No. 20-55820

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SOCAL RECOVERY, LLC, *et al.*,

Plaintiffs-Appellants

v.

CITY OF COSTA MESA,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING APPELLANTS AND URGING REVERSAL

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, and the related appeal in *RAW Recovery, LLC* v. *City of Costa Mesa*, No. 20-55870, both of which address the threshold requirements that group homes must satisfy to establish disability discrimination under the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA).[1]

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[1] Because this brief addresses legal issues common to both *SoCal Recovery, LLC* v. *City of Costa Mesa*, No. 20-55820, and *RAW Recovery, LLC* v. *City of Costa Mesa*, No. 20-55870, the United States has filed an identical copy of this brief in each case.

The federal government enforces the FHA and ADA in several ways. First, the Attorney General has authority under the FHA to initiate civil suits challenging a pattern or practice of discrimination or a denial of fair housing rights to a group of persons, 42 U.S.C. 3614(a), as well as to commence suits where the Department of Housing and Urban Development investigates and refers a discriminatory housing practice involving the legality of a state or local zoning or land use law, 42 U.S.C. 3614(b), 3610(g). Second, the Attorney General has authority to bring civil enforcement actions under Title II of the ADA and to issue regulations implementing Title II. See 42 U.S.C. 12133, 12134. Third, the Department of Housing and Urban Development is the designated agency for implementing Title II of the ADA relating to state and local assisted housing. See 28 C.F.R. 35.190(b)(4). Finally, Section 504 of the Rehabilitation Act directs federal agencies to issue regulations to prevent disability discrimination by entities—like the defendant in this case—that receive federal financial assistance. See 29 U.S.C. 794(a).

Consistent with the above authority, the federal government has challenged zoning practices that discriminate against group homes for people with disabilities. See, *e.g.*, *United States* v. *City of Jackson*, 359 F.3d 727, 728-729 (5th Cir. 2004). The United States has also participated as *amicus curiae* in other FHA and ADA cases brought by group homes. See, *e.g.*, *Pacific Shores Props., LLC* v. *City of*

Newport Beach, 730 F.3d 1142 (9th Cir. 2013), cert. denied, 574 U.S. 974 (2014). The United States has a similar interest in the present cases.

STATEMENT OF THE ISSUE

In these two related appeals, group homes for people recovering from drug and alcohol addiction allege that a city's zoning ordinances violate the FHA and the ADA by discriminating against facilities that serve people with disabilities. The United States addresses only the following question:

Whether the group homes must provide individualized evidence of their residents' disabilities to establish a cause of action for disability discrimination under the FHA and the ADA.

STATEMENT OF THE CASE

Plaintiffs in these appeals, RAW Recovery and SoCal Recovery, operate group homes in the City of Costa Mesa, California, providing temporary residences to people recovering from drug or alcohol addiction. They brought these actions to challenge a pair of zoning ordinances regulating "sober living home[s]," which the City defines as "group home[s] for persons who are recovering from a drug and/or alcohol addiction and who are considered handicapped under state or federal law." Costa Mesa Mun. Code § 13-6. SoCal Recovery and RAW Recovery allege that the ordinances discriminate on the basis of disability, in violation of the FHA and the ADA. The district court rejected these claims because the sober living homes

failed to show, on an individualized basis, that their residents have a "disability," as that term is defined in the FHA and the ADA.

1. Statutory Background

Originally enacted under the Civil Rights Act of 1968, the FHA "broadly prohibits discrimination in housing throughout the Nation." *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 91, 93 (1979). As amended, the statute makes it unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny" a dwelling to any person because of disability. 42 U.S.C. 3604(f)(1). This prohibition applies not only to private actors but also to state and local governments that discriminate through zoning and land use practices. See *Pacific Shores Props., LLC* v. *City of Newport Beach*, 730 F.3d 1142, 1157 (9th Cir. 2013), cert. denied, 574 U.S. 974 (2014). As the House Judiciary Committee has explained, the FHA's ban on discrimination against people with disabilities "is intended to prohibit the application of special requirements through land-use regulations * * * and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community." H.R. Rep. No. 711, 100th Cong., 2d Sess. 24 (1988).

Title II of the ADA likewise prohibits state and local governments from discriminating based on disability. Specifically, the law provides that public entities may not deny persons with disabilities "the benefits of the services,

programs, or activities of a public entity." 42 U.S.C. 12132; see also 28 C.F.R. 35.130(b)(3)(ii). And here too, Congress's stated purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1). Consistent with that "sweeping language," this Court has determined that Title II of the ADA prohibits local governments from enacting zoning laws that discriminate based on disability. *Bay Area Addiction Rsch. & Treatment, Inc.* v. *City of Antioch*, 179 F.3d 725, 732 (9th Cir. 1999).

Generally, to prevail on a claim of disability discrimination under either the FHA or the ADA, a plaintiff must first show that the defendant discriminated on the basis of "disability," as the statutes define that term. See *Gamble* v. *City of Escondido*, 104 F.3d 300, 304-305 (9th Cir. 1997) (listing elements of an FHA claim); *Thompson* v. *Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (listing elements of an ADA claim), cert. denied, 538 U.S. 921 (2003). Both statutes employ a similar three-pronged definition of "disability":

(1) a physical or mental impairment that substantially limits one or more major life activities;

(2) a record of having such an impairment; or

(3) being regarded as having such an impairment.

See 42 U.S.C. 3602(h)[2]; 42 U.S.C. 12102(1); 28 C.F.R. 35.108(a)(1); 24 C.F.R. 100.201.

The first prong of this definition—commonly known as the "actual disability" prong—applies to individuals who currently have a disability. The second prong—often called the "record of disability" prong—applies to individuals with a prior history of a disability. And the third prong—known as the "regarded as disabled" prong—applies to individuals who are perceived as having a disability, even if they do not actually have one.

The legislative history of both the ADA and the FHA shows that Congress intended the statutory definition of "disability" to encompass substance-abuse disorders, such as drug and alcohol addiction. The House Conference report on the ADA, for example, recognizes "that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act." H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990). And the House Judiciary Committee's report on the

[2] The FHA uses the word "handicapped" instead of "disability." Throughout this brief, the United States uses the term "disability" because, for purposes of the FHA, the terms have the same meaning. See *Bragdon* v. *Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" under Americans with Disabilities Act is taken almost verbatim from definition of "handicap" under Fair Housing Act); *Giebeler* v. *M & B Assocs.*, 343 F.3d 1143, 1146 n.2 (9th Cir. 2003) (using the term "disability" when discussing FHA claims).

1988 amendments to the FHA (which added the prohibition on disability discrimination to the statute) specifically highlights the adverse effects of zoning laws that target individuals in substance-abuse treatment programs, explaining that "[d]epriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery." H.R. Rep. No. 711, at 22-24. Both the FHA and the ADA specify, however, that current, illegal drug use does not qualify as a disability. 42 U.S.C. 12210, 3602(h).

Although most cases alleging discrimination on the basis of disability are brought by individuals with disabilities, the FHA and the ADA do not limit who can bring suit to those individuals. 42 U.S.C. 3613, 12133. Rather, residential facilities—like group homes—may bring suit under both the FHA and the ADA, even though the facilities are not themselves individuals with disabilities. See, *e.g.*, *Regional Econ. Cmty. Action Program, Inc.* (*RECAP*) v. *City of Middletown*, 294 F.3d 35, 46 n.2 (2d Cir.) (holding that a group home had standing to bring suit under the FHA and the ADA), cert. denied, 537 U.S. 813 (2002). As this Court explained in *Pacific Shores*, Title II of the ADA permits suit by "any person alleging discrimination on the basis of disability," and the FHA similarly permits suit by anyone "aggrieved" by housing discrimination against persons with disabilities. 730 F.3d at 1157 nn.16-17 (quoting 42 U.S.C. 3613, 12133).

2. Factual And Procedural Background

Since 2013, Costa Mesa has repeatedly amended its zoning code to impose new restrictions on "sober living home[s]," which the City defines as "group home[s] for persons who are recovering from a drug and/or alcohol addiction and who are considered handicapped under state or federal law." Costa Mesa Mun. Code § 13-6. The City adopted these restrictions in an effort to reduce the number of sober living homes operating within the City. See, *e.g.*, *RAW Recovery*, 11-ER-2695, *SoCal Recovery*, 10-ER-2020 (2014 Ordinance citing the "sharp increase" in the number of sober living homes and asserting that local officials had been "bombarded with complaints from residents about the proliferation of sober living homes").[3] The present cases concern a pair of ordinances, enacted in 2015 and 2017, that require sober living homes to obtain permits or exemptions to continue operating in certain residential neighborhoods. See *RAW Recovery*, 11-ER-2714-2724, 2727-2740; *SoCal Recovery*, 10-ER-2039-2049, 2052-2065.

In 2018, several sober living homes—including RAW Recovery and SoCal Recovery—filed lawsuits against the City under the FHA, the ADA, the Rehabilitation Act, the Civil Rights Act of 1871, and state law. The sober living

[3] "__-ER-__" refers to the volume and page number in the excerpts of record submitted by Raw Recovery and SoCal Recovery in these appeals.

homes alleged that the 2015 and 2017 ordinances discriminated on the basis of disability and effectively prevented the homes from operating within Costa Mesa.[4]

The district court granted summary judgment to the City in every case, in nearly identical opinions. As relevant here, the court held that the sober living homes had failed to satisfy a threshold element of their claims—namely, that their residents had a "disability," as defined in the FHA and the ADA. The court held that the sober living homes had not satisfied the "actual disability" prong of the definition because they failed to show—on a resident-by-resident basis—that their residents were substantially limited in some major life activity. *RAW Recovery*, 1-ER-28; *SoCal Recovery*, 1-ER-30-32. The court held that the sober living homes had also failed to satisfy the "record of disability" prong because they did not produce any of their residents' medical records and, moreover, asserted privilege when the City requested those records during discovery. *RAW Recovery*, 1-ER-27; *SoCal Recovery*, 1-ER-32. Finally, the court held that the sober living homes did not satisfy the "regarded as disabled" prong because they failed to show that the City "subjectively believed" that the homes' residents were disabled. *RAW Recovery*, 1-ER-27; *SoCal Recovery*, 1-ER-32.

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[4] The sober living homes appeared to challenge the ordinances both facially and as applied, invoking a variety of different theories in their complaints.

Although all of the sober living homes initially appealed from the adverse judgments, several have since moved to withdraw their appeals because they have ceased operations or been subject to abatement proceedings by the City. See, *e.g.*, *Pacific Shores, LLC* v. *City of Costa Mesa*, No. 20-55456, Dkt. 36, at 4-¶ 5 (9th Cir. Oct. 15, 2021) and Dkt. 39 (9th Cir. Nov. 21, 2021). Only RAW Recovery and SoCal Recovery are still pursuing their FHA and ADA claims on appeal.

SUMMARY OF THE ARGUMENT

The district court erred in concluding that the sober living homes failed to satisfy the definition of "disability" under the FHA and the ADA. Specifically, when evaluating the sober living homes' claims, the court applied the wrong analysis under both the "actual disability" and "regarded as" prongs of the statutory definition.

1. First, under the "actual disability" prong, the district court wrongly required the sober living homes to prove, on a case-by-case basis, that their residents have a disability, *i.e.*, by requiring individualized proof that their residents are impaired in a major life activity. Although a group home *can* satisfy the "actual disability" prong by producing such individualized evidence, that is not the only way to do so. A group home may also rely on other, non-individualized forms of evidence, such as its admissions criteria, staff testimony, or other information documenting the nature of its residents' impairments in the aggregate,

rather than on a "case-by-case" basis. Thus, in requiring individualized proof, the district court elided a critical distinction between claims brought by group homes and claims brought by individual plaintiffs: while individual plaintiffs generally must show that they are *personally* limited in some "major life activity," group homes may make that showing *on a collective basis*. The district court's contrary ruling, if affirmed, would undermine the protections that the FHA and the ADA provide to group homes and their residents. Indeed, under the district court's standard, when a discriminatory zoning law prevents a group home from opening in the first place—and, thus, no current residents exist to put before the court—the group home could *never* satisfy the disability element of an FHA or ADA claim.

2. The district court likewise applied the wrong standard under the "regarded as disabled" prong. Under that prong, the sober living homes needed only to show that the City perceived them to be serving people with disabilities, and they presented ample evidence to make that showing. Most notably, the sober living homes cited the language of the challenged ordinances themselves, which apply only to facilities that serve people "considered handicapped under state or federal law." Under these circumstances, where a *city's own laws* explicitly target group homes for people with disabilities, a group home need not provide additional evidence to show that its residents are "regarded as" such.

* * *

As explained below, the district court's holdings find no support in the FHA, the ADA, or this Court's precedents. This Court should thus reverse the district court's decisions and remand for the district court to reconsider, under the proper standards, whether the summary-judgment record establishes any material factual dispute regarding the disability element of the FHA and the ADA claims.

ARGUMENT

I

THE DISTRICT COURT APPLIED THE WRONG STANDARD IN DETERMINING WHETHER THE SOBER LIVING HOMES SATISFIED THE "ACTUAL DISABILITY" PRONG OF THE DEFINITION OF DISABILITY

To prevail on an FHA or ADA claim for discrimination on the basis of disability, an individual plaintiff generally must establish that he or she has a disability as defined in the statutes. But when a residential facility—like the group homes in this case—asserts an FHA or ADA claim, a different standard necessarily applies because such facilities cannot themselves have a disability. The district court failed to appreciate this critical difference.

A. A Group Home Does Not Need To Provide Individualized Proof Of Its Residents' Disabilities To Satisfy The "Actual Disability" Prong Of The Disability Definition

"It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA." *Pacific Shores Props., LLC* v. *City of Newport Beach*, 730 F.3d 1142, 1156 (9th Cir. 2013), cert. denied, 574 U.S. 974

(2014). Thus, "[p]articipation in a supervised drug rehabilitation program, coupled with non-use, meets the definition of handicapped [under the FHA]." *City of Edmonds* v. *Washington State Bldg. Code Council*, 18 F.3d 802, 804 (9th Cir. 1994), aff'd, 514 U.S. 725 (1995). The same is true under the ADA: as this Court has recognized, "addiction that substantially limits one or more major life activities is a recognized disability." *Thompson* v. *Davis*, 295 F.3d 890, 896 (9th Cir. 2002), cert. denied, 538 U.S. 921 (2003); see also, *e.g.*, *Regional Econ. Cmty. Action Program, Inc.* (*RECAP*) v. *City of Middletown*, 294 F.3d 35, 47 (2d Cir.) (holding that addictions that substantially limit the ability of group home residents to live independently are protected under the FHA and the ADA), cert. denied, 537 U.S. 813 (2002); *Cornerstone Residence* v. *City of Clairton*, 754 F. App'x 89, 91 (3d Cir. 2018) (collecting cases holding that recovering addicts are a protected group under the FHA).

Here, the district court acknowledged that the sober living homes provide housing to people recovering from drug and alcohol addiction. *RAW Recovery*, 1-ER-23; *SoCal Recovery*, 1-ER-27. But the court nonetheless held that the homes failed to satisfy the "actual disability" prong because they failed to show—on a resident-by-resident basis—that "their clients have a physical or mental impairment that substantially limits one or more major life activities." *RAW Recovery*, 1-ER-23, 26-27; *SoCal Recovery*, 1-ER-27, 31-32.

The court erred by requiring the sober living homes to provide individualized proof of their residents' specific impairments. Although *individual plaintiffs* typically do need to adduce evidence of their specific impairments to establish an "actual disability," *group homes* may instead draw on other forms of evidence to satisfy that prong of the statutory definition. A defendant therefore cannot prevail on summary judgment simply because a group home has not offered individualized proof that each—or even most—of its residents have an actual disability. Indeed, as one court observed, if group homes needed to offer individualized proof of their residents' impairments in every case, then "no group home with a fluctuating or transient resident population could ever find protection under the FHA." *Harmony Haus Westlake* v. *Parkstone Prop. Owners Ass'n*, 440 F. Supp. 3d 654, 663 n.5 (W.D. Tex. 2020), aff'd in part, rev'd in part, 851 F. App'x 461 (5th Cir. 2021). That cannot be the law.

Thus, many courts have recognized that group homes may establish a "disability" under the FHA or the ADA "not only by reference to the characteristics of the *individuals* in question, but also by reference to the criteria for admission to the *facility* at issue." *McKivitz* v. *Township of Stowe*, 769 F. Supp. 2d 803, 822 (W.D. Pa. 2010) (emphasis in original). For instance, the Fifth Circuit recently held that a sober living home's admissions criteria are "sufficient evidence of handicapped status in this type of group home." *Harmony Haus*, 851

F. App'x at 465. The court reasoned that, because the group home's residents generally had to "be admitted to, and complete, an in-patient treatment program" in order to reside in the home, the home's admissions criteria established that even unidentified future residents would meet the FHA's definition of "disability." *Ibid.*

Relatedly, the Second Circuit has held that a halfway house for recovering alcoholics could satisfy the "disability" element of its FHA and ADA claims by pointing to state regulations outlining the admissions criteria for such facilities. *RECAP*, 294 F.3d at 47. Those regulations restricted admission to people who, among other things, had been diagnosed with alcohol dependence, were unable to abstain without continued care, and agreed to move out once they were able to live independently. *Ibid.* The court held that these regulatorily defined levels of impairment obviated the need for a case-by-case analysis of individual residents. *Id.* at 48 n.3. As the court put it, "[a]ll of the halfway house's residents must be substantially impaired in a major life activity to continue residing there." *Id.* at 48.

Admissions criteria are not the only way for a group home to satisfy the disability element of an FHA or ADA claim without engaging in a case-by-case analysis of individual residents. Testimony from employees or residents of the group home may also suffice to show that the group home serves individuals with disabilities. In *MX Group* v. *City of Covington*, for instance, the Sixth Circuit relied on testimony from an employee of a methadone clinic who described how

the clinic's clients had been affected by their narcotics addictions. 293 F.3d 326, 331, 337 (6th Cir. 2002). The court cited the testimony as evidence "that drug addiction affects the major life activities of working, functioning socially and parenting" for the clinic's clients. *Id.* at 337. The court's reliance on that testimony reaffirms that group homes need not show on a case-by-case basis that their residents are impaired in a major life activity in order to satisfy the ADA's "disability" definition. As the Sixth Circuit explained, "we believe that to overturn the district court's disposition in Plaintiff's favor on the basis that an individualized inquiry of a client is needed would defy reason as Plaintiff has presented evidence that it was altogether foreclosed from opening its clinic in the first place because of the substance abuse services it planned to offer to its potential clients." *Id.* at 336.

To be sure, the above cases do not establish that *all* persons recovering from addiction have disabilities under the FHA or the ADA. Generally, when an individual pleads an impairment based on drug or alcohol addiction, that individual must show that the addiction "substantially limits one or more major life activities"—the central element of the "actual disability" definition. 42 U.S.C. 12102(1); 42 U.S.C. 3602(h); see also 28 C.F.R. 36.105(d)(1)(vi). As the Second Circuit explained in *RECAP*, "mere status as an alcoholic or substance abuser does not necessarily imply a 'limitation'" of a major life activity. 294 F.3d at 47. But,

as *RECAP* and other cases illustrate, group homes do not need to engage in a case-by-case analysis of their residents in order to satisfy that standard. Rather, they have multiple options for proving that they serve people with an "actual disability" under the FHA or the ADA. And as discussed below, the sober living homes here did in fact provide other evidence, which the district court did not consider because of its erroneous interpretation of the law.

B. The Sober Living Homes Presented Ample Evidence That They Serve Residents With Actual Disabilities

Instead of requiring the sober living homes to present individualized proof of disability, the district court should have evaluated whether the record contained sufficient evidence overall to show that the sober living homes served people with actual disabilities. Here, the sober living homes provided such evidence, similar to that accepted in other group-home cases, which the district court failed to properly consider.

SoCal Recovery, for example, certified to the City that "only residents (other than the house manager) who are handicapped as defined by state and federal law will reside at the group home." *SoCal Recovery*, 9-ER-1708; see also *SoCal Recovery*, 4-ER-719-720 (testimony by SoCal Recovery representative that its primary purpose is to "help alcoholics and drug addicts get acclimated back into society"). Likewise, RAW Recovery documented that "[a]ll residents of housing provided by RAW are persons in recovery from alcoholism and substance [abuse]"

and that those residents "cannot live independently without fear or threat of relapse into active alcoholism and substance abuse." *RAW Recovery*, 10-ER-2316. And both sober living homes prohibit using alcohol and non-prescription drugs. *RAW Recovery*, 10-ER-2309-2310; *SoCal Recovery*, 4-ER-616. As noted above, other courts have relied on similar evidence to determine that a group home satisfies the disability element of FHA or ADA claims. See Part I.A., *supra*; *e.g.*, *Harmony Haus*, 851 F. App'x at 463-464; *RECAP*, 294 F.3d at 47. But the district court here never even acknowledged this evidence in its opinions.

The district court likewise failed to evaluate whether testimony from one of the residents might satisfy the "actual disability" prong or serve as a representative sample of other residents' experiences.[5] For example, a SoCal Recovery resident testified about his addiction and the likelihood that he would relapse if he did not have the support of a sober living home. *SoCal Recovery*, 9-ER-1907-1908, 1911,

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[5] The district court never specified exactly how many residents with an "actual disability" each sober living home would have to identify in order to satisfy the "disability" element of an ADA or FHA claim. But, to the extent the district court meant to require each home to produce individualized proof for more than one resident, that was also erroneous. As long as a group home can show that at least one of its residents satisfies the "actual disability" prong, then that group home could, at least in theory, establish a viable claim of discrimination as to that resident. Although the group home might struggle to satisfy the remaining elements of such a claim absent evidence that other residents also had a disability, the home would at least survive a summary-judgment challenge on the threshold definitional element of its claim.

1915-1916, 1944-1945; see also *RAW Recovery*, 8-ER-1882-1886 (statements from former RAW Recovery residents about how living in a sober living home helped them recover from addiction). Once again, this is the type of evidence other courts have relied upon to conclude that a sober living home meets the "actual disability" prong even without an individualized analysis of all its residents. See, *e.g.*, *Harmony Haus*, 851 F. App'x at 464-465. Yet, as with the admissions criteria, the district court failed to discuss this testimony in its opinion.

Finally, the district court erred in faulting the sober living homes for failing to provide medical documentation of their residents' alleged impairments. *SoCal Recovery*, 1-ER-32; see also *RAW Recovery*, 1-ER-27 (same). Contrary to the district court's approach, "[n]either the ADA or the FHA's text, nor the respective implementing regulations require medical evidence to establish a genuine dispute of material fact regarding the impairment of a major life activity at the summary judgment stage." *Rodriguez* v. *Village Green Realty, Inc.*, 788 F.3d 31, 43 (2d Cir. 2015). Rather, as this Court has recognized, plaintiffs may establish an "actual disability" through non-medical evidence. See *Rohr* v. *Salt River Project Agric. Imp. & Power Dist.*, 555 F.3d 850, 859 (9th Cir. 2009) (holding that a plaintiff's testimony may suffice to show an actual disability).

In sum, the district court's grant of summary judgment to the City rested on a core analytical error: namely, requiring the sober living homes to produce

individualized proof that their residents' impairments satisfy the definition of "disability" under the FHA or the ADA. That requirement finds no support in the text of the statutes, nor in the case law construing them. Moreover, the district court's analysis would have perverse consequences: if a discriminatory zoning law were to preclude a prospective group home from opening in the first place, that group home would not be able to challenge the law because it would not be able to show that people with actual disabilities live there. Such a result would conflict with the FHA's and ADA's purpose. This Court should thus reverse the district court's summary-judgment rulings and remand these cases with instructions to consider whether the record contains evidence—individualized or not—that the sober living homes serve people with "actual disabilities."[6]

[6] To the extent the sober living homes allege discrimination based on the "record of disability" prong, the district court erred for the same reasons discussed above. Like the "actual disability" inquiry, the "record of disability" inquiry does not require the sober living homes to produce individualized evidence pertaining to each resident.

II

THE DISTRICT COURT APPLIED THE WRONG STANDARD IN DETERMINING WHETHER THE SOBER LIVING HOMES SATISFIED THE "REGARDED AS" PRONG OF THE DEFINITION OF DISABILITY

A. Group Homes May Rely On A City's Own Laws To Show That The City Regarded Them As Serving Persons With Disabilities

Just as it did with its "actual disability" analysis, the district court imposed too high a burden on the sober living homes under the "regarded as disabled" prong. Most strikingly, the district court ignored a central fact in the record: that the challenged ordinances expressly apply *only* to group homes for people "considered handicapped under state or federal law." Costa Mesa Mun. Code § 13-6. This effective admission by the City should have been sufficient to satisfy the "regarded as disabled" prong of both the ADA and the FHA.

"[U]nder the 'regarded as' prong, the Court must determine whether [the City] perceived Plaintiff's clients as being disabled and discriminated against them on that basis." *MX Grp.* v. *City of Covington*, 293 F.3d 326, 340 (6th Cir. 2002). As the Fourth Circuit has explained, "whether any individual client is now or was ever substantially limited in one or more 'major life activities' is immaterial" under the "regarded as" prong. *United States* v. *Southern Mgmt.*, 955 F.2d 914, 918-919 (4th Cir. 1992). Rather, the analysis turns on how an individual is perceived by others. See 42 U.S.C. 12102(1)(C); 24 C.F.R. 100.201(d); 28 C.F.R. 35.108(f)(1).

Here, the sober living homes offered a simple yet powerful piece of evidence to show that the City perceived them as serving persons with disabilities: the City's own definition of "sober living home." Indeed, the City does not dispute that, under its own definition of "sober living home," it cannot enforce the challenged provisions of its zoning code against a group home *unless* the group home's residents are "considered handicapped under state or federal law." Costa Mesa Mun. Code § 13-6.[7] By disregarding that central and undisputed fact—and requiring the sober living homes to submit *additional* evidence that the City "subjectively believed" that their residents have impairments—the district court applied the wrong standard under the "regarded as" prong. *RAW Recovery*, 1-ER-27; *SoCal Recovery*, 1-ER-32.

B. The District Court Disregarded Other Evidence Indicating That The City Regarded The Sober Living Homes As Serving Persons With Disabilities

The City's definition of "sober living home" is not the only evidence that the district court failed to consider. The district court also failed to examine whether the City's actions were based on unfounded fears and stereotypes—a central tenet

[7] This Court applies the "same standards" to state-law claims under the California Fair Housing and Employment Act that it applies to FHA claims. *Pacific Shores Props., LLC* v. *City of Newport Beach*, 730 F.3d 1142, 1156 (9th Cir. 2013) (quoting *Walker* v. *City of Lakewood*, 272 F.3d 1114, 1131 n.8 (9th Cir. 2001)), cert. denied, 574 U.S. 974 (2014). Thus, if the City considers a resident of a sober living home to have a disability under state law, then the City necessarily considers that resident to have a disability under federal law as well.

of the "regarded as" prong. See 24 C.F.R. 100.201, 28 C.F.R. 35.108(f)(1). Indeed, Congress added the "regarded as disabled" prong specifically because it believed that "society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment." *Rodriguez* v. *Village Green Realty, Inc.*, 788 F.3d 31, 50 (2d Cir. 2015) (quoting *School Bd. of Nassau Cnty.* v. *Arline*, 480 U.S. 273, 284 (1987) (referring to Section 504 of the Rehabilitation Act of 1973); see also 28 C.F.R. 35, App. C. (explaining that the "regarded as" prong was designed to protect individuals from adverse decisions based upon unjustifiable beliefs about people with disabilities).

Here, the sober living homes introduced substantial evidence that fears and stereotypes may indeed have motivated the City's actions. For example, both RAW Recovery and SoCal Recovery produced e-mails from the public opposing their requests for a permit and making derogatory comments about sober living homes. See, *e.g.*, *RAW Recovery*, 4-ER-672 ("Crime and homelessness is out of control, due to these recovery homes."); *RAW Recovery*, 4-ER-682 ("We have a nice, quiet neighborhood and would like to keep it that way."); *RAW Recovery*, 4-ER-683 (stating that the sober living home residents may be "capable of mayhem and violence"); *RAW Recovery*, 4-ER-685 (noting that single women are "uncomfortable" with residents of a sober living home so close to their homes);

SoCal Recovery, 4-ER-651 ("I believe much of the crime and mayhem are a direct result of the over proliferation of the Sober Living Houses in our neighborhoods.").

This is the very type of evidence that other courts have found to satisfy the "regarded as disabled" definition when group homes challenge actions by city officials. In *MX Group*, for example, the Sixth Circuit cited testimony from a zoning hearing as evidence that, "based on fear and stereotypes, residents believed that the drug addiction impairment of Plaintiff's potential clients, at the very least, limited the major life activity of productive social functioning." 293 F.3d at 342. Likewise, in *Southern Management*, the Fourth Circuit held that the "regarded as" definition was satisfied because the group home showed it was denied housing on account of "the substance abuser status of the prospective tenants and the perception that they would be undesirable tenants." 955 F.2d at 919.

In addition to failing to examine whether fears and stereotypes may have motivated the City's action, the Court also did not meaningfully consider whether the City's own actions provided sufficient evidence on the "regarded as" prong. For example, the City's administrative rulings on the sober living homes' zoning requests stated that the City accepted that the requests were "submitted on behalf of persons who are considered disabled under state and federal law." *RAW Recovery*, 9-ER-2063; *SoCal Recovery*, 9-ER-1741. And the City sued the sober living homes in state court for nuisance abatement, alleging that they operated as

sober living homes, which (as noted) the City defines as serving persons with disabilities. *RAW Recovery*, 11-ER-2536; *SoCal Recovery*, 9-ER-1769-1770. The district court, however, dismissed this evidence without analysis or explanation, simply stating that "[t]he other evidence Plaintiffs offer on this point, relying on Plaintiffs' applications for use permits, is either inadmissible, mischaracterizes what the City required from Plaintiffs in the application process, and/or does not establish the City's subjective belief of the clients' impairments." *RAW Recovery*, 1-ER-27. The court erred in doing so.

Other courts have relied on precisely this type of evidence when finding a disability under the "regarded as" prong. For example, in *McKivitz* v. *Township of Stowe*, the city in its zoning proceedings did not contest a group home's assertion that its residents have disabilities. 769 F. Supp. 2d 803, 823 (W.D. Pa. 2010). And that was enough for the district court to find the "disability" element satisfied: "Having considered these individuals to be 'handicapped' throughout the course of the administrative proceedings, the Defendants cannot turn around and now claim that, *as a matter of law*, these same individuals were not 'handicapped.'" *Ibid.* (emphasis in original). Thus, as *McKivitz* and the other cases show, group homes may rely on many different types of evidence to show that a city regarded the group home as serving persons with disabilities. See also *MX Group*, 293 F.3d at 341.

In sum, because the district court failed to meaningfully engage with this other evidence, the district court's rulings should be reversed and remanded to consider whether this other evidence was sufficient to establish a genuine dispute of material fact on the "regarded as disabled" element of the sober living homes' claims.

CONCLUSION

This Court should reverse the district court's decisions and remand for the district court to apply the correct standards for determining whether the alleged discrimination was based on disability.

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 5891 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman, 14-point font.

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Date: November 29, 2021

CERTIFICATE FOR PAPER COPY OF ELECTRONIC BRIEF

I certify that this brief is identical to the version submitted electronically on November 29, 2021, in *SoCal Recovery, LLC* v. *City of Costa Mesa*, No. 20-55820.

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