UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

LAWRENCE COUNTY RECOVERY, LLC, et al., **Plaintiffs,** v. **VILLAGE OF COAL GROVE, OHIO, et al.,** **Defendants.**	**CASE NO. 1:24-cv-00452** **JUDGE MICHAEL BARRETT**

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517 to address questions of law raised by the defendants' motion to dismiss.[1] *See* Defs.' Mot to Dismiss (hereinafter "Defs.' Mot."), ECF No. 9. Specifically, the United States argues that 1) Plaintiffs' complaint adequately alleges that Lawrence County Recovery, LLC's residents are persons with disabilities under the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619, *see* Defs.' Mot. 6-8; 2) the FHA applies to municipal zoning decisions, *see id.* at 6; 3) Plaintiffs adequately allege intentional discrimination under the FHA based on the challenged zoning ordinances, *id.* at 11-18; and 4) Plaintiffs' claim for retaliation under the FHA is not dependent on the merits of their underlying discrimination claims, *see id.* at 18-22. The United States does not address the parties' other claims or arguments.

[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, to attend to any other interest of the United States."

I. INTEREST OF THE UNITED STATES

Plaintiffs allege, *inter alia*, that the Village of Coal Grove, Ohio ("Village") and its city solicitor violated the FHA by restricting small, independent homes for persons in recovery from alcohol or drug addiction from operating under the Village's zoning code. Compl. ¶¶ 88-112, 200-09, 228-32, 238-41, ECF No. 1. Although a national problem, recent data indicate that drug overdose deaths in Ohio are among the highest in the United States.[2] The Substance Abuse and Mental Health Services Administration (SAMHSA) has found that rates of opioid and illicit drug use in Ohio are above the national average.[3] Ensuring access to independent living homes is one step in the overall efforts needed to address this epidemic.

The United States has important enforcement responsibilities under the FHA. For example, the Attorney General may initiate civil proceedings on behalf of the United States in cases alleging a "pattern or practice" of housing discrimination, 42 U.S.C. § 3614(a), and has challenged discriminatory land use restrictions on group homes under this provision. *See*, *e.g.*, *Valencia v. City of Springfield*, 446 F. Supp. 3d 369, 381-82 (C.D. Ill. 2020). Additionally, the Attorney General "may commence a civil action" upon the referral by HUD of any fair housing complaint that "involves the legality of any State or local zoning or other land use law or ordinance." 42 U.S.C. §§ 3610(g)(2)(C), 3614(b)(1)(A). Furthermore, private litigation under the FHA is an important supplement to government enforcement. *See Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972); *see also* 42 U.S.C. § 3616a (authorizing the Secretary of

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[2] Centers for Disease Control and Prevention, *Drug Overdose Mortality by State* (2022), https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm (last visited Dec. 4, 2024).

[3] SAMHSA, 6 *Behavioral Health Barometer: Ohio*, 22-24 (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32852/Ohio-BH-Barometer_Volume6.pdf.

HUD to contract with private, non-profit fair housing organizations to conduct testing, investigation, and litigation under the FHA). The United States therefore has a substantial interest in the proper resolution of legal issues concerning the FHA's application to zoning restrictions for homes for persons with disabilities, including persons with substance abuse disorders.[4]

II. BACKGROUND

As relevant here, Plaintiffs allege as follows:

A. Lawrence County Recovery LLC

Plaintiff Lawrence County Recovery, LLC ("LCR") is a licensed and accredited recovery service provider operating in southeastern Ohio. Compl. ¶ 2. LCR operates small independent living homes for individuals in recovery from drug or alcohol abuse. Compl. ¶¶ 45-51. Two of these homes are in Coal Grove. Compl. ¶ 3. Each can serve up to six individuals in recovery from substance abuse disorder. Compl. ¶ 3. Residents of these homes are not permitted to use illegal drugs or alcohol. Compl. ¶ 55. To enforce this rule, LCR conducts mandatory, random drug testing on all residents. Compl. ¶ 64.

B. Coal Grove's Ordinances Restricting the Availability of Recovery Housing

On June 22, 2023, the Village Council enacted a series of ordinances regulating housing for people in recovery, Compl. ¶ 88, as follows:

1. Ordinance 2023-12 imposes a "one year moratorium on the establishment of additional and/or new Group Residential Homes or Facilities and

[4] Plaintiffs have also raised claims under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12132, and state law. Although not specifically addressed here, Plaintiffs' ADA claims are similar to, and should be analyzed in tandem with, their FHA claims. *See Valencia v. City of Springfield*, 883 F.3d 959, 967 (7th Cir. 2018). The United States does not address Plaintiffs' state law claims.

Addiction/Substance Abuse Treatment Providers located within the Village of Coal Grove." Compl. ¶ 98 (citation omitted). It also requires any existing "Group Residential Homes or Facilities and Addiction/Substance Abuse Treatment Providers" to register annually with the Village by providing their physical address, the number of residents, and the number of staff. Compl. ¶ 99.

2. Ordinance 2023-11 requires "[a]ll entities and/or locations operating as Group Residential Homes or Facilities and Addiction/Substance Abuse Treatment Providers" to submit proof of licensure or accreditation from certain enumerated entities. Compl. ¶¶ 92-93 (citation omitted). The ordinance also requires all homes for individuals with substance abuse disorders to submit proof of additional permits and submit to an inspection "by the Village Zoning Administrator and Village Fire Chief or proper designee upon reasonable notice and not less than once each six months." Compl. ¶ 93 (citation omitted).

3. Ordinance 2023-10 amended the definition of "family" to refer to "one or more persons occupying a dwelling," specifying that "[a] family shall not contain more than three individuals unless all members of said family are related by blood, marriage, or adoption." Compl. ¶ 89 (citation omitted). Previously, the Village's zoning code contained no limit on the number of unrelated individuals who could occupy a dwelling. Compl. ¶ 89.

The ordinances imposed civil penalties of up to $1,000.00 per day and criminal misdemeanor charges for noncompliance. Compl. ¶¶ 96, 109, 157-58.

The ordinances were enacted in response to comments in which Village residents expressed "harmful stereotypes about people in recovery and indicated a desire to exclude this

population." Compl. ¶ 79. Additionally, Village Solicitor James Thomas Holt IV called recovery services "fraudulent" enterprises and said that many of those who provide such services were "ex-felons." Compl. ¶¶ 80, 130. He further stated that persons in addiction recovery "all do meth and heroin, and fentanyl." Compl. ¶ 128. Councilmembers alleged that people in recovery were "changing the demographics of our Village," Compl. ¶ 127, and continued to make disparaging remarks about people in recovery after passage of the ordinances. Compl. ¶¶ 119-32.

C. The Village's Enforcement Actions Against LCR

In October 2023, the Village issued citations and civil fines against LCR and charged two LCR officers with misdemeanors for violating the ordinances. Compl. ¶¶ 150-53, 157-61. In response to these enforcement actions, LCR agreed to limit the number of residents in its two existing independent living homes to five people and not open any additional recovery homes in the Village. Compl. ¶¶ 169-170. Although the criminal charges against LCR's officers were dismissed following this agreement, the ordinances remain in effect, and the Village extended its moratorium on new homes by 90 days. Compl. ¶ 174. At this time, LCR had a six-week waiting list for its Coal Grove homes but was unable to serve additional individuals due to the Village's zoning ordinances. *See* Compl. ¶ 175.

III. ARGUMENT

A. Persons in recovery from drug or alcohol addiction are persons with disabilities under the FHA

Defendants argue that LCR's residents are not protected by the FHA because, as a matter of law based on the allegations of the complaint, they fall within an exception to the FHA's

definition of disability for "current, illegal use of or addiction to a controlled substance[.]" 42 U.S.C. § 3602(h); *see* Defs.' Mot. 6-8.[5] This is incorrect and without merit.

The FHA defines disability as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment," but excludes "current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21)." 42 U.S.C. § 3602(h). These terms should be construed "in accordance with their ordinary and natural meaning and the overall policies and objectives of the statute." *Bricklayers and Trowel Trades Int'l Pension Fund v. Wasco, Inc.*, 551 B.R. 319, 335 (M.D. Tenn. 2015) (quoting *SUPERVALU, Inc. v. Bd. of Trustees of Sw. Pa. & W. Md. Area Teamsters & Emp.'s Pension Fund*, 500 F.3d 334, 340 (3d Cir. 2007)); *accord United States v. Orellana*, 405 F.3d 360, 365 (5th Cir. 2005). The FHA's objective, "to provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. § 3601, mandates that its terms be given a "generous construction." *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995) (quoting *Trafficante*, 409 U.S. at 209); *Linkletter v. W. & S. Fin. Grp, Inc.*., 851 F.3d 632, 637 (6th Cir. 2017) (FHA's remedial provisions "should be broadly interpreted and applied with the Fair Housing Act's purpose in mind").

Logically, a person recovering from addiction may be substantially limited in one or more major life activities. As the Fourth Circuit has recognized, "Congressional intent was to treat

[5] Although the FHA uses the term "handicap," the United States uses the preferred term "disability." *See Helen L. v. DiDario*, 46 F.3d 325, 330 n.8 (3d Cir. 1995) ("The change in nomenclature from 'handicap' to 'disability' reflects Congress' awareness that individuals with disabilities find the term 'handicapped' objectionable."). For purposes of the FHA, the terms have the same meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (recognizing that the definition of "disability" under Americans with Disabilities Act taken almost verbatim from definition of "handicap" under Fair Housing Act).

drug abuse and addiction as significant impairments that would constitute handicaps unless otherwise excluded." *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 919 (4th Cir. 1992). Citing the House Judiciary Committee's report accompanying the Fair Housing Amendments Act of 1988, the Fourth Circuit concluded that "someone who as a medical matter will always have a craving for narcotics, but who has been able to control that craving for some (undefined) period of time, must not be denied access to housing on the basis of that craving." *Id.* at 922 (citing H.R. Rep. No. 100-711, at 22 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2183). Indeed, as that Committee report concluded, the FHA provisions prohibiting disability discrimination do not exclude individuals who "are participating in a treatment program or a self-help group" and "[d]epriving such individuals of housing … would constitute irrational discrimination that may seriously jeopardize their continued recovery." H.R. Rep. No. 100-711, *supra,* at 22.

Not surprisingly, courts that have decided this question have held that persons who are actively attempting to overcome drug or alcohol addiction may be covered by the FHA's broad, general language defining persons with disabilities, notwithstanding the narrow and focused exclusion for current, illegal use of or addiction to a controlled substance. 42 U.S.C. § 3602(h); *see One Love Hous., LLC v. City of Anoka*, 93 F.4th 424, 430 (8th Cir. 2024) ("[R]esidents of a sober home who are recovering alcoholics or drug addicts may establish they have a qualifying disability if they [meet § 3602(h)'s requirements]."); *S. Mgmt. Corp.*, 955 F.2d at 922-23; *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1156 (9th Cir. 2013) ("It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA."); *Reg'l Econ. Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 46-48 (2d Cir. 2002) (finding that residents of halfway houses recovering from addiction were "entitled thereby to the protections of [the FHA, ADA, and the Rehabilitation Act]") (quoting *United States v.*

Borough of Audubon, 797 F. Supp. 353, 359 (D.N.J. 1991)) (brackets in original); *City of Edmonds v. Wash. State Bldg. Code Council*, 18 F.3d 802, 804 (9th Cir. 1994) ("Participation in a supervised drug rehabilitation program, coupled with non-use, meets the definition of handicapped [under the FHA]."), *aff'd sub nom.*, *City of Edmonds v. Oxford House*, 514 U.S. at 731.

Here, the complaint alleges that the residents of LCR's independent living homes must abstain from alcohol or drug abuse as a condition of living there, must have completed an addiction recovery program, and must be currently employed. Compl. ¶¶ 54-56, 64. On this motion to dismiss, Defendants cannot show that the allegations of the complaint, construed in favor of Plaintiffs, establish that the residents are "currently" using or addicted to controlled substances. To the contrary, the complaint plainly alleges that the residents are recovering from addiction.

In arguing that the FHA's "current use[] or addiction" exemption applies to the residents of LCR's homes, Defendants rely on dicta from *Lake-Geauga Recovery Centers, Inc. v. Munson Twp.*, No. 1:20-cv-02405, 2021 WL 1049661 (N.D. Ohio Mar. 19, 2021). *See* Defs.' Mot. 7-8. In *Lake-Geauga*, on a motion for a preliminary injunction, the court concluded that plaintiffs had not shown they were likely to succeed on their reasonable accommodation claim under the FHA because "persons actively recovering from drug and/or alcohol addiction[] likely fall within this exclusion from the Fair Housing Act." *Lake-Geauga*, 2021 WL 1049661, at *6. The court cited no legal authority or evidence in the record for this statement, which is inconsistent with the plain language of the FHA's relevant provisions, the statements in the House Report, and the federal court of appeals holdings that persons recovering from, but not currently addicted to or using, controlled substances remain protected by the FHA. *See supra* at 6-7. And the statement

was unnecessary to the disposition of the case, as the court ultimately granted the preliminary injunction in part after finding that the plaintiffs were likely to succeed on their reasonable accommodation claims under the ADA. *Lake-Geauga*, 2021 WL 1049661, at *12-13.

Furthermore, the statement in *Lake-Geauga* was not a legal holding about the meaning of the FHA, but rather a case-specific finding, made after briefing and an evidentiary hearing on a motion for a preliminary injunction, that plaintiffs *in that case* had not met their burden of showing they were likely to succeed on the merits of their FHA reasonable accommodation claim. *Id*. at *5-6. The procedural posture here, by contrast, is a motion to dismiss, where the plaintiffs are not required to make any *prima facie* evidentiary showing and all factual allegations in the complaint must be accepted as true and construed in the light most favorable to the plaintiff. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Here, as noted above, Plaintiffs have specifically alleged that the residents of their independent living homes have completed an addiction recovery program and are required to abstain from drugs and alcohol, which renders dismissal based on the FHA's exclusion for "current use[] or addiction inappropriate. *See supra* at 7-8.

It also bears emphasizing that, to state a claim under the FHA, sober living homes need not include individualized proof that each resident has a disability under the FHA. The Sixth Circuit has held that, under Title II the ADA, a non-residential provider of addiction treatment services was only required to allege that "its potential clients qualify as disabled" and specifically rejected the proposition that an "individualized inquiry" of each client was required. *MX Grp., Inc. v. City of Covington*, 293 F.3d 326, 336-37 (6th Cir. 2002). Likewise, in *SoCal Recovery, LLC v. City of Costa Mesa*, the Ninth Circuit held that, even at the summary judgment stage, "sober living homes need not provide individualized evidence of their residents'

disabilities to establish a cause of action for disability discrimination under the FHA or the ADA." 56 F.4th 802, 814 (9th Cir. 2023).

B. The FHA applies to municipal defendants and reaches discriminatory zoning provisions

Defendants further argue that the FHA does not apply to them, and that Plaintiffs' claims should be dismissed, because as a municipality they are not "providers of housing[.]" Defs.' Mot. 6 (citation omitted). This argument fails because, as explained below, the FHA prohibits municipal zoning and land use practices that "otherwise make unavailable or deny, a dwelling to any buyer or renter because of" disability. 42 U.S.C. § 3604(f)(1).

The text of the FHA "focuses on prohibited acts." *Meyer v. Holley*, 537 U.S. 280, 285 (2003). It does not limit or delineate which parties may be sued, and liability may attach to any defendant if their actions operate to deny or "make unavailable" housing, or discriminate in the terms, conditions, and privileges of housing, based on disability. 42 U.S.C. § 3604(f)(1)-(2). The Sixth Circuit has therefore held that "Congress explicitly intended for the FHAA to apply to zoning ordinances and other laws which would restrict the placement of group homes." *Larkin v. Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 289 (6th Cir. 1996) (citing H.R. Rep. No. 100-711, *supra*, at 24). The Sixth Circuit has also repeatedly applied the FHA to municipal zoning ordinances and decisions. *Smith & Lee Assocs. v. City of Taylor*, 13 F.3d 920, 924 (6th Cir. 1993) ("This Court has applied the FHAA to municipal zoning ordinances that affect housing opportunities for the disabled."); *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43, 45 (6th Cir. 1992) (holding that FHA "extend[s] to zoning practices and enforcement of otherwise neutral

[municipal] safety regulations that have the effect of limiting the ability of handicapped individuals to live in the residence of their choice.").[6]

The authorities cited by Defendants do not compel a contrary conclusion. *See* Defs.' Mot. 6. Instead, these cases, none of which involved zoning or land use claims, challenged conduct that was too attenuated from housing to give rise to liability under the FHA. *See Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 192 (4th Cir. 1999) (affirming dismissal of plaintiffs' FHA claim "[b]ecause this challenge to the highway site selection process is too remotely related to the housing interests that are protected by the Fair Housing Act"); *Kingman Park Civic Ass'n v. Gray*, 956 F. Supp. 2d 260, 264 (D.D.C. 2013) (dismissing plaintiff's claim that construction of a streetcar barn violated the FHA because "none of the numbered paragraphs that follow even refer to the Fair Housing Act or the *availability* of housing as a result of the streetcar project.") (emphasis in original); *Clifton Terrace Assocs. v. United Tech. Corp.*, 929 F.2d 714, 719-20 (D.C. Cir. 1991) (affirming dismissal of FHA claims under 42 U.S.C. § 3604(f)(1) against third-party elevator contractor for failure to maintain an apartment building's elevators because "[a] lack of elevator service is a matter of habitability, not availability," and clarifying that municipalities may be liable under the FHA based on services including "zoning approval").[7] Here, in contrast, Plaintiffs allege that the Village directly

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[6] Other Circuits are in accord. *See One Love Hous.*, 93 F.4th at 429 (emphasizing that both the ADA and FHA "'prohibit governmental entities from implementing or enforcing housing policies in a discriminatory manner against persons with disabilities' and both 'apply to municipal zoning decisions'") (quoting *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 573-74 (2d Cir. 2003)); *Valencia v. City of Springfield,* 883 F.3d 959, 967 (7th Cir. 2018) (the FHA "appl[ies] to municipal zoning decisions"); *Groome Res. Ltd.. v. Parish of Jefferson*, 234 F.3d 192, 201 (5th Cir. 2000) (in case challenging limit on unrelated residents of a dwelling, holding that the FHA "specifically targeted the type of zoning regulations at issue here.").

[7] Defendants also cite to *Lee v. Washtenaw County*, No. 19-10830 (E.D. Mich. 2020). Defs.' Mot. at 6. However, the only 2020 decision in that case was a two-page order granting Washtenaw County's motion for summary judgment "for the reasons stated on the record." *See*

discriminated against them in violation of the FHA by passing and enforcing ordinances that limit housing for persons with disabilities. Compl. ¶¶ 84-112, 205. Thus, the claims against the Village should survive Defendants' motion to dismiss. *Smith & Lee Assocs.*, 13 F.3d at 924.

C. Plaintiffs sufficiently plead that the challenged ordinances are discriminatory

"To prevail on a disparate treatment claim, a plaintiff must show proof of intentional discrimination." *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 612 (6th Cir. 2012). The Sixth Circuit has recognized that "statutes that single out for regulation group homes for the handicapped are facially discriminatory." *Larkin*, 89 F.3d at 290; *see also Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995) (Where statutes "facially single out the handicapped and apply different rules to them[,] … the discriminatory intent and purpose … are apparent on their face."); *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1050 (9th Cir. 2007) ("[T]he plaintiffs have established a prima facie case of facial discrimination under the Fair Housing Act because they have explicitly been excluded from Community House based on their gender and familial status."); *Int'l Union v. Johnson Controls, Inc.*, 499 U.S. 187, 197 (1991) (under Title VII of Civil Rights Act, a policy excluding "women with childbearing capacity from lead-exposed jobs" effectuated "a facial classification based on gender"). For facially discriminatory provisions to survive an FHA challenge, "the defendant must demonstrate that

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Order Granting Def.'s Mot. for Summ. J. 2, ECF No. 33, *Lee v. Washtenaw Cnty.*, No. 19-10830 (E.D. Mich. Sep. 4, 2020). In any event, this case, like the others cited by Defendants, is completely unrelated to zoning or land use laws that operate to deny housing based on disability. The plaintiff instead claimed that the defendant mental health providers violated the FHA and other laws by failing to help him find housing after he was evicted. *Lee v. Washtenaw Cnty.*, No. 19-10830, 2021 WL 927372, at *2, 4 (E.D. Mich. Mar. 11, 2021). Under those facts, the court found that the defendants, as non-housing providers, were not liable for discriminating in the "terms, conditions, or privileges" of housing. *Id.* at *4-5. *Lee* is therefore distinguishable from this case.

they are 'warranted by the unique and specific needs and abilities of those handicapped persons' to whom the regulations apply." *Larkin*, 89 F.3d at 290 (quoting *Marbrunak*, 974 F.2d at 47).

As alleged by Plaintiffs, by their plain terms, Ordinances 2023-11 and 2023-12 single out "Group Residential Home or Facilities and Addiction/Substance Abuse Treatment Providers" for differential treatment. Compl. ¶¶ 92, 98. Put differently, each ordinance identifies homes serving people with disabilities, including those operated by LCR, and subjects them to additional, onerous requirements that do not apply to similarly situated housing for persons without disabilities. Compl. ¶¶ 92-95, 98-103. Accordingly, as alleged by Plaintiffs, these ordinances are facially discriminatory. *Larkin*, 89 F.3d at 290. Defendants, for their part, do not purport to justify these ordinances based on the unique and specific needs of individuals in addiction recovery.

Unlike Ordinances 2023-11 and 2023-12, Ordinance 2023-10 does not by its terms single out housing for persons with disabilities, *see* Compl. ¶¶ 89, 124, 152, 157, and Defendants therefore claim that this ordinance is not discriminatory because it "does not specifically exclude protected classes of individuals." Defs.' Mot. 13. This argument misstates the relevant inquiry, however, for "[f]acial neutrality is not determinative." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). "Official action that targets" a protected class "for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Id.* The key consideration is "whether invidious discriminatory purpose" served as "a motivating factor" for a challenged piece of legislation, "even when the governing legislation appears neutral on its face." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). In conducting this analysis, "both direct and circumstantial evidence" can be used to show the municipality's legislative purpose, such that "the historical background of the decision

under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body" all "bear on the question of discriminatory object." *Lukumi*, 508 U.S. at 540; *see also United States v. City of Birmingham*, 727 F.2d 560, 565 (6th Cir. 1984) (affirming district court's finding of discriminatory intent by a city based on "the totality of [the] circumstances" analysis under *Arlington Heights*).

Notwithstanding Ordinance 2023-10's facial neutrality, Plaintiffs sufficiently allege discriminatory intent. Pleading that LCR's homes operate in a family-like manner, with residents living, eating, dividing up household chores, and maintaining their home like any other family unit—*see* Compl. ¶¶ 36, 58, 61—Plaintiffs allege that Ordinance 2023-10 targets them for providing housing to persons with disabilities. Compl. ¶¶ 119-24, 175. In support, Plaintiffs emphasize that prior to Ordinance 2023-10's passage, "any number of unrelated persons" could live together in a dwelling. Compl. ¶¶ 84, 89. The passage and implementation of Ordinance 2023-10, moreover, coincided with discussions at which Councilmembers voiced disparaging opinions of recovery homes and individuals in recovery. Compl. ¶¶ 87, 117, 125-32. Alongside Ordinances 2023-11 and 2023-12, Ordinance 2023-10 subjected LCR to new, onerous requirements that made housing unavailable to persons with disabilities. Compl. ¶¶ 5, 104. By extension, Ordinance 2023-10, operating in concert with Ordinances 2023-11 and 2023-12, rendered LCR criminally and civilly liable for conduct it had previously engaged in lawfully, without incident. Compl. ¶¶ 146-61, 181, 205-07. Viewing the "totality of [the] circumstances" presented in the complaint, Plaintiffs plausibly allege that invidious discrimination motivated Defendants' passage of Ordinance 2023-10. *See City of Birmingham*, 727 F.2d at 565; *Arlington*

Heights, 429 U.S. at 266; *Lukumi*, 508 U.S. at 540. Thus, this claim should also survive Defendants' motion to dismiss.

D. Plaintiffs have sufficiently pleaded a § 3617 claim

Section 3617 of the FHA provides that:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617. The Sixth Circuit has recognized that Section 3617's "language 'interfere with' encompasses . . . less obvious, but equally illegal, practices such as exclusionary zoning." *Mich. Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir. 1994) (citing *City of Birmingham*, 727 F.2d at 565). Plaintiffs may therefore bring a Section 3617 claim even in the absence of a housing discrimination claim under Section 3604. "Section 3617 requires a nexus with the rights protected by §§ 3603-06" of the FHA, "without requiring an actual violation of the underlying provisions." *Linkletter*, 851 F.3d at 639.

The Sixth Circuit has also held that "the language 'interfere with' [in Section 3617] should be broadly interpreted to reach all practices which have the effect of interfering with housing rights." *Linkletter*, 851 F.3d at 638. To that end, Section 3617 is not limited only to those parties who are liable for housing discrimination and "extends to other actors who are in a position directly to disrupt the exercise or enjoyment of a protected right and exercise their powers with a discriminatory animus." *Babin*, 18 F.3d at 347.

Plaintiffs have alleged that Defendants directly interfered with their ability to provide housing to persons with disabilities by imposing occupancy limits, subjecting them to fines for putative violations of these limits, and forcing them to choose between risking continued

criminal and civil penalties or capping the number of residents in each home and agreeing to never open another home in the Village. Compl. ¶¶ 169-70. Plaintiffs also allege that Solicitor Holt and Village Councilmembers made "[p]aternalistic and other discriminatory statements" about LCR's residents, *see Smith & Lee Assocs. v. City of Taylor*, 102 F.3d 781, 791 (6th Cir. 1996), such as referring to recovery residents as "backpack bandits" and members of the "backpack army," Compl. ¶ 117, along with other disparaging remarks about residents' purported criminality and lack of economic productivity. Compl. ¶¶ 125-32. Several of these comments followed the passage of the Recovery Ordinances and specifically identified LCR as a target for application of the ordinances. Compl. ¶¶ 119-32. Thus, Plaintiffs have sufficiently alleged a Section 3617 violation.

IV. CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court consider the above views in deciding the defendants' motion to dismiss.

Dated: December 6, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2024, I caused to be served a copy of the foregoing document entitled via the Court's CM/ECF system, which shall send notice to all counsel of record.

s/ Hayley Hahn