 07-17407.

As *amici* have seen firsthand, post-acquisition discrimination continues to be a disease in America – killing dreams, ruining lives, and shattering communities. But the Fair Housing Act can and should serve as an antidote to this problem, as it provided a remedy to tenants and homeowners for decades before this Court suggested in *Halprin*, and affirmed in the panel majority's decision, that the FHA applies only to *access* to housing. Fortunately, the Court now has the opportunity to clarify its position, reaffirm the principles set forth in *Trafficante*, 409 U.S. at 209, 212, and explain that an individual's right to fair housing does not evaporate when the moving van pulls away from the curb. Should the Court fail to do so, the ironic result will be that families in this Circuit will have less protection from discriminatory treatment in their homes in 2009 than at any time since the passage of the Fair Housing Act – an era when families like the Youngers in *A Raisin in the Sun* were routinely threatened and harassed simply because they wanted to live and raise their children in an integrated neighborhood.

CONCLUSION

For the foregoing reasons, the decision of the district court should be reversed and remanded for further proceedings.

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Respectfully submitted,

s/ Jonathan K. Baum
One of the attorneys for *amici*

Jonathan K. Baum
David F. Benson
Gail H. Kim
Aaron M. Chandler
KATTEN MUCHIN ROSENMAN LLP
525 West Monroe Street
Chicago, Illinois 60661-3693
Phone: (312) 902-5200
Fax: (312) 577-8672

Elizabeth Shuman-Moore
Matthew Ginsburg
CHICAGO LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW, INC.
100 N. LaSalle St., Suite 600
Chicago, IL 60602
Phone: (312) 630-9744
Fax: (312) 630-1127

Joseph D. Rich
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1401 New York Ave., NW, Suite 400
Washington, DC 20005
Phone: (202) 662-8600
Fax: (202) 783-0857

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation imposed by Fed. R. App. P. 32(a)(7)(B) and 29(d). This brief was prepared using Microsoft Word 2003 and contains 5,281 words of proportionally spaced text. The type face is Century Schoolbook, 12-point font.

s/ David F. Benson

CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 31(e)

I hereby certify that the digital version of this brief was generated by printing to PDF format from the original word processing file and not by scanning paper documents. Counsel did not have access to the original word processing files for Exhibits B-E to the brief. Therefore a digital version of Exhibits B-E are not available.

s/ David F. Benson

CERTIFICATE OF SERVICE

I, David F. Benson, an attorney, hereby certify that on February 27, 2009, I caused two true and correct copies of the foregoing BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC., LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION, INC., PUBLIC INTEREST LAW CENTER OF PHILADELPHIA, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, THE MISSISSIPPI CENTER FOR JUSTICE, NATIONAL FAIR HOUSING ALLIANCE, AND CHICAGO FAIR HOUSING ALLIANCE AS AMICI CURIAE SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL AND REMAND ON FAIR HOUSING ACT CLAIMS to be served via the United States postal service, first class mail, postage prepaid, upon the following:

Gary S. Feinerman
Sidley Austin
One S. Dearborn Street
Chicago, IL 60603
(Counsel for Plaintiffs-Appellants)

Grace Chung Becker
Mark L. Gross
April J. Anderson
Department of Justice
Civil Rights Division
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(Counsel for the United States)

David C. Hartwell
Penland & Hartwell
Suite 1515, One N. LaSalle Street
Chicago, IL 60602
(Counsel for Defendants-Appellees)

Stanley J. Adelman
DLA Piper US, LLP
Suite 1800, 203 N. LaSalle Street
Chicago, IL 60601-1293
(Counsel for Decalogue Society of Lawyers)

s/ David F. Benson