

In the
Supreme Court of Ohio

OHIO CIVIL RIGHTS COMMISSION, et. al.,	:	Case No. 2007-0254
	:	
	:	
Plaintiffs-Appellees,	:	On Appeal from the
	:	Summit County
v.	:	Court of Appeals,
	:	Ninth Appellate District
AKRON METROPOLITAN HOUSING AUTHORITY, et. al.	:	Court of Appeals Case
	:	Nos. CA 23056 & 23060
Defendants-Appellants.	:	

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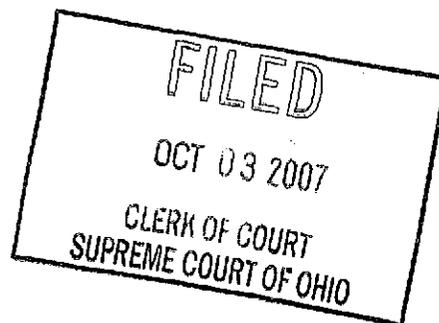


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INTRODUCTION

This case involves an ongoing campaign of racial harassment by one public-housing tenant against another. The harassment ranged from derogatory epithets to knife-brandishing and threats of physical violence. Despite the victim's complaints of such incidents, the landlord opted not to intercede, or even to investigate the situation. The question for the Court is whether these facts, or any facts, give rise to an actionable claim for the creation of, tolerance of, or failure to take reasonable steps to remediate a hostile housing environment.

For over two decades, courts have held that the word "discriminate" encompasses the creation or tolerance of harassment on the basis of membership in a protected class that is sufficient to create a hostile environment. Although that meaning originally arose in the context of workplace discrimination, it rings equally true in the context of housing discrimination. After all, "[i]t is a general axiom of statutory construction that once words have acquired a settled meaning, that same meaning will be applied to a subsequent statute on a similar or analogous subject." *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St. 3d 460, 464. As illustrated below, various courts, both state and federal, have recognized as much.

Yet Akron Metropolitan Housing Authority ("AMHA") urges the Court to ignore these precedents and instead to chart its own path by insulating a landlord from liability for its own negligent failure to address a hostile housing environment. Finding no refuge in the text of Ohio's fair-housing statute or in decades of jurisprudence, AMHA relies instead on mischaracterizations of the Ohio Civil Rights Commission's position and thin distinctions between the workplace and housing. Finally, AMHA argues that subjecting it to liability for condoning a racially hostile housing environment will force it to violate the Constitution. Each of these arguments is unavailing.

First (and contrary to AMHA's characterization of the Commission's position), the Commission does not urge this Court to burden landlords with strict liability any time a hostile environment erupts. Instead, the Commission argues only that the principles underlying hostile-work-environment claims should apply also to hostile-housing-environment claims. The Commission understands that the *application* of these principles may differ between contexts because the scope of acceptable behavior in the workplace and the home differ, but maintains that the framework applicable to hostile-work-environment cases can account for this difference in individual hostile-housing-environment cases. Second, AMHA fails to support its contention that a landlord does not have sufficient authority over its premises to protect its tenants from a hostile environment, as do employers. To the contrary, when a tenant creates a hostile environment, landlords have the power to take practical corrective measures—including informal conferences, warnings, and evictions—to abate that tenant's improper behavior. Third, AMHA raises a constitutional red herring by arguing that landlords will suppress First Amendment rights or evict without due process. But tenants have the same protections against public-housing providers' constitutionally overreaching as a public employee has against his or her employer.

As explained below, this Court should follow the precedents from its sister courts and hold that hostile-housing-environment claims are actionable under R.C. 4112.02(H)(4), and that plaintiffs may prove such claims by demonstrating elements analogous to those governing hostile-work-environment claims under R.C. 4112.02(A).

STATEMENT OF FACTS

A. The Kaisk household created a racially hostile environment for the Harper household at the Van Buren Homes development.

AMHA provides public housing for low-income residents. (Davidson Dep., p. 19; Second Supp. at 2). Fontella Harper and her two sons lived at Van Buren Homes, an AMHA property,

during the relevant time period. (Harper Dep., pp. 6-7, 15-16; Second Supp. at 55-58). The Harpers are an African-American family. June Davidson was the property manager at Van Buren Homes during the same time. (Davidson Dep., pp. 19, 25-27; Second Supp. at 2-5). For just over a year, Beverly Kaisk and her two minor children, Kimberly Lewis and Keith Kaisk, lived two doors down from the Harpers. (Davidson Dep., pp. 56-58 & Ex. 9; Second Supp. at 9-11, 36).

While the two families lived near one another, the Kaisk household and their guests harassed Harper and her family based on their race. For example, in one incident, Harper asserts that Kimberly Lewis called Harper's visiting relatives "n***ers" and "Black b**ches." When Harper's cousin told Kimberly to stop, a male guest of Kaisk's threatened the cousin that he would "cut you from your throat to you're a**." He grabbed a butcher knife, brandishing it at Harper and her relatives, while advancing on them. The confrontation ended only when the police arrived. (Harper Dep., pp. 23-27 & Ex. F; Second Supp. at 59-63, 83).

Harper also testified to numerous other instances in which the Kaisk household and their guests called her and her children "n***ers, n***er lovers, Black b**ch, Black everything, Black f***ers. I mean it was all vulgar language. But we was always a Black something or we was always a n***er something or they were always going to do something." (Harper Dep., p. 72, l. 1-8; Second Supp. at 80).

In 2002, Ms. Kaisk applied for a transfer, which was approved. (Davidson Dep., pp. 76-77, 97-98 & Ex. 16; Second Supp. at 20-23, 38). Harper asserts that shortly before the move, Ms. Kaisk told her "you Black b**ch, I'm moving and you can't do anything about it." (Harper Dep., pp. 53; Second Supp. at 73).

B. AMHA was aware of the racially hostile environment.

AMHA property managers refer appropriate tenant complaints to AMHA's Security Department. (Westfere Dep., pp. 9-13; Second Supp. at 150-54). At the relevant time, AMHA's Security Department consisted, in part, of Summit County law-enforcement officers. AMHA had a contract with the Summit County Sheriff's office that made Summit County Deputies agents of AMHA. The deputies investigated and addressed security problems on AMHA properties referred to them by the property managers. (Westfere Dep., pp. 18-21; Second Supp. at 157-60). Deputies Porter, Manuel, and Hall were three of the Deputies assigned to investigate AMHA complaints. (Hall Dep., p. 8; Manuel Dep., pp. 8-9; Porter Dep., pp. 12; Second Supp. at 47, 106-07, 132).

Harper submitted numerous complaints, some orally and some in writing, about the Kaisks' racial harassment to AMHA property manager June Davidson. She also spoke with Deputies Hall and Manuel about the harassment. (Harper Dep., pp. 23-31, 39-40, 43-44, 52-58, 71-72, 79-80 & Ex. F; Davidson Dep., pp. 60-61 & Ex. 10; Porter Dep., pp. 23-26, 58-59 & Ex. 20; Manuel Dep., pp. 15-17, 19, 27-29, 33-38 & Ex. 23; Hall Dep., pp. 9-10, 12-15; Second Supp. at 13-14, 48-53, 59-83, 110-22, 134-37, 143-45).

Davidson was also aware from the Kaisks that there were racial problems. Ms. Kaisk submitted a written complaint designed to support her request for a transfer. She spoke with Davidson, and indicated that she had problems with "many black residents." (Emphasis in original notes generated by Davidson, Ex. 18; Second Supp. at 40). Davidson admitted that after this conversation she was aware of racial problems at the complex and that the Kaisks' problem with other residents featured strong racial overtones. (Davidson Dep., pp. 160-61, 163 & Ex. 18; Second Supp. at 33-35, 40).

C. AMHA had the ability to take corrective action to eliminate the hostile environment.

Public housing managers at AMHA can initiate a lease cancellation if a resident violates any provision in an AMHA lease. The form lease that AMHA uses at Van Buren Homes provides numerous restrictions on the conduct of the tenants. Among other things, the lease prevents tenants and their guests from disturbing the neighbors' peaceful enjoyment. (Kneale Dep., pp. 39-40 & Ex. 40, sec. VII., subsec. R.; Second Supp. at 95-96, 102).

AMHA managers, including Davidson, use the violation of lease provisions to hold hearings and cancel leases. (Kneale Dep., 17-18, 25-26; Second Supp. at 88-91). For example, Davidson used the "peaceful enjoyment" lease provision to evict a tenant whose son threatened another tenant with a knife. (Davidson Dep., pp. 30-31; Second Supp. at 6-7).

Davidson also issued a notice of lease cancellation to Kaisk at least twice. The first time was based on allegations that she was keeping a dog. Kaisk proved at a hearing that she did not have a dog, and the cancellation was rescinded. (Davidson Dep., pp. 70-71; Kneale Dep., pp. 29-31 & Ex. 13, 14; Second Supp. at 18-19, 92-94, 97-98). The second time was after the Kaisks had transferred away from the Harpers. Before AMHA issued the cancellation notice, Deputy Porter investigated extensively and determined that Kaisk was allowing individuals not on her lease to live in her unit. Kaisk chose not to attend the hearing and left AMHA housing. (Davidson Dep., pp. 132-135; Porter Dep., pp. 22, 25, 48-50 & Ex. 32; Second Supp. at 25-28, 133, 136, 138-40, 147-48).

D. AMHA failed to take corrective action to eliminate the hostile environment.

Davidson did not attempt to remediate the hostile environment before late 2002—after the Kask transfer was approved.¹ (Davidson Dep., pp. 62-63; Second Supp. at 15-16). At that point, AMHA conducted two belated investigations, one by Deputies Hall and Manuel and the other by Deputy Porter.² (Hall Dep., pp. 13-15; Manuel Dep., pp. 29, 33-38, 41-44, 57 & Ex. 23; Porter Dep., pp. 23-24 & Ex. 20; Second Supp. at 51-53, 116-28, 134-35, 145-46). The only action taken was that Deputy Porter told Ms. Kask not to cause problems in her new location. (Porter Dep., Ex. 20; Second Supp. at 145).

E. Procedural background.

Harper and the Fair Housing Advocates Association (“FHAA”) filed charges of discrimination with the Ohio Civil Rights Commission (“Commission”) against AMHA and Davidson. FHAA’s charges alleged that the Kask family created a racially hostile housing environment for Harper and her family. Both Harper and FHAA asserted that AMHA, as the owner of the development, and Davidson, as the property manager for that development, violated their duty to eliminate the racially hostile environment.

The Commission investigated and determined that there was a sufficient basis to refer the matter to the Attorney General’s Office for prosecution. The Commission, represented by the Attorney General, filed a Complaint in the Summit County Court of Common Pleas. In its Complaint, the Commission sought compensatory damages, punitive damages, attorney fees, costs, and injunctive relief—including an injunction requiring AMHA to promptly investigate and respond to complaints regarding a hostile environment. Harper and FHAA intervened.

¹ While Davidson does assert that some unknown person investigated the complaint regarding the knife incident, there is no documentation of that alleged investigation and no action was taken against the Kask household because of this incident.

After discovery, all parties filed motions for summary judgment. The key legal dispute was whether Ohio recognizes a cause of action for a landlord's negligent failure to take steps to eliminate a hostile housing environment caused by other tenants under its control. The trial court granted AMHA's motion. (AMHA App. at 11).

The Commission, Harper, and FHAA timely appealed. The Ninth District Court of Appeals reversed, finding that Ohio law requires a landlord to act when the landlord is placed on notice that one of its tenants creates a racially hostile housing environment for another tenant. *Ohio Civil Rights Comm'n v. Akron Metro. Hous. Auth.* (9th Dist. 2006), 170 Ohio App. 3d 283, 2006-Ohio-6967, ¶ 19. The court further found that, if proven, Harper's testimony and other evidence in the record here provided a basis for a hostile housing environment claim sufficient to survive summary judgment. *Id.* at ¶ 21.

This Court accepted jurisdiction on the question whether Ohio law supports a claim for hostile-housing-environment discrimination when the environment is caused by the acts of one tenant against another, and the landlord knows of the hostile environment yet fails to remedy, or even to investigate, the situation. No appeal was taken on whether the facts of this particular case meet the requirement of a hostile environment claim.

² Deputy Porter investigated a written complaint that Harper had submitted to Davidson several months previously.

ARGUMENT

Ohio Civil Rights Commission's Proposition of Law:

Hostile-housing-environment discrimination claims are cognizable under Ohio's fair-housing statute, R.C. 4112.02(H)(4) and are governed by elements analogous to those applicable to hostile-work-environment discrimination claims under R.C. 4112.02(A).³

Ohio's fair-housing statute, R.C. 4112.02(H)(4), prohibits "discriminat[ion] . . . in the terms or conditions of . . . renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the . . . occupancy or use of any housing accommodations." The word "discrimination" in this statute includes the creation or tolerance of a hostile housing environment for at least three reasons. First, this Court has interpreted analogous language in Ohio's statute prohibiting workplace discrimination as prohibiting hostile-environment discrimination. Second, other state courts have interpreted similar, less-expansive, fair-housing statutes as encompassing such a prohibition. And third, similar provisions in the federal Fair Housing Act prohibit hostile-environment discrimination.

A. Ohio already recognizes hostile-environment claims in employment.

Harassment on the basis of a protected class constitutes discrimination and thus violates Title VII when it is sufficiently severe to create a hostile working environment. *Meritor Sav. Bank, FSB v. Vinson* (1986), 477 U.S. 57, 64-66. In *Hampel v. Food Ingredients Specialists, Inc.* (2000), 89 Ohio St. 3d 169, 2000-Ohio-128, this Court followed the U.S. Supreme Court's lead and held that R.C. 4112.02(A)'s prohibition of "discriminat[ion] . . . with respect to . . . terms, conditions, or privileges of employment" encompasses hostile-environment harassment. The *Hampel* Court recognized the following elements of a hostile-environment claim:

³ This proposition is in response to AMHA's Proposition of Law No. 1, which reads: "OHIO DOES NOT, AND SHOULD NOT, RECOGNIZE A HOSTILE HOUSING ENVIRONMENT

- (1) the harassment was unwelcome;
- (2) the harassment was based on the victim's membership in a protected class;
- (3) the harassment "was sufficiently severe or pervasive to affect the 'terms, conditions, or privileges of employment'"; and
- (4) either (a) the harassment was committed by a supervisor, or (b) the employer "knew or should have known of the harassment and failed to take immediate and appropriate corrective action."

Id. at 176-77.

The *Hampel* Court was clear, however, that not all inappropriate, or even offensive, conduct would lead to liability. Drawing from federal case law, the Court emphasized that "harassment is not automatically discrimination because of sex merely because the words used have sexual content or connotations." *Id.* at 180.⁴ Instead, only harassment that is "severe or pervasive" can create a hostile environment. *Id.* Whether this requirement is satisfied "can be determined only by looking at all the circumstances [including] the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* (quoting *Harris v. Forklift Sys., Inc.* (1993), 510 U.S. 17, 23). Accordingly, whether harassment is actionable is a fact-driven inquiry that depends on a careful evaluation of "the work environment as a whole and . . . the totality of all the facts and surrounding circumstances." *Id.* at 181.

CLAIM UNDER ITS FAIR HOUSING LAW." Merit Brief of Appellants Akron Metropolitan Housing Authority and June Davidson ("AMHA Br.") at 8.

⁴ The same principle, of course, attaches to racial harassment. See, e.g., *Bell v. Cuyahoga Cmty. Coll.* (8th Dist. 1998), 129 Ohio App. 3d 461, 466 n.3 (same criteria apply to both race- and sex-harassment claims).

But employers are not strictly liable any time a hostile environment arises. *Burlington Indus., Inc. v. Ellerth* (1998), 524 U.S. 742, 758-59; see also *Plumbers & Steamfitters Joint Apprenticeship Comm. v. Ohio Civil Rights Comm'n* (1981), 66 Ohio St. 2d 192, 196 (federal case law applying Title VII “is generally applicable to cases involving alleged violations of R.C. Chapter 4112”). Instead, an employer can be liable only when “its own negligence is a cause of the harassment,”—that is, when “it knew or should have known about the conduct and failed to stop it.” *Ellerth*, 524 U.S. at 759. And an employer’s duty to quell harassing conduct is not infinite. Instead the employer must only “exercise[] *reasonable care* to prevent and correct promptly any . . . harassing behavior.” *Id.* at 765 (emphasis added).

When an employer knows of, but fails to address, a hostile environment, “the combined knowledge and inaction may be seen as demonstrable negligence, or as the employer’s adoption of the offending conduct and its results, quite as if they had been authorized affirmatively as the employer’s policy.” *Farragher v. City of Boca Raton* (1998), 524 U.S. 775, 789. This rule applies both when the harasser is an employee of the defendant, *Payton v. Receivables Outsourcing, Inc.* (8th Dist.), 163 Ohio App. 3d 722, 2005-Ohio-4978, ¶ 22 (employer liable for failing to address non-supervisory employee’s harassment of coworker); *McCombs v. Meijer, Inc.* (6th Cir. 2005), 395 F.3d 346, 353 (same), and when the harasser is not an employee, but the employer still has the power to influence the environment, *Rodriguez-Hernandez v. Miranda-Velez* (1st Cir. 1998), 132 F.3d 848, 851-53, 855 (employer held liable for failing to address harassment perpetrated by a customer). Further, an employer who responds to reported harassment can be liable only “if its response manifests indifference or unreasonableness in light of the facts the employer knew or should have known” because such a reaction indicates a

permissive attitude toward the harassment. *McCombs v. Meijer, Inc.* (6th Cir. 2005), 395 F.3d 346, 353 (quoting *Blankenship v. Parke Care Ctrs.* (6th Cir. 1997), 123 F.3d 868, 873).

These prerequisites for employer liability are in keeping with the requirement that harassment be “severe or pervasive” before it can be actionable. Each standard independently ensures that employers are not liable for stray remarks or isolated incidents of harassment. In other words, these standards ensure that employment-discrimination laws do not transform “into a general civility code for the American workplace” that employers must enforce. *Oncale v. Sundowner Offshore Servs.* (1998), 523 U.S. 75, 80.

B. The same principles apply to hostile-housing-environment claims.

Just as these principles apply to hostile-working-environment claims under R.C. 4112.02(A), they must also apply to hostile-housing-environment claims under R.C. 4112.02(H)(4) for at least three reasons. First, the text of R.C. 4112.02’s fair-housing provision is substantively indistinguishable from the text of its fair-employment provision. Second, courts have held that state fair-housing statutes similar to R.C. 4112.02(H)(4) encompass a hostile-housing-environment cause of action, and have applied the above-recited principles to such claims. Third, federal courts have interpreted the analogous federal Fair Housing Act (“FHA”) to encompass hostile-housing-environment claims. Importantly, these courts have resorted heavily to employment-discrimination cases in reaching this conclusion and in defining the elements of such a cause of action.

- 1. The text of Ohio’s fair-housing statute is substantively indistinguishable from, and must be construed in harmony with, Ohio’s prohibition of workplace discrimination.**

The textual parallels between R.C. 4112.02(A) and R.C. 4112.02(H)(4) are unmistakable. The prohibition of hostile working environments derives from R.C. 4112.02(A)’s prohibition on “discriminat[ion] . . . with respect to . . . *terms, conditions, or privileges* of employment.” R.C.

4112.02(A) (emphasis added). Along the same lines, the fair-housing provisions of R.C. 4112.02 proscribe “discriminat[ion] . . . in the *terms or conditions* of . . . renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or *privileges* in connection with the . . . occupancy or use of any housing accommodations.” R.C. 4112.02(H)(4) (emphasis added). As this recitation illustrates, the fair-employment and fair-housing provisions of R.C. 4112.02 run parallel.

These textual parallels are unsurprising, for all of Chapter 4112’s provisions are infused with a common purpose: “In enacting R.C. Chapter 4112 . . . , the General Assembly undoubtedly was responding to a public social problem. Discrimination *in its various forms* drains our economic resources, subverts the democratic process and undermines the general welfare.” *Hampel*, 89 Ohio St. 3d at 182 (quoting *Cosgrove v. Williamsburg of Cincinnati Mgmt. Co., Inc.* (1994), 70 Ohio St. 3d 281, 288) (emphasis added). As both provisions address the same social ill—discrimination—they must be read in *pari materia*. *In re C.W.* (2004), 104 Ohio St. 3d 163, 2004-Ohio-6411, ¶ 7 (“Statutes concerning the same subject matter must be construed in *pari materia*.”).

Further, even if there were no analogous provision of Chapter 4112 that Ohio’s courts did not already construe as prohibiting hostile-environment discrimination, another provision of Chapter 4112 requires that the creation or tolerance of such an environment is actionable under Ohio law. Consistent with the Chapter’s broad purpose, the General Assembly explicitly provided that Chapter 4112 “shall be construed liberally for the accomplishment of its purposes.” R.C. 4112.08. “Because R.C. Chapter 4112 is remedial, it must be ‘liberally construed to promote its object (elimination of discrimination) and protect those to whom it is addressed (victims of discrimination).’” *Osborne v. AK Steel/Armco Steel Company* (2002), 96 Ohio St. 3d

368, 370, 2002-Ohio-4846 (citing *Elek v. Huntington Natl. Bank* (1991), 60 Ohio St. 3d 135, 137). Furthermore, this Court has held that “there is no place in [Ohio] for any sort of discrimination no matter its size, shape, or form or in what clothes it might masquerade.” *Genaro v. Central Transport, Inc.* (1999), 84 Ohio St. 3d 293, 296. A liberal reading of Chapter 4112 should encompass a hostile-environment cause of action for housing.

For each of these reasons, the text of Chapter 4112 requires that hostile-environment principles applicable in employment cases also apply to cases brought under Ohio’s fair-housing statute.

2. States with similar, but less expansive, fair-housing statutes have recognized hostile-environment claims and have applied hostile-work-environment principles.

Various states have passed fair-housing statutes that are less expansive than Ohio’s. For instance, Massachusetts’s fair-housing statute prohibits discrimination “in the terms, conditions or privileges of [housing] accommodations . . . or in the furnishings of facilities and services in connection therewith.” Mass. Gen. Laws Ch. 151B § 4(6). This statute, however, does not address explicitly discrimination in the *occupancy or use* of housing accommodations, as does Ohio’s fair-housing statute. *Compare id. with* R.C. 4112.02(H)(4). Other states, including Iowa, New York, Illinois, and Virginia, have enacted fair-housing statutes substantively identical to Massachusetts’s. See Iowa Code § 216.8(2) (2007); N.Y. Exec. Law § 296(5)(a)(2) (2007); 775 Ill. Comp. Stat. 5/1-102(A) (2007); Va. Code Ann. § 36-96.3(A)(2) (2007).

Although these States’ fair-housing laws do not cover explicitly discrimination in the use or occupancy of a dwelling, courts have concluded that hostile-housing-environment claims are actionable under each of these statutes. In *Gnerre v. Massachusetts Committee Against Discrimination* (1988), 402 Mass. 502, for instance, the Supreme Judicial Court of Massachusetts concluded that harassment that creates a hostile environment constitutes

discrimination in the terms, conditions, or privileges of housing and therefore is actionable. Similarly, in *Iowa ex rel. Dobbs v. Burche* (Iowa 2007), 729 N.W.2d 431, the Supreme Court of Iowa affirmed a judgment against a landlord for creating a hostile housing environment by sexually harassing his tenant. In *Szkoda v. Human Rights Commission* (Ill. 1998), 302 Ill. App. 3d 532, the court noted that hostile-housing-environment claims are actionable under the Illinois fair-housing statute. And in *Bradley v. Carydale Enterprises* (E.D. Va. 1989), 707 F. Supp. 217, *disapproved on other grounds by Layne v. Campbell County Dep't of Soc. Servs.* (4th Cir. 1991), 939 F.2d 217,⁵ the court concluded that a landlord's failure to address a tenant's harassing behavior violated Virginia's fair-housing statute, exposing the landlord to liability to the victim.⁶ See also *In re State Div. of Human Rights v. Stoute* (N.Y. App. Div. 2006), 36 A.D.3d 257 (hostile housing environment actionable under New York's Human Rights Law); *Riedel v. Hum. Relations Commission* (Penn. 2000), 756 A.2d 142 (hostile housing environment actionable under City of Reading's fair-housing ordinance); *Brown v. Smith* (1997), 55 Cal. App. 4th 767 (hostile housing environment actionable under California's Fair Employment and Housing Act); *Chomicki v. Wittkind* (1985), 128 Wis. 2d 188, 194-95 ("If an employer's sexual harassment of an employee constitutes sex discrimination in the workplace, then a landlord's sexual harassment of a tenant constitutes sex discrimination in the rental market."). Each of these cases establishes that harassment sufficient to create a hostile housing environment constitutes discrimination in the terms, conditions, or privileges of housing.

⁵ *Layne* addressed only *Bradley's* holding concerning a local ordinance, but said nothing regarding *Bradley's* analysis of the Virginia fair-housing statute.

⁶ *Bradley* addressed a draft of the Virginia fair-housing statute that has since been repealed. See *Bradley*, 707 F. Supp. at 224 (citing Va. Code Ann. §§ 36-88(1), 36-88(2) (Cum. Supp. 1988)). The current version of the statute, however, contains language identical to that in the repealed section. Compare Va. Code Ann. § 36-96.3(A)(2) with *Bradley*, 707 F. Supp. at 224 (quoting Va. Code Ann. §§ 36-88(1), 36-88(2) (Cum. Supp. 1988)).

Several of these cases draw from employment-law precedents to conclude that hostile-housing-environment claims are actionable. See, e.g., *Stoute*, 36 A.D.3d at 263; *Gnerre*, 402 Mass. at 506; *Chomicki*, 128 Wis. 2d at 194-95. Not surprisingly, several States have defined the elements of the hostile-housing-environment claim in accordance with the elements of a hostile-work-environment claim. For instance, in New York the elements are (1) membership in a protected class, and (2) unwanted harassment (3) based on that membership (4) affecting a term, condition, or privilege of housing. *Stoute*, 36 A.D.3d at 265. Further, the *Stoute* court recognized that if the landlord itself was not the harasser, “the complainant must show that the owner knew or should have known about the harassment and failed to remedy the situation promptly.” *Id.*; accord *Szkoda*, 302 Ill. App. 3d at 540 (reciting the same elements). As these cases recognize, hostile-housing-environment claims mirror the elements of, and principles applicable to, hostile-work-environment claims.

3. Federal courts recognize a hostile-housing-environment cause of action under the analogous federal Fair Housing Act and apply the same principles as in Title VII cases.

Various federal courts recognize a hostile-housing-environment claim under the federal Fair Housing Act (“FHA”) and import employment-law principles for evaluating them. For instance, in *Honce v. Vigil* (10th Cir. 1993), 1 F.3d 1085, the Tenth Circuit held that harassment—including hostile-environment harassment—violated the FHA’s prohibition of “discrimination . . . in the provision of services in connection with a rental.” *Id.* at 1088 (citing 42 U.S.C. § 3604(b)). In reaching this conclusion, the court “look[ed] to employment discrimination cases [under Title VII] for guidance.” *Id.* The court reviewed the elements of a hostile-work-environment claim laid out in *Vinson* and concluded that “[a]ppplied to housing, a claim is actionable when the offensive behavior unreasonably interferes with use and enjoyment

of the premises. The harassment must be ‘sufficiently severe or pervasive’ to alter the conditions of the housing arrangement.” *Id.* at 1090.

The Seventh Circuit, in *DiCenso v. Cisneros* (7th Cir. 1996), 96 F.3d 1004, adopted the Tenth Circuit’s conclusion that a hostile housing environment is actionable under the FHA. Like the Tenth Circuit, the *DiCenso* court derived the applicable principles from Title VII’s prohibition of hostile-environment discrimination. *Id.* at 1008. See also *Halprin v. The Prairie Single Family Homes of Dearborn Park Ass’n* (7th Cir. 2004), 388 F.3d 327, 330 (holding that religious harassment sufficient to create a hostile housing environment is actionable under the FHA and a companion regulation); *Krueger v. Cuomo* (7th Cir. 1997), 115 F.3d 487, 491 (recognizing that harassment can violate the FHA); *United States v. Altmayer* (N.D. Ill. 2005), 368 F. Supp. 2d 862, 863 (same); *United States v. Koch* (D. Neb. 2004), 352 F. Supp. 2d 970, 980-81 (holding that sexual harassment violates the FHA and that such claims “are to be analyzed under a framework derived from Title VII cases”); *Williams v. Poretsky Mgmt.* (D. Md. 1996), 955 F. Supp. 490, 495 (concluding that hostile-housing-environment claims are actionable and noting that other courts reaching this conclusion have generally relied on the hostile-work-environment analysis in Title VII precedents); *Beliveau v. Caras* (C.D. Cal. 1995), 873 F. Supp. 1393 (same); *New York ex rel. Abrams v. Merlino* (S.D.N.Y. 1988), 694 F. Supp. 1101, 1104 (holding that harassment claims are actionable under the FHA and applying the Title VII framework).

These cases demonstrate forcefully that harassment on the basis of a protected class, when sufficient to create a hostile environment, is a form of discrimination prohibited by fair-housing laws. Each of these cases held that such harassment violates the FHA, and Ohio courts turn to such cases when construing Ohio’s fair-housing statute. See *Strader v. Johnson* (10th Dist.),

1998 Ohio App. Lexis 6246, *6-7. Importantly, Ohio’s fair-housing statute is broader than the FHA. The FHA prohibits “discriminat[ion] . . . in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,” 42 U.S.C. § 3604(b), and “coerc[ing], intimidat[ing], threaten[ing], or interfer[ing] with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed” such rights, *id.* § 3617. Ohio’s fair-housing statute goes a step further by explicitly outlawing discrimination “in privileges in connection with the . . . *occupancy or use* of any housing accommodations.” R.C. 4112.02(H)(4) (emphasis added).

Although many of these cases address harassment that took place at the hands of the landlord, nothing in their reasoning restricts the hostile-housing-environment doctrine to harassment by a landlord. To the contrary, these cases draw from employment-law precedents and state that employment-law principles apply to the FHA. See, e.g., *Williams*, 955 F. Supp. at 496 (the landlord may be liable if “the landlord ‘knew or should have known of the harassment, and took no effectual action to correct the situation.’” (quoting *Katz v. Dole* (4th Cir. 1983), 709 F.2d 251, 256)). As indicated above, an employer can be liable whenever it knew or should have known of harassment sufficient to create a hostile environment, yet failed to take reasonable corrective action. The framework for landlord liability should be no different.

Federal courts have held as much. For instance, in *Neudecker v. Bosclair Corp.* (8th Cir. 2003), 351 F.3d 361 (per curiam), the Eighth Circuit recognized a cause of action for disability harassment under the FHA. There, the plaintiff did not allege that the landlord or the landlord’s agents harassed him. Instead, he “allege[d] that tenants—including children of [the corporate landlord’s] management team—constantly harassed and threatened him based on his disability,” that he complained to management, that these complaints went unanswered, and that the

harassment “was sufficiently severe to deprive him of his right to enjoy his home.” *Id.* at 364-65.⁷ The court held that these allegations were sufficient to state a hostile-housing-environment cause of action and reversed the district court’s dismissal of the complaint. *Id.* at 365.

Similarly, in *Reeves v. Carrollsburg Condominium Unit Owners Ass’n* (D.D.C. Dec. 18, 1997), 1997 U.S. Dist. Lexis 21762, a resident sued a condo association for failing to intercede after she complained about a fellow resident’s repeated harassment, which included racist and sexist epithets, physical intimidation, and threats to rape and kill her. *Id.* at *4. The court held that hostile-housing-environment claims were actionable, analogizing such claims to hostile-work-environment claims under Title VII. *Id.* at *21-*22. Ultimately, because the condo association’s bylaws gave it the power to intervene in such situations, the court held that an issue of fact existed as to whether the association “sufficiently carried out its duties” to respond to the plaintiff’s complaints of harassment. *Id.* at *27. See also *Bradley*, 707 F. Supp. at 224 (concluding that landlord could be held liable under state fair-housing statute for failing to remediate racial harassment). These cases establish that federal courts have both (1) recognized the hostile-housing-environment cause of action under the FHA and (2) applied hostile-work-environment principles to these claims.

The textual parity between Ohio’s prohibitions of workplace discrimination and housing discrimination demands that this Court apply the same principles to hostile-housing-environment claims that it applies to hostile-working-environment claims. That other courts, both state and federal, have recognized these parallels in analogous statutes and have consequently applied the employment-law framework to hostile-housing-environment claims bolsters this conclusion.

⁷ AMHA claims in its brief that *Neudecker* involved harassment by the landlord’s employees, AMHA Br. at 11, but the above-quoted text contradicts this contention.

Accordingly, a tenant must be able to recover under a hostile-housing-environment theory when he or she can prove:

- (1) unwelcome harassment;
- (2) based on his or her membership in a protected class;
- (3) that was sufficiently severe or pervasive to affect the terms, conditions, or privileges of housing; and
- (4) either (a) the harassment was committed by a the landlord, or (b) the landlord knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

C. AMHA’s arguments to the contrary are unavailing.

In light of the textual parallels between R.C. 4112.02(A) and 4112.02(H)(4) and the copious authority holding that hostile-housing-environment claims are actionable under analogous fair-housing laws, the conclusion that such claims are actionable is uncontroversial. AMHA does not contest seriously that such hostile-housing-environment claims are cognizable under Ohio law when the landlord and/or its employees create the hostile environment. See Merit Br. of Appellants Akron Metropolitan Housing Authority and June Davidson (“AMHA Br.”) at 10 (acknowledging that five cases hold clearly that harassment by a landlord is actionable). The crux of the parties’ dispute is whether Ohio law countenances hostile-environment claims premised upon the landlord’s *failure to remediate* a hostile environment caused by other tenants.

Authority from the employment context, see, e.g., *Ellerth*, 524 U.S. at 759; *McCombs*, 395 F.3d at 353, as well as the housing context, see, e.g., *Neudecker*, 351 F.3d at 364-65; *Reeves*, 1997 U.S. Dist. Lexis 21762 at *27; *Bradley*, 707 F. Supp. at 223-34; *Stoute*, 36 A.D.3d at 265; *Szkoda*, 302 Ill. App. 3d at 540, establishes that such claims are actionable. AMHA’s arguments to the contrary are unpersuasive and fail to overcome these precedents.

1. AMHA misconstrues the Commission's position.

AMHA spends the bulk of its brief attacking straw men. AMHA asserts that fair-housing laws are not intended to “be a vehicle for the resolution of neighborhood disputes,” AMHA Br. at 8, or “to serve as a means by which neighbors of different races may bring neighborhood feuds into court,” *id.* at 9. The Commission agrees and has never suggested anything to the contrary.

The Commission's position is not that landlords should be strictly liable for all tenant-on-tenant harassment, but rather that a hostile-housing-environment claim bears contours similar to a hostile-work-environment claim. AMHA's assertion that landlord liability would render all “neighborhood feuds” actionable is thus inaccurate. Instead, landlords could be liable only when (1) the harassment is so severe or pervasive that it objectively alters the terms, conditions, or privileges of the housing accommodations, and (2) the landlord knows or has reason to know of the harassment, but (3) fails to take *reasonable* corrective action to abate the harassment. Each of these elements is highly fact-dependent; together, they ensure that landlords will face liability only when their own negligence in failing to address the harassment effectively amounts to condoning the hostile environment.

Accordingly, AMHA's argument against “imputed” liability of landlords misses the mark. See AMHA Br. at 12. The Commission does *not* suggest that tenants' acts of harassment can be imputed to landlords in the same way that an agent's negligence is imputed to her master through respondeat superior liability. Instead, consistent with principles applicable in employment cases, the Commission argues that a landlord may be held liable for *its own negligence* in failing to address a hostile environment that it knows, or should know, about. As the Sixth Circuit put it, “[t]he act of discrimination . . . in such a case is not the harassment, but rather the inappropriate response to the charges of harassment.” *McCombs*, 395 F.3d at 353 (quoting *Blankenship v. Parke Care Ctrs.* (6th Cir. 1997), 123 F.3d 868, 873).

The Commission notes that importing the employment-law *principles* into the hostile-housing-environment analysis does not mean that any conduct sufficient to create a hostile environment in the workplace will necessarily create a hostile housing environment. As noted above, harassment cannot create a hostile environment unless it sufficiently alters the terms of residency such that it creates “an environment that a *reasonable person* would find hostile or abusive.” *Harris v. Forklift Sys., Inc.* (1993), 510 U.S. 17, 21 (emphasis added) (citations omitted). Applying the existing employment-law framework will account for the relevant differences between one’s home and one’s place of work. Consistent with the adage that “one’s home is one’s castle,” a reasonable person might expect to have more latitude in his or her behavior at home than at work, and thereby might be more sensitive to harassment in the workplace than at home. Whether harassment creates an objectively hostile environment is a fact-driven inquiry to be analyzed under the totality of the circumstances. *Hampel*, 89 Ohio St. 3d at 180.

2. AMHA has sufficient authority over its premises to protect tenants from a hostile environment.

AMHA next argues against landlord liability by claiming that landlords categorically lack sufficient authority to remedy a hostile environment. This argument is both legally and factually unavailing.

First, to the extent AMHA argues that an employment relationship is a prerequisite to employer liability in a workplace discrimination suit, AMHA is wrong. It is not the *type* of relationship that matters, but rather the defendant’s *power* to alter the harassing behavior. In *Crist v. Focus Homes, Inc.* (8th Cir. 1997), 123 F.3d 1107, for example, the plaintiffs were employees of a company that operated residential facilities for developmentally disabled individuals. One of the residents repeatedly sexually assaulted the plaintiffs, and management

did nothing to resolve this situation despite numerous complaints. The Eighth Circuit concluded that this failure was actionable sexual harassment under Title VII and reversed the district court's grant of summary judgment for the employer. *Id.* at 1112. The lack of an employment relationship between the defendant and the harasser was irrelevant because the defendant "controlled the environment in which [the harasser] resided, and it had the ability to alter those conditions to a substantial degree." *Id.*; see also *Rodriguez-Hernandez v. Miranda-Velez* (1st Cir. 1998), 132 F.3d 848 (affirming jury verdict for plaintiff in sexual-harassment case in which the harassment was perpetrated by a customer).

AMHA's lease agreement and Ohio law demonstrate that AMHA has sufficient authority over its tenants to remedy a hostile environment. The lease agreement requires tenants to refrain from "disturb[ing] the neighbors' peaceful enjoyment of their accommodations" and from "engag[ing] in illegal or other activity which impairs the physical or social environment of the development." *Ohio Civil Rights Comm'n v. Akron Metro. Hous. Auth.* (9th Dist. 2006), 170 Ohio App. 3d 283, 2006-Ohio-6967, ¶ 18. Further, the lease gives AMHA the power to terminate a lease for violating this provision. (Kneale Dep., Ex. 40; Second Supp. at 103). And R.C. 5321.05 obligates a tenant to "[c]onduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises." R.C. 5321.05(A)(8). If a tenant violates this provision, "the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees . . . in addition to any right of the landlord to terminate the rental agreement." R.C. 5321.05(C)(1).

Of course, a landlord's power to abate harassment—and thus the scope of reasonable corrective action it could take—is context-dependent. Cf. *Crist*, 122 F.3d at 1111 (noting that

the reasonableness of a defendant's response to complaints of harassment is "a fact-intensive consideration" turning on whether the "response was immediate or timely and appropriate in light of the circumstances"). The extent of the landlord's power in a given case will depend on, among other things, the lease agreement's terms, the availability of comparable units under the landlord's control to which it might transfer an unruly tenant, applicable rules and regulations governing the landlord's ability to evict, and the landlord's size and available resources. The key is that the landlord must take *reasonable* steps, given the context, to abate the harassment.

Notably, AMHA fails to cite a case that truly supports its position that a landlord cannot be liable for harassment that he did not personally commit. The best it can muster is *Lawrence v. Courtyards at Deerwood Ass'n* (S.D. Fla. 2004), 318 F. Supp. 2d 1133. This case, however, is inapposite. *Lawrence* addresses a suit brought by *homeowners*, not tenants, against a *homeowners' association*, not a landlord. Because the homeowners' association in that case lacked the same power to remove disagreeable residents that landlords have, *Lawrence* is readily distinguishable. The court rejected the hostile-environment claim under the particular facts of that case, emphasizing that the homeowners' association lacked the ability to eliminate the environment. *Id.* at 1146-48. Further, the court noted that "landlords are able to exert far more control over their tenants than a voluntary board of directors can exert over property owners. Tenants may be evicted; homeowners may not." *Id.* at 1151. *Lawrence* accordingly does not undermine the proposition that landlords may be held liable for their own negligence in failing to address a hostile environment.

3. The existence of common-law remedies for certain harassing conduct does not undercut the need to recognize the hostile-housing-environment claim.

AMHA and Amici argue that it is unnecessary to recognize the hostile-housing-environment claim because a tenant who is exposed to a hostile environment has relief through

standard common-law remedies such as the covenant of quiet enjoyment. This argument undercuts the plain text of the statute and overlooks the unique and crucial role that fair-housing laws play in our society. While there may be some overlap with common-law remedies, common law will not provide the systemic protection needed to eliminate racial discrimination in housing. Any overlap with common law remedies does not render the hostile-housing-environment doctrine unnecessary, nor does it provide a basis for rejecting the hostile-housing-environment doctrine.

Fair-housing laws must encompass hostile-environment claims for those laws to advance their intended purpose of eliminating discrimination from the housing arena. As the U.S. District Court for the District of Nebraska recently recognized while addressing the federal Fair Housing Act, “little progress could have been made towards Congress’ goals—and its measures would appear to have few teeth—if the basic privilege of residing within one’s home were not protected from the evils of discriminatory harassment.” *United States v. Koch* (D. Neb. 2004), 352 F. Supp. 2d 970, 978 (citations omitted). Consequently, fair-housing statutes must be “construed generally in order to promote the replacement of segregated ghettos with ‘truly integrated and balanced living patterns.’” *Id.* at 976 (citing *Trafficante v. Metro. Life Ins. Co.* (1972), 409 U.S. 205, 211). While common-law remedies may or may not be available in a particular situation, only by recognizing the hostile-environment claim under Ohio’s fair-housing statute can this Court fulfill the overriding purpose of Ohio’s fair housing law.

Moreover, Ohio law permits cumulative remedies. For example, tenants suing under Ohio’s Landlords and Tenants Act may pursue both common-law and statutory remedies. *Miller v. Ritchie* (1989), 45 Ohio St. 3d 222, 224-25. Along similar lines, this Court has held that R.C. Chapter 4112 does not preempt common-law torts, but instead recourse under R.C. Chapter 4112

stands alongside potential common-law remedies and both are available to plaintiffs. *Helmick v. Cincinnati Word Processing* (1989), 45 Ohio St. 3d 131, 134-35. If remedies available under the common law and under R.C. Chapter 4112 can coexist in the employment context, the same should be true in the housing context.

D. AMHA's status as a public entity is irrelevant.

Finally, AMHA argues that permitting a hostile-housing-environment claim to proceed against a public entity will force it to tread on the United States Constitution. More specifically, AMHA asserts that such claims will require that it undermine the First, Fourth, and Fourteenth Amendment rights of its tenants. Not so.

1. Recognizing a hostile-housing-environment claim will not encourage violations of the First Amendment.

AMHA argues that recognizing hostile-housing-environment discrimination will spur public-housing providers, for fear of liability, to over-regulate tenants' speech in violation of the First Amendment. Again, AMHA attacks a straw man. The hostile-housing-environment cause of action does not render public-housing providers liable for each and every racially or sexually insensitive remark by a tenant, so providers have no reason to enact speech codes barring protected speech. Instead, a hostile environment exists only when the remarks and conduct are so "severe or pervasive" that they "alter the terms of the victim's" tenancy and thereby "create an objectively hostile or abusive [housing] environment—an environment that a reasonable person would find hostile or abusive." *Harris v. Forklift Sys., Inc.* (1993), 510 U.S. 17, 21 (citations omitted). And only when the landlord fails to "exercise[] reasonable care to prevent and correct promptly any . . . harassing behavior," can it be held liable. *Burlington Indus. v. Ellerth* (1998), 524 U.S. 742, 765. Thus, public-housing providers would have no reason to enact overreaching speech codes.

Further, the First Amendment permits public entities to prohibit harassment in one's home. In *Frisby v. Schultz* (1988), 487 U.S. 474, the Supreme Court upheld a municipal ordinance prohibiting pickets aimed at a particular residence. In reaching this conclusion, the Court noted that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Id.* at 484 (quoting *Carey v. Brown* (1980), 447 U.S. 455, 471). To offer such protection, public entities may protect unwilling listeners from speech they wish not to hear. Accordingly, "individuals are not required to welcome unwanted speech into their homes and . . . the government may protect this freedom." *Id.* at 485. Put differently, "[t]here is simply no right to force speech into the home of an unwilling listener." *Id.* Accordingly, enacting rules prohibiting residents of public housing from engaging in unwanted harassment is perfectly consistent with the Constitution.

Finally, like public-housing providers, public employers are subject to both hostile-work-environment claims and the First Amendment. Courts addressing the issue have concluded that there is no necessary conflict, as there is no First Amendment right to create a hostile environment. E.g., *Burns v. City of Detroit* (Mich. Ct. App. 2002) 253 Mich. App. 608, 621-22. Further, public employers have been able to enact sensible workplace policies to remediate on-the-job harassment notwithstanding being subject to the First Amendment. E.g., *Klessens v. U.S. Postal Serv.* (1st Cir. Dec. 28, 1994), No. 93-1823, 1994 U.S. App. Lexis 36482, at *13 (public employer not liable for harassment because, upon learning of harassment, it transferred harasser to a different facility).

2. Recognizing a hostile-housing-environment claim does not implicate the Fourth Amendment.

AMHA next argues that evicting a tenant from public housing is "seizing" property, and thus subject to the Fourth Amendment. The Court need not spend much time on this issue,

however, as this argument is actually a due-process argument in Fourth Amendment garb. Indeed, the case AMHA cites to establish that public-housing tenants have an interest in remaining on the property, *Gorsuch Homes, Inc. v. Wooten* (2d Dist. 1992), 73 Ohio App. 3d 426, was a due-process case, not a Fourth Amendment case.

Even if AMHA were correct, however, that eviction constitutes a “seizure” for Fourth Amendment purposes, its argument misses the mark. As AMHA notes, the Fourth Amendment prohibits only those seizures that are “unreasonable.” When a public-housing tenant violates the terms of the lease and loses the right to possess the living unit, such a “seizure” cannot be unreasonable. Instead, the bounds of reasonableness are determined by the contract. A landlord is within its legal rights to terminate a contract when a tenant violates its terms. Additionally, AMHA provides no reason to believe that eviction is the only reasonable action a public-housing provider could take to abate harassment. AMHA ignores alternatives such as verbal and written warnings, informal conferences, informal hearing procedures, and transfers. Such alternative courses of action would, in many cases, sufficiently insulate a public-housing landlord from liability without the need for such a “seizure.” In other words, subjecting public-housing providers to hostile-housing-environment suits in no way forces them to *evict* tenants in the majority of cases.

3. AMHA provides no reason to believe that recognizing a hostile-housing-environment claim will spur landlords to violate the Fourteenth Amendment.

AMHA’s final argument is that recognizing hostile-housing-environment claims will prod public-housing landlords to violate the Fourteenth Amendment’s Due Process Clause by evicting tenants without a pre-eviction hearing. And when there is a hearing, AMHA further argues, there exists a high risk of erroneous deprivation because harassment claims often boil down to a

“he said/she said” battle. In such a situation, says AMHA, the merits mean little because the more rhetorically skillful adversary will win. These arguments are wholly unavailing.

Addressing the second argument first, AMHA tellingly cites no supporting authority. This argument indicts virtually *all* process and even the adversary system in general. For instance, if “he said/she said” disputes, by their very nature, raise an unconstitutional risk of an erroneous deprivation, many prosecutions for crimes such as assault, robbery, or fraud would have to be shelved. The same is true of many workplace harassment suits and disputes regarding oral agreements. That these cases regularly proceed to jury trials demonstrates that AMHA’s argument proves too much.

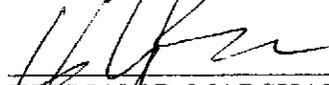
AMHA’s first argument fares no better. As noted above, the notion that public-housing providers will bypass other methods of resolving disputes, and rush prematurely to evict, is a red herring. In other words, AMHA incorrectly conflates a requirement that a landlord take prompt and immediate *action* to address a hostile environment of which it learns with a requirement that the landlord pursue a prompt and immediate *eviction*. Accordingly, recognizing a hostile-housing-environment claim against providers of public housing has no necessary due-process implications.

CONCLUSION

For the foregoing reasons, Appellee Ohio Civil Rights Commission respectfully asks that this Court AFFIRM the judgment of the Court of Appeals for the Ninth District and hold that hostile-housing-environment claims are actionable under R.C. 4112.02(H)(4) and that courts apply the same principles to such claims as they apply to hostile-work-environment claims under R.C. 4112.02(A).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of the Ohio Civil Rights Commission was served by U.S. mail this 3rd day of October, 2007, upon the following counsel:

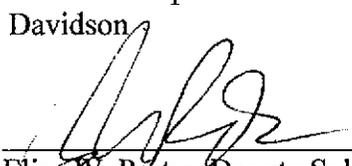
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APPENDIX

LEXSTAT MASS GEN LAWS CH. 151B §4

ANNOTATED LAWS OF MASSACHUSETTS

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*** CURRENT THROUGH ACT 110 OF THE 2007 LEGISLATIVE SESSION ***

*** WITH THE EXCEPTION OF ACT 109 ***

PART I ADMINISTRATION OF THE GOVERNMENT

TITLE XXI LABOR AND INDUSTRIES

Chapter 151B Unlawful Discrimination Because of Race, Color, Religious Creed, National Origin,
Ancestry or Sex

GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY

ALM GL ch. 151B, § 4 (2007)

§ 4. Unlawful Practices; Certain Records to be Kept; Employer, etc., Not Required to Grant Preferential Treatment to Any Individual or Group.

It shall be an unlawful practice:

* * *

6. For the owner, lessee, sublessee, licensed real estate broker, assignee or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations or other person having the right of ownership or possession or right to rent or lease, or sell or negotiate for the sale of such accommodations, or any agent or employee of such a person or any organization of unit owners in a condominium or housing cooperative (a) to refuse to rent or lease or sell or negotiate for sale or otherwise to deny to or withhold from any person or group of persons such accommodations because of the race, religious creed, color, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, or marital status of such person or persons or because such person is a veteran or member of the armed forces, or because such person is blind, or hearing impaired or has any other handicap; (b) to discriminate against any person because of his race, religious creed, color, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry, or marital status or because such person is a veteran or member of the armed forces, or because such person is blind, or hearing impaired or has any other handicap, in the terms, conditions or privileges of such accommodations or the acquisitions thereof, or in the furnishings of facilities and services in connection therewith, or because such a person possesses a trained dog guide as a consequence of blindness, or hearing impairment; (c) to cause to be made any written or oral inquiry or record concerning the race, religious creed,

EXHIBIT 1

color, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry or marital status of the person seeking to rent or lease or buy any such accommodation, or concerning the fact that such person is a veteran or a member of the armed forces or because such person is blind or hearing impaired or has any other handicap. The word "age" as used in this subsection shall not apply to persons who are minors nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in housing developments assisted under the federal low income housing tax credit and intended for use as housing for persons 55 years of age or over or 62 years of age or over, nor to residency in communities consisting of either a structure or structures constructed expressly for use as housing for persons 55 years of age or over or 62 years of age or over, if the housing owner or manager register biennially with the department of housing and community development. For the purpose of this subsection, housing intended for occupancy by persons fifty-five or over and sixty-two or over shall comply with the provisions set forth in 42 USC 3601 et seq.

For purposes of this subsection, discrimination on the basis of handicap includes, but is not limited to, in connection with the design and construction of: (1) all units of a dwelling which has three or more units and an elevator which are constructed for first occupancy after March thirteenth, nineteen hundred and ninety-one; and (2) all ground floor units of other dwellings consisting of three or more units which are constructed for first occupancy after March thirteenth, nineteen hundred and ninety-one, a failure to design and construct such dwellings in such a manner that (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons; (ii) all the doors are designed to allow passage into and within all premises within such dwellings and are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design: (a) an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

HISTORY: 1946, 368, § 4; 1947, 424; 1950, 697, §§ 6-8; 1955, 274; 1957, 426, §§ 2, 3; 1959, 239, § 2; 1960, 163, § 2; 1961, 128; 1963, 197, § 2; 1965, 213, § 2; 1965, 397, §§ 4-6; 1966, 361; 1969, 90; 1969, 314; 1971, 661; 1971, 726; 1971, 874, §§ 1-3; 1972, 185; 1972, 428; 1972, 542; 1972, 786, § 2; 1972, 790, § 2; 1973, 168; 1973, 187, §§ 1-3; 1973, 325; 1973, 701, § 1; 1973, 929; 1973, 1015, §§ 1-3; 1974, 531; 1975, 84; 1975, 367, § 3; 1975, 637, §§ 1, 2; 1978, 89; 1978, 288, §§ 1, 2; 1979, 710, § 2; 1980, 343; 1983, 533, §§ 4-6; 1983, 585, § 7; 1983, 628, §§ 1-3; 1984, 266, §§ 5-7; 1985, 239; 1986, 588, § 3; 1987, 270, § 1, 2, 1987, 775, § 11; 1989, 516, §§ 4-14; 1989, 544; 1989, 722, §§ 13-23; 1990, 177, § 341; 1990, 283, §§ 2, 3; 1996, 262; 1997, 2, § 2; 1997, 19, §§ 105, 106; 1998, 161 § 532; 2000, 254, §§ 6-23A; 2001, 11, §§ 1, 2; 2003, 26, § 589; 2004, 355, § 1; 2006, 291, §§ 1, 2.

LEXSTAT IOWA CODE §216.8

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2006 EDITION (2006 LEGISLATION)

*** ANNOTATIONS CURRENT THROUGH AUGUST 8, 2007 ***

TITLE VI. HUMAN SERVICES
SUBTITLE 1. SOCIAL JUSTICE AND HUMAN RIGHTS
CHAPTER 216. CIVIL RIGHTS COMMISSION

Iowa Code § 216.8 (2006)

216.8 Unfair or discriminatory practices -- housing.

It shall be an unfair or discriminatory practice for any person, owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin, disability, or familial status of such person.

2. To discriminate against any person because of the person's race, color, creed, sex, religion, national origin, disability, or familial status, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest in the real property or housing accommodation or in the provision of services or facilities in connection with the real property or housing accommodation.

For purposes of this section, "*person*" means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin, disability, or familial status is unwelcome, objectionable, not acceptable or not solicited.

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin of persons who may from time to time be present in

EXHIBIT 2

or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity.

HISTORY: C71, § 105A.13; C73, § 601A.13; C75, 77, 79, 81, § 601A.8

89 Acts, ch 205, § 2; 92 Acts, ch 1129, § 4

C93, § 216.8

LEXSTAT N.Y. EXEC. LAW § 295(5)

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*** THIS SECTION IS CURRENT THROUGH CH. 678, 8/28/2007 ***
*** With the exception of chs. 628, 665 and 672 ***

EXECUTIVE LAW
ARTICLE 15. HUMAN RIGHTS LAW

Go to the New York Code Archive Directory

NY CLS Exec § 296 (2007)

§ 296. Unlawful discriminatory practices

* * *

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or any intent to make any such limitation, specification or discrimination.

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant

of the housing accommodation or by the owner of the housing accommodation and the owner resides in such housing accommodation or (4) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

LEXSTAT 775 ILL COMP STAT 5/1-102

ILLINOIS COMPILED STATUTES ANNOTATED
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*** STATUTES CURRENT THROUGH P.A. 95-485, EXCEPT P.A. 95-331 ***
*** ANNOTATIONS TO STATE CASES CURRENT THROUGH JULY 15, 2007 ***

CHAPTER 775. HUMAN RIGHTS
ILLINOIS HUMAN RIGHTS ACT
ARTICLE 1. GENERAL PROVISIONS

775 ILCS 5/1-102 (2007)

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 68, para. 1-102]

§ 775 ILCS 5/1-102. Declaration of Policy

Sec. 1-102. Declaration of Policy. It is the public policy of this State:

(A) *Freedom from Unlawful Discrimination.* To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, military status, sexual orientation, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.

EXHIBIT 4

LEXSTAT VA CODE ANN §36-96.3

CODE OF VIRGINIA
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*** CURRENT THROUGH THE 2007 REGULAR SESSION, ACTS 2007, cc. 1 to 948 ***
*** ANNOTATIONS CURRENT THROUGH JUNE 19, 2007 ***

TITLE 36. HOUSING
CHAPTER 5.1. VIRGINIA FAIR HOUSING LAW

Va. Code Ann. § 36-96.3 (2007)

§ 36-96.3. Unlawful discriminatory housing practices

A. It shall be an unlawful discriminatory housing practice for any person:

1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, or familial status;

2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, or familial status;

3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. However, reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;

4. To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

5. To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, or handicap;

EXHIBIT 5

6. To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, or handicap or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;

7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, or handicap;

8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter, (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or (iii) any person associated with the buyer or renter;

9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i) that person, (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available, or (iii) any person associated with that buyer or renter.

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

1. The public use and common use areas of the dwellings are readily accessible to and usable by handicapped persons;

2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

3. All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

C. Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people shall be deemed to satisfy the requirements of subdivision B 3.

D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation which requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

HISTORY: 1972, c. 591, § 36-88; 1973, c. 358; 1978, c. 138; 1984, c. 685; 1985, c. 344; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. 327.

NOTES:

THE 1996 AMENDMENT added the third sentence in subdivision A 3.

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*** CURRENT THROUGH P.L. 110-81, APPROVED 9/14/2007 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 45. FAIR HOUSING
GENERALLY

42 USCS § 3604

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.

As made applicable by section 803 [42 USCS § 3603] and except as exempted by sections 803(b) and 807 [42 USCS §§ 3603(b), 3607], it shall be unlawful—

* * *

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

EXHIBIT 6

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*** CURRENT THROUGH P.L. 110-80, APPROVED 8/13/2007 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 45. FAIR HOUSING
GENERALLY

42 USCS § 3617

§ 3617. Interference, coercion, or intimidation

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 803, 804, 805, or 806 [42 USCS §§ 3603, 3604, 3605, or 3606].

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH SEPTEMBER 18, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2007 ***

TITLE 53. REAL PROPERTY
CHAPTER 5321. LANDLORDS AND TENANTS

ORC Ann. 5321.05 (2007)

§ 5321.05. Obligations of tenant

(A) A tenant who is a party to a rental agreement shall do all of the following:

- (1) Keep that part of the premises that he occupies and uses safe and sanitary;
- (2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;
- (3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;
- (4) Use and operate all electrical and plumbing fixtures properly;
- (5) Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;
- (6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;
- (7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;
- (8) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;
- (9) Conduct himself, and require persons in his household and persons on the premises with his consent to conduct themselves, in connection with the premises so as not to violate the prohibitions contained in Chapters 2925. and 3719. of the Revised Code, or in municipal ordinances that are substantially similar to any section in either of those chapters, which relate to controlled substances.

(B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations,

alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(C) (1) If the tenant violates any provision of this section, other than division (A)(9) of this section, the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for the possession of the premises, or to obtain injunctive relief to compel access under division (B) of this section.

(2) If the tenant violates division (A)(9) of this section and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of *section 1923.02 of the Revised Code*, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division, then the landlord promptly shall give the notice required by division (C) of *section 5321.17 of the Revised Code*. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of *section 5321.04 of the Revised Code*. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(i) of *section 1923.02 of the Revised Code*.

HISTORY:

135 v S 103 (Eff 11-4-74); 143 v S 258. Eff 8-22-90.