No. 10-1032

IN THE

Supreme Court of the United States

STEVE MAGNER, ET AL.,

Petitioners,

—v.—

THOMAS GALLAGHER, ET AL.,

Respondents.

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

BRIEF *AMICI CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION, THE NATIONAL COMMUNITY REINVESTMENT COALITION, FUTURES WITHOUT VIOLENCE, AND THE NATIONAL NETWORK TO END DOMESTIC VIOLENCE, IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

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. Since it was founded in 1920, the ACLU has appeared before this Court in numerous cases, both as direct counsel and *amicus curiae*. The ACLU's Racial Justice Program engages in a nationwide program of litigation and advocacy to enforce and protect the constitutional and civil rights of people who have been historically denied their rights on the basis of race. Through its Women's Rights Project, the ACLU has long been a leader in legal advocacy aimed at ensuring women's full equality. The ACLU has taken a primary role at the local, state, and national levels 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.

Futures Without Violence, formerly Family Violence Prevention Fund, is a national nonprofit organization that has worked for over thirty years to prevent and end violence against women and children around the world. Futures Without

[1] Pursuant to Rule 37.6, counsel for *amici* state that no counsel for a party authored this brief in whole or in part, and no one other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. The parties have filed blanket consent letters with the Clerk of the Court pursuant to Rule 37.3.

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

The National Community Reinvestment Coalition (NCRC) is a nonprofit public interest organization founded in 1990. NCRC, both directly and through its network of six hundred community-based member organizations, works to increase access to basic banking services including credit and savings, and to create and sustain affordable housing, job development and vibrant communities for America's working families. NCRC, through its National Neighbors civil rights program, seeks to advance fair lending and open housing practices nationwide and actively assists in efforts to affirmatively further fair housing and eliminate discrimination that is detrimental to the economic

growth of low to moderate income and traditionally underserved communities.

The National Network to End Domestic Violence (NNEDV) is a not-for-profit organization incorporated in the District of Columbia in 1995. A network of state domestic violence coalitions, representing over 2,000 member programs nationally, NNEDV serves as the voice of domestic violence victims and their children and those who provide direct services to them. NNEDV works to make domestic violence a national priority, to change the way communities respond to domestic violence, and to strengthen efforts against intimate partner violence at every level of government. Its member programs consistently report that a lack of housing options is one of the most pressing problems faced by survivors and that housing discrimination against victims contributes to their inability to escape abusive situations. For that reason, NNEDV strongly advocates to improve housing opportunities for victims and to ensure that the law protects them against discrimination.

SUMMARY OF ARGUMENT

The Fair Housing Act (FHA), interpreted for nearly forty years by federal appellate courts to authorize disparate impact claims, has proven transformative in combating housing discrimination. This statutory scheme, including the disparate impact standard, is a vital tool for remedying and deterring discrimination. Discriminatory barriers to equal housing opportunity remain deeply entrenched, however, even as they take on new forms. Contemporary forms of discrimination – such

as race discrimination in subprime mortgage lending and sex discrimination against victims of domestic and sexual violence – offend the foundational anti-discrimination principle enunciated by Congress with the FHA's original enactment and reaffirmed when the law was amended in 1988. For the same reasons disparate impact analysis has been a critical weapon in the statute's anti-discrimination arsenal for over forty years, it remains indispensable in making meaningful Congress' promise to eradicate discrimination in housing.

One current and pressing context in which the disparate impact standard remains a critical tool is discrimination in mortgage lending, particularly subprime lending. 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, in which minority communities in many instances 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 shown that these disparities appear even when holding income and creditworthiness constant – in other words, minority borrowers received riskier loan products than similarly situated whites, leaving minority

communities with significantly higher rates of foreclosure.

Disparate impact analysis provides an indispensable tool for remedying the widespread discrimination that defined the subprime lending boom. Courts considering disparate impact claims examine aggregate data collected by lenders, allowing them to uncover disparities and determine whether or not those disparities can be explained by factors legitimately linked to creditworthiness. Indeed, the mortgage lending context is particularly well-suited for disparate impact analysis: Lenders collect extensive financial data from borrowers, and legitimate lending decisions reflect algorithmic analysis of objective financial information, so disparities that persist when controlling for legitimate factors demonstrate unlawful discrimination. For this reason, disparate impact analysis is uniquely powerful as a means of smoking out illegitimate discrimination that would otherwise remain unredressed.

Disparate impact also remains a critical tool in addressing housing discrimination against women who have been victims of domestic and sexual violence. Domestic and sexual violence affects women and girls at vastly disproportionate rates. It is also a principal cause of homelessness among women and their children. Yet across the country, landlords employ policies that operate to evict survivors of violence, not because of any wrongdoing they have committed, but on the basis of crimes committed against them, even after the perpetrator has been arrested or left the household. Zero tolerance practices that result in evictions of all

members of a household in which any person has committed a crime, as applied to abuse victims, have a perverse effect: survivors of abuse lose their home merely by virtue of having suffered earlier acts of violence. In addition to being transparently unfair, such policies undercut law enforcement by inhibiting victims of domestic and sexual violence from reporting crimes and by trapping them in violent situations.

Without disparate impact analysis, however, women denied housing because of violence directed against them would lack a critical means of legal redress, as other laws do not adequately protect them. Zero tolerance policies are facially neutral. Yet, because the overwhelming majority of survivors are women, there will rarely be similarly situated men subject to eviction by virtue of suffering domestic abuse. Disparate impact analysis is therefore uniquely capable of reaching the discriminatory, and devastating, effects of these policies. When a landlord is unable to justify such a policy based on legitimate business or safety grounds, the intensely disproportionate effect on women makes challenges to such policies appropriate under the FHA.

Amici point to these examples as instructive, and urgent, illustrations of the continuing need for disparate impact analysis under the FHA. While there are many other contexts that also highlight the importance of combating discrimination using the disparate impact standard, the argument presented here aims to emphasize two areas of contemporary salience that demonstrate the drastic consequences

that would follow a ruling that disparate impact analysis is not cognizable under the FHA.

ARGUMENT

I. DISPARATE IMPACT IS A VITAL TOOL FOR REMEDYING THE DISCRIMINATORY LENDING PRACTICES THAT FUELED THE SUBPRIME LENDING BUBBLE AND CONTRIBUTED TO THE CURRENT FORECLOSURE CRISIS

A. Discriminatory Subprime Lending Precipitated the Foreclosure Crisis

1. *Roots of Subprime Lending*

Over the last two decades, many subprime lenders engaged in predatory practices, charging excessive fees, imposing overly-risky terms, and frequently layering multiple risks in a single transaction. The impact of these practices has fallen disproportionately on minority borrowers. Subprime lenders marketing to minority communities capitalized on the absence of conventional lending institutions resulting from a history of housing discrimination. *See, e.g.*, U.S. DEP'T OF HOUS. & URBAN DEV. & U.S. DEP'T OF THE TREASURY, CURBING PREDATORY HOME MORTGAGE LENDING 18, 47-49 (2000) [hereinafter CURBING PREDATORY HOME MORTGAGE LENDING]; Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 630-31 (2010).

The historical roots of contemporary disparities in access to credit can be traced to the 1930s, when the federal government developed a

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. *See* ALYS COHEN, CREDIT DISCRIMINATION (5th ed. 2009); Douglas S. Massey, *Origins of Economic Disparities: The Historical Role of Housing Segregation*, *in* SEGREGATION: THE RISING COST FOR AMERICANS 40, 69-73 (James H. Carr & Nandinee K. Kutty, eds., 2008). Loans were virtually never made in these "redlined" communities. Massey, *Origins of Economic Disparities, supra*, at 69. Federal courts have long recognized that the practice of redlining – i.e., refusing to extend equal credit opportunities based on the racial composition of neighborhoods – violates the Fair Housing Act. *See, e.g.*, *Nationwide Mutual Ins. Co. v. Cisneros*, 52 F.3d 1351, 1359-60 (6th Cir. 1995) (holding that HUD reasonably interpreted the FHA to prohibit insurance redlining); *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489, 493 (S.D. Ohio 1976) (holding that the FHA prohibits redlining by loan companies).

Despite the illegality of redlining, credit opportunities remained scarce in African American and Hispanic communities throughout the 1970s and 80s. *See* Kathleen C. Engel & Patricia A. McCoy, *From Credit Denial to Predatory Lending: The Challenge of Sustaining Minority Homeownership*, *in* SEGREGATION: THE RISING COSTS FOR AMERICANS, *supra*, at 81, 85. A series of Pulitzer Prize-winning newspaper articles examining lending practices in Atlanta illustrates the persistence of neighborhood-based racial discrimination during that period. The investigation found that "[r]ace – not home value or household income – consistently determine[d] the

lending patterns of metro Atlanta's largest financial institutions," and that "[a]mong stable neighborhoods of the same income, white neighborhoods always received the most bank loans per 1,000 single family homes," while black neighborhoods "always received the fewest." Bill Dedman, *Atlanta Blacks Losing in Home Loans Scramble*, ATLANTA JOURNAL-CONSTITUTION, May 1, 1988, at A1. Similarly, a study by the Federal Reserve Bank of Boston found that, after controlling for creditworthiness, blacks and Hispanics were more likely than whites to be turned down for credit. Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data*, 86 AMER. ECON. REV. 25, 26 (1996).

Redlining, and the disparities in access to credit it created, set the stage for new forms of discriminatory lending arising in the 1990s and cresting in the years leading up to the 2008 financial crisis. As the 1990s progressed, the advent of subprime lending and mortgage securitization created the tools and incentives that led subprime specialists to focus on communities previously denied access to conventional credit. Subprime products "originally were extended to customers primarily as a temporary credit accommodation in anticipation of early sale of the property or in expectation of future earnings growth." Statement on Subprime Mortgage Lending, 72 FED. REG. 37569-01 (Dep't of the Treas. et al. June 28, 2007). However, unscrupulous lenders also sold these high-cost loans to people who qualified for prime loans and to credit impaired borrowers who could not afford the loans. *See, e.g.*, CURBING PREDATORY HOME MORTGAGE LENDING, *supra*, 2; IRA GOLDSTEIN WITH DAN UREVICK-ACKELSBERG, THE REINVESTMENT FUND, SUBPRIME

LENDING, MORTGAGE FORECLOSURES AND RACE: HOW FAR HAVE WE COME AND HOW FAR HAVE WE TO GO? 10 (2008). Indeed, an analysis conducted for the *Wall Street Journal* found that, in 2005, 55 percent of subprime borrowers had sufficiently high credit scores to qualify for prime loans. Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, WALL ST. J., Dec. 3, 2007, at A1.

Lenders intensified these unscrupulous practices in response to explosive demand from financial firms that bundled subprime mortgages into securities products. *See, e.g.*, KATHLEEN C. ENGEL & PATRICIA A. MCCOY, THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS 56-58 (2011). In contrast to traditional lending – where banks held onto mortgages, bearing the risk and reward of payment obligations for the life of the loan – securitization allowed lenders to quickly dispose of loans, selling them on to investment banks (which, in turn, sold investment interests in large pools of loans). *Id.* at 40-41; *see also* William Apgar & Allegra Calder, *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending*, *in* THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 101, 104 (Xavier De Souza Briggs, ed., 2005). This process allowed lenders to rapidly replenish their funds, enabling a cycle of origination, sale, and securitization. Because these loans could be quickly sold, and because the secondary market incentivized origination of loans with the riskiest terms over prime loans, lenders' focus shifted from originating quality loans to maximizing volume, especially for risky loans that generated the largest profits. ENGEL & MCCOY, THE

SUBPRIME VIRUS, *supra*, at 28-29, 32-33. "Rather than simply search for the best loan product for the customer, the presence of yield spread premiums[2] or a differential compensation system" created incentives to "'push market' particular products to the extent that the market [would] bear." REN S. ESSENE & WILLIAM APGAR, JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., UNDERSTANDING MORTGAGE MARKET BEHAVIOR: CREATING GOOD MORTGAGE OPTIONS FOR ALL AMERICANS 8 (2007) (citation omitted); *see also* Howell E. Jackson & Laurie Burlingame, *Kickbacks or Compensation: The Case of Yield Spread Premiums*, 12 STAN. J. L. BUS. & FIN. 289 (2007). For these reasons, the "invention of securitized mortgages . . . changed the calculus of mortgage lending and made minority households very desirable as clients."[3] Rugh & Massey, *supra,* at 631.

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[2] "Yield spread premiums are payments made by lending institutions to mortgage brokers based on the rate of interest charged on a borrower's loan. The higher the interest rate, the larger the yield spread premium payment." Howell E. Jackson & Laurie Burlingame, *Kickbacks or Compensation: The Case of Yield Spread Premiums*, 12 STAN. J. L. BUS. & FIN.. 289, 289 (2007).

[3] Certain *amici* supporting petitioner misleadingly assert that it is somehow inconsistent with responsible underwriting practices to avoid disparate impact. *See* Br. for Indep. Cmty. Bankers of America et al. as *Amici Curiae* in Supp. of Pet'r, 29-32; Br. for the Pacific Legal Foundation et al., as *Amici Curiae* in Supp. of Pet'r, 32. To the contrary, it was the subprime industry's abandonment of sound underwriting that resulted in a disparate impact on minority borrowers. By paying a premium for the highest cost (and highest risk) loans, securitization encouraged lending practices that disregarded traditional underwriting standards. Indeed, with the

2. *Subprime Lenders Engaged in Widespread Race Discrimination*

The subprime lending boom and race were inextricably linked from the outset. A joint report from the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of the Treasury found that as of 2000, "borrowers in black neighborhoods [were] five times as likely to refinance in the subprime market than borrowers in white neighborhoods," even when controlling for income. CURBING PREDATORY HOME MORTGAGE LENDING, *supra*, 47-48. Moreover, "[b]orrowers in *upper-income* black neighborhoods were twice as likely as homeowners in *low-income* white neighborhoods to refinance with a subprime loan." *Id.* at 48. Similarly, research from the Harvard Joint Center

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proliferation of loan products that required no information on borrower income or assets, subprime lenders eviscerated sound underwriting. *See, e.g.*, ENGEL & MCCOY, THE SUBPRIME VIRUS, *supra*, at 33, 35-39. (describing lenders using slogans like "a thin file is a good file," and "Did You Know NovaStar Offers to Completely Ignore Consumer Credit!"); *Testimony Before the S. Comm. on Banking, Hous., and Urban Affairs*, 110th Cong. 10-11 (Mar. 4, 2008) (statement of John C. Dugan, Comptroller of the Currency) (recounting how the pressures from securities market led to loosened underwriting standards); Christopher L. Peterson, *Predatory Structured Finance*, 28 CARDOZO L. REV. 2185, 2214-15 (2007) (observing that in "the rush to originate new loans" to be securitized "some lenders have even disregarded their *own* underwriting guidelines"). Minority borrowers absorbed the consequences of lenders' shoddy underwriting because they were targeted for a disproportionate share of the high-cost, risk-layered loans. Thus, the deterioration of underwriting standards in the lead-up to the foreclosure crisis was a tactic of discriminatory lending, not a product of anti-discrimination law.

for Housing Studies shows that, in 1998, subprime lenders originated 14.1 percent of home purchase loans and 42.2 percent of refinance loans in predominately minority neighborhoods, compared to 3.8 percent of new home purchase loans and 8.8 percent of refinance loans in predominately white neighborhoods. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., STATE OF THE NATION'S HOUSING 2000, at Table A-11 (June 10, 2000); *see also* STEPHEN L. ROSS & JOHN YINGER, THE COLOR OF CREDIT: MORTGAGE DISCRIMINATION, RESEARCH METHODOLOGY, AND FAIR-LENDING ENFORCEMENT 24-25 (2002) (summarizing research on minority access to credit). In effect, a "dual mortgage market" took root, in which different communities were offered "a different mix of products and by different types of lenders" and subprime lenders "disproportionately target[ed] minority, especially African American, borrowers and communities, resulting in a noticeable lack of prime loans among even the highest-income minority borrowers." Apgar & Calder, *supra,* at 102.

Later studies uncovered stark disparities as subprime lending expanded. One study found that, within the subprime market, "borrowers of color . . . were more than 30 percent more likely to receive a higher-rate loan than white borrowers, even after accounting for differences in risk." DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, UNFAIR LENDING: THE EFFECT OF RACE AND ETHNICITY ON THE PRICE OF SUBPRIME MORTGAGES 3 (2006). Another study found that African Americans and Latinos were much more likely to receive subprime loans, and that "the disparities were especially pronounced for borrowers with higher credit scores." DEBBIE GRUENSTEIN BOCIAN ET AL.,

CTR. FOR RESPONSIBLE LENDING, LOST GROUND, 2011: DISPARITIES IN MORTGAGE LENDING AND FORECLOSURES 5 (2011). That study also found "evidence that higher-rate loans were often inappropriately targeted: as many as 61 percent of borrowers who received subprime loans had credit scores that would have enabled them to qualify for a prime loan." *Id.* at 17 (citation omitted). These practices also meant that "borrowers in minority groups were much more likely to receive loans with product features associated with higher rates of foreclosure," i.e., loans with higher interests rates or with risky terms, like ballooning interest rates. *Id.* at 21. These high 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. "African Americans and Latinos are, respectively, 47% and 45% more likely to be facing foreclosure than whites." DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, FORECLOSURE BY RACE AND ETHNICITY 10 (2010). These disparities persist even within income categories. *Id.* at 9-10. The Center for Responsible Lending predicts that "the spillover wealth lost to African-American and Latino communities between 2009 and 2012 as a result of depreciated property values alone will be $194 billion and $177 billion, respectively." *Id.* at 11; *see also* JAMES H. CARR ET AL., NAT'L COMMUNITY REINVESTMENT COAL., THE FORECLOSURE CRISIS AND ITS IMPACT ON COMMUNITIES OF COLOR: RESEARCH AND SOLUTIONS 31 (Sept. 2011) (discussing the racial wealth gap).

Examined in the aggregate, the connection between race, subprime lending, and foreclosures is starkly apparent. Researchers at Princeton University, for example, studied the statistical links between neighborhood racial composition, subprime lending, and foreclosure rates, and found "strong empirical support for the hypothesis that residential segregation constitutes an important contributing cause of the current foreclosure crisis, that segregation's effect is independent of other economic causes of the crisis, and that segregation's explanatory power exceeds that of other factors hitherto identified as key causes (e.g., overbuilding, excessive subprime lending, housing price inflation, and lenders' failure to adequately evaluate borrowers' creditworthiness)." Rugh & Massey, *supra*, at 644. "Simply put, the greater the degree of Hispanic and especially black segregation a metropolitan area exhibits, the higher the number and rate of foreclosures it experiences." *Id.*

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

Disparate impact analysis provides a crucial 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.[4] Yet lenders collect highly detailed

[4] This was particularly true for subprime borrowers in the years before the housing market collapse. For prime borrowers, 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,

data relevant to the creditworthiness of individual loan applicants. Disparate impact doctrine sets out a method for examining that data on a large scale and determining whether racial disparities exist that cannot be accounted for by objective criteria defining credit risk.

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

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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 application fee, then raise[d] the price again at closing, often with no advance notice." *Id.* at 124. "[P]rices in the subprime market [were] only partly based on differences in borrowers' risk. Other factors, including mortgage broker compensation, discrimination, and rent-seeking, [could] and [did] push up subprime prices." *Id.* at 127.

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 disparate impact test detects discrimination using statistical analysis to determine whether the availability or terms of credit vary according to race in a manner that cannot be justified by credit risk.[5] Typically,

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[5] *Amici* representing the financial services industry seek to obscure this point by claiming that "[t]he threat of disparate-impact liability arises when the end results of a lender's operations have different demographic results, despite the uniform application of sound, neutral financial standards." Br. for Indep. Cmty. Bankers of America et al. as *Amici Curiae* in Supp. of Pet'r, 23. But if the neutral financial standards are truly sound and necessary to achieve the lenders' goal of originating safe loans, lenders will prevail. Disparate impact analysis allows courts to smoke out discriminatory lending practices where disparities persist even when controlling for factors actually linked to objective financial standards.

Indeed, in that same brief, the lending industry seeks to enlist the support of a publication issued by the National Community Reinvestment Coalition, one of the *amici* on this brief. *See id*. at 24. That report is cited in support of the proposition that the use of credit scores in assessing an applicant's potential credit risk is appropriate even though lower credit scores may be more prevalent within certain racial/ethnic groups. This misleading citation distorts the point of the NCRC report. The sentence following the quote used by the lending industry states that "the majority of the country's largest FHA [Federal Housing Administration] lenders are

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, *Evidence of Discrimination in Consumer Markets*, 12 J. OF ECON. PERSP. 23, 27 (1998). Regression analysis of aggregate data allows a court to grasp the legal import of pricing disparities between white and minority borrowers where no difference in credit risk exists, a situation that one district court referred to as "a classic case of disparate impact," *Miller v. Countrywide Bank, N.A.*, 571 F.Supp. 2d 251, 254 (D. Mass. 2008) ("If the facts alleged in the complaint are to be believed – which they must at this point in the litigation – the net effect of Countrywide's pricing policy is a classic case of disparate impact: White homeowners with identical or similar credit scores pay different rates and charges than African

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refusing to lend under the FHA loan program to consumers with credit scores between 580 and 640, despite the fact that FHA policy is for approved-lenders to extend credit to consumers with credit scores at 580 and above." NAT'L CMTY. REINVESTMENT COAL., WORKING-CLASS FAMILIES ARBITRARILY BLOCKED FROM ACCESSING CREDIT: NCRC'S FAIR LENDING INVESTIGATION OF CREDIT SCORE RESTRICTIONS BY FEDERAL HOUSING ADMINISTRATION-APPROVED LENDERS 15 (2010). This, the report argues, has a chilling effect on home ownership among minority communities, and may constitute discrimination in violation of the Fair Housing Act and other statutes. *Id*. at 22.

American homeowners . . . .").[6] Indeed, the federal agencies charged with enforcing the Fair Housing Act and other fair lending laws have recognized the appropriateness of statistical analysis in detecting mortgage lending discrimination. A 1994 interagency Policy Statement on Discrimination in Lending explains that the "existence of disparate impact" is frequently established "through a quantitative or statistical analysis" that may focus on a challenged practice's "effect on an applicant

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[6] *Amici* are not aware of any court that has yet adjudicated the merits in a case alleging unjustified statistical disparities in subprime lending. Several cases pressing such allegations are currently pending or have closed prior to adjudication on the merits. *See City of Memphis v. Wells Fargo Bank, N.A.*, No. 09-2857, 2011 WL 1706756 (W.D. Tenn. May 4, 2011) (order denying defendants' motion to dismiss); *In re Wells Fargo Mortg. Lending Practices Litig.*, No. 3:08-md-01930 (N.D. Cal. Apr. 10, 2008) (pending); *Mayor of Baltimore v. Wells Fargo Bank, N.A.*, No. 1:08-CV-00062, 2011 WL 1557759 (D. Md. Apr. 22, 2011) (order denying defendants' motion to dismiss); Final Approval Order, *Ramirez v. Greenpoint Mortg. Funding, Inc.*, No. 3:08-cv-00369 (N.D. Cal. Apr. 12, 2011); *Guerra v. GMAC, LLC*, No. 2:08-cv-01297, 2009 WL 449153 (E.D. Pa. Feb. 20, 2009) (memorandum and order denying defendants' motion to dismiss); *Barrett v. H&R Block, Inc.*, 652 F.Supp. 2d 104 (D. Mass. 2009) (order granting defendant parent company's motion to dismiss for lack of personal jurisdiction and denying subsidiaries' motion to dismiss); Order Granting Plaintiffs' Request to Dismiss and Denying Defendants Motion to Dismiss, *NAACP v. Ameriquest Mortg. Co.*, No. 8:07-cv-00794 (C.D. Cal. Oct. 21, 2010); Order Granting Voluntary Dismissal, *Taylor v. Accredited Home Lenders, Inc.*, No. 07-cv-01732, (S.D. Cal. Oct. 29, 2010); *Garcia v. Countrywide Fin. Corp.,* No. 5:07-cv-1161, 2008 WL 7842104 (C.D. Cal. Jan. 17, 2008) (denying defendants' motion to dismiss as to plaintiffs' disparate impact claims); Memorandum and Order, *Hargraves v. Capital City Mortg. Corp.*, No. 1:98-cv-01021 (D.D.C. Mar. 27, 2002) (dismissing in light of settlement).

pool." Policy Statement on Discrimination in Lending, 59 FED. REG. 18266-01 (Dep't of Hous. & Urban Dev. et al. Apr. 15, 1994).

Indeed, disparate impact analysis is particularly well suited for the mortgage lending context. Mortgage lending is a business in which it is possible to "reliably control for any creditworthiness variables" because "[l]oan pricing decisions are made en masse by automated systems of regularly updated rate sheets" and are "based on the formulaic application of objective, statistically-validated criteria." Class Certification Report of Howell E. Jackson at ¶ 36, *In re Wells Fargo Mort. Lending Practices Litig.*, No. 08-CV-01930 (N.D. Cal. Sept. 1, 2010). In other words, allegations of mortgage discrimination can be tested in a highly sophisticated manner: Raw disparities in loan terms can be rigorously examined to determine whether they reflect objective factors related to creditworthiness – e.g., credit score, the ratio of a loan to a home's value, an applicant's total debt obligations, etc. If disparities remain after controlling for such factors, those disparities reveal discrimination against minority borrowers.

This mode of analysis is effective in uncovering illegitimate disparities. One recent HUD study focused specifically on whether racial disparities in rates of subprime lending could be explained by factors related to creditworthiness, concluding that "the inclusion of credit score measures did not explain away the troubling finding that even after years of public policy efforts, race and ethnicity remain important determinants of the allocation of mortgage credit in both home purchase and home

refinance markets." WILLIAM APGAR ET AL., U.S. DEP'T OF HOUS. & URBAN DEV., RISK OR RACE: AN ASSESSMENT OF SUBPRIME LENDING PATTERNS IN NINE METROPOLITAN AREAS 45 (2009); *see also* Complaint at ¶ 3, *United States v. Countrywide Fin. Corp.,* No. CV11 10540 (C.D. Cal. Dec. 21, 2011) ("As a result of Countrywide's policies and practices, more than 200,000 Hispanic and African-American borrowers paid Countrywide higher loan fees and costs for their home mortgages than non-Hispanic White borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their 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" and concluding that those studies "confirm[] that race remains a factor").

Expert witness analysis of aggregate pools of data in several pending lawsuits demonstrates that, when subject to regression analyses designed to account for legitimate markers of creditworthiness, the practices of many leading subprime lenders reveal significant unjustified racial disparities. *E.g.*, Class Certification Report of Howell E. Jackson at ¶ 53, *In re Wells Fargo Mort. Lending Practices Litig.*, No. 08-CV-01930 (N.D. Cal. Sept. 1, 2010) ("even when a comprehensive list of risk-based characteristics are controlled for, African Americans' APRs are 10.1 basis points greater than whites' APRs, and Hispanics' APRs are 6.4 basis points greater than whites' APRs"); Class Certification Report of Ian Ayres at ¶ 69, *Barrett v. Option One Mortg., Corp.*, No. 08-10157 (D. Mass. Sept. 24, 2010) ("even when a comprehensive list of risk-based

characteristics are controlled for, African Americans' APRs are 8.6 basis points greater than whites' APRs"); Class Certification Report of Howell E. Jackson at ¶ 52, *Ramirez v. Greenpoint Mortg. Funding, Inc.*, No. 3:08-cv-00369 (N.D. Cal. Apr. 1, 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").

The cascading effects of the foreclosure crisis touch every community in America. African American and Latino communities singled out for abusive lending practices, however, have been especially hard hit and have an urgent need for effective means of enforcing anti-discrimination laws, both to address past abuses and deter future ones. Econometric analysis and recent litigation demonstrate that, in the mortgage lending context, disparities in lending outcomes can be rigorously analyzed to control for legitimate factors related to a lender's business necessity. It is hard to fathom any argument in favor of insulating lenders from liability when they systematically provide credit on less favorable terms because of race. Disparate impact analysis is the principal tool for policing these abuses.

II. DISPARATE IMPACT ANALYSIS IS A CRUCIAL TOOL FOR STOPPING 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 estimating that 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 21-22 (Dec. 2011) (reporting that nearly a fifth of cities surveyed in 2011 cited domestic violence as one of the three main causes of family homelessness). Discriminatory 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 impact 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: "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.* She 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. HUD noted that there were no similarly situated male tenants. *Id.* at 3. Accordingly, the case could best be understood through the lens of disparate impact. After reviewing the available statistics on intimate partner violence and gender and the arguments presented by the management company, HUD concluded that discrimination had occurred: "The evidence taken as a whole establishes that a policy of evicting innocent

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

victims of domestic violence because of that violence has a disproportionate adverse impact on women and is not supported by a valid business or health or safety reason." *Id.* at 6. The Department of Justice subsequently filed suit, leading to a consent decree that mandated the adoption of a housing policy prohibiting discrimination against victims of violence. Consent Decree, *United States ex rel. Alvera v. The C.B.M. Group, Inc.*, No. 01-857-PA (D. Or. Nov. 5, 2001).

Since *Alvera*, women similarly facing eviction after a domestic violence incident and the abuser's arrest or removal from the home have invoked disparate impact analysis under the FHA. For example, in 2003, Quinn Bouley and her two children faced eviction from their St. Albans, Vermont home. Her husband had physically attacked her, and Ms. Bouley called the police and fled. *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677 (D. Vt. 2005). St. Albans police arrested her husband, who pled guilty to several criminal charges related to the incident, and Ms. Bouley obtained a restraining order. *Id.* Three days later, her landlord gave Ms. Bouley a 30 day notice to vacate, quoting a 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 eviction, stating that she had violated the portion of her lease that held her liable for any damage resulting from lack of proper supervision of her guests. *Id.* at ¶¶ 22, 32. As a result, Ms. Lewis was forced to remain in a shelter with her daughters, although it was safe to return to their home given her ex-partner's incarceration. Santiago Esparza, *Landlord, Victim Settle*, DETROIT NEWS, Feb. 27, 2008. She subsequently filed a federal lawsuit that included disparate impact claims. Ultimately, she obtained a settlement that 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").

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 challenge facially neutral policies that are applied overwhelmingly against women. Without disparate impact analysis, even the most extreme disparities in the effect of zero tolerance policies would likely lie beyond the reach of anti-discrimination law, and survivors of domestic and sexual violence deprived of housing would lack legal redress.

This reasoning was embraced by HUD, the agency with primary authority for implementing the FHA, in recently-issued guidance 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 & HUMAN SERVICES, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES (2003); CALLIE MARIE RENNISON, U.S. DEP'T OF JUSTICE, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001 (2003)).[8] Because "statistics

[8] More recent statistics confirm that although prevalence of domestic violence against men has increased, women experience extremely high, and disproportionate, rates of domestic and sexual violence. U.S. DEP'T OF HEALTH & HUMAN SERVICES, 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 have been raped). Intimate partner violence, rape, and stalking are even more prevalent among African American women, American Indian women, and multiracial women. *Id.* at 20, 31.

While the HUD Memo focused on domestic violence, studies document the devastating impact of both domestic and sexual violence on women. The most recent Department of Justice study examining violent crime and gender found that women were subjected to 85 percent of intimate partner violence and that women made up 70 percent of all domestic violence homicide victims in 2007, a percentage that has not changed significantly over time. SHANNAN CATALANO ET AL., U.S. DEP'T OF JUSTICE, FEMALE VICTIMS OF VIOLENCE 1, 3 (revised Oct. 2009). Likewise, women are far more likely to be

show that discrimination against victims of domestic 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. According to the guidance: "Disparate impact cases often arise in the context of 'zero tolerance' policies, under which the entire household is evicted for the criminal activity of one household member. . . . [A]s the overwhelming majority of domestic violence victims, women are often evicted as a result of the violence of their abusers."[9] *Id.* at 5.

Other laws do not provide comprehensive protection against housing discrimination. The federal Violence Against Women Act, which contains explicit housing protections for victims of domestic violence, dating violence, and stalking, applies to only a few federally-funded housing programs and does not provide victims with an explicit administrative or judicial remedy. 42 U.S.C. §§ 1437d, 1437f; HUD MEMO, *supra*, at 4. And only a

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victimized by rape, sexual assault, and stalking, whether or not they know the perpetrator. JENNIFER L. TRUMAN, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION, 2010, at 9 (2011) (finding that women experienced over 169,000 rapes and sexual assaults, compared to approximately 15,000 experienced by men); KATRINA BAUM ET AL., U.S. DEP'T OF JUSTICE, STALKING VICTIMIZATION IN THE UNITED STATES 3 (2009) [hereinafter STALKING VICTIMIZATION] (finding that women are stalked at double the rate of men).

[9] In the memo, HUD stated that the application of zero tolerance policies to domestic violence victims, while not per se unlawful, may be illegal and is subject to a disparate impact analysis. HUD MEMO, *supra*, at 2, 5.

handful of states have enacted laws specifically prohibiting housing discrimination against victims of domestic or sexual violence. *See* NAT'L HOUS. LAW PROJECT, HOUSING RIGHTS OF DOMESTIC VIOLENCE SURVIVORS: A STATE AND LOCAL LAW COMPENDIUM (2011) (states include Arkansas, District of Columbia, Indiana, North Carolina, Oregon, Rhode Island, Washington, Wisconsin). 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 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[10] or the noise disturbance and property damage they caused is widespread. *See* NAT'L LAW CTR. ON HOMELESSNESS & POVERTY & NAT'L NETWORK TO END DOMESTIC VIOLENCE, LOST HOUSING, LOST SAFETY: SURVIVORS OF DOMESTIC VIOLENCE EXPERIENCE HOUSING DENIALS AND EVICTIONS ACROSS THE COUNTRY 7-9 (2007) [hereinafter LOST HOUSING, LOST SAFETY]; NAT'L SEXUAL VIOLENCE RESOURCE CTR., NATIONAL SURVEY OF ADVOCATES ON SEXUAL VIOLENCE, HOUSING & VIOLENCE AGAINST WOMEN ACT 17-18 (2011). A national survey of service providers showed that approximately 30 percent had represented victims who were threatened with eviction or were evicted due to the violence or noise, calls to the police, or physical damage directly resulting from the violence. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, DOMESTIC VIOLENCE PROGRAM, INSULT TO INJURY: VIOLATIONS OF THE VIOLENCE AGAINST WOMEN ACT, at v, 12 (2009) [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 from domestic violence or emergency shelters. *See* EQUAL RIGHTS

[10] Landlords are especially likely to become aware of these crimes because such a significant percentage occurs at home. *See, e.g.*, SHANNAN CATALANO, U.S. DEP'T OF JUSTICE, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE IN THE UNITED STATES 24 (revised Dec. 19, 2007) [hereinafter INTIMATE PARTNER VIOLENCE IN THE U.S.].

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); s*ee 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 give rise to a double victimization, imperiling the housing options and safety of a victim when she is most in need of secure housing.[11] Housing discrimination based on violence compounds the safety risks because

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[11] Victims already lose their homes due to violence. *See, e.g.*, STALKING VICTIMIZATION, *supra*, at 6 (stating that one in seven stalking victims reported they moved as a result of stalking); JANA L. JASINSKI ET AL., THE EXPERIENCE OF VIOLENCE IN THE LIVES OF HOMELESS WOMEN: A RESEARCH REPORT 2, 65 (2005) (finding that one out of every four homeless women is homeless because of violence committed against her); WILDER RESEARCH CTR., HOMELESS ADULTS AND THEIR CHILDREN IN FARGO, NORTH DAKOTA, AND MOORHEAD, MINNESOTA: REGIONAL SURVEY OF PERSONS WITHOUT PERMANENT SHELTER 38 (2004) (similar); CTR. FOR IMPACT RESEARCH, PATHWAYS TO AND FROM HOMELESSNESS: WOMEN AND CHILDREN IN CHICAGO SHELTERS 3 (2004) (similar).

Renters appear to be at greater risk of violence than homeowners, thus increasing the likelihood that violence will result in homelessness. *See* INTIMATE PARTNER VIOLENCE IN THE U.S., *supra*, at 16-17.

it can help trap victims, who often have few resources due to their abuse and isolation, in dangerous situations. 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 CTR., HOMELESSNESS IN MINNESOTA 2009: RESULTS OF THE WILDER STATEWIDE SURVEY 3, 25 (2010) (48 percent of homeless women reported staying in an abusive situation due to lack of housing alternatives); TK Logan et al., *Barriers to Services for 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., COMMISSION ON DOMESTIC VIOLENCE, REPORT TO THE HOUSE OF DELEGATES 1 (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). Given the safety consequences of eliminating housing options, disparate impact analysis is a crucial tool for preserving housing for survivors 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.

CONCLUSION

For the reasons stated herein, *amici* respectfully urge this Court to hold that disparate impact claims can be brought under the Fair Housing Act.

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