

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EQUAL RIGHTS CENTER,)	
)	
Plaintiff,)	
)	Case No. 1:06-CV-01991
v.)	Judge Richard J. Leon
)	
POST PROPERTIES, INC.,)	
POST GP HOLDINGS, INC., and)	
POST APARTMENT HOMES, L.P.,)	
)	
Defendants.)	

**MOTION OF THE UNITED STATES OF AMERICA
FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE***

The United States of America (“United States”), through counsel, respectfully moves this Court for leave to file a brief amicus curiae in response to Defendants’ Motion for Summary Judgment or, Alternatively, for Partial Summary Judgment (Dkt. No. 121). The United States’ proposed brief is attached to this Motion. In support of this Motion, the United States avers as follows:

1. In their Motion, Defendants have challenged Plaintiff’s enforcement of provisions under the Fair Housing Act, 42 U.S.C. §§ 3601-3631, which require that new multifamily housing be accessible to and usable by persons with disabilities. 42 U.S.C. § 3604(f)(3)(C). Defendants have argued that 1) accessibility guidelines issued by the U.S. Department of Housing and Urban Development are not relevant in determining whether the Act itself has been violated; 2) Plaintiff lacks standing to maintain this action; and 3) Plaintiff’s action is time-barred for all but one property alleged to be inaccessible.

2. The United States believes that its views on these issues will be “helpful and of

interest to the Court in the instant litigation,” Cobell v. Norton, 246 F. Supp. 2d 59, 62 (D.D.C. 2003), for the following reasons:

- a. The United States has important enforcement responsibilities under the Fair Housing Act. 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). Additionally, the Attorney General “shall commence and maintain a civil action” on behalf of an aggrieved person who has filed a complaint of housing discrimination with the Department of Housing and Urban Development (“HUD”), where HUD has made a determination of reasonable cause and the complainant or respondent has elected to proceed in federal court. See 42 U.S.C. § 3612(o). Pursuant to this authority, the United States has filed numerous cases to enforce the Act’s accessibility provisions for newly-constructed housing.¹ Resolution of the issues raised by Defendants may affect the United States’ enforcement of the Act.
- b. In addition, private litigation under the Act is an important supplement to government enforcement. See Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972); 42 U.S.C. § 3616a (authorizing the Secretary of HUD to contract with private, non-profit fair housing organizations to conduct testing, investigation, and litigation under the FHA).

¹ See <http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm> (last visited Feb. 17, 2009) (listing cases).

Accordingly, the United States has an interest in ensuring that private parties continue to have the ability to enforce the Act.

3. The United States additionally requests that, should the Court hear oral argument on these motions, the United States be permitted to participate.

4. Counsel for the United States has notified counsel for Plaintiff and counsel for Defendants of their intention to file this motion. Counsel for Plaintiff has indicated she consents to this motion. Counsel for Defendants has indicated she does not consent to this motion.²

WHEREFORE, the United States respectfully requests the Court grant the United States leave to file the attached Brief Amicus Curiae in the above matter.

² The United States notes that Rule 29 of the Federal Rules of Appellate Procedure, from which district courts derive their authority to grant or deny amici, Jin v. Ministry of State Sec., 557 F. Supp. 2d 131, 136 (D.D.C. 2008) (quoting Smith v. Chrysler Fin. Co., No. 00-6003, 2003 U.S. Dist. LEXIS 1798, *21 (D.N.J. Jan. 15, 2003)), provides that “[t]he United States . . . may file an amicus-curiae brief without the consent of the parties or leave of court.” Fed. R. App. P. 29(a).

Dated February 20, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2009, I filed the foregoing document entitled **Motion of the United States of America for Leave to File a Brief Amicus Curiae** via the Court's CM/ECF system, which shall send notice to the following counsel of record:

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