No. 22-2828

In the
United States Court of Appeals
for the Seventh Circuit

DEBORAH BRUMIT AND ANDREW SIMPSON, Plaintiffs-Appellants,

v.

CITY OF GRANITE CITY, ILLINOIS, Defendant Appellee.

On Appeal from the United States District Court
for the Southern District of Illinois (No. 19-CV-01019)
Hon. Staci M. Yandle

BRIEF OF AMICI CURIAE ILLINOIS STATE CONFERENCE OF THE NAACP, AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, NATIONAL HOUSING LAW PROJECT, AMERICAN CIVIL LIBERTIES UNION, AND CENTER ON RACE, INEQUALITY, AND THE LAW AT NYU SCHOOL OF LAW IN SUPPORT OF APPELLANTS

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JANUARY 24, 2023

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(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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Attorney's Signature: /s/ John J. Clarke, Jr. Date: January 24, 2023

Attorney's Printed Name: John J. Clarke, Jr.

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Circuit Rule 26.1 Disclosure Statement
Addendum to 3(i)

The Center on Race, Inequality, and the Law at NYU School of Law is part of the NYU School of Law. No other party has a parent corporation.

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INTERESTS OF THE AMICI CURIAE

The *amici curiae* are non-profit legal organizations that advocate on behalf of vulnerable groups, including communities of color, persons with disabilities, and survivors of gender-based violence, impacted by local policies and programs that jeopardize their housing stability and silence their ability to seek help when they need it. The *amici* are submitting this brief to draw the Court's attention to the serious negative effects resulting from "crime-free housing ordinances" on renters in Granite City and many other municipalities in Illinois (and in other states within this Circuit), including renters from vulnerable populations, despite the absence of evidence that these ordinances fulfill their stated goals to deter and reduce crime.[1]

The Illinois State Conference of the NAACP ("Illinois NAACP") is one of the oldest and largest organizations promoting and protecting the

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[1] All parties have consented to the filing of this brief, which therefore is being filed without an accompanying motion for leave of Court in accordance with Federal Rule of Appellate Procedure 29(a)(2).

In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), the *amici curiae* state that no party's counsel authored this brief, in whole or in part, and no party or person other than the *amici curiae*, their members, or their counsel contributed money intended to fund the preparation or submission of this brief.

civil rights of people of color in Illinois. The Illinois NAACP has over 5,000 members across the state of Illinois. Its mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. That mission includes fighting against discriminatory housing practices and for greater access to housing for all people in Illinois.

The American Civil Liberties Union of Illinois ("ACLU of Illinois") is a statewide, nonprofit, nonpartisan organization with more than 60,000 members that is dedicated to the protection and defense of the civil rights and civil liberties of all Illinoisans. In particular, the ACLU of Illinois advances the rights of many of the groups that are most likely to be impacted by enforcement of crime-free housing ordinances, such as people of color, survivors of gender-based violence, and people with disabilities. The ACLU of Illinois has a history of advocating for state and local policy changes to limit the discriminatory harms from these ordinances.

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with more than four million members, activists, and supporters dedicated to the principles of liberty

and equality embodied in the Constitution and our nation's civil rights laws. Through its Women's Rights Project and Racial Justice Program, the ACLU has taken a leading role in challenging local nuisance and crime-free housing ordinances, which violate the rights of residents and disproportionately result in the eviction and punishment of communities of color, domestic violence survivors, and people with disabilities. The ACLU has brought litigation against these policies across the country and successfully advocated for protections at the federal and state levels.

The National Housing Law Project ("NHLP") is a private, nonprofit, national housing and legal advocacy center established in 1968 and located in San Francisco, California. NHLP's mission is to advance housing justice for poor people by increasing and preserving the supply of decent, affordable housing; advance housing justice for all; expand and enforce low-income tenants' and homeowners' rights; and increase equitable housing opportunities for racial and ethnic minorities. NHLP is the lead legal organization that spearheaded efforts to pass the proposed housing title provisions of the 2022 reauthorization of the Violence Against Women Act, including new provisions intended to curb

the use of crime-free housing programs and nuisance property ordinances by local governments.

NHLP frequently works with federal agencies on the implementation of VAWA, the Fair Housing Act, and other laws and policies to support survivors of gender-based violence, communities of color, and persons with disabilities. NHLP is the technical assistance expert on crime-free programs and nuisance property ordinances for the Office on Violence Against Women ("OVW"). Through this effort, NHLP provides technical assistance to OVW grantees, legal aid attorneys, and domestic and sexual violence advocates, on the harm caused by crime-free programs and nuisance property ordinances in an effort to limit their use. Through litigation, policy advocacy, and training, NHLP supports local legal advocates in their efforts to stop or challenge the use of crime-free programs and nuisance property ordinances.

The Center on Race, Inequality, and the Law at New York University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. Among the Center's top priorities is challenging modern drivers of racial segregation in housing that lay at the core of the many racial

inequities that underlie our social division, including laws and practices that import the bias of the criminal legal system into the private housing market.

INTRODUCTION

The defendant-appellee, Granite City, Illinois, is one of scores of municipalities in Illinois and other states within this Circuit that have enacted so-called "crime-free housing ordinances" ("CFHOs") or similar laws. Putatively enacted for the purpose of reducing crime, their impact far exceeds the typical outer limits of the landlord-tenant relationship for private rental properties.

Plaintiffs-appellants Deborah Brumit and Andrew Simpson were among the many renters of privately owned leaseholds who faced compulsory eviction under Granite City's ordinance, in their case based on alleged misconduct by Ms. Brumit's adult daughter committed outside of their home, and about which they knew nothing. Ms. Brumit's daughter was not living in their household at the time.

These ordinances warrant scrutiny. Although cloaked in the mantle of "crime prevention," there is little evidence that the ordinances have advanced that goal. There is evidence, however, that these laws have increased housing insecurity, especially for people of color, survivors of gender-based violence, and people with disabilities, and that they actually deter calls for emergency assistance from residents who need it.

Rather than serving a compelling or legitimate governmental interest, these ordinances punish residents, often based on mere allegations of, or associations with, criminal activity.

The *amici* respectfully submit this brief to provide important context for the Court, including an overview of the history of crime-free housing ordinances and information concerning their negative impact on the communities they purport to protect.

SUMMARY OF ARGUMENT

1. The Granite City compulsory-eviction law at issue in this appeal is just one example of CFHOs or similar ordinances adopted by municipalities throughout the United States in the past several decades, including more than 100 jurisdictions in Illinois, often using language drawn from online templates. Despite their stated rationale – to prevent or deter crime – these ordinances often are enforced in ways that are discriminatory even while they have no proven efficacy in reducing crime. In several documented instances, "crime free housing" has been a euphemism for racial redlining, and the ordinances often are enacted in response to perceived changes in racial demographics for a locality. Even where such concerns have not been expressed in passing CFHOs, the

laws have had disproportionate effects on communities of color, victims of domestic violence (primarily women), and people with disabilities.

2. In concluding that Granite City's stated rationale for its ordinance, "[c]rime deterrence and prevention," was sufficient to insulate the law from challenge, A.009 (MTD Op.), A.018 (S.J. Op.), the district court took a position at odds with developing law and policy concerning CFHOs, as reflected in guidance by the U.S. Department of Housing and Urban Development ("HUD"), reauthorization amendments to the federal Violence Against Women Act, and recent actions taken by the U.S. Department of Justice. Adopting a CFHO such as the Granite City ordinance here is not a rational approach to deterring or preventing crime. Instead, these ordinances result in foreseeable and impermissible harm to members of the communities those laws putatively are enacted to help.

ARGUMENT

I. Ostensibly Developed to "Deter Crime," CFHOs Such As Granite City's Instead Have Been Vehicles for Unlawful Discrimination.

Crime-free housing ordinances have spread widely. Despite their prevalence, however, there is little evidence that these laws achieve their ostensible purpose – to reduce crime. More commonly, the laws are adopted in response to concerns about a town's changing demographics. And ample evidence demonstrates that ordinances like Granite City's *do* operate disproportionately to exclude people of color from housing, just as they do individuals with disabilities and individuals who have suffered from gender-based violence.

A. The Proliferation of CFHOs.

The concept of "crime-free" housing ordinances was developed and promoted by the International Crime Free Association ("ICFA"), an organization founded in 1992. Int'l Crime Free Association, *Crime Free Programs: A Brief History*.[2] Since then, the ICFA has offered localities a crime-free housing "program," which it describes as a compilation of "innovative, law enforcement[-]based prevention solutions designed to

[2] Available at www.crime-free-association.org/history.htm (last accessed January 24, 2023).

keep illegal activity off rental property." Int'l Crime Free Association, *Crime Free Multi-Housing*.[3] The ICFA has created model forms and templates, which permit local jurisdictions to easily prepare their own laws by borrowing from existing language. *See* Emily Werth, *The Cost of Being "Crime-Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances*, Sargent Shriver Nat'l Ctr. On Poverty Law, at n.5 (2013) (discussing practice of copying ordinances from other jurisdictions).[4]

These efforts have been successful: nearly 2,000 cities in 48 states have adopted versions of the ICFA program and draft ordinance. *See* Deborah N. Archer, *"Crime-Free" Housing Ordinances, Explained*, The Appeal (Feb. 17, 2021) (discussing ICFA statistics).[5] In Illinois alone, more than 50 municipalities have enacted a crime-free housing ordinance (a figure that climbs to over 100 when related "nuisance" ordinances are included). *See* Werth, *The Cost of Being "Crime-Free,"* at 1; Appendix A.

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[3] Available at www.crime-free-association.org/index.html (last accessed Jan. 24, 2023).

[4] Available at www.povertylaw.org/files/docs/cost-of-being-crime-free.pdf (last accessed Jan. 24, 2023).

[5] Available at www.theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained (last accessed Jan. 24, 2023).

Modeled to varying degrees on the ICFA's template, CFHOs generally "are local laws that either encourage or require private landlords to evict or exclude tenants who have had varying levels of contact with the criminal legal system." Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173, 173, 187-89 (2019).[6]

To achieve that objective, these ordinances tend to share certain attributes: (1) requiring landlords to obtain a license to lawfully rent residential properties (and often requiring landlords to participate in crime-free housing training); (2) requiring tenants and adult household members to sign a "crime free lease addendum" stating that alleged criminal activity or certain other non-criminal misconduct by tenants,

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[6] "Nuisance ordinances" are closely related and are similarly widespread. These "are local laws that allow a city to label a property a nuisance when it is the site of a certain number of police responses or alleged nuisance conduct, a category that can include assault, harassment, stalking, disorderly conduct, city code violations, and much more." NYCLU & ACLU, *More Than a Nuisance: The Outsized Consequences of New York's Nuisance Ordinances*, at 6 (2018) (available at https://bit.ly/3DehmCS (last accessed Jan. 24, 2023). Even if structured somewhat differently, nuisance ordinances have the same effect – punishing renters for contact with law enforcement – and many of the same discriminatory effects as CHFOs. Given the close relationship of these types of laws, the *amici* discuss litigation and research regarding nuisance ordinances in addition to CFHOs.

household members or even guests will trigger eviction, sometimes if the alleged misconduct occurs away from the premises; (3) relying upon calls to police, police reports, or arrests as the basis for enforcement, even if those events do not result in convictions; (4) requiring landlords to evict an *entire* household when any triggering activity *allegedly* has occurred, often regardless of whether the tenant or other household member was actually the victim of the criminal activity or an innocent third party; (5) imposing penalties against landlords for failure to evict a household once ordered to do so; and (6) offering few, if any, procedural protections or defenses to enforcement against landlords and residents. *See* Werth, *The Cost of Being "Crime-Free,"* at 3-4.

The Granite City CFHO at issue on appeal included many of these characteristics. The Granite City ordinance: deemed a CFHO lease addendum to be part of every residential lease, whether agreed to or not; mandated eviction of an entire household if any household member was charged with commission of a crime within city limits; and subjected landlords to fines and possible loss of their rental licenses if they did not evict renters in accordance with the CFHO. A.074-083.

Because of these provisions in Granite City's ordinance, Ms. Brumit and Mr. Simpson faced compulsory eviction at the City's instruction, and against the wishes of their landlord, based on the alleged commission of a crime that did not occur at the property by Ms. Brumit's adult daughter, who was not then living with them, and without their knowledge or involvement. A.014-015.

B. The False Promise of Preventing or Deterring Crime.

Advocates for crime-free housing ordinances assert that the laws are an effective way "to keep crime out of rental properties." Int'l Crime Free Ass'n, *Crime Free Programs: A Brief History*, *supra*; *see also id.* (asserting that before adoption of program in Mesa, AZ "[p]eople with criminal intent were moving into rental property to ply their trade . . . result[ing] in expensive repairs and constant police calls[.]"). But, in reality, CFHOs do not reduce crime and likely undermine effective law enforcement and public safety.

There is no empirical evidence that the CFHOs enacted by Granite City or any other municipalities actually reduce crime. And logic confirms what the lack of evidence suggests – that enactment of CFHOs does not protect communities. Lease addendums such as the one that led

to the eviction order for Ms. Brumit and Mr. Simpson, for example, allow a city to compel eviction based on allegations of criminal activity alone, and even if the activity allegedly occurred far from the leased premises and involved someone other than the tenant. Compelling eviction in those circumstances neither facilitates the investigation of an alleged crime nor disincentivizes crimes because the person facing eviction is not the alleged wrongdoer.

Instead of facilitating law enforcement, these ordinances can undercut it. Often, CFHOs include provisions that deter tenants from calling the police when a crime is in progress out of fear of eviction – even when they are the *victims* – for example, provisions deeming a specified number of police calls within a given period to be a CFHO violation. *See* Jerusalem Demsas, "Why Are People Getting Evicted for Calling 911?," *Vox* (Mar. 15, 2021) (recounting eviction of Rosetta Watson after four calls to police over six months in response to assaults by a former boyfriend).[7] Even when a CFHO or a related state law exempts certain conduct, such as domestic violence, harmful impacts for victims only can

[7] Available at www.vox.com/.../crime-free-evictions-for-calling-911 (last accessed Jan. 24, 2023).

be avoided if law enforcement correctly identifies the conduct as being exempt in enforcing the ordinance.[8] That has not always been the case.[9]

Perversely, therefore, "crime-free" housing ordinances can inhibit crime prevention by creating a disincentive against calling the police. In fact, given their own obligations under these laws, landlords might even "proactively discourage tenants from reaching out to the police in the first place." *The Cost of Being "Crime-Free,"* at 8. The result is that law enforcement agencies are less likely to receive reports of criminal activity, such as domestic violence.

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[8] Since early 2016, Illinois law has prohibited municipalities from enacting or enforcing an ordinance that penalizes tenants or landlords based on calls to emergency services to prevent or respond to domestic violence, actual or threatened domestic violence against a tenant, or criminal activity within a dwelling unit directly relating to domestic violence. Ill. P.A. 099-0441, *codified at* 65 ILCS 5/1-2-1-5.5. Congress created broader protections in the recent reauthorization of the Violence Against Women Act, which now protects residents from penalties for seeking emergency assistance or for criminal activity for which they are not at fault. 34 U.S.C. §§ 12495(b)(1)(B), (b)(2)(B); *see generally infra* at 26-27.

[9] *See, e.g.*, *United States v. City of Hesperia, Calif.*, No. 5:19-cv-02298, First Am. Compl. ¶ 47 [ECF No. 31] (C.D. Cal.) ("The Sheriff's Department also notified landlords to begin evictions of victims of domestic violence even though the ordinance contained language purporting to protect them.").

Consequently, law enforcement officials have come to the recognition that CFHOs hinder efforts to build relationships in their communities and divert police attention away from addressing serious crimes. Chief Mark Talbot, formerly of Norristown, Pennsylvania, for example, has said that he has not seen "any evidence that [these ordinances are] a reasonable method of crime reduction" and that he believes they "run counter to our mission." He has "advocated for the elimination of these policies" in Norristown and elsewhere, which he believes "reduce[] community trust in police." Demsas, "Why Are People Getting Evicted for Calling 911?," *Vox*, *supra*; *see also id.* ("You can't both be mad when nobody calls and mad when they do call.").

C. Evidence Suggests Race Discrimination Is a Primary Motivation for Enacting CFHOs.

Despite their stated purpose of preventing crime, closer scrutiny of CFHOs suggests they instead have been used to continue our nation's unfortunate history of housing segregation. "By using contact with the criminal legal system as a tool for exclusion, documented racial biases in policing and the criminal legal system are imported into the private housing market, furthering systemic racial exclusion and residential

segregation." Archer, *The New Housing Segregation*, 118 Mich. L. Rev. at 179.

There is significant evidence that enactment of CFHOs often is spurred by demographic changes in a locality that existing residents find uncomfortable. *See*, *e.g.*, Joseph Mead, Megan Hatch, J. Rosie Tighe, *et al.*, *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, Cleveland State University Report, at 3 (Nov. 8, 2017) ("Rarely do residents express concern with serious crime. Instead, residents and councilmembers complain about annoying or rude behavior and their wish for a certain community character. Race and class undertones are frequently evident. At times, these undertones are thinly veiled, if at all");[10] Archer, *The New Housing Segregation*, 118 Mich. L. Rev. at 199-200 (discussing enactment of CFHO in Faribault, Minnesota in response to influx of Somali immigrants); Demsas, "Why are people getting evicted for calling 911?," *Vox*, *supra* ("When Bedford, Ohio, was considering adopting one after an influx of Black residents, one local said at a city council meeting that he supported the ordinance because he didn't want

[10] Available at engagedscholarship.csuohio.edu/.../1509/ (last accessed Jan. 24, 2023).

Bedford turning into another 'Maple Heights and Warrensville Heights' – two majority-Black cities nearby.").

When enacting these ordinances, public officials often have articulated the discriminatory purposes motivating the adoption of the laws. For instance, the Mayor of Bedford, Ohio voiced support for a crime-free ordinance because "[w]e believe in neighborhoods not hoods. . . . these are predominantly African American kids who bring in that mentality from the inner city where that was a gang related thing by staking their turf. We are trying to stop that." *Somai v. City of Bedford, Oh.*, No. 1:19-cv-0373, Second Am. Complaint ¶ 40 [ECF No. 40.1] (N.D. Ohio Jan. 30, 2020).

Similarly, a member of the city-council in Hesperia, California stated that the purpose of the ordinance was to "correct a demographical problem," because "those kind of people" were "of no value to this community, period." *United States v. City of Hesperia, Calif.*, No. 5:19-cv-02298, First Am. Complaint, ¶ 25(a). As Hesperia's mayor put it, a crime-free ordinance would help exclude "the people that aggravate us [and] aren't from here" and who "come from somewhere else with their tainted history." *Id.* ¶ 25(b); *see also* Archer, *The New Housing*

Segregation, 118 Mich. L. Rev. at 200 (quoting officials' statements that intention was to "keep out undesirables, or the criminal element").

Unsurprisingly, a number of jurisdictions have settled intent-based challenges to their CFHOs. The City of Hesperia and San Bernadino County, for example, recently settled federal charges of violations of the Fair Housing Act and Title VI of the Civil Rights Act of 1964 in adopting and enforcing the CFHO in Hesperia. *See United States v. City of Hesperia, Calif.*, No. 5:19 cv-02298, Consent Order [ECF No. 103] (C.D. Cal. Dec. 22, 2022). Similarly, in 2020 the City of Hemet, California entered into a voluntary compliance agreement with HUD to address charges that its CFHO was enacted with discriminatory intent and targeted people of color in violation of Title VI. HUD News Release: "HUD Reaches Voluntary Compliance Agreement With California's City Of Hemet Over Discriminatory 'Crime And Nuisance Free' Programs," Dec. 10, 2020.[11]

[11] Available at archives.hud.gov/news/2020/pr20-207.cfm (last accessed Jan. 24, 2023).

D. CFHO Enforcement Disproportionately Impacts Marginalized Groups.

Evidence from a variety of sources consistently demonstrates that CFHOs have a disparate impact on people of color, women, and people with disabilities, disproportionately subjecting them to the grave harms of compulsory eviction.

Statistical analysis conducted by the U.S. Department of Justice, for example, demonstrated that under the CFHO enacted by the City of Hesperia, "African-American and Latinx renters were evicted at disproportionately high rates when compared to non-Hispanic white renters" in the city. *City of Hesperia*, *supra*, Consent Decree, ¶ 5. Reporting from the City of Tampa, Florida showed similar effects from the ordinance enacted there. *See* Christopher O'Donnell, *et al.*, "Tampa police called for hundreds to be evicted," *Tampa Bay Times*, Sept. 15, 2021 (reporting that "roughly 90 percent of the 1,100 people flagged by [Tampa Bay's crime-free] program were Black, police records show. That's despite Black residents making up only 54 percent of all arrests in Tampa over the past eight years.").[12]

[12]Available at tampabay.com/.../tampa-police-called-for-hundreds-to-be-evicted/ (last accessed Jan. 24, 2023).

Researchers have reached the same conclusion regarding the disparate racial impact of these ordinances. *See* Matthew Desmond & Nicole Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Sociological Rev. 117, 117 (2013) ("[p]roperties in black neighborhoods [in Milwaukee] disproportionately received citations, and those located in more integrated black neighborhoods had the highest likelihood of being deemed nuisances"); *see generally* Archer, *The New Housing Segregation*, 118 Mich. L. Rev. at 208-213 (discussing disproportionate impact of CFHOs as an extension of societal discrimination in policing and regulation).[13]

[13] Numerous studies have examined the impact of bias in the criminal legal system and its effects on rates of contact with that system for different population groups. *See* Emma Pierson, *et al.*, A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States, *Nature Human Behaviour*, Vol. 4, 736-745 (July 2020) (analyzing data concerning disparate effects of police traffic stops); Susan Nembhard and Lily Robin, *Racial and Ethnic Disparities throughout the Criminal Legal System: A Result of Racist Policies and Discretionary Practices*, Urban Institute (Aug. 2021) (examining racial disparities in the criminal justice system); American Civil Liberties Union, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (April 2020) (discussing data showing Black people are 3.6 times as likely to arrested for marijuana possession than White people, despite similar usage rates) (available at aclu.org/.../marijuanareport_03232021.pdf) (last accessed Jan. 24, 2023).

Women also have suffered disproportionately as a result of CFHOs, because women are more often the victims of domestic violence leading to police involvement, which can trigger enforcement of a CFHO. *See* Gretchen Arnold, *From Victim to Offender: How Nuisance Property Laws Affect Battered Women*, Journal of Interpersonal Violence (2019) (study of black women who were victims of domestic abuse and had come into contact with nuisance property laws because of domestic violence);[14] HUD Office of General Counsel, *Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (Sept. 13, 2016) ("[W]omen comprise approximately 80 percent of all individuals subjected to domestic violence each year, which may provide grounds for HUD to investigate under the Fair Housing Act allegations that the adverse effects of a nuisance ordinance fall more heavily on victims of domestic violence[.]").[15] As noted above, victims still can be impacted by

[14] Available at journals.sagepub.com/.../0886260516647512 (accessed via subscription Jan. 24, 2023).

[15] Available at hud.gov/.../finalnuisanceordgdnce.pdf (last accessed Jan. 24, 2023).

CFHO enforcement even when an ordinance purports to exempt domestic violence from its ambit. *See supra* at 15 & n.9.

The discriminatory effects of these ordinances also extend to persons with disabilities, who could have more interactions with law enforcement because of an increased need to seek police and other emergency services. *See* Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, Am. J. Pub. Health (Nov. 8, 2017), (finding much higher rates of arrests for individuals with disabilities and especially Black individuals with disabilities);[16] Alisha Jarwala and Sejal Shah, *When Disability Is a "Nuisance": How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes*, 54 Harv. C.R.-C.L. L. Rev. (2019) (using case studies to demonstrate unlawful disparate impact of nuisance ordinances); Mead, *et al.*, *Who is a Nuisance?*, *supra* ("cities sometimes use their [nuisance ordinances] against individuals seeking help for a mental health crisis or medical

[16] Available at ncbi.nlm.nih.gov/pmc/articles/PMC5678390/ (last accessed Jan. 24, 2023).

emergency," including instances where individuals with disabilities simply sought emergency assistance).

II. Federal Policy Acknowledges the Problems Raised By CFHOs and Challenges the Assumption They Serve Any Rational Purpose.

In the proceedings below, the district court rejected constitutional challenges to Granite City's crime-free housing ordinance on the ground that "crime deterrence and prevention are rational and legitimate reasons to evict renters." A.009; *see also* A.018. But federal policy, in the form of agency pronouncements and congressional enactment, cast additional doubt that crime deterrence and prevention are served by CFHOs.

In 2016, HUD's Office of the General Counsel issued guidance warning that local governments could face enforcement actions under the Fair Housing Act for CFHOs that intentionally discriminated on the basis of race or gender or had an "unjustified discriminatory effect." *See*, HUD Office of General Counsel, *Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances*, *supra*, at 7-12. For example, HUD stated that it would investigate "allegations that the adverse effects of a nuisance ordinance fall more heavily on" victims of domestic violence given

evidence that "women comprise approximately 80 percent of all individuals subjected to domestic violence each year[.]" *Id.* at 8.

The HUD guidance also stated that an ordinance that caused an unlawful discriminatory effect would violate the FHA, even if there had been no intent to discriminate. HUD observed that, a "local government *would have a difficult burden* to prove that cutting off access to emergency services for those in grave need . . . in fact achieves a core interest of the local government and was not undertaken for discriminatory reasons or in a discriminatory manner." *Id.* at 9 (emphasis added). The guidance suggested that repealing such problematic ordinances "is one step local governments can take to avoid Fair Housing Act violations and as a part of a strategy to affirmatively further fair housing." *Id.* at 13.[17] The December 2020 voluntary

[17] In another pronouncement that year, HUD explained that barriers to housing based on criminal records alone were "likely to have a disproportionate impact on minority home seekers," and "excluding individuals because of one or more prior *arrests* (without any conviction) cannot . . . [be] necessary to achieve a substantial, legitimate, nondiscriminatory interest," given data showing that some racial minorities "are arrested, convicted and incarcerated at rates disproportionate to their share of the general population." HUD Office of General Counsel, *Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (April 4, 2016) at 2, 5 (emphasis

compliance agreement between HUD and the City of Hemet, California is one example of this policy in application.[18]

The 2022 reauthorization of the federal Violence Against Women Act also demonstrates congressional awareness of the problems raised by CFHOs. In that enactment, Congress amended the VAWA to guarantee that "tenants, residents, occupants, and guests of, and applicants for, housing" have the right to "seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. 34 U.S.C. § 12495(b)(1)(A). Under the provision, those persons and their property owners "shall not be penalized," including

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added), available at www.hud.gov/.../HUD_OGC_guidance.pdf (last accessed Jan. 24, 2023). The Department recently has reemphasized these principles. *See* Memorandum from Demetria L. McCain, Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity, *Implementation of the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (June 10, 2022) ("If housing providers choose to use criminal background screening policies or practices, they should . . . [e]nsure they can justify their policies with reliable evidence showing that it *actually assists* in protecting resident safety and/or property") (emphasis added), available at www.fairhousingnc.org/.../2022/08/06-10-2022-Implementation-of-OGC-Guidance.pdf (last accessed Jan. 24, 2023).

[18] *See* HUD News Release, "HUD Reaches Voluntary Compliance Agreement with California's City of Hemet," Dec. 10, 2020 (available at archives.hud.gov/news/2020/pr20-207) (last accessed Jan. 24, 2023).

through eviction or the threat of eviction, based on "requests for assistance or based on criminal activity of which they are a victim or otherwise not at fault . . . ." *Id.* §§ 12495(b)(1)(B), (b)(2)(B). Accordingly, federal law now prohibits certain funding recipients from imposing the type of policy challenged here – one that imposes penalties, such as evictions, on residents based on alleged criminal activity committed by someone else.

These developments in federal law and policy illustrate the growing acknowledgment that CFHOs' broad directive to punish tenants based on a range of interactions with law enforcement does not further crime reduction and instead negatively affects marginalized groups around the United States. The district court's failure to carefully examine whether the Granite City ordinance advanced a legitimate governmental interest was at odds with that recognition.

CONCLUSION

The *amici curiae* respectfully submit that the judgment below should be reversed.

Dated: January 24, 2023

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CERTIFICATE OF COMPLIANCE

1. This *amicus curiae* brief complies with the type-volume limitations of Rule 32(g) of the Federal Rules of Appellate Procedure and Circuit Rules 29 and 32(c) because this brief contains 5021 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, specifically, 14 point Century in Word 2010.

Dated: January 24, 2023

/s/ John J. Clarke, Jr.
John J. Clarke, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2023, I caused the foregoing document to be electronically filed in this appeal using the electronic case filing system for the United States Court of Appeals for the Seventh Circuit. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record in the appeal.

Dated: January 24, 2023

/s/ John J. Clarke, Jr.
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