

IN THE SUPREME COURT OF OHIO

AKRON METROPOLITAN HOUSING AUTHORITY, ET AL.) **OHIO SUPREME COURT**
) **CASE NO. 07-0254**
)
APPELLANTS,) **AN APPEAL FROM THE SUMMIT COUNTY**
) **COURT OF APPEALS, NINTH APPELLATE**
V.) **DISTRICT**
)
OHIO CIVIL RIGHTS COMMISSION, ET AL.) **COURT OF APPEALS CONSOLIDATED CASE**
) **NOS. 23056 AND 23060**
)
APPELLEES.)

BRIEF OF AMICI CURIAE

**OHIO AND NATIONAL
FAIR HOUSING AND CIVIL RIGHTS
ORGANIZATIONS***
(*COMPLETE LIST APPEARS ON NEXT PAGE)

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St. Bernard Catholic Church; Equal Justice
Foundation; City of Barberton Law
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LIST OF AMICI CURIAE URGING AFFIRMANCE

National Fair Housing Alliance, Inc. (NFHA)

Miami Valley Fair Housing Center, Inc.

Housing Research & Advocacy Center

Heights Community Congress

Fair Housing Contact Service

Housing Opportunities Made Equal of Greater Cincinnati

Toledo Fair Housing Center

The John Marshall Law School Fair Housing Legal Support Center

Akron Branch NAACP

Urban League of Greater Cincinnati

Lorain County Urban League

Coalition on Homelessness and Housing in Ohio (COHHIO)

St. Bernard Catholic Church

Equal Justice Foundation

City of Barberton Law Department

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INTEREST OF AMICI CURIAE

Amicus curiae **National Fair Housing Alliance, Inc. (NFHA)** is a national non-profit public service organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business at 1212 New York Avenue, N.W., Suite 525, Washington, D.C., 20005. NFHA is a nationwide alliance of private, non-profit fair housing organizations, including eight in the State of Ohio¹ and dozens more in 28 states. NFHA's purpose is the achievement of "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. §3601. It attempts to fulfill that purpose by conducting research into the nature and effects of housing discrimination, advocating for effective programs of fair housing compliance enforcement, sponsoring national education conferences on fair housing issues and fair housing litigation, and participating in fair housing cases as a litigant. NFHA also attempts to identify and eliminate housing practices that are discriminatory and that constitute barriers to equal access to housing.

Amici curiae **Miami Valley Fair Housing Center, Inc., Housing Research & Advocacy Center, Heights Community Congress, Fair Housing Contact Service, Housing Opportunities Made Equal of Greater Cincinnati, and Toledo Fair Housing Center**, are non-profit public interest fair housing agencies formed under the laws of the State of Ohio. They work to eliminate housing discrimination in the State of Ohio and to ensure equal housing opportunities for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. Like the Appellees Ohio Civil Rights Commission and Fair Housing Advocates Association, they accept complaints alleging housing

¹ Appellee Fair Housing Advocates Association, Inc., is a member of NFHA.

discrimination, investigate housing-related industries for compliance with fair housing laws, and participate in federal and state court litigation brought under those laws.

Amicus curiae **The John Marshall Law School Fair Housing Legal Support Center (“Center”)** is a clinical law program supported by The John Marshall Law School in Chicago, Illinois. The mission of the Center is to educate the public on fair housing law and provide legal assistance to those private or public organizations that are seeking to eliminate discriminatory housing practices. The Center conducts national conferences and trainings on fair housing law and enforcement and is a national resource for attorneys, agencies, fair housing organizations, and trade associations in the housing, lending, and insurance industries. The Center coordinates the John Marshall Law School Fair Housing Legal Clinic (“Clinic”), which provides litigation and dispute resolution training for law students, and litigation and dispute resolution assistance to persons who complain of housing discrimination in violation of federal, state and local laws.

Amici curiae **Akron Branch NAACP, Urban League of Greater Cincinnati, Lorain County Urban League, Coalition on Homelessness and Housing in Ohio (COHHIO), St. Bernard Catholic Church, and the Equal Justice Foundation** are all Ohio non-profit membership organizations whose members include citizens of the State of Ohio who support equal opportunity in housing. Many of the members of these organizations are also tenants whose rights and living conditions will be affected by the Court’s ruling in this case.

Amicus curiae **City of Barberton Law Department** provides legal advice to the City of Barberton and its employees and officials.

The legal issue presented in this appeal is of great importance to amici and the communities they serve. The lower court’s recognition of a cause of action under state and federal fair housing laws for a hostile living environment caused by tenant-on-tenant harassment

is essential for the effective enforcement of those laws, and for the protection of tenants whose landlords stand by while those tenants are persecuted by others because of their race, religion, sex, disability, or other protected characteristic. For the reasons set forth below, these amici urge affirmance of the court of appeals' judgment.

STATEMENT OF FACTS

These amici urge the Court not to accept the Statement of Facts set forth by Appellants. This case is here on review of a decision on summary judgment, which requires all facts to be construed in favor of Appellees. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St. 2d 64, 66. The Appellants' factual summary clearly ignores this principle. For purposes of this appeal, the Court must accept as true the Appellees' Statement of Facts, as the court of appeals properly did below. See *Ohio Civil Rights Comm'n v. Akron Metropolitan Housing Auth.* (2006), 170 Ohio App. 3d 283, 289.

According to that Summary, the landlord in this case had knowledge that a family of tenants was engaged in a repeated and continuous campaign of race-based harassment, including threats of physical violence, against a family of African-American tenants, yet did nothing about it. It is this alleged racially charged "hostile living environment" caused by tenant-on-tenant racial harassment that is presented here.

ARGUMENT

PROPOSITION OF LAW NO. 1:

RECOGNIZING A CAUSE OF ACTION UNDER FEDERAL AND OHIO FAIR HOUSING LAW AGAINST A LANDLORD FOR THE KNOWING TOLERANCE OF A RACIALLY HOSTILE LIVING ENVIRONMENT, OR FOR THE KNOWING FAILURE TO ELIMINATE RACIAL HARASSMENT BY CO-TENANTS, IS CONSISTENT WITH TRADITIONAL LANDLORD TORT LIABILITY

1. INTRODUCTION AND SUMMARY OF ARGUMENT

Appellants -- and the amici supporting them -- argue that recognition of a cause of action against a landlord under federal or Ohio fair housing statutes based on a landlord's knowing failure to eliminate a hostile living environment, or based on a landlord's knowing tolerance of racial harassment by some tenants against others, would be an "expansion of liability under the Fair Housing Act and the Ohio Fair Housing Act." Brief of Amici Council of Large PHAs [et al], at 3. *See also* Brief of Amicus Housing and Development Law Institute, at 13 (the decision below "flies in the face of long-standing case law defining the scope of a landlord's liability"). To the Appellants, it is "inconceivable" that either Congress or the Ohio legislature could have intended this result. Merit Brief of Appellants, at 12.

This position reflects a fundamental ignorance of contemporary landlord tort liability law. Virtually every state -- including Ohio -- has abandoned the former common law view that a landlord cannot be held responsible to others for conditions on its property that cause harm, including those caused by its own tenant's negligence or misbehavior.² To the contrary, almost

² "[At common law], the landlord was immune from tort liability for injuries sustained on the rented premises. However, abrogation of this immunity has been advocated by legal commentators, and the overwhelming majority of states have abolished, either in whole or part,

all states have embraced the modern concept of imposing liability on a landlord for the tortious actions of a tenant if: (1) the landlord knew of the tenant's activities, and (2) failed to insure that appropriate steps were taken to prevent that harm from occurring. As this Court has noted, "the exceptions nearly have swallowed up the general rule of landlord immunity" from liability for harm caused on the premises. *Shump v. First Continental-Robinwood* (1994), 71 Ohio St.3d 414, 418. The recognition of a cause of action under federal and state fair housing laws against a landlord for harm caused by a hostile living environment induced by co-tenant harassment is entirely consistent with contemporary landlord liability law in other contexts.

The court below and Appellees in their Merit Briefs show convincingly why Title VII jurisprudence supports a cause of action against landlords under the fair housing laws for tenant-on-tenant harassment. But even if the Court looks no further than traditional tort liability principles, the result is the same. Under these traditional rules of landlord liability, questions of agency relationship and control, so often discussed in the Title VII context, are of no moment.

This Brief will therefore not discuss the analogy to Title VII jurisprudence or principles of vicarious liability in the employer-employee context based on agency law, which are already discussed at length in the Appellees' Merit Briefs. Rather, this Brief will demonstrate that holding a landlord liable under state and federal fair housing laws for claims such as a hostile living environment or co-tenant harassment is entirely consistent with traditional principles of landlord tort liability. The standard of liability articulated by the court below for holding landlords liable under the fair housing laws is the same standard to which landlords are now held under the common law, or under other statutes enacted by the Ohio legislature. The decision below is not an "expansion" of liability, it does not "fly in the face" of established principles, and

the traditional immunity enjoyed by landlords." *Shroades v. Rental Homes, Inc.* (1981), 68 Ohio St.2d 20, 24.

it is not “inconceivable” that the Ohio legislature or Congress would have intended to impose liability under the fair housing statutes in these circumstances.

The point here is not to establish a common law cause of action for a hostile living environment or tenant-on-tenant harassment, although opposing amici identify several possible theories for doing so. See Brief of Amici Council of Large PHAs [et al], at 15-18. The question we address is whether holding a landlord liable *under fair housing laws* for tolerating the existence of a hostile living environment caused by tenant-on-tenant harassment would be consistent with traditional principles of landlord liability. As shown below, it would.

2. THE FAIR HOUSING ACT INCORPORATES TRADITIONAL COMMON LAW PRINCIPLES OF TORT LIABILITY.

It is well established that a damages action brought under the Fair Housing Act is “in effect, a tort action.” *Meyer v. Holley* (2003), 537 U.S. 280, 285. See also *Curtis v. Loether* (1974), 415 U.S. 189, 195 (the Fair Housing Act “sounds basically in tort”). Fair housing claims are analogous to common law dignitary torts such as defamation or the intentional infliction of mental distress. *Curtis*, 415 U.S. at 195 n. 10. Moreover, some fair housing violations are akin to physical torts such as assault and battery or property damage. For example, §3617 of the Federal Act, which makes it unlawful to “coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any right granted or protected by [the Act],” 42 U.S.C. §3617, prohibits a white neighbor from firebombing the home of a black neighbor to threaten and intimidate the black family and coerce the family to move. See, e.g., *Byrd v. Brandenburg* (N.D. Ohio 1996), 922 F. Supp. 60 (white teenagers violated §3617 when they threw a Molotov cocktail on a black neighbor’s porch). See also R.C. §4112.02(H)(12) (containing language identical to §3617). Thus, the Fair Housing Act (and Ohio’s analogous fair housing law) cover both dignitary and physical torts.

Of critical importance to this appeal is the U.S. Supreme Court's determination that, when it enacted the Fair Housing Act, Congress intended ordinary tort-related vicarious liability rules to apply under the Act. *Meyer v. Holley*, 537 U.S. at 285. In *Meyer* those traditional rules of tort liability, as applied to principals and agents, compelled the conclusion that principals and employers are vicariously liable under the Act for the unlawful acts of their employees. *Id.* In the case at bar, those traditional rules of tort liability, as applied to landlords, compel the conclusion that landlords can be liable under the Act for tortious acts that occur on their property – including acts committed by their own tenants.

3. UNDER TRADITIONAL PRINCIPLES OF TORT LIABILITY, LANDLORDS CAN BE LIABLE FOR INJURIES THAT OCCUR ON THE LEASED PREMISES.

Under Ohio law, landlords can be held liable to their tenants for injuries that occur on the leased premises. In *Shroades v. Rental Homes, Inc.* (1981), 68 Ohio St.2d 20, this Court held that “a landlord is liable for injuries, sustained on the demised premises, which are proximately caused by the landlord’s failure to fulfill the duties imposed by [Ohio’s Landlord Tenant Act].” *Id.* at 25. The court concluded that a violation of that statute constitutes negligence *per se*. *Id.* In order for a landlord to be held liable for breaching its statutory duty, a claimant must establish that the statutory violation is the proximate cause of the injuries sustained, *id.*, and the landlord knew or should have known that a defective condition existed. *Sikora v. Wenzel* (2000), 88 Ohio St.3d 493, 498, clarifying *Shroades*, 68 Ohio St.2d at 25-26. Thus, a landlord can be held liable to its tenant for harmful conditions when: (1) it has knowledge of the harmful conditions, (2) it fails to correct those conditions, and (3) the harmful conditions result in injury to the tenant.

There is no requirement, as Appellants and their amici mistakenly suggest, that the landlord actively participate in the creation of the harmful conditions.³

The obligations that landlords have to tenants extend to any person who is legally on the landlord's property. *Shump v. First Continental-Robinwood* (1994), 71 Ohio St.3d 414, 419 ("a landlord owes the same duties to persons lawfully upon the leased premises as the landlord owes to the tenant"). Thus, a non-tenant can recover damages from a landlord due to injuries the third party sustains from harmful conditions on the landlord's property. *Id.* In a number of Ohio cases, landlords have been held liable for injuries suffered by tenants, tenants' guests, or other people lawfully on the landlord's property.⁴

Ohio is not unique. Almost all states have abrogated the traditional rule of landlord non-liability in favor of a rule imposing a duty of reasonable care on landlords "for conditions of

³ The Court in *Shroades* cited favorably to the Restatement of Property 2d, Landlord and Tenant, §17.6, which states:

"A landlord is subject to liability for physical harm caused to the tenant and others upon the leased property * * * by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of:

"(1) an implied warranty of habitability; or

"(2) a duty created by statute or administrative regulation."

Shroades, 68 Ohio St.2d at 24; accord, *Shump v. First Continental-Robinwood* (1994), 71 Ohio St.3d 414, 419. There is no requirement under §17.6 that the landlord itself "created" the condition.

⁴ See, e.g., *Caraballo v. Gannon* (Dec. 16, 1999), 8th Dist. No. 75481, 1999 WL 1206611 (court upheld verdict awarding tenant damages for injuries she sustained when she fell down a staircase that did not have a handrail); *Schoenfield v. Beulah Road, Inc.* (Aug. 26, 1999), 10th Dist. No. 98AP-1475, 1999 WL 645273 (court concluded that landlord was liable for injuries that tenant's guest suffered when she tripped and fell on deteriorating steps); *Davis v. Burns* (Oct. 10, 1997), 3d Dist. No. 9-97-39, 1997 WL 638276 (court ruled that landlord was liable for injury tenant sustained as a result of a defective stairwell); and *Bell v. Goldsmith* (July 6, 1995), 8th Dist. No. 67893, 1995 WL 396352 (court upheld judgment in favor of tenant whose minor child was injured after ingesting lead paint).

which he is aware, or of which he could have known in the exercise of reasonable care.” Restatement of Property 2d, Landlord and Tenant, §17.6, comment c. See, generally, Schwemm, Barriers to Accessible Housing: Enforcement Issues in Design and Construction Cases Under the Fair Housing Act (2006), 40 U. Rich. L. Rev. 753, 796-799 (discussing common law development of landlord liability and its relevance to fair housing violations).

4. UNDER TRADITIONAL PRINCIPLES OF TORT LIABILITY, LANDLORDS CAN BE LIABLE FOR HARM CAUSED BY THEIR TENANTS TO OTHERS.

Landlords can also be held liable to others for harm caused *by* their tenants. The typical case arises when a tenant’s dog bites another tenant or someone else who is legally on the landlord’s property. Landlords can be liable for injuries caused by animals owned and kept on the leased premises by the tenant where the landlord has knowledge of the dangerous animal but fails to take any action to have the animal removed or confined. *Flint v. Holbrook* (1992), 80 Ohio App.3d 21, 25-26. The injured person can bring an action against the landlord under both common law and statute. As this Court has explained, “when it has been shown that the animal has been kept after knowledge of its dangerous character has been acquired or circumstances from which the law would imply knowledge and an injury has followed, this would be prima facie evidence of negligence.” *Hayes v. Smith* (1900), 62 Ohio St. 161, 182-183. Therefore, a landlord who knows that a tenant’s dog is vicious, but fails to take any action to have the animal removed or confined, can be held liable under the common law for injuries that the dog causes. *Flint*, 80 Ohio App.3d at 26.

In addition, landlords can in certain circumstances be held liable for the criminal acts of one tenant against another tenant. In Ohio, a landlord has the duty to take reasonable measures for the safety of tenants in the common areas of an apartment complex. *Doe v. Flair Corp.* (1998), 129 Ohio App.3d 739, 752 (Dyke, concurring in part and dissenting in part) (citing

Carmichael v. Colonial Square Apartments (1987), 38 Ohio App.3d 131, 132; *Sciascia v. Riverpark Apartments* (1981), 3 Ohio App.3d 164, 166). Accordingly, landlords may be liable for the criminal acts of tenants against other tenants “where the landlord should have reasonably foreseen the criminal activity in question and failed to take reasonable precautions to prevent such activity, and this failure was the proximate cause of the tenant’s harm.” *Doe v. Beach House Dev. Co.* (2000), 136 Ohio App.3d 573, 581 (quoting *Doe v. Flair Corp.*). An outcome is considered foreseeable if “a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of the act.” *Id.* Thus, if a landlord knows that a tenant has a history of violent behavior, the landlord can be held liable for similar harm that the tenant causes in the future. Compare *Kerans v. Porter Paint Co.* (1991), 61 Ohio St. 3d 486, 492-493 (employer can be liable at common law for employee-on-employee harassment if it knew or should have known of the harassing employee’s past history of improper behavior).

Although a tenant’s harboring of vicious dogs or committing criminal acts are two circumstances under which a landlord might be exposed to liability for tenant misbehavior, they are not the only ones. See, e.g., *Bowers v. Wurzburg* (2000), 207 W. Va. 28, 528 S.E.2d 475 (discussing cases where landlord was liable to others for its tenant’s activities, relying on §379A of the Restatement of Torts 2d). A landlord’s liability for the acts of a tenant “arises in those cases where the condition or use of the premises is so potentially harmful that the courts will not permit the owner to hide behind a lease.” *Easson v. Wagner* (S.D. 1993), 501 N.W.2d 348, 350.

Note in this regard that the landlord’s “control” of the tenant or the tenant’s harmful activities is neither relevant nor required. Under the various Restatements that address a landlord’s liability for tortious behavior committed on its property or by its tenant, only

knowledge and a failure to act is required.⁵ There is no requirement that the landlord be shown to “control” the behavior of the offending tenant, or that the tenant is acting as the “agent” of the landlord with respect to the activity causing harm. Rules of “agency” liability do not apply here. To the extent Appellants and their amici rely on cases that suggest otherwise, *see* Merit Brief of Appellees, at 9; Brief of Amici Council of Large PHAs, at 9-12, we believe those decisions are not in step with modern principles of landlord liability, and should be rejected.⁶

5. UNDER TRADITIONAL PRINCIPLES OF TORT LIABILITY, LANDLORDS CAN BE LIABLE FOR HARM TO THEIR TENANTS CAUSED BY OTHERS.

In certain circumstances landlords can be held liable for the torts of third parties committed against their tenants. Several Ohio cases have involved tenants suing their landlords for negligently failing to provide adequate security against criminal acts of third parties. Similar to tenant-on-tenant violence cases, a landlord will be held liable for third-party criminal acts against tenants if the criminal act was foreseeable, the landlord failed to take reasonable precautions to prevent the act, and the landlord’s negligence was the proximate cause of the tenant’s injury. *Doe v. Flair Corp.*, *supra*, 128 Ohio App.3d at 746. See also *Kelly v. Bear Creek Invest. Co.* (Feb. 14, 1991), 8th Dist. No. 58011, 1991 WL 19152; *Pamer v. Pritchard Brothers* (1990), 61 Ohio Misc.2d 150 (genuine issue of material fact existed as to whether the landlord was negligent in providing adequate security); *Meier v. Vistula Heritage Village* (1992), 62 Ohio Misc.2d 632 (in action against landlord by tenant who had been sexually assaulted by a

⁵ Restatement of Property 2d, Landlord and Tenant, §17.6; Restatement of Property 2d, §18.4; Restatement of Torts 2d, §379A.

⁶ The Brief of Amici Council of Large PHAs (at p. 11) cites *Scarnati v. Owners of Georgetown in Columbus* (June 18, 1996), 1996 Ohio App. LEXIS 2538, for the proposition that a landlord is not responsible for breach of quiet enjoyment committed by other tenants. This is not an accurate characterization of the holding of that case. In fact, the court of appeals in *Scarnati* held only that the alleged breach of a covenant of quiet enjoyment is a matter of common law, and is not expressly covered by R.C. Chapter 5321. The fact that the alleged breach was caused by other tenants was completely immaterial to the court’s ruling.

third-party, court denied the landlord's motion for summary judgment, ruling that reasonable minds could differ as to whether the landlord was negligent in satisfying its duty to provide reasonable security in the common areas and whether the negligence increased the risk of the tenant being sexually assaulted). See, generally, Annotation: Landlord's Liability for Failure to Protect Tenant From Criminal Acts of Third Person, 43 A.L.R.5th 207. Compare *Anania v. Daubenspeck Chiropractic* (1998), 129 Ohio App. 3d 516, 520-521 (federal courts "overwhelmingly recognize" a cause of action for hostile work environment caused by non-employees).

6. HOLDING A LANDLORD LIABLE FOR A HOSTILE ENVIRONMENT CREATED BY ITS OWN TENANTS IS CONSISTENT WITH OTHER STATUTORY CAUSES OF ACTION ENACTED BY THE OHIO LEGISLATURE AND CONGRESS.

As Amici Council of Large PHAs acknowledge, a tenant suffering in a hostile environment created by another tenant may pursue an action against the landlord under a number of non-fair housing theories, including breach of Chapter 5321 or breach of the common law covenant of quiet enjoyment. Brief of Amici Council of Large PHAs, at 16. Indeed, they and the dissent below attribute great significance to the fact that tenants who suffer from harassment by co-tenants "may avail themselves of traditional causes of action against landlords who fail contractual and common law obligations" Brief of Amici Council of Large PHAs, at 4 and 15; 170 Ohio App. 3d at 291 (dissent by Judge Slaby).

The answer to this obloquy, of course, is that Chapter 4112 and the Fair Housing Act do indeed "create" a new cause of action that may overlay existing common law, statutory, or contractual remedies. *Curtis v. Loether* (1974), 415 U.S. 189, 195-196 (the Fair Housing Act "defines a new legal duty . . . analogous to a number of tort actions recognized at common law," such as defamation and the intentional infliction of emotional distress); *Helmick v. Cincinnati*

Word Processing, Inc. (1989), 45 Ohio St. 3d 131, 134-135 (Chapter 4112 adds to the remedies available to victims of harassment, who may pursue claims under *both* common law *and* Chapter 4112); *Warner v. Wolfe* (1964), 176 Ohio St. 389, 392 (enactment of statutory cause of action for damages caused by dogs merely adds to traditional common law remedies). It is not beyond the bounds of statutory interpretation, therefore, to conclude that Congress and the Ohio legislature intended the same behaviors that give rise to landlord liability under the common law or other statutes to give rise to liability under Chapter 4112 and the Fair Housing Act. Both the federal Fair Housing Act and Ohio's fair housing statute are to be interpreted liberally, because they embody national and state policies "of the highest priority." This is the mandate to the courts from Congress and the Ohio legislature, and this is the defining principle that has guided this Court,⁷ and the U.S. Supreme Court,⁸ in all prior interpretations of these important laws.

Harassing behavior by co-workers has been held by this Court to subject employers to liability under both the common law and Chapter 4112. *Helmick; Kerans*. As the U.S. Supreme Court has explained, "When the workplace is permeated with discriminatory intimidation,

⁷ The Ohio General Assembly has instructed the courts of the State of Ohio to construe Chapter 4112 liberally to achieve its remedial purpose. R.C. §4112.08. This Court has consistently paid homage to this directive, both in language and result. See, e.g., *Elek v. Huntington National Bank* (1991), 60 Ohio St. 3d 135, 137 (§4112.99 is to be interpreted liberally to provide persons the right to sue); *Smith v. Friendship Village of Dublin, Inc.* (2001), 92 Ohio St. 3d 503 (§4112.05(B) must be construed liberally to allow persons alleging discrimination to pursue claims); *Osborne v. AK Steel* (2002), 96 Ohio St. 3d 368, 370 (Chapter 4112 must be construed liberally).

⁸ Likewise, the federal Fair Housing Act must be given "a generous construction" because the Act carries out a "policy of the United States that Congress considered to be of the highest priority." *Trafficante v. Metropolitan Life Ins. Co.* (1972), 409 U.S. 205, 211. This mandate for a generous construction by a unanimous Supreme Court has become the foundation for all subsequent federal interpretations of the Fair Housing Act. See *Havens Realty Corp. v. Coleman* (1982), 455 U.S. 363, 380 (unanimous recognition of "the broad remedial intent of Congress" embodied in the Act); *City of Edmonds v. Oxford House, Inc.* (1995), 514 U.S. 725, 731 (reaffirming *Trafficante's* recognition of the Act's "broad and inclusive compass" and its entitlement to a "generous construction").

ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated." *Harris v. Forklift Systems* (1993), 510 U.S. 17, 21. It would not stretch either the common law or Chapter 4112, therefore, to conclude that Congress and the Ohio legislature intended the same behaviors to constitute a violation of R.C. §4112.02(H) and the federal Fair Housing Act.

Finally, the Court ought not make a significant legal ruling in this important case based on the Appellants' characterization of the underlying facts as a common "neighborhood feud," a "neighborhood dispute," a "ruckus," or one involving "simply" neighbors of different races fighting. E.g., Merit Brief of Appellants at 8, 9, 11. The Court ought not construe a law that "Congress considered to be of the highest priority," *Trafficante v. Metropolitan Life Ins. Co.* (1972), 409 U.S. 205, 211, by such an ignoble characterization of the claim asserted. "Neighborhood dispute" is not a legal term of art, and is incapable of application in any meaningful way. Under Appellants' characterization, if the Harpers' home had been firebombed by a member of the Ku Klux Klan, the perpetrator could seek to avoid culpability by claiming he was simply involved in a "neighborhood dispute." See *Hampel v. Food Ingredients Specialties* (2000), 89 Ohio St.3d 169, 181-182 ("we emphatically reject the notion" that workplace harassment is not actionable because it is "commonplace").

In any event, it is no more difficult for courts to outline the parameters of actionable neighbor harassment as it is for them to define the circumstances under which harassment in the workplace becomes actionable. Short, *Post-Acquisition Harassment and the Scope of the Fair Housing Act* (2006), 58 Ala. L. Rev. 203, 245-250. "For most courts, any difficulty in distinguishing between serious harassment allegations and common neighborhood squabbles does not dissuade them from drawing appropriate lines and entertaining colorable claims. The

FHA provides courts textual guidance at least as detailed as – and arguably more detailed than – Title VII, under which courts are consistently able to draw necessary lines between actionable cases and those that should be dismissed.” *Id.* at 249.

7. CONCLUSION.

“With ownership of property comes responsibility.” *Tetzlaff v. Camp* (Iowa 2006), 715 N.W.2d 256, 257 (landlord can be liable if it has notice of a tenant’s nuisance). Ohio and federal fair housing laws require that traditional principles of tort liability be applied in situations involving discrimination against tenants on the basis of race, sex, disability, and other protected characteristics. It is clear that Ohio law imposes liability on landlords for a variety of torts that occur on their property and cause injury to their tenants. It is entirely consistent with these principles, therefore, to hold landlords liable for tolerating the existence of a hostile living environment, or for knowingly permitting tenant-on-tenant racial harassment. Indeed, it would be a mockery of the powerful public policy set forth in our nation’s and Ohio’s laws prohibiting discrimination in housing if a tenant like Fontella Harper can sue her landlord for injuries suffered when bit by her neighbor’s dog, but not for injuries caused by her neighbor’s abusive and pervasive race-based intimidation and threats of violence.

For the foregoing reasons, the judgment of the lower court should be affirmed.

Oct. 1, 2007
Date


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief of Amici Curiae was sent by regular U.S. Mail to all counsel of record this 15th day of October, 2007.

A handwritten signature in black ink that reads "Stephen M. Dane". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Stephen M. Dane, Esq. (0013057)