No. 21-3503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SUELLEN KLOSSNER,

Plaintiff-Appellee/Cross-Appellant

v.

IADU TABLE MOUND MHP, LLC, *et al.*,

Defendants-Appellants/Cross-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE/CROSS-APPELLANT AND URGING AFFIRMANCE

DAMON SMITH
General Counsel

SASHA SAMBERG-CHAMPION
Deputy General Counsel
for Enforcement and Fair Housing

JEANINE WORDEN
Associate General Counsel for Fair Housing

REBECCA M. COY
HEATHER E. NODLER
Trial Attorneys
Department of Housing and Urban Development
Office of General Counsel, Office of Fair Housing
451 7th Street SW
Washington, D.C. 20410

KRISTEN CLARKE
Assistant Attorney General

NICOLAS Y. RILEY
JASON LEE
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-1915

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which concerns the proper application of the Fair Housing Act's (FHA) reasonable-accommodation provision. See 42 U.S.C. 3604(f)(3)(B). The Department of Justice and the Department of Housing and Urban Development (HUD) share enforcement authority under the FHA. 42 U.S.C. 3610, 3612, 3614. HUD has commenced administrative proceedings against housing providers who fail to reasonably accommodate the needs of residents with disabilities. See, *e.g.*, *Astralis Condo.*

Ass'n v. *HUD*, 620 F.3d 62 (1st Cir. 2010). And the United States has filed amicus briefs in appeals involving the FHA's reasonable-accommodation provision. See, *e.g.*, *Edwards* v. *Gene Salter Props. & Salter Constr. Inc.*, 739 F. App'x 357 (8th Cir. 2018) (No. 17-3769), cert. denied, 139 S. Ct. 1271 (2019); *Salute* v. *Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998) (No. 96-7398).

This case also implicates the United States' interest in the Housing Choice Voucher program—formerly known as the "Section 8" program—established under the United States Housing Act of 1937. Through this program, HUD regulates and provides funding to local public housing authorities that, in turn, provide rental assistance to low-income families. See 42 U.S.C. 1437f(o). The United States has an interest in ensuring that the program and its implementing regulations are properly construed.

The United States files this brief under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUE AND APPOSITE CASES

The FHA requires a landlord to reasonably accommodate a renter with a disability when doing so is necessary to ensure that the renter has an equal opportunity to use and enjoy a dwelling as those without a disability. 42 U.S.C. 3604(f)(2) and (3)(B). Section 8 of the United States Housing Act of 1937 establishes a voucher program that offers rental assistance to help low-income

families obtain safe and sanitary housing. 42 U.S.C. 1437f(o). The question here is whether the FHA requires a landlord to accept a Section 8-provided housing voucher on behalf of a tenant as a reasonable accommodation when the tenant cannot work due to her disabilities and accepting the voucher will not impose undue financial and administrative burdens on the landlord.

> *Schaw* v. *Habitat for Human. of Citrus Cnty., Inc.*, 938 F.3d 1259 (11th Cir. 2019)
>
> *Edwards* v. *Gene Salter Props. & Salter Constr. Inc.*, 739 F. App'x 357 (8th Cir. 2018), cert. denied, 139 S. Ct. 1271 (2019)
>
> *Giebeler* v. *M & B Assocs.*, 343 F.3d 1143 (9th Cir. 2003)

STATEMENT OF THE CASE

Plaintiff-appellee/cross-appellant Suellen Klossner lives in a mobile home park in Dubuque, Iowa. Add. 9.[1] In 2020, she was approved to receive rental assistance under the Housing Choice Voucher program (housing choice program), but her landlord refused to accept it as partial payment of her rent. Add. 11. Klossner filed this FHA suit to challenge that refusal.

1. Statutory And Regulatory Background

a. The FHA bars discrimination in the terms, conditions, or privileges of rental of a dwelling because of, *inter alia*, a person's disability. 42 U.S.C.

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[1] "Add. __" refers to the addendum filed by appellants. "R.Doc. ___, at ___" refers to documents filed in the district court. "Defs.' Br. ___" refers to defendants' opening brief. "Pl.'s Br. ___" refers to plaintiff's response brief.

3604(f)(2). This includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B).

b. Section 8 of the United States Housing Act of 1937 establishes a program that provides rental assistance to help low-income families obtain safe and sanitary housing. See 42 U.S.C. 1437f(a) and (o). HUD funds and regulates this program at the national level, and local public housing agencies administer it at the local level. 24 C.F.R. 982.1(a); 24 C.F.R. 982.151(a)(1). If a family is admitted into the program, the local agency issues a voucher that authorizes the family to rent privately-owned housing with the assistance of a government-funded subsidy. 24 C.F.R. 982.302(a).

Before the family can rent a unit using the voucher, the landlord must enter into a Housing Assistance Payments (HAP) contract with the local public housing agency. 42 U.S.C. 1437f(b)(1) and (o)(7). Under the HAP contract, the family typically pays a portion of their monthly rent and utilities—frequently 30% of the family's monthly adjusted income—and the local agency issues a housing assistance payment to the landlord that covers the remaining rent balance. 42 U.S.C. 1437a(a)(1); 42 U.S.C. 1437f(o)(1) and (2)(A). The total cost of the

housing's rent and utilities must be consistent with HUD's "housing market-wide estimates of rents" for the geographic area. 24 C.F.R. 888.113(a).

The HAP contract also imposes certain requirements on the landlord and the family. Where the contract pertains to manufactured housing, like mobile homes, the landlord ensures that the space on which the home sits complies with HUD's housing quality standards, while the family ensures that the home itself complies with HUD's standards. R.Doc. 80-5, at 9. The landlord and the family must permit the local public housing agency to inspect the space and the home. R.Doc. 80-5, at 4. Housing assistance may be withheld if the agency finds that the space or the home is out of compliance. R.Doc. 73, at 160-161. Finally, the landlord generally may not terminate the tenancy during the term of the family's lease except for "good cause." R.Doc. 80-5, at 9.

2. Factual And Procedural History

Klossner has a number of medical conditions that prevent her from working, including bipolar disorder, neuropathy, fibromyalgia, and agoraphobia. Add. 10; R.Doc. 73, at 11, 38. She used to work full-time as a cosmetologist, and she supported her family (including her daughter and two sons) with her earnings. R.Doc. 73, at 51. Klossner's disabilities preclude such employment now, and she relies on Social Security disability benefits to pay her rent and living expenses. R.Doc. 73, at 12, 16. Each month, she receives "a little less" than $800 in Social

Security Disability Insurance (SSDI) and Supplemental Security Income payments. R.Doc. 73, at 9, 16.

In 2009, Klossner moved to the Table Mound manufactured home park. R.Doc. 73, at 13. Like most individuals in manufactured housing, Klossner "owns her home, but rents the land beneath it." Add. 10. When she moved to Table Mound, Klossner's rent was $235 per month, and it included sewage, water, and trash pickup. R.Doc. 73, at 15-16. Over the next eight years, Klossner's rent increased by only $45, reaching $280 per month by 2017. R.Doc. 73, at 15.

In 2017, defendant-appellant/cross-appellee IADU Table Mound MHP, LLC (IADU) purchased Table Mound. Add. 9. After that, Klossner's monthly rent and expenses increased much more rapidly. IADU raised Klossner's monthly rent by $40 in 2017 (R.Doc. 80-1), $25 in 2018 (R.Doc. 80-2), and $35 in 2019 (R.Doc. 80-3). IADU also installed water meters on each lot and began billing tenants for trash pickup, sewage, water, and rental of the water meters. R.Doc. 80-4, at 1. By 2020, Klossner was paying approximately $430 per month in rent and other housing-related expenses. R.Doc. 80-4, at 1.

These new and increased expenses make it very difficult for Klossner to pay her rent. For example, when Klossner needed to replace her toilet and some bathroom tiles, she had to "seek financial assistance from [a local charity], which paid part of her rent for one month" so that she could afford the repairs. Add. 10;

see also R.Doc. 73, at 17-19. To remedy her fragile financial situation, in January 2020, Klossner applied for a voucher under the housing choice program. Add. 11. The local housing agency approved her application, granting Klossner a voucher that would have limited her monthly rent obligation to 30% of her income. Add. 11. Klossner asked defendant-appellant/cross-appellee Impact MHC Management, LLC (Impact), which manages Table Mound for IADU (R.Doc. 73, at 189), to accept the voucher as an accommodation of her disabilities (R.Doc. 73, at 23). Impact refused to do so. Add. 11.

In September 2020, Klossner filed suit in the Northern District of Iowa against IADU, Impact, and the company that had managed Table Mound prior to Impact. R.Doc. 3. Among other claims, Klossner asserted that, in refusing to accept rental assistance under the housing choice program, defendants had failed to reasonably accommodate her disabilities, in violation of the FHA. R.Doc. 3, at 13-16.

The district court held a two-day bench trial and ruled in favor of Klossner on her reasonable-accommodation claim. Add. 25. In its opinion, the court explained that the only contested issues were whether Klossner's requested accommodation was "reasonable" and "necessary for her to use and enjoy" her home. Add. 15. As to the reasonableness issue, the court found that acceptance of rental assistance would be "reasonable in the mine run of cases" because, even

though some funds might "come[] from another source," a landlord still would "be paid rent and expenses in full." Add. 20. And as to necessity, the court found that Klossner's disabilities "ha[ve] prevented her from working," which "limits her income" and "prevents her from paying her entire rent from her own limited resources." Add. 17. Accordingly, the court concluded that the accommodation was "necessary to ameliorate the effect of [Klossner's] disabilit[ies]" by "allow[ing] her to supplement her rent payments through another funding source." Add. 17.

The district court noted that participating in the housing choice program potentially "could impose significant burdens on [defendants]." Add. 21. For example, IADU would be limited in its ability to terminate Klossner's lease absent "good cause" (Add. 21), and if Klossner failed to maintain her home in compliance with HUD's regulations, her housing assistance possibly could "cease" (Add. 21). Yet the court concluded for two reasons that these potential burdens did not constitute undue hardship. First, the court pointed out that "defendants have shown themselves capable of participating in housing voucher programs," as they do so in four other states and introduced "no evidence" that this "created undue hardship." Add. 22. Second, the court explained that requiring defendants to accept Klossner's rental assistance would not automatically require them to do so for other renters. Add. 23-24. The district court also rejected defendants' other

alleged burdens as "vague," "insignificant," and "speculative," including "administrative burdens" from "keeping track of two rent payments" and "possible difficulties in scheduling inspections of the property." Add. 21.

The court thus entered judgment in favor of Klossner on her FHA claim, though it declined to award any compensatory damages. Add. 25. Defendants appealed the court's ruling on Klossner's FHA claim (R.Doc. 86, at 1), and Klossner cross-appealed the court's ruling on damages (R.Doc. 92, at 1).

SUMMARY OF ARGUMENT

The district court correctly held that, in refusing to accept rental assistance provided through the housing choice program, defendants failed to reasonably accommodate Klossner's disabilities and thus violated the FHA. The court found that Klossner's requested accommodation—the ability to pay part of her rent from a source other than her own income—was both reasonable and necessary to ensure that she has an equal opportunity to retain the housing of her choice. These findings were well supported by the trial record and neither is clearly erroneous.

A. Regarding reasonableness, the district court was right to find that the accommodation is reasonable on its face and will not cause undue hardship for defendants. The accommodation benefits both parties by making it less likely that Klossner becomes delinquent on her rent, and case law confirms its facial reasonableness. Relying on the Second Circuit's opinion in *Salute* v. *Stratford*

Greens Garden Apartments, 136 F.3d 293 (2d Cir. 1998), defendants contend that the accommodation is unreasonable as a matter of law. But as subsequent Supreme Court and other appellate court decisions make clear, a landlord who refuses to provide an accommodation must present case-specific evidence showing that it will cause undue hardship under the particular circumstances, and defendants failed do so here. Defendants also argue that the district court clearly erred in finding no undue hardship. But the testimony they cite does not establish that granting Klossner's accommodation will impose significant financial and administrative burdens on them.

B. Regarding necessity, the evidence presented at trial, along with the relevant case law, again amply support the district court's finding that Klossner's requested accommodation is necessary to afford her equal housing opportunity. Defendants' theory that the accommodation is unnecessary as a matter of law rests on an unduly narrow—and unsupported—conception of a landlord's obligation to provide a reasonable accommodation. And their contention that the court clearly erred in finding necessity is contradicted by the trial record. This Court should therefore affirm.[2]

[2] The United States takes no position on Klossner's cross-appeal (No. 21-3544).

ARGUMENT

DEFENDANTS' ACCEPTANCE OF RENTAL ASSISTANCE UNDER THE HOUSING CHOICE PROGRAM IS A REASONABLE AND NECESSARY ACCOMMODATION OF KLOSSNER'S DISABILITIES

To prevail on a failure-to-accommodate claim, a plaintiff must show: (1) she has a disability within the meaning of the statute; (2) she asked the defendant to provide a reasonable accommodation of her disability; (3) the accommodation may be necessary to afford her an equal opportunity to use and enjoy a dwelling; and (4) the defendant refused to provide the accommodation. See *Schaw* v. *Habitat for Human. of Citrus Cnty., Inc.*, 938 F.3d 1259, 1264 (11th Cir. 2019); *Giebeler* v. *M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003). Only the second and third elements—reasonableness and necessity—are contested here. See Defs.' Br. 31-33.[3] The district court properly found that Klossner had satisfied these two elements, and defendants have not identified any evidence or authorities to suggest that those findings were clearly erroneous.[4]

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[3] Although the FHA uses the term "handicap," 42 U.S.C. 3604(f)(2), this brief uses the term "disability." The two terms have the same legal meaning, see, *e.g.*, *Bragdon* v. *Abbott*, 524 U.S. 624, 631 (1998), and may be used "interchangeably," *Austin* v. *Town of Farmington*, 826 F.3d 622, 624 n.2 (2d Cir.), cert. denied, 137 S. Ct. 398 (2016).

[4] All parties agree that the district court's findings of reasonableness and necessity are subject to clear-error review. See Defs.' Br. 31, 62; Pl.'s Br. 27, 42.

A. Klossner's Requested Accommodation Is Reasonable

1. The Accommodation Is Reasonable On Its Face

The district court was right to find that Klossner's requested accommodation is reasonable. To demonstrate reasonableness, a plaintiff need only "show that the requested accommodation is 'reasonable on its face, *i.e.*, ordinarily or in the run of cases.'" *Peebles* v. *Potter*, 354 F.3d 761, 768 (8th Cir. 2004) (quoting *US Airways, Inc.* v. *Barnett*, 535 U.S. 391, 401 (2002)). This "threshold presents a relatively low bar." *Schaw*, 938 F.3d at 1265. If the plaintiff makes this showing, the burden shifts to the defendant to prove—as an affirmative defense—that the accommodation is unreasonable based on "case-specific[] circumstances that demonstrate undue hardship in the particular circumstances." *Peebles*, 354 F.3d at 768 (quoting *Barnett*, 535 U.S. at 402); see also *Schaw*, 938 F.3d at 1265 n.3, 1267. Demonstrating "undue hardship" typically requires the defendant to show that the accommodation would impose "undue financial and administrative burdens." *Hollis* v. *Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 542 (6th Cir. 2014) (citation omitted).

Here, Klossner seeks an accommodation that would enable her to pay a portion of her rent through a source other than her own income—specifically, through rental assistance provided under the housing choice program. Klossner carried her burden by surmounting the "low bar" of showing that this

accommodation is reasonable on its face. *Schaw*, 938 F.3d at 1265. As the district court noted, the accommodation would not change the amount of rent defendants receive each month. Add. 20. Rather, it would only alter the *manner* in which Klossner's rent is paid: Klossner would make one payment to defendants, as she does now, and the local housing agency would make a rental-assistance payment to defendants for the remaining balance.

The reasonableness of this accommodation is evident from the benefits that it would confer on all parties. In the past, Klossner has struggled to pay her rent due to the cost of making home repairs. See p. 6, *supra*. But under the housing choice program, the amount of rent for which she is personally responsible would be capped at a reasonable portion of her monthly income. See 42 U.S.C. 1437f(o)(2)(A). Consequently, defendants' acceptance of rental assistance under the program would make it less likely that home repairs and other unanticipated expenses would deplete Klossner's finances to the point where she cannot reasonably cover her rent. Moreover, payment of her remaining rent balance would be guaranteed by the federal government. See 42 U.S.C. 1437i(a). Klossner's requested accommodation thus would advantage both parties, making it easier for Klossner to maintain and remain in her home and lowering the risk for defendants that she becomes delinquent on her rent.

Decisions by this and other courts further confirm the facial reasonableness of Klossner's accommodation. For example, in *Edwards* v. *Gene Salter Properties & Salter Construction Inc.*, 739 F. App'x 357 (8th Cir. 2018), cert. denied, 139 S. Ct. 1271 (2019), this Court considered a landlord's policy of requiring prospective renters to verify their income by providing copies of "pay stubs, an offer letter, or tax returns." *Id.* at 358. The plaintiff could not do so "because [her] only sources of income were [SSDI], retirement benefits, and rental income." *Ibid.* This Court held that waiving application of the policy and considering other forms of income documentation would be a reasonable accommodation of the plaintiff's disability. *Ibid.* *Edwards*' logic supports the district court's finding of reasonableness in this case. Just as documenting the plaintiff's income in a different way was reasonable there, so too is payment of Klossner's rent in a different way (through two payments instead of one) reasonable here.

The Ninth and Eleventh Circuits examined similar accommodation requests and reached the same conclusion. In *Giebeler*, the plaintiff was unable to work due to his disability and could not satisfy the minimum-income requirement of the apartment he wanted to rent. *Giebeler*, 343 F.3d at 1145. He sought to add his mother as a cosigner because she could satisfy the requirement, but the owner of the complex rejected the accommodation, citing a "policy against allowing co-signers." *Ibid.* The Ninth Circuit held that waiver of the policy was "reasonable in

the run of cases" because, like here, it would not require the owner "to accept less rent" or "otherwise alter the essential obligations of tenancy." *Id.* at 1157. Rather, it simply asked the owner "to accept an alternative way of proving financial responsibility." *Ibid.*

The Eleventh Circuit endorsed *Giebeler*'s reasoning in *Schaw*. The plaintiff there could not satisfy the minimum-gross-annual-income requirement for the house he wished to rent based on his SSDI income alone. *Schaw*, 938 F.3d at 1262-1263. He therefore asked the owner to consider his receipt of food stamps and financial support from his father, but the owner declined to do so. *Id.* at 1263. The Eleventh Circuit held that the plaintiff's accommodation was reasonable because it would not require the owner "to accept any less than usual in terms of payment." *Id.* at 1268. Rather, the owner would simply "accept proof that [the plaintiff] brings in the same amount of money as any other * * * homeowner, but in a different form." *Ibid.*

Giebeler and *Schaw* demonstrate that the district court's finding was justified. As in those cases, defendants would not be forced to accept a lower monthly rent or alter any essential obligations of Klossner's tenancy. Rather, they would continue to receive the full amount required under her lease, just with Klossner tendering a portion and the local housing agency paying the remaining amount. There was no error, let alone clear error, in the court's finding.

2. Defendants Failed To Show That The Accommodation Is Unreasonable As A Matter Of Law, Or That It Will Cause Undue Hardship Under The Circumstances

Defendants contend that the district court was wrong to find that Klossner's requested accommodation is reasonable. They broadly argue, contrary to the case law, that the accommodation is unreasonable as a matter of law. Defs.' Br. 46. And they argue in the alternative that the district court's reasonableness finding was clearly erroneous. Defs.' Br. 43-46. This Court should reject both contentions.

a. Klossner's Accommodation Is Not Unreasonable As A Matter Of Law

In arguing that Klossner's accommodation is unreasonable as a matter of law, defendants rely on the Second Circuit's decision in *Salute* v. *Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998). Defs.' Br. 34-46. *Salute* considered whether the FHA might require a landlord to accept rental assistance under the housing choice program as an accommodation of a renter's disability. *Salute*, 136 F.3d at 300-302. In a divided opinion, the Second Circuit held that requiring a landlord to accept rental assistance would be unreasonable as a matter of law because participation in the housing choice program carries the "potential for burdensome requirements," like "financial audits, maintenance requirements, [and] inspection of the premises." *Id.* at 301.

Defendants in this case argue that they are subject to "[t]he same administrative concerns" that the *Salute* majority identified. Defs.' Br. 42-43. But they have not cited any evidence to show that any of the "potential" burdens discussed in *Salute* will actually arise if they grant Klossner's accommodation. At most, defendants proffered speculative testimony suggesting that such impositions possibly could occur. Defs.' Br. 43-44. That speculation, however, is insufficient under the Supreme Court's decision in *Barnett*, which post-dates *Salute* and held, in the Americans with Disabilities Act (ADA) context, that the denial of a facially reasonable accommodation must be justified by "special (typically *case-specific*) circumstances that demonstrate undue hardship in the *particular circumstances*." *Barnett*, 535 U.S. at 402 (emphases added). Appellate courts have held that this requirement for case-specific evidence also applies under the FHA, see p. 12, *supra* (discussing *Peebles* and *Schaw*), and defendants failed to proffer such evidence here, as explained below.

In deeming the plaintiffs' accommodation unreasonable as a matter of law, *Salute* also relied on the argument that participation in the housing choice program normally is "voluntary." *Salute*, 136 F.3d at 301. Echoing this point, defendants imply that Klossner's requested accommodation is unreasonable because it similarly would force them to participate in an otherwise "voluntary" program. Defs.' Br. 33 (emphasis omitted); see also Defs.' Br. 71. But, by definition, the

FHA's reasonable-accommodation mandate requires landlords to take certain *in*voluntary actions. As then-Judge Gorsuch once stated, the very "point of the reasonable accommodation mandate [is] to *require* changes in otherwise neutral policies that preclude [persons with a disability] from obtaining 'the same . . . opportunities that those without disabilities automatically enjoy.'" *Cinnamon Hills Youth Crisis Ctr., Inc.* v. *Saint George City*, 685 F.3d 917, 923 (10th Cir. 2012) (quoting *Barnett*, 535 U.S. at 397) (emphasis added and omitted). And even if defendants granted Klossner's accommodation, participation in the housing choice program would remain generally voluntary for them: defendants still could refuse to accept rental assistance on behalf of tenants who do not have a disability. Accordingly, the purported "voluntar[iness]" of the program does not render Klossner's accommodation unreasonable as a matter of law. Defs.' Br. 33 (emphasis omitted).

Finally, defendants fault the district court for relying on *Giebeler* and *Schaw* instead of *Salute*. They argue that *Giebeler* is inapposite because it did not involve the housing choice program, and that *Schaw* is distinguishable because the Eleventh Circuit remanded the plaintiff's failure-to-accommodate claim for further consideration of undue hardship and necessity. Defs.' Br. 41 n.3, 42-43. As explained, however, *Giebeler*'s underlying rationale—that the FHA sometimes requires landlords to waive their usual policies to accommodate tenants whose

disabilities prevents them from working—is equally applicable to Klossner's claim here. And *Schaw* discussed at length the governing "principles" for assessing reasonableness and how "the separate-but-related elements of necessity and equality" also "apply" under the FHA. *Schaw*, 938 F.3d at 1265-1273. Both opinions thus offer valuable guidance for analyzing Klossner's claim, and for the reasons discussed, the district court was correct to follow their approach and not *Salute*'s.

b. The District Court Was Justified In Finding No Undue Hardship Under These Circumstances

Defendants also are mistaken in suggesting that the district court clearly erred in rejecting their undue-hardship defense. Defendants recognize that the court considered multiple potential burdens in its analysis of undue hardship, including changes to Klossner's lease that would be required under the HAP contract, limitations on defendants' ability to terminate her lease absent good cause, and the possibility that rental assistance could "cease" if Klossner failed to maintain her home in accordance with HUD regulations. Defs.' Br. 72. They also acknowledge the court's conclusion that their alleged administrative burdens were "vague" and "speculative." Defs.' Br. 73 (quoting Add. 21). Defendants do not suggest that any of this analysis is wrong; rather, they characterize it as "not compelling" in light of testimony from Dave Reynolds, the President of Impact, and defendants' expert. Defs.' Br. 73; Add. 11-12. But a trial judge's "decision to

credit the testimony of certain witnesses and not others is virtually never clear error." *Bowles* v. *Osmose Utils. Servs., Inc.*, 443 F.3d 671, 674 (8th Cir. 2006).

More to the point, Reynolds' testimony does not suffice to demonstrate undue hardship. First, although that testimony discussed, in the abstract, certain alleged "burdens not discussed by the court" (like "inefficiencies of recordkeeping"), the testimony failed to prove that these burdens ever arise in practice. Defs.' Br. 73. Impact manages manufactured home parks and participates in the housing choice program in four other states. Add. 13; R.Doc. 73, at 222-223. Yet defendants offered no evidence that these burdens have arisen in any of those parks, let alone that they amounted to undue hardship. See Add. 22 (noting that "[d]efendants presented no evidence that [participating in the program in other states] created undue hardship upon them"). This strongly suggests that no such hardship exists.

Second, Reynolds' testimony offered no case-specific evidence that any burdens will result under the particular circumstances here. For example, he suggested that if Klossner's accommodation is granted, defendants might "incur[] expenses of up to $10,000" if she does not maintain her home in accordance with HUD regulations, her rental assistance is suspended, and her mobile home must be removed from their park. Br. 73-74. But this constitutes mere conjecture, with no explanation from Reynolds for why this scenario is likely to manifest. Indeed, the

evidence suggests the opposite, as Klossner repaired her home when needed, see p. 6, *supra*, and as discussed, defendants' acceptance of rental assistance under the housing choice program will make it easier for Klossner to afford such repairs in the future, see p. 13, *supra*.

Likewise, testimony by defendants' expert did not supply the evidence they needed to establish undue hardship. Their expert offered only his "opinion" on certain topics, Fed. R. Evid. 703, based on his review of the parties' pleadings and trial briefs (see R.Doc. 74, at 297-299). And he acknowledged his lack of personal knowledge about factual issues in the case, relying instead on his "experience[s] in * * * different jurisdictions." R.Doc. 74, at 281-282, 297-299, 304-305. Accordingly, defendants' expert failed to establish that Klossner's accommodation will cause "undue hardship in the[se] particular circumstances." *Peebles*, 354 F.3d at 768 (quoting *Barnett*, 535 U.S. at 402).[5]

[5] Defendants also suggest that, by relying on their participation in the housing choice program in other states, the district court "essentially mandated" that if a landlord participates in the program "in any jurisdiction," it is "required by law" also to participate "in any other jurisdiction where it operates." Defs.' Br. 75 (emphases omitted). Not so. The district court simply reasoned that if participation actually imposes the types of burdens alleged by defendants, they should be able to provide evidence of it based on their firsthand experience in the program.

B. Klossner's Requested Accommodation Is Necessary

1. Allowing Klossner To Rely On Rental Assistance Is Needed To Afford Her An Equal Opportunity To Retain And Enjoy Her Home

The district court's "necessity" determination was also justified. To show that an accommodation "may be necessary," a plaintiff must demonstrate that, absent the accommodation, she may be denied an "equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B); see also *Schaw*, 938 F.3d at 1269. This includes an equal opportunity for the plaintiff to obtain and retain "the housing of her choice." *Wisconsin Cmty. Servs., Inc.* v. *City of Milwaukee*, 465 F.3d 737, 749 (7th Cir. 2006) (en banc). An accommodation is necessary if it "redress[es] injuries that otherwise would prevent a [person with a disability] from receiving the same enjoyment from the property as a [person without a disability] would receive." *Hollis*, 760 F.3d at 541; see also *Cinnamon Hills*, 685 F.3d at 923.

Here, the evidence presented at trial supports the district court's finding that Klossner's requested accommodation is necessary to ensure that she has an equal opportunity to retain and enjoy her home. When Klossner was able to work, she earned enough to provide for her entire family, including paying her rent. R.Doc. 73, at 51. Due to her disabilities, however, she can no longer work and relies on Social Security disability benefits to pay her rent and living expenses. Add. 17; R.Doc. 73, at 16. Since IADU acquired her manufactured home park, Klossner's rent has consumed an increasingly high percentage of those benefits. See p. 6,

supra. She currently spends 50% of her income on rent—a figure that does not include additional charges for things like trash pickup and water-meter rental fees (R.Doc. 80-4, at 1)—thus leaving her "[s]evere[ly] cost burden[ed]" under HUD's regulations, 24 C.F.R. 91.5. This puts Klossner in a precarious financial position, as any emergency, unanticipated expense, or repair to her home could leave her unable to afford her rent. See p. 6, *supra*. The uncontroverted evidence suggests that she is in this position because of the disabilities that prevent her from working. See Add. 19.

On this record, the district court correctly found that defendants' acceptance of rental assistance under the housing choice program is necessary to provide Klossner the same opportunity to obtain housing as a person without a disability. See *Wisconsin Cmty. Servs.*, 465 F.3d at 749. The accommodation ensures that Klossner's inability to engage in full-time employment—which stems directly from her disability—does not jeopardize her access to housing because it permits her to pay her rent from a non-employment funding source. In short, the accommodation provides "a level playing field in housing" by equalizing Klossner's ability to retain her housing, despite the impediments created by her disabilities. *Cinnamon Hills*, 685 F.3d at 923.

As above, *Edwards*, *Giebeler*, and *Schaw* all support the district court's finding of necessity. Accommodations were necessary in those cases because each

plaintiff would have qualified to rent the housing at issue but for their respective disabilities. Those disabilities rendered the plaintiffs unable to provide specific forms of income documentation, *Edwards*, 739 F. App'x at 358, or meet minimum-income thresholds, *Schaw*, 938 F.3d at 1262; *Giebeler*, 343 F.3d at 1145. All three courts confirmed that, in those contexts, accommodations were necessary to provide the plaintiffs with an equal opportunity to obtain housing. This was accomplished by permitting alternative documentation of income, *Edwards*, 739 F. App'x at 358, consideration of additional income sources, *Schaw*, 938 F.3d at 1272, and inclusion of a co-signer, *Giebeler*, 343 F.3d at 1156.

Similar logic applies here. Klossner can afford to rent space for her home, just like other residents. But due to the effects of her disability, she requires an accommodation to do so securely—namely, the ability to pay part of her rent through rental assistance provided under the housing choice program. This scenario is analogous to *Edwards*, *Giebeler*, and *Schaw*, and the district court's finding of necessity was correct for the same reasons given in those cases.

2. Defendants' Arguments To The Contrary Are Meritless

Defendants argue that Klossner's accommodation is unnecessary as a matter of law, and alternatively, that the district court's finding of necessity is clearly erroneous. Both arguments are meritless.

a. Klossner's Accommodation Properly Addresses Conditions Created By Her Disabilities

Defendants challenge the district court's finding, arguing that a reasonable accommodation cannot redress "a person's financial situation"; rather, in their view, an accommodation is necessary only if it "alleviate[s] the direct physical or mental effects of a disability." Defs.' Br. 56, 59. Defendants contend that Klossner's request does the former and not the latter and, thus, constitutes "a luxury" rather than an accommodation. Defs.' Br. 54. This argument conflicts with established case law and misunderstands the FHA's reasonable-accommodation requirement.

As multiple courts have made clear, Klossner's accommodation remedies exactly the type of inequity the FHA seeks to prevent. The statute requires that an accommodation be provided to address "conditions created by [a person's] disabilities" when necessary to equalize "housing opportunities between those with disabilities and those without." *Cinnamon Hills*, 685 F.3d at 923; see also *Hollis*, 760 F.3d at 541. Such conditions can include a person's economic status and corresponding need to rely on rental assistance when the person's disabilities prevent her from working. Indeed, as explained by Judge Calabresi, dissenting in *Salute*, and the Eleventh Circuit in *Schaw*, the need for an accommodation in that scenario "is completely analogous to that of a blind person with a dog who is denied access to a housing complex that has a 'no pets policy.'" *Salute*, 136 F.3d

at 310 (Calabresi, J., dissenting). The person's blindness "creates an inability to walk around safely * * * and thus a need for a waiver of the prohibition on pets." *Schaw*, 938 F.3d at 1270. Similarly, where a person's disabilities give rise to "an inability to work," there can be "a need for a waiver of" certain rental policies, *ibid.*, like those that require rental payments to come from a tenant's personal income. In both circumstances, "an accommodation is being provided to alleviate the *effects* of a disability" on a person's use and enjoyment of a dwelling—the inability to navigate a space safely without a service animal and the inability to work and earn enough to pay rent securely without the aid of rental assistance. *Ibid.* (emphasis added).

Defendants' arguments to the contrary are unavailing. They misconstrue the Seventh Circuit's decision in *Hemisphere Building Co.* v. *Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999), in arguing that the FHA does not require accommodation of a person's "financial situation." Defs.' Br. 37 (quoting *Hemisphere*, 171 F.3d at 440). *Hemisphere* simply stands for the proposition that a general "interest" among persons with a disability in obtaining lower-cost housing does not establish necessity. *Hemisphere*, 171 F.3d at 439-440. That proposition is inapposite here. Klossner is not requesting a lower rent because of her financial situation; rather, she seeks to pay part of her actual rent through an additional source.

Defendants also suggest that the Supreme Court's decision in *Barnett* "affirmed that reasonable accommodations must alleviate the direct physical or mental effects of a disability." Defs.' Br. 56. But *Barnett* involved an entirely different statutory provision—a portion of the ADA that specifically requires an employer to reasonably accommodate "the known physical or mental limitations of an otherwise qualified individual." 42 U.S.C. 12112(b)(5)(A); see also *Barnett*, 535 U.S. at 396. By contrast, the FHA's reasonable-accommodation provision contains no such limiting language. See 42 U.S.C. 3604(f)(3)(B).

Defendants fare no better in pointing to a particular HUD regulation that does not use examples involving "nonphysical or nonmental byproduct[s] of a person's disability." Defs.' Br. 59 (citing 24 C.F.R. 100.204(b)). The regulation's examples merely "illustrate[]" a landlord's obligation to provide a reasonable accommodation. 24 C.F.R. 100.204(b). They do not represent the limits of that obligation. Cf. 53 Fed. Reg. 45,003 (Nov. 7, 1988) (noting that the examples in Section 100.203(b) "are illustrative and not exhaustive").[6]

[6] Defendants alternatively suggest that the FHA seeks only to combat "stereotypes or prejudices" against persons with a disability. Defs.' Br. 60-61. Their cramped interpretation of the statute conflicts with this Court's recognition of the FHA's broad remedial purpose. See *Radecki* v. *Joura*, 114 F.3d 115, 116 (8th Cir. 1997). As explained above, the accommodation requested here furthers that same purpose of ensuring that people with disabilities, like Klossner, have equal access to housing.

b. The District Court Did Not Clearly Err In Finding Necessity

Next, defendants proffer three reasons why the district court clearly erred in finding Klossner's requested accommodation to be necessary, but as above, each is unavailing. First, they argue that, "for more than a decade," Klossner had been able to pay her rent without the help of rental assistance. Defs.' Br. 65-66. But this ignores the multiple rent increases and many charges defendants have added *since they purchased her manufactured home park*, which created new barriers to Klossner's ability to pay her rent in light of her disabilities. See p. 6, *supra*.

Second, defendants suggest that Klossner's accommodation is unnecessary because even if she had no disabilities, she "*still* may not have sufficient income to meet [her] rent obligations." Defs.' Br. 67. Setting aside the obvious conflict with defendants' prior suggestion that Klossner can pay her rent, this argument is untenable. The district court expressly found that "but for plaintiff's disability she could work and earn enough money to pay her rent" and pointed out there was "no evidence to the contrary." Add. 19. Defendants cite nothing in the record demonstrating that this finding is clearly erroneous.

Finally, defendants contend that because Klossner could have rented space in another manufactured home community that participates in the housing choice program, it is not necessary for them to do so. Defs.' Br. 69. But this would deprive Klossner of an equal opportunity to retain "the housing *of her choice*."

Wisconsin Cmty. Servs., 465 F.3d at 749 (emphasis added). Moreover, the case defendants cite as authority, *Bryant Woods Inn, Inc.* v. *Howard Cnty.*, 124 F.3d 597 (4th Cir. 1997), does not support their proposition. Defs.' Br. 69. That case considered a request for a zoning variance that would have enabled a group home for persons with a disability to increase its capacity from eight to fifteen residents. *Bryant Woods Inn*, 124 F.3d at 599. The court deemed the proposed expansion unnecessary to accommodate persons who have disabilities and "desir[e] to live in a group home in a residential community" because they already could reside at the group home in question, "and, if no vacancy exists," there were openings at "numerous other group homes." *Id.* at 605. This reasoning does not support defendants' much broader argument that a landlord need not accommodate a renter's disabilities if the renter can simply move to other housing where an accommodation is not needed. Indeed, this argument is antithetical to the FHA's goal of ensuring "equality of opportunity" between "those with disabilities and those without." *Cinnamon Hills*, 685 F.3d at 923.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's decision.

Respectfully submitted,

DAMON SMITH
General Counsel

SASHA SAMBERG-CHAMPION
Deputy General Counsel
for Enforcement and Fair Housing

JEANINE WORDEN
Associate General Counsel for Fair Housing

REBECCA M. COY
HEATHER E. NODLER
Trial Attorneys
Department of Housing and Urban Development
Office of General Counsel, Office of Fair Housing
451 7th Street SW
Washington, D.C. 20410

KRISTEN CLARKE
Assistant Attorney General

s/ Jason Lee
NICOLAS Y. RILEY
JASON LEE
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-1915

CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE/CROSS-APPELLANT AND URGING AFFIRMANCE:

(1) complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6491 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f);

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s/ Jason Lee
JASON LEE
Attorney

Date: March 7, 2022

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2022, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE/CROSS-APPELLANT AND URGING AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Jason Lee
JASON LEE
Attorney