

RECEIVED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SEP 05 2006

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

JANE ADDAMS SENIOR CAUCUS,  
RUTH WILLIAMS, ELIZABETH ESSEX,  
JEWELL "JUDY" SUTTON, and  
ELIZABETH CAMARIGG, On Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

vs.

THE MOODY BIBLE INSTITUTE OF  
CHICAGO,

Defendant.

No.

06C 4800

JURY DEMANDED

JUDGE RUCKLO

MAGISTRATE JUDGE DENLOW

COMPLAINT

1. Defendant The Moody Bible Institute of Chicago ("Moody Bible") owns Morningside I ("Morningside"), a property financed with government support and built for the express purpose of providing Chicago-area seniors and disabled persons with a stable source of affordable housing. Throughout the building's existence, Moody Bible or its predecessor received, and continues to receive, millions of dollars in subsidies for units rented to Morningside's senior and disabled residents.

2. Notwithstanding Moody Bible's continual receipt of the government funds, and its repeated renewal of the contracts under which it receives those funds, Moody Bible has ceased renting available units in the building to the senior and disabled persons intended to benefit from that support. Instead, Moody Bible has declared its intent to convert all units in the building into housing for its students and supporters—none of whom are eligible residents under the applicable statutory provisions and contractual terms.

3. In 1999, to implement this intent, Moody Bible began a pattern and practice of refusing to rent vacated units to eligible senior and disabled residents. Instead, Moody Bible filled those units with students or converted them into corporate apartments for alumni and other supporters. During this time, instead of filling vacant units with the 300 seniors and disabled persons on the property's waiting list, Moody Bible has let that list languish, leaving the senior

and disabled persons waiting for housing unable to determine their status on the list while also preventing others from adding their names to it.

4. Despite repeated demands from federal and state officials, as well as Plaintiffs, that Moody Bible cease this unlawful practice, Moody Bible continues to violate its contract by taking affordable housing units away from senior and disabled residents and converting them to student and corporate housing. Indeed, now when a senior and disabled person inquires about renting units in the building, Moody Bible agents state that Moody Bible no longer rents units at Morningside to such persons. Moreover, Moody Bible continues to move students into Morningside to this day, having moved numerous students in prior to the start of the 2006-2007 academic year.

5. At the same time, Moody Bible has engaged in a pattern and practice of discriminating against senior and disabled residents, both those now living at Morningside and those who wish to do so. While it supplied its students with newly carpeted, freshly painted and Internet access wired units, Moody Bible has denied current senior and disabled residents of Morningside any meaningful maintenance for years, refusing to provide units occupied by senior and disabled residents with the same maintenance and upkeep provided to student-occupied units. Moody Bible also prevented Morningside's senior and disabled residents from using parking spaces previously accessible to them in the parking lot neighboring the building. Instead, Moody Bible designated those spaces for use by Moody Bible students, faculty and staff, forcing Morningside's elderly and disabled residents to park in spaces much farther away and that require them to cross four-lane streets to reach their homes.

6. Those not able to live at Morningside have fared no better. Moody Bible has engaged in a pattern and practice of discriminating against these senior and disabled individuals as well, refusing to even consider their requests for the affordable housing the property is obligated to provide. Instead, Moody Bible responds to these inquiries by simply saying that it no longer rents to seniors or persons with disabilities.

7. These actions violate Moody Bible's contractual and regulatory duties, including duties under Moody Bible's contracts with the federal and state governments which require operation of the building as low income housing, and regulations requiring the maintenance of a waiting list and an affirmative fair housing plan.

8. Having failed in all reasonable steps short of litigation, and faced with imminent threat of irreparable harm, Plaintiffs now bring this action. In doing so, Plaintiffs seek injunctive relief from this Court to end Moody Bible's breach of the controlling contracts and regulations as well as the federal and state civil rights laws in its unlawful effort to convert Morningside into a dorm and to require that Moody Bible restore all of Morningside's 201 units to their intended use as affordable housing for Chicago-area senior and disabled persons. Plaintiffs further request that the Court award monetary relief to compensate them for damages already suffered as a result of the denial of affordable housing and discriminatory treatment.

### **JURISDICTION AND VENUE**

9. This court has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 (federal question), 42 U.S.C. § 3613 (fair housing), and 28 U.S.C. § 1367 (supplemental jurisdiction).

10. Plaintiffs seek declaratory relief against Defendants, pursuant to 28 U.S.C. § 2202.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

### **PARTIES**

#### **A. The Plaintiffs.**

##### **1. Current Morningside Residents.**

12. Ruth Williams is an 82-year-old, disabled female who resides at Morningside. Ms. Williams has resided at Morningside since 1997. Because of the available Project-based Section 8 subsidies, her share of her monthly rent is currently \$149.00. Ms. Williams is a member of the Jane Addams Senior Caucus (the "Senior Caucus").

13. Elizabeth Essex is an 80-year-old, disabled female who resides at Morningside. Ms. Essex has resided at Morningside since 1997. Because of the available Project-based Section 8 subsidies, her share of the monthly rent is currently \$226.00. Ms. Essex is a member of the Senior Caucus.

##### **2. Persons Seeking Housing At Morningside.**

14. Jewell "Judy" Sutton is an 86-year-old, disabled female who sought housing at Morningside. With a limited income, Ms. Sutton could not find housing she can afford on her own. As a result Ms. Sutton currently lives with family on the far northwest side of Chicago. Additionally, Ms. Sutton currently pays \$300 per month to keep her belongings in storage while

she seeks housing she can afford. When she tried to obtain housing at Morningside, the property manager told Ms. Sutton that Moody Bible is no longer taking applications. Ms. Sutton is a member of the Senior Caucus.

15. Elizabeth Camarigg is a 69-year-old, disabled female currently residing at 150 W. Maple in Chicago. Ms. Camarigg currently pays \$795.00 for her monthly rent and that is scheduled to increase to \$815.00 per month if she renews her lease in November 2006. Ms. Camarigg's current monthly rent payments account for over 40% of her monthly income. When Ms. Camarigg called to inquire about housing at Morningside, the property manager told Ms. Sutton that Moody Bible no longer rented units at Morningside to seniors and that the waiting list for the property was closed. Ms. Camarigg is a member of the Senior Caucus.

### **3. The Senior Caucus.**

16. The Jane Addams Senior Caucus is a 30-year-old Chicago non-profit organization focused on issues affecting seniors. The majority of Senior Caucus members are low-income individuals actively involved in the Senior Caucus campaigns and initiatives. One of the Senior Caucus's current priorities is the preservation of affordable housing critical to seniors and low-income families who wish to continue living independently and contributing to the community. The Senior Caucus's membership includes many residents of Morningside and many senior and disabled persons in need of affordable housing in Chicago.

17. In response to Moody Bible's violations of its contractual and regulatory obligations, the Senior Caucus has devoted significant resources to help preserve Morningside as a source of affordable housing. At the same time, the Senior Caucus has devoted significant resources to working with current residents of Morningside to obtain fair and equal treatment from Moody Bible. Additionally, the Senior Caucus has also devoted a significant amount of its resources to aid and organize other Chicago-area senior and disabled persons who need affordable housing and would like to live at Morningside.

18. The Senior Caucus seeks to represent the best interests of all Morningside senior and disabled low-income residents as well as Chicago-area senior and disabled low-income residents in need of affordable housing.

**B. The Defendant.**

19. In addition to owning Morningside, Defendant Moody Bible is a non-profit Evangelical Christian higher education institution incorporated in the State of Illinois. Moody Bible also operates a national radio network and a publishing house, Moody Publishers.

**CLASS ACTION ALLEGATIONS**

20. Plaintiffs Ruth Williams, Elizabeth Essex, Jewell B. Sutton, and Elizabeth Camarigg bring this action on behalf of themselves and, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of all persons similarly situated. The Plaintiff class is defined as:

All eligible low-income persons either (i) residing at, (ii) on the waiting list for a residence at, or (iii) who have sought, but been denied the opportunity to obtain housing at Morningside Apartments (Property id # 800006154), a property located at 171 W. Oak, Chicago Illinois 60610.

21. **Numerosity.** The class is so numerous that joinder of all members is impractical. Upon information and belief, it is comprised of (i) approximately 100 residents of Morningside and (ii) at least 400 elderly and/or disabled low-income Chicago residents who have applied for or sought to apply for housing at Morningside.

22. **Commonality.** There are questions of law and fact common to the class as a whole. Additionally, the Defendants have acted and refused to act on grounds generally applicable to the Plaintiff class, thus making appropriate final injunctive and declaratory relief with respect to the class as a whole.

23. **Typicality and Adequacy.** The individual claims of the class representatives are typical of the claims of the class, and the class representatives and their counsel will fairly and adequately protect the interests of the class.

**STATEMENT OF FACTS**

**A. The Project-Based Section 8 Program.**

24. Morningside is a senior-designated development located at 171 W. Oak that receives project-based subsidies. All of its current residents who are eligible for assistance are disabled senior and non-senior low-income individuals. Throughout this Complaint, these residents, and others like them seeking to become residents of Morningside, are referred to as “senior and disabled persons.”

25. Through enactment of the Housing and Community Development Act of 1974, Congress supplemented the United States Housing Act of 1937, 42 U.S.C. § 1437. One program added through this supplement was the Section 8 program. Congress designed the Section 8 program to provide decent affordable housing to low-income individuals and families. Under the program, eligible residents pay a portion of their rent, equal to 30% of their adjusted incomes, and HUD pays the remainder. 42 U.S.C. §§ 1437f(c)(3), 1437a(a)(1) (2005).

26. The Section 8 program for state housing finance agencies at issue here is one of a number of programs commonly referred to as project-based programs. Under project based programs, the subsidy is provided pursuant to a contract between either HUD, or a state housing finance agency such as IHDA, and the owner of the building where the subsidy is to be offered. As a result, a project-based subsidy stays with the building when a tenant moves. By staying with the building, and not moving with the resident, project-based subsidies assure the long-term availability of affordable housing units in a particular area.

27. Concerned about unqualified college students receiving housing subsidies, Congress recently enacted Public Law 109-115 which prevents college students from receiving Section 8 housing assistance unless they meet certain exceptions. As per the applicable contracts, all 201 units in Morningside are intended to be available to senior and disabled residents as project-based Section 8 housing.

**B. Contractual And Regulatory Duties Owed By Morningside's Owners.**

28. In the 1970s, HUD targeted certain funds for use by state housing finance agencies to create low-income housing. In Illinois, these funds went to IHDA, which then issued tax-exempt debt for construction of properties, including Morningside, where the rents guaranteed by the Section 8 contract provided for an income stream substantially higher than what would otherwise be available.

29. In return for this public support, the property's original owners, Moody House Associates ("Moody House"), agreed to a number of contractual and regulatory obligations applicable to owners of project-based Section 8 properties.

30. In 1978, Moody House, IHDA and HUD entered into an agreement for Section 8 assistance called a Housing Assistance Payments Contract ("HAP Contract"). The HAP Contract created the subsidy structure that enables Morningside to provide 201 units of affordable, subsidized housing to eligible low-income senior and disabled individuals. (See HAP

Contract, attached as Exhibit A.) These individuals are the intended third-party beneficiaries of the contract.

31. Pursuant to the HAP Contract and other regulatory requirements, Morningside's owners are required to maintain a waiting list of applicants for the property and to fill vacancies within a property from eligible individuals on the waiting list. See HAP Contract, Ex. A, at ¶ 1.10(a), (c), and (e); HUD HANDBOOK 4350.3 REV-1: Occupancy Requirements Of Subsidized Multifamily Housing Programs (June 12, 2003). Maintaining a waiting list requires not just accepting names, but also updating the list, regularly apprising applicants of their status on the list, and moving people off of the waiting list into units as they become available. *Id.*

32. The HAP Contract and the applicable regulatory provisions also require that Morningside's owners create, obtain approval for, and maintain an Affirmative Fair Housing Marketing Plan and Tenant Selection Plan. See HAP Contract, Ex. A, at ¶ 1.10(a); 24 C.F.R. §§ 200.610; 200.620; and 200.625; and HUD 4350.3 REV-1. This plan, which must be publicly available, 24 C.F.R. § 200.625, is to govern how Morningside's owners will recruit new applicants who wish to live at the property and must be reviewed and, if necessary, updated every five years. HUD Affirmative Fair Housing Marketing Plan Form 935.2 (2004). By virtue of the HAP Contract, Moody Bible also agreed to comply with both Title VIII of the United States Civil Rights Act—also referred to as the Fair Housing Act—and Executive Order 11063, which imposes on owners an affirmative obligation to prevent discrimination.

33. A clause in the HAP Contract limits the effect other agreements can have on it:

“[t]his Contract ... comprises the entire agreement between the parties ... and neither party is bound by any ... agreements of any kind except as contained herein or except as contained in agreements entered into writing which are not inconsistent with this Contract.”

(See HAP Contract, Ex. A, at ¶ 1.1.)

34. The HAP Contract's term is for forty years, meaning it is scheduled to end in 2018. It also includes a provision for automatic renewal every five years until then. Since entering into the HAP Contract, Morningside's owners and IHDA have allowed the contract to renew every five years, most recently renewing in 2003. It remains in effect today for all 201 units in Morningside.

35. At or around the same time as the formation of the HAP Contract, HUD and IHDA also entered into an Annual Contributions Contract (“ACC”). This contract provides the

terms under which HUD will provide IHDA with the money required to fund and administer the HAP Contract. (See Annual Contributions Contract, attached as Exhibit B.)

**C. The Moody House Sells Morningside To Moody Bible.**

36. In 1993, the Moody House sold the Morningside property to their corporate affiliate, Moody Bible. As a condition of its purchase of Morningside, Moody Bible became subject to the agreements the Moody House had been party to with IHDA and HUD.

37. Following its purchase of Morningside from the Moody House, Moody Bible continued to operate Morningside as required under its agreements with HUD and IHDA; as a Project-Based Section 8 building providing 201 units of affordable housing for Chicago-area seniors and disabled persons. During this period, eligible senior and disabled low-income individuals occupied all 201 of Morningside's units. Additionally, on information and belief, until at least 1997, approximately 300 eligible senior and disabled individuals seeking units in Morningside appeared on the property's waiting list awaiting available units.

**D. Moody Bible Begins Violating Its Contractual And Regulatory Obligations By Moving Ineligible Students Into Available Units At Morningside.**

38. Beginning in or around 1999, Moody Bible began a pattern and practice of moving Moody Bible students into vacant units, without regard to their eligibility for subsidized housing. Around this same time, Moody Bible also renamed the property "Jenkins Hall," in honor of best-selling author, and Moody Bible faculty member, Jerry Jenkins.

39. Also starting in 1999, Moody Bible began a pattern and practice of discrimination by ceasing all efforts to market or lease vacant units to seniors and persons with disabilities, or otherwise adhere to the HUD-mandated Affirmative Fair Housing Marketing Plan. As a result, no new names were added to the waiting list after Moody Bible began moving its students into Morningside.

40. At the same time, eligible senior and disabled individuals seeking affordable housing at Morningside remained on the property's waiting list. None of these individuals were offered any available units in Morningside.

41. Upon becoming aware of Moody Bible's actions in violation of its contractual and regulatory obligations, HUD gave IHDA notice that Moody Bible's conduct violated the HAP Contract, the ACC, and federal regulations. (See Letters from HUD to IHDA dated July 29, 2005, November 15, 2005 and July 21, 2006, attached as Exhibit C.) Upon information and



belief, IHDA in turn notified Moody Bible that its actions violated its contractual obligations and demanded that Moody Bible cease these actions and comply with its obligations.

42. After a year of communicating with Moody Bible through IHDA, in August of 2006, HUD wrote to Moody Bible directly. In its letter, HUD reiterated its position that Moody Bible's action violated its contractual and statutory obligations. At the same time, HUD provided Moody Bible with information about the steps, including, but not limited to, obtaining IHDA's approval, that would be required before Moody Bible can opt-out of the HAP Contract. (See Aug. 14, 2006 Letter from Edward Hinsberger, attached as Exhibit D.)

43. Notwithstanding this series of unequivocal instructions from IHDA and HUD, Moody Bible continues to actively lease vacant units to students. As the current school year began in August 2006, several students moved into Morningside. "At this point, there are approximately 160 students and spouses living in Jenkins Hall." (See August 24, 2006 Letter from Heidi Hartley, Vice President, Corporate Communications, Moody Bible Institute, attached as Exhibit E.)

44. Additionally, Moody Bible converted certain units into "corporate apartments." Upon information and belief, since Moody Bible began this effort sometime during 2006, there are now a total of sixteen such corporate apartments in Morningside being used as hotel rooms or temporary quarters for Moody Bible alumni and other supporters.

45. One such corporate apartment has been provided to Morningside's new namesake, noted Evangelical Christian novelist Jerry Jenkins, as his own private apartment in the development. Upon information and belief, Mr. Jenkins, a best-selling author, is not an eligible low-income senior or disabled resident. Rather, he provided Moody Bible with a sizeable contribution used to pay down the mortgage on Morningside.

**E. Moody Bible's Discriminatory Treatment Of Senior and Disabled Residents.**

46. As it began moving Moody Bible students into Morningside starting in 1999, Moody Bible also maintained and made improvements to the units being offered to those students, providing new flooring, fresh paint, and wiring for Internet access. At the same time, Moody Bible began a pattern and practice of providing these improvements and maintenance only to those units not occupied by senior and disabled low-income residents.

47. IHDA recently inspected 12 of the Morningside units occupied by senior and disabled residents and determined that all but one of the units had not been painted since at least

1997. Further, the one unit that had been painted since then was painted by the resident, not Moody Bible. As a result, IHDA concluded that “it seems there is an owner directive not to decorate occupied units.” This directive, IHDA noted “conflicts with a required policy of maintaining units in ‘decent, safe and sanitary condition.’” (See July 20, 2006 Letter from D. Ann Conley to Robert L. Gunter, attached as Exhibit F.)

48. On information and belief, the units occupied by Moody Bible students and used as corporate apartments have all been painted since 1997.

49. Around the same time, Moody Bible also began a pattern and practice of gradually denying senior and disabled residents access to parking spaces in the lot immediately neighboring Morningside. Instead, Moody Bible began restricting use of these spaces to Moody Bible students, staff, and faculty. This left the senior and disabled residents no choice but to park in spaces further from the building, and across a busy, four-lane street.

50. Moody Bible also has a pattern and practice of refusing to rent vacant units to senior and disabled persons. Instead, starting as early as 1999, when such persons contact Moody Bible seeking housing at Morningside, they are told that the waiting list is closed or that Moody Bible no longer rents units there to seniors and persons with disabilities. Additionally, because Moody Bible refuses to maintain a waiting list for Morningside, these persons are also denied the ability to formally apply and add their names to the waiting list.

**F. Moody Bible’s Retaliation Against Plaintiffs For Organizing To Prevent Ongoing Violations Of Moody Bible’s Obligations.**

51. In response to the Plaintiff’s recent efforts to stop Moody Bible’s ongoing violations of its contractual and regulatory obligations, Morningside’s property management recently notified the Senior Caucus and residents who are the Senior Caucus members that they must make prior arrangements for any meetings that they wish to hold in the property’s common areas. Prior to this notice, senior and disabled residents and students alike were free to use the common areas of Morningside without making any prior arrangements with the property’s management. (See August 21, 2006 Memorandum from Judy Devine, attached as Exhibit G.)

52. Upon information and belief, at the same time it is requiring Plaintiffs to make arrangements for use of common areas, Moody Bible allows its students to regularly use common rooms for their own use, thereby preventing senior and disabled residents from being able to enjoy the use of those facilities. Upon information and belief, Morningside’s

management has not similarly informed student residents that they must make arrangements for any events they wish to hold in the property's common areas.

53. Following Plaintiffs' recent efforts to resolve the current dispute and bring Moody Bible into compliance with its legal obligations, on August 24, 2006, Moody Bible wrote to residents of Morningside, purporting to provide them with an update on the situation. Rather than simply an update, in that letter Moody Bible threatened to terminate, in 2008, its contractual agreement to provide Plaintiffs and other low-income seniors and disabled persons with affordable housing. (See August 24, 2006 Letter, Ex. E)

**G. Injuries Suffered By Individual Named Plaintiffs And Plaintiff Class.**

54. All of the low-income residents at Morningside are disabled, and all are receiving Section 8 assistance in recognition of their reduced incomes. Additionally, 90% of the low-income residents at Morningside are senior residents.

55. On information and belief, the individuals on the property's waiting list or those who have attempted to apply to live in this housing are overwhelmingly low-income disabled individuals.

56. According to the 2004 American Community Survey, an annual survey conducted as part of the decennial census, disabled households constitute 11.69% of Cook County residents, but 16.85% of households in poverty. Indeed, 20.02% of disabled residents in Cook County are below the poverty line, while only 13.09% of non-disabled residents live in poverty. Of disabled renters in Illinois, 20.2% are extremely rent-burdened (defined as paying more than 50% of their income for rent), as compared to 14.4% of non-disabled Illinois residents.

57. As all Morningside residents and applicants are disabled, they are significantly more likely to be poor and disproportionately eligible for subsidized housing as compared to their representation in the general population, and they are disproportionately represented among Morningside residents.

58. Thus, Moody Bible's actions, namely denying individuals the opportunity to access 201 rent-subsidized units and failing to provide the same level of maintenance and apartment improvements to units occupied by low-income residents have an adverse discriminatory impact on disabled individuals. Such a disparate impact on poor, disabled households violates 42 U.S.C. § 3604 and Section 504 of the Rehabilitation Act.

59. Moody Bible's actions have caused, and will continue to cause, irreparable injury to the named Plaintiffs and to members of the Plaintiff class. As a result of Moody Bible's actions, the Plaintiffs and members of the Plaintiff class residing at Morningside have been denied the opportunity to have their units maintained or improved while members wishing to reside at Morningside but unable to because of Moody Bible's actions have been denied that opportunity.

60. Plaintiffs have no adequate remedy at law.

**G. Injuries Suffered By The Senior Caucus.**

61. Moody Bible's plans and actions as described above have caused and will cause irreparable injury to Plaintiff Senior Caucus. Senior Caucus members, including current residents of Morningside and persons who have applied or tried to apply for housing at Morningside, have been harmed by Moody Bible's actions.

62. Moody Bible's activities, as described herein, have frustrated the Senior Caucus' mission to act on behalf of and in conjunction with low-income, primarily disabled seniors, to create the power necessary for older adults to play a central role in determining their quality of life. Central to that mission is the fight to increase the supply of affordable housing for seniors, without which many seniors are unable to live independently. Moody Bible's actions have interfered with Senior Caucus' activities undertaken to advance that mission.

63. Since 2004, the Senior Caucus has had to divert a significant amount of its resources to work with the residents and applicants of Morningside, organize them, and develop solutions for preserving the property's project-based Section 8 contract for those residents and individuals who have applied or attempted to apply to live there.

64. The Senior Caucus has lost actual and potential members due to Moody Bible's ongoing pattern and practice of (a) denying individuals the opportunity to apply for housing at Morningside and (b) treating senior and disabled residents differently from other residents in the provision of maintenance and improvements.

65. The Senior Caucus has no adequate remedy at law.

**CLAIMS FOR RELIEF**

**COUNT I:  
Violations of the HAP Contract**

66. Plaintiffs re-allege paragraphs 1 to 65 of this Complaint and incorporate them herein.

67. Defendant Moody Bible is party to the HAP Contract, a valid and enforceable contract it entered into with IHDA. In addition to being bound by the terms of the HAP Contract, Moody Bible is also bound by the program regulations and HUD Handbook.

68. The HAP Contract exists to benefit Plaintiffs, making them third party beneficiaries of the HAP Contract.

69. In violation of the HAP Contract and other obligations resulting from it, Moody Bible is converting Morningside into student dormitories and corporate housing.

70. In violation of the HAP Contract and other obligations resulting from it, Moody Bible is not maintaining the units under contract in a decent, safe, and sanitary condition.

71. In violation of the HAP Contract and other obligations resulting from it, Moody Bible is failing to market units, process applications for admission, or lease units in Morningside to eligible low-income individuals.

72. In violation of the HAP Contract and other obligations resulting from it, Moody Bible is not making its best efforts to maintain occupancy by very-low income individuals in at least 30% of the contract units

73. In violation of the HAP Contract and other obligations resulting from it, Moody Bible is reducing the number of contract units without cause of a drop in demand and without notice to, or approval by, HUD.

74. Defendant's actions constitute breaches of the HAP Contract and other obligations resulting from it, as enumerated in the program regulations and HUD handbook and made applicable to Moody Bible by the terms of the HAP Contract.

75. Plaintiffs have suffered damages as a result of Moody Bible's breach of the HAP Contract and the other obligations resulting from it, including, but not limited to, a change in living conditions, monies paid for rent that otherwise would not have been paid, and monies diverted to organizing efforts aimed at bringing an end to Moody Bible's unlawful activities.

**COUNT II:**  
**Violation of the Fair Housing Act, 42 U.S.C. § 3604,**  
**as amended by the Fair Housing Amendments Act of 1988**

76. Plaintiffs re-allege paragraphs 1 to 75 of this Complaint and incorporate them herein.

77. Plaintiffs, persons with disabilities, are members of a class of persons protected by the Fair Housing Act, 42 U.S.C. § 3604.

78. By virtue of providing them with subsidized housing, Moody Bible knows that those Plaintiffs currently residing at Morningside are persons with disabilities. On information and belief, Moody Bible knows that those Plaintiffs seeking housing at Morningside are persons with disabilities.

79. Plaintiffs are either persons living at Morningside or seeking to do so and all are able to do so.

80. Moody Bible has a pattern and practice of refusing to rent units at Morningside to eligible senior and disabled persons.

81. By refusing to rent units at Morningside to seniors and persons with disabilities, Moody Bible is intentionally discriminating against Plaintiffs, constituting a violation of the Fair Housing Act, 42 U.S.C. § 3604, as amended by the Fair Housing Amendments Act of 1988.

82. By engaging in a pattern and practice of failing to provide senior and disabled residents with the same maintenance and improvements that are offered to other residents, Moody Bible is discriminating against Plaintiffs, constituting a violation of the Fair Housing Act, 42 U.S.C. § 3604, as amended by the Fair Housing Amendments Act of 1988.

83. The Defendant's actions also have and continue to have a disparate impact on persons with disabilities, constituting a violation of the Fair Housing Act, 42 U.S.C. § 3604, as amended by the Fair Housing Amendments Act of 1988.

**Count III:  
Violation of 504 of the Rehabilitation Act of 1973**

84. Plaintiffs re-allege paragraphs 1 to 83 of this Complaint and incorporate them herein.

85. Plaintiffs are persons with disabilities under § 504 of the Rehabilitation Act.

86. Plaintiffs are otherwise qualified, eligible residents for the subsidized rental units in Morningside.

87. Moody Bible has denied Plaintiffs housing they are eligible for at Morningside because it no longer rents units at Morningside to persons with disabilities.

88. Moody Bible has refused to provide Plaintiffs upgrades and maintenance offered to non-disabled residents because of their disabilities.

89. Through the rental subsidies provided for units at Morningside, Moody Bible receives federal financial assistance.

90. By refusing to market or lease vacant units to eligible disabled individuals, treating disabled residents differently than non-disabled Moody Bible students, and converting housing designated for seniors and persons with disabilities into a dormitory for students without disabilities, Defendant Moody Bible is in violation of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C.A § 794.

**Count IV:**

**Violations of the Fair Housing Act, 42 U.S.C. § 3617 and 24 C.F.R. § 100.400**

91. Plaintiffs re-allege paragraphs 1 to 89 of this Complaint and incorporate them herein.

92. Plaintiffs are persons protected under the Fair Housing Act, 42 U.S.C. § 3604.

93. Plaintiffs efforts to require Moody Bible to adhere to its contractual, statutory, and regulatory obligations regarding Morningside are intended to allow Plaintiffs to exercise and enjoy their fair housing rights, and/or aid others in the exercise and enjoyment of those rights.

94. In refusing to rent units in Morningside persons with disabilities and providing other residents with maintenance and improvements to units that is different than that offered to Morningside's senior and disabled residents, Moody Bible has intentionally discriminated against and disparately impacted these persons.

95. Following, and because of, Plaintiffs' efforts to require Moody Bible to comply with its contractual, statutory, and regulatory obligations, Moody Bible has threatened, intimidated, and interfered with Plaintiffs' efforts to obtain such compliance.

96. Defendant Moody Bible, in violation of § 3617 of the Fair Housing Act and 24 C.F.R. § 100.400, is retaliating against Plaintiffs for working to save the property by asserting rights protected pursuant to the Fair Housing Act.

**COUNT V:**

**Violations of the Illinois Human Rights Act**

97. Plaintiffs re-allege paragraphs 1 to 95 of this Complaint and incorporate them herein.

98. Plaintiffs are persons protected under the Illinois Human Rights Act, 775 ILCS 5/3-101, 102.

99. Moody Bible is aware that Plaintiffs are seniors and persons with disabilities.

100. Plaintiffs are either persons living at Morningside or seeking to do so and all are able to do so.

101. Moody Bible has a pattern and practice of refusing to rent units at Morningside to eligible senior and disabled persons.

102. Article 3 of the Illinois Human Rights Act prohibits discrimination on the basis of age and handicap in real estate transactions, including the rental or lease of real property. 775 ILCS 5/3-102(A), 3-102, and 3-101.

103. The Defendants' actions as described above discriminate against persons with disabilities and senior citizens and, therefore, constitute a violation of the Illinois Human Rights Act.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that the acts and omissions of the Defendants, as set forth above, violate Title VIII of the Civil Rights Act of 1968, 504 of the Rehabilitation Act of 1973, the HAP Contract, Section 8 Program Regulations, the HUD Handbook, Executive Order 11063, and the Illinois Human Rights Act;
- B. Enter a preliminary and permanent injunction requiring that Defendants:
  - (1) Refrain from allowing students or other ineligible persons to in any way occupy units at Morningside;
  - (2) Refrain from taking any additional steps aimed at, or which might assist in, converting the property or any of its 201 units for use as anything other than low-income project based Section 8 housing for senior citizens and persons with disabilities;
  - (3) Move with all deliberate speed to rent to eligible residents, including those now on any existing waiting list, any and all units not currently occupied by eligible residents;
  - (4) Maintain a waiting list for the property for any eligible applicants seeking housing but for whom no units are available;
  - (5) Comply with the terms of the Housing Assistance Payments Contract;



- (6) Refrain from disparately treating the senior and disabled low-income residents of Morningside in violation of Title VIII of the Civil Rights Act of 1968, 504 of the Rehabilitation Act of 1973; and
- C. Award damages to compensate the non-organizational plaintiffs for Moody Bible's violations of the Fair Housing Act and the Rehabilitation Act;
- D. Enter an order requiring Defendants to pay Plaintiffs' reasonable costs and attorneys' fees for the prosecution of this action; and
- E. Grant Plaintiffs such further relief as this Court deems just and proper.

Dated: September 5, 2006

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Plaintiff

Katherine E. Walz  
Tiffany Hardy  
Sargent Shriver National Center on Poverty Law  
50 E. Washington, Suite 500  
Chicago, IL 60602  
(312) 263-3830

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(312) 207-1000

*Of Counsel:*

John "Jack" Cann  
Housing Preservation Project  
570 Asbury Street, Suite 105  
St. Paul, MN 55104  
(651) 642-0102



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED

SEP 05 2006

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

JANE ADDAMS SENIOR CAUCUS,  
RUTH WILLIAMS, ELIZABETH ESSEX, )  
JEWELL "JUDY" SUTTON, and )  
ELIZABETH CAMARIGG, On Behalf of )  
Themselves and All Others Similarly )  
Situating, )

No.

06C 4800

Plaintiffs,

Judge

vs.

THE MOODY BIBLE INSTITUTE OF  
CHICAGO,

Defendant.

ALICE BUCKLO

MAGISTRATE JUDGE DENNIS

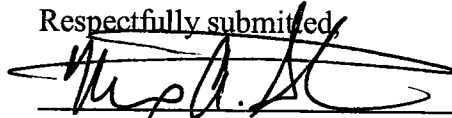
NOTICE OF MOTION

To: Robert L. Gunter, Vice President and General Counsel  
The Moody Bible Institute of Chicago  
820 North LaSalle Street  
Chicago, IL 60610

PLEASE TAKE NOTICE that on September 7, 2006 at 9:15 a.m./p.m., or as soon thereafter as counsel may be heard, we shall appear on behalf of the above captioned Plaintiffs before the Honorable Judge Bucklo, in the courtroom usually occupied by said Judge, in the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, and then and there present Plaintiffs' Motion for a Temporary Restraining Order, a copy of which is attached hereto and hereby served upon you.

Dated: September 5, 2006

Respectfully submitted

  
\_\_\_\_\_  
Attorney for Plaintiff

Katherine E. Walz  
Sargent Shriver National Center on Poverty Law  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SEP 05 2006

MICHAEL W. C. [unclear]  
CLERK, U.S. DISTRICT COURT

JANE ADDAMS SENIOR CAUCUS, )  
RUTH WILLIAMS, ELIZABETH ESSEX, )  
JEWELL "JUDY" SUTTON, and )  
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Themselves and All Others Similarly )  
Situating, )  
 )  
Plaintiffs, )  
vs. )  
 )  
THE MOODY BIBLE INSTITUTE OF )  
CHICAGO, )  
 )  
Defendant. )

No.

06C 4800

**PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiffs Jane Adams Senior Caucus, Ruth Williams, Liz Essex, Jewell "Judy" Sutton, and Elizabeth Camarigg (collectively "Plaintiffs"), by and through their attorneys, respectfully move the Court for entry of a temporary restraining order pursuant to Fed. R. Civ. P. 65.

In support of their motion, Plaintiffs state as follows:

1. Morningside I ("Morningside") is a project-based Section 8 development on Chicago's near-north side. As a project-based Section development, Morningside is intended to provide 201 units of affordable housing for eligible senior and disabled residents in Chicago. Because the subsidies associated with it are project-based, they remain with the property, making Morningside a stable source of such housing for Chicago area seniors and disabled persons.

2. Plaintiffs consist of a group of current residents of Morningside, persons wishing to live there, and an organization assisting them in their efforts to ensure that Morningside serves its intended purpose. The individual Plaintiffs—Ruth Williams, Elizabeth Essex, Jewell "Judy" Sutton, and Elizabeth Camarigg—are senior and disabled persons eligible to reside in the subsidized units at Morningside.

3. Plaintiffs bring this litigation and this Motion seeking orders from this Court requiring Defendant The Moody Bible Institute of Chicago ("Moody Bible") to comply with its contractual, statutory, and regulatory obligations to provide affordable housing at Morningside.

4. Moody Bible is the owner of Morningside. Per the terms of contracts entered into by Moody Bible and its predecessors, including the Housing Assistance Payments Contract (“HAP Contract”), which creates the structure for the subsidies in place at Morningside funding 201 units of affordable housing to eligible senior and disabled residents.

5. Currently, however, Moody Bible is not providing the contracted for 201 units of affordable housing. Instead, beginning in 1999 and continuing to this day, Moody Bible has converted units in Morningside for use as dormitory rooms and corporate apartments. To accomplish these conversions, after a unit occupied by a senior or disabled resident becomes vacant, Moody Bible upgrades the unit by painting, installing new flooring, and adding internet access to the unit and then, for units being converted to dorm rooms, makes the unit available to Moody Bible students. Moody Bible has even gone so far as to rename Morningside as “Jenkins Hall,” in honor of Moody Bible benefactor and faculty member, and best-selling author, Jerry Jenkins.

6. For units being converted to corporate apartments, in addition to the other upgrades, Moody Bible has combined multiple units to create larger units. One such combination is now occupied by Mr. Jenkins.

7. Through these efforts, Moody Bible has converted approximately half of Morningside’s 201 units. As a result, according to Moody Bible, approximately 160 Moody Bible students and their spouses now live in units intended for low-income senior and disabled residents.

8. Moody Bible continues to move students into Morningside today, thereby creating the possibility of further harms with each passing day.

9. In addition to its unlawful actions in converting Morningside units for use as dorm rooms and corporate apartments, Moody Bible is also violating additional related contractual and statutory obligations. First, Moody Bible no longer markets units at Morningside to senior and disabled residents, nor does it maintain a plan to do so. To the contrary, when people contact Moody Bible seeking housing at Morningside for senior and disabled persons, they are told that Moody Bible no longer leases to senior and disabled persons.

10. Second, Moody Bible also is no longer allowing senior and disabled persons to place their names on a waiting list, as it is required to do so. Indeed, it is not clear whether Moody Bible is even maintaining such a wait list at all, despite its obligation to do so.

11. Third, for those senior and disabled persons fortunate enough to have affordable housing at Morningside, Moody Bible has failed, and is failing, to properly maintain those units. First, despite the upgrades it provides to units vacated by senior and disabled residents in the conversion process, Moody Bible refuses to provide that same maintenance and upgrades to units occupied by senior and disabled residents. Instead, those residents live in units suffering from mold contamination, chipping paint, substandard flooring, clogged plumbing, and other problems.

12. Fourth, Moody Bible has revoked those residents access to parking in the lot adjacent to Morningside. Instead, while the senior and disabled residents of Morningside are now forced to park in lots farther away and across busy Chicago thoroughfares, Moody Bible has made these spots available to its students, faculty, and staff.

13. Further exacerbating matters, Moody Bible has responded to Plaintiffs' efforts to resolve these issues by retaliating against Plaintiffs for their attempts to exercise rights granted to them under federal housing statutes. Moody Bible's retaliation has included the imposition of requirements designed to prevent Plaintiffs and others concerned about these issues from meeting in public spaces at Morningside and threatening Plaintiffs and other senior and disabled persons with the termination of the subsidies in place for Morningside.

14. Moody Bible's actions violate numerous contractual and statutory provisions, including the HAP Contract, incorporated federal regulations, and the Fair Housing Act.

15. If Moody Bible's ongoing violations of its contractual and statutory obligations are not stopped and Moody Bible is allowed to continue converting units in Morningside for use as dorm rooms and corporate apartments during pendency of this litigation, Plaintiffs will suffer irreparable harm from the loss of additional units of affordable housing for senior and disabled persons.

16. The relief sought by this Motion maintains the status quo while the parties the litigate the underlying claims of contract breach, regulatory violations and discrimination.

17. The balance of harms supports imposition of a temporary restraining order since the potential harm to low-income senior and disabled residents lacking options for affordable housing, namely the loss of additional sources of affordable housing, significantly outweighs the potential harm such relief could cause Moody Bible, a prosperous institution with significant resources, both monetary and organizational.

18. Issuing a temporary restraining order would served the public interest by advancing expressed policies of both the federal and state governments to promote affordable housing for senior and disabled persons.

19. To prevent any further harm that might result from Moody Bible's ongoing violations of its contractual and statutory obligations, Plaintiffs now bring this Motion, seeking a temporary restraining order that enjoins Moody Bible from further violations of its contractual and statutory obligations.

20. Plaintiffs should not be required to post a bond securing against an injuries that Moody Bible might suffer as a result of the temporary restraining order requested in this Motion. Though the likelihood of such injuries is slight, even that slight possibility does not justify requiring Plaintiffs, low-income senior and disabled persons seeking to advance significant issues of public policy, to post a bond.

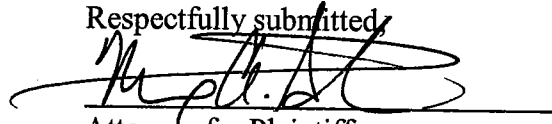
WHEREFORE, Plaintiffs, Jane Adams Senior Caucus, Ruth Williams, Liz Essex, Jewell "Judy" Sutton, and Elizabeth Camarigg (collectively "Plaintiffs"), respectfully request that this Court grant Plaintiffs' Motion For A Temporary Restraining Order and enter an order that:

- a. Restrains Moody Bible from moving any additional students into the residential property known as Morningside;
- b. Restrains Moody Bible from converting any additional residential units at Morningside into dormitory rooms, corporate apartments, or for any other use other than low-income housing for senior and disabled persons;
- c. Restrains Moody Bible from revoking any parking spaces currently assigned to senior and disabled residents of Morningside;
- d. Requires Moody Bible to create and maintain a waiting list of applicants seeking to lease units at Morningside for use in selecting new residents as units become vacant; and
- e. Provide Plaintiffs any other relief that the Court deems appropriate.



Dated: September 5, 2006

Respectfully submitted,



Attorney for Plaintiff

Katherine E. Walz  
Sargent Shriver National Center on Poverty Law  
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Chicago, IL 60602  
(312) 263-3830

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Max A. Stein  
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*Of Counsel:*

John "Jack" Cann  
Housing Preservation Project  
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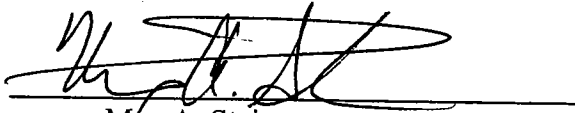
**Certificate of Service**

I, Max A. Stein, an attorney, certify that I shall cause to be served:

1. Plaintiffs' Motion for a Temporary Restraining Order;
2. Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction;
3. Notice of Motion.

Upon the parties shown below, both by delivering a copy to the process server to be served in conjunction with Plaintiffs' Complaint in this matter, and by First Class Mail this 5th day of September, 2006:

Robert L. Gunter, Vice President and General Counsel  
The Moody Bible Institute of Chicago  
820 North LaSalle Street  
Chicago, IL 60610

  
Max A. Stein



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED

SEP 05 2006

MICHAEL W. DOBINS  
CLERK, U.S. DISTRICT COURT

JANE ADDAMS SENIOR CAUCUS,  
RUTH WILLIAMS, ELIZABETH ESSEX,  
JEWELL "JUDY" SUTTON, and  
ELIZABETH CAMARIGG, On Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

vs.

THE MOODY BIBLE INSTITUTE OF  
CHICAGO,

Defendant.

No.

Judge

06C 4800

JUDGE BUCKLE

MAGISTRATE JUDGE DENLOW

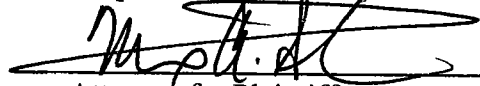
**NOTICE OF MOTION**

To: Robert L. Gunter, Vice President and General Counsel  
The Moody Bible Institute of Chicago  
820 North LaSalle Street  
Chicago, IL 60610

**PLEASE TAKE NOTICE** that on September 7, 2006 at 9:15 a.m./p.m., or as soon thereafter as counsel may be heard, we shall appear on behalf of the above captioned Plaintiffs before the Honorable Judge Buckle, in the courtroom usually occupied by said Judge, in the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, and then and there present Plaintiffs' Motion for a Preliminary Injunction, a copy of which is attached hereto and hereby served upon you.

Dated: September 5, 2006

Respectfully submitted,

  
Attorney for Plaintiff

Katherine E. Walz  
Sargent Shriver National Center on Poverty Law  
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IN THE UNITED STATES DISTRICT COURT  
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No.

06C 4800

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs Jane Adams Senior Caucus, Ruth Williams, Liz Essex, Jewell "Judy" Sutton, and Elizabeth Camarigg (collectively "Plaintiffs"), by and through their attorneys, respectfully move the Court for entry of a Preliminary Injunction pursuant to Fed. R. Civ. P. 65.

In support of their motion, Plaintiffs state as follows:

1. Morningside I ("Morningside") is a project-based Section 8 development on Chicago's near-north side. As a project-based Section development, Morningside is intended to provide 201 units of affordable housing for eligible senior and disabled residents in Chicago. Because the subsidies associated with it are project-based, they remain with the property, making Morningside a stable source of such housing for Chicago area seniors and disabled persons.

2. Plaintiffs consist of a group of current residents of Morningside, persons wishing to live there, and an organization assisting them in their efforts to ensure that Morningside serves its intended purpose. The individual Plaintiffs—Ruth Williams, Elizabeth Essex, Jewell "Judy" Sutton, and Elizabeth Camarigg—are senior and disabled persons eligible to reside in the subsidized units at Morningside.

3. Plaintiffs bring this litigation and this Motion seeking orders from this Court requiring Defendant The Moody Bible Institute of Chicago ("Moody Bible") to comply with its contractual, statutory, and regulatory obligations to provide affordable housing at Morningside.

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5. Currently, however, Moody Bible is not providing the contracted for 201 units of affordable housing. Instead, beginning in 1999 and continuing to this day, Moody Bible has converted units in Morningside for use as dormitory rooms and corporate apartments. To accomplish these conversions, after a unit occupied by a senior or disabled resident becomes vacant, Moody Bible upgrades the unit by painting, installing new flooring, and adding internet access to the unit and then, for units being converted to dorm rooms, makes the unit available to Moody Bible students. Moody Bible has even gone so far as to rename Morningside as “Jenkins Hall,” in honor of Moody Bible benefactor and faculty member, and best-selling author, Jerry Jenkins.

6. For units being converted to corporate apartments, in addition to the other upgrades, Moody Bible has combined multiple units to create larger units. One such combination is now occupied by Mr. Jenkins.

7. Through these efforts, Moody Bible has converted approximately half of Morningside’s 201 units. As a result, according to Moody Bible, approximately 160 Moody Bible students and their spouses now live in units intended for low-income senior and disabled residents.

8. In addition to its unlawful actions in converting Morningside units for use as dorm rooms and corporate apartments, Moody Bible is also violating additional related contractual and statutory obligations. First, Moody Bible no longer markets units at Morningside to senior and disabled residents, nor does it maintain a plan to do so. To the contrary, when people contact Moody Bible seeking housing at Morningside for senior and disabled persons, they are told that Moody Bible no longer leases to senior and disabled persons.

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10. Third, for those senior and disabled persons fortunate enough to have affordable housing at Morningside, Moody Bible has failed, and is failing, to properly maintain those units.

First, despite the upgrades it provides to units vacated by senior and disabled residents in the conversion process, Moody Bible refuses to provide that same maintenance and upgrades to units occupied by senior and disabled residents. Instead, those residents live in units suffering from mold contamination, chipping paint, substandard flooring, clogged plumbing, and other problems.

11. Fourth, Moody Bible has revoked those residents access to parking in the lot adjacent to Morningside. Instead, while the senior and disabled residents of Morningside are now forced to park in lots farther away and across busy Chicago thoroughfares, Moody Bible has made these spots available to its students, faculty, and staff.

12. Further exacerbating matters, Moody Bible has responded to Plaintiffs' efforts to resolve these issues by retaliating against Plaintiffs for their attempts to exercise rights granted to them under federal housing statutes. Moody Bible's retaliation has included the imposition of requirements designed to prevent Plaintiffs and others concerned about these issues from meeting in public spaces at Morningside and threatening Plaintiffs and other senior and disabled persons with the termination of the subsidies in place for Morningside.

13. Moody Bible's actions violate numerous contractual and statutory provisions, including the HAP Contract, incorporated federal regulations, and the Fair Housing Act.

14. If Moody Bible's ongoing violations of its contractual and statutory obligations are not stopped, Plaintiffs will suffer irreparable harm from the loss of additional units of affordable housing for senior and disabled persons.

15. The balance of harms supports imposition of a preliminary injunction since the potential harm to low-income senior and disabled residents lacking options for affordable housing, namely the loss of additional sources of affordable housing, significantly outweighs the potential harm such relief could cause Moody Bible, a prosperous institution with significant resources, both monetary and organizational.

16. Issuing a preliminary injunction would served the public interest by advancing expressed policies of both the federal and state governments to promote affordable housing for senior and disabled persons.

17. To prevent any further harm that might result from Moody Bible's ongoing violations of its contractual and statutory obligations, Plaintiffs now bring this Motion, seeking a



preliminary injunction that enjoins Moody Bible from further violations of its contractual and statutory obligations.

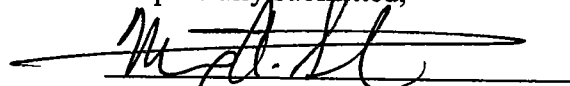
18. Plaintiffs should not be required to post a bond securing against an injuries that Moody Bible might suffer as a result of the preliminary injunction requested in this Motion. Though the likelihood of such injuries is slight, even that slight possibility does not justify requiring Plaintiffs, low-income senior and disabled persons seeking to advance significant issues of public policy, to post a bond.

WHEREFORE, Plaintiffs, Jane Adams Senior Caucus, Ruth Williams, Liz Essex, Jewell "Judy" Sutton, and Elizabeth Camarigg (collectively "Plaintiffs"), respectfully request that this Court grant Plaintiffs' Motion For A Preliminary Injunction and enter an order that:

- a. Enjoins Moody Bible from moving any additional students into the residential property known as Morningside;
- b. Enjoins Moody Bible from converting any additional residential units at Morningside into dormitory rooms, corporate apartments, or for any other use other than low-income housing for senior and disabled persons;
- c. Requires Moody Bible to create and maintain a waiting list of applicants seeking to lease units at Morningside for use in selecting new residents as units become vacant; and
- d. Provide Plaintiffs any other relief that the Court deems appropriate.

Dated: September 5, 2006

Respectfully submitted,



Attorney for Plaintiff

Katherine E. Walz  
Sargent Shriver National Center on Poverty Law  
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(312) 263-3830

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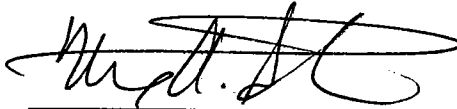
**Certificate of Service**

I, Max A. Stein, an attorney, certify that I shall cause to be served:

1. Plaintiffs' Motion for a Preliminary Injunction;
2. Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction;
3. Notice of Motion.

Upon the parties shown below, both by delivering a copy to the process server to be served in conjunction with Plaintiffs' Complaint in this matter, and by First Class Mail this 5th day of September, 2006:

Robert L. Gunter, Vice President and General Counsel  
The Moody Bible Institute of Chicago  
820 North LaSalle Street  
Chicago, IL 60610

A handwritten signature in black ink, appearing to read 'Max A. Stein', written over a horizontal line.

Max A. Stein



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JANE ADDAMS SENIOR CAUCUS,  
RUTH WILLIAMS, ELIZABETH ESSEX,  
JEWELL "JUDY" SUTTON, and  
ELIZABETH CAMARIGG, On Behalf of  
Themselves and All Others Similarly  
Situating,

Plaintiffs,

vs.

THE MOODY BIBLE INSTITUTE OF  
CHICAGO,

Defendant.

No.

**06C 4800**

**JUDGE BUCKLO**

**MAGISTRATE JUDGE DENLOW**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTIONS FOR A  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**INTRODUCTION**

Morningside I ("Morningside") is a project-based Section 8 development built in the late 1970s to provide a stable source of affordable housing for low-income senior and disabled persons. Defendant The Moody Bible Institute of Chicago ("Moody Bible") now owns Morningside, and is bound to operate it in this manner through 2018. Notwithstanding these obligations, Moody Bible has decided to use the property as a student dormitory. To implement this decision, Moody Bible has stopped leasing vacant units to elderly and disabled persons. Instead, whenever a unit becomes available, Moody Bible's pattern and practice is to complete long-overdue maintenance on the unit by installing new flooring, fresh paint, and wiring for internet access, and then provide the unit to its students. Additionally, Moody Bible has converted several units in Morningside into corporate apartments, including one for best-selling author and Moody Bible faculty member Jerry Jenkins, in whose honor Moody Bible recently renamed Morningside as "Jenkins Hall." To date, Moody Bible has converted approximately half of the units at Morningside in this manner, depriving Chicago's senior and disabled population of approximately 100 units of affordable housing.

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U.S. DISTRICT COURT  
CHICAGO

The United States Department of Housing and Urban Development (“HUD”) has warned Moody Bible that its actions violate both its contractual obligations and federal regulations. Nevertheless, Moody Bible persists in its conduct, continuing to move students into Morningside. Indeed, notwithstanding clear statements from HUD and others informing Moody Bible that its actions violate its duties, Moody Bible has informed the residents of Morningside that it does not intend to move any students out of the building during this academic year, and has threatened to terminate its Section 8 contracts if no agreement is reached to accommodate its students.

Because of Moody Bible’s actions, approximately 100 units of designated housing are unavailable for Chicago’s low-income seniors and disabled persons. These at-risk individuals are suffering, and will continue to suffer, irreparable harm due to the reduction of available affordable housing. Moreover, as Moody Bible continues to move students into the building, it will become more difficult to move them out if and when Plaintiffs ultimately prevail in this litigation. Plaintiffs therefore seek a Temporary Restraining Order and a Preliminary Injunction prohibiting Moody Bible from moving any additional students or other ineligible individuals into Morningside or otherwise converting units into dorm rooms or corporate apartments. Plaintiffs also request that the Court order Moody Bible to comply with its legal obligations, and to rent any available units to eligible low-income seniors or disabled persons from Morningside’s waiting list.

## **BACKGROUND AND STATEMENT OF FACTS**

### **A. Morningside And The Project-Based Section 8 Program.**

Congress created the Section 8 program in 1974 to provide decent, affordable housing to low-income families and individuals. Under the program, eligible residents pay 30% of their adjusted incomes toward their rent, with the remainder paid through a HUD subsidy. See 42 U.S.C. §§ 1437f(c)(3), 1437a(a)(1). Morningside is subsidized through what is commonly called a project-based Section 8 subsidy. In a project-based development, the units themselves are subsidized; thus, when a tenant moves out, the subsidy remains for the next eligible tenant. Project-based Section 8 subsidies assure the long-term availability of affordable housing units in a particular area. Morningside is designated for use as subsidized housing for low-income senior citizens and non-senior disabled persons. Currently, 100% of the Section 8 tenants are disabled, with 90% senior-disabled, and 10% non-senior disabled.

In the 1970s, in an effort to create low-income housing, HUD provided funds to state housing finance agencies for the creation of additional affordable housing stocks. In Illinois, the subsidies were provided through the Illinois Housing Development Authority (“IHDA”). Morningside was developed through these efforts in the late 1970s. To participate in the program, the original owners—Moody Bible affiliate Moody House Associates (“Moody House”)—IHDA and HUD entered into a series of contracts. In 1978 the Moody House, IHDA, and HUD entered into the primary contract at issue in this litigation, the Housing Assistance Payments Contract (the “HAP Contract”). (See HAP Contract, attached as Exhibit A.)

The HAP Contract, which Moody House assigned to Moody Bible in 1994, establishes the subsidy structure for Morningside, and requires that Moody Bible comply with its terms as well as applicable federal regulations. Through a series of automatic five-year renewals, the HAP Contract runs to 2018 unless terminated by agreement of IHDA and Moody Bible at the expiration of a renewal period. Covering all 201 units in Morningside, the HAP Contract requires Moody Bible to maintain a waiting list of eligible low-income seniors and disabled persons, and to fill vacant units from the list. (HAP Contract, Ex. A, at ¶ 1.10(a), (c) and (e)). Additionally, the HAP Contract, and incorporated federal regulations, require Moody Bible to create, obtain approval for, and maintain an Affirmative Fair Housing Marketing Plan and Tenant Selection Plan to govern how new applicants are recruited. That plan must be reviewed and updated every five years, and be made available to the public. (HAP Contract, Ex. A, at ¶ 1.10(a)); 24 C.F.R. §§ 200.610; 200.620; and 200.625; HUD 4350.3).

**B. Moody Bible Takes Over Morningside, Begins To Turn It Into A Student Dorm, And Discriminates Against Seniors And The Disabled.**

In 1994 Moody Bible acquired Morningside from Moody House, and assumed the Moody House’s rights and obligations under the HAP Contract. (See Assignment of Housing Assistance Payment Contract, attached as Exhibit B.) Moody Bible continues to operate Morningside pursuant to the HAP Contract today, accepting the HUD subsidies provided therein. Starting in approximately 1999, however, Moody Bible began a gradual process of converting Morningside into a student dormitory. (August 24, 2006 Letter to residents, attached as Exhibit C.) At that time Moody Bible began a practice of rehabbing vacant units with fresh paint, new flooring, and internet access, and then converting the unit to a dorm room for Moody Bible students. (See Affidavit of Elizabeth Essex, attached as Exhibit D, at ¶¶ 7-8; Affidavit of Ruth

Williams, attached as Exhibit E, at ¶¶ 7-8.) Moody Bible even went as far as to rename the building “Jenkins Hall.” (August 24, 2006 Letter, Ex. C) In addition to the dorm rooms, Moody Bible has also converted several units into larger “corporate apartments” by rehabbing and combining two or more units. (Essex Aff. Ex. D, at ¶¶ 7-8; Williams Aff. Ex. E, at ¶¶ 7-8.)

Moody Bible has continued this pattern to the present day. Currently, Moody Bible makes no effort to market or lease vacant units to senior and disabled persons, as required under the HAP Contract. (Affidavit of Jewell Sutton, attached as Exhibit F, at ¶ 7; Affidavit of Elizabeth Camarigg, attached as Exhibit G, ¶ 6.) At this point, Moody Bible has converted approximately one-half of the units at Morningside into dorm rooms and corporate apartments, housing approximately 160 students and spouses. (August 24, 2006 Letter, Ex. C; Essex Aff., Ex. D, at ¶ 8; Williams Aff., Ex. E, at ¶ 8.)

Moody Bible has also engaged in a variety of discriminatory practices at Morningside. For example, while Moody Bible provides improvements for each converted unit, no comparable improvements are provided to Morningside’s senior and disabled residents. (Essex Aff., Ex. D, at ¶ 7; Williams Aff., Ex. E, at ¶ 7.) Instead, these residents live in deteriorating units that in some circumstances fall below federal housing standards. (See IHDA Inspection Report, July 20, 2006, attached as Exhibit H.) Additionally, Moody Bible has denied its senior and disabled residents access to parking spaces in the lot immediately neighboring Morningside, despite having previously allowed these residents to use these spaces. Instead, use of the spaces has been restricted to Moody Bible students and staff. (Essex Aff., Ex. D, at ¶ 8; Williams Aff., Ex. E, at ¶ 8.) Finally, since Moody Bible began the conversion process, Moody Bible officials have affirmatively told people inquiring about availability at Morningside and others that it no longer rents to seniors or disabled persons. (Camarigg Aff., Ex. G, at ¶ 6; Affidavit of Hannah Willage, attached as Exhibit I, at ¶ 4.)

**C. HUD Warns Moody Bible That Its Actions Violate the HAP Contract and Incorporated Federal Regulations.**

Upon becoming aware of Moody Bible’s actions, HUD repeatedly informed IHDA that Moody Bible’s conduct violates the HAP Contract and the incorporated federal regulations. IHDA then informed Moody Bible of its contractual and regulatory violations, seeking to bring Moody Bible into compliance with those obligations. Seeing no change in Moody Bible’s conduct despite IHDA’s efforts, most recently HUD wrote to Moody Bible directly, stating:



“The [HAP] contract does not permit a phasing out of the Section 8 rental assistance.” (See August 14, 2006 letter to Moody Bible, attached as Exhibit J.) Despite these communications from IHDA and HUD, Moody Bible continues to lease the vacant units to students, moving new student residents into Morningside for the 2006 academic year.

**D. Moody Bible Retaliates Against And Threatens Its Section 8 Residents For Organizing To Preserve Morningside.**

Plaintiffs have been working to bring Moody Bible into compliance with its contractual and statutory duties. In response, rather than complying with the agreements it made and the regulations it chose to be governed by, Moody Bible has instead retaliated against Plaintiffs. Immediately following a meeting among Plaintiffs and their attorneys recently held in a common area of Morningside, Moody Bible’s property manager delivered a memo notifying Plaintiffs, including residents of the Building, that they cannot have meetings in the building’s common areas without making prior arrangements. (See Memorandum of August 21, 2006, attached as Exhibit K.) Prior to this notice, senior and disabled residents were allowed to use the common areas without prior arrangements. (Essex Aff., Ex. D, at ¶ 6; Williams Aff., Ex. E, at ¶ 6.)

Additionally, on August 24, 2004, Moody sent a letter to the residents of “Jenkins Hall,” regarding the “pending legal situation related to the building.” (Letter of August 24, Ex. C.) Though it attempts to sound conciliatory, the letter is little more than a thinly veiled threat. The culmination of that threat is Moody Bible’s claim that its “only option may be to terminate the federal housing assistance program in 2008,” if it cannot find a “reasonable solution with IHDA and HUD.” (*Id.*) The letter also states that Moody Bible intends to use the building as a dormitory at least through the just-begun academic year.

**ARGUMENT**

**I. TO PREVENT FURTHER HARM TO PLAINTIFFS CAUSE BY MOODY BIBLE’S BREACHES OF ITS CONTRACTUAL AND STATUTORY OBLIGATIONS, THE COURT SHOULD ISSUE ORDERS REQUIRING MOODY BIBLE TO COMPLY WITH ITS DUTIES.**

Plaintiffs are entitled to a temporary restraining order (“TRO”) and a preliminary injunction to ensure Moody Bible complies with its contractual and statutory duties. As set out below, because Moody Bible’s conduct blatantly violates a variety of its contractual obligations, federal regulations, and federal statutes, Plaintiffs have a strong likelihood of success on the merits. Similarly, Plaintiffs can show that no adequate remedy at law exists for seniors and

disabled persons unable to find or keep affordable housing and that Plaintiffs are suffering and will continue to suffer irreparable harm resulting from the loss of additional affordable housing. Finally, the balance of harms and public interest favors the at-risk citizens affected by Moody Bible's actions.

Both a TRO and preliminary injunctive relief are available where the party seeking relief can demonstrate "(1) its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) it will suffer irreparable harm if the injunction is not granted." Ty, Inc. v. Jones Group, Inc., 237 F.3d 891, 895 (7th Cir. 2001); Flamm v. Lieber & Co., No. 94 C 3415, 1994 WL 274932, at \*2 (N.D. Ill. June 17, 1994) (recognizing that the requirements for a TRO are identical to those for a preliminary injunction). If these conditions are met, the court must also examine and balance the respective harm that each side will suffer in the event an injunction is or is not granted, as well as the impact on the public interest. See Ty, Inc., 237 F.3d at 895. In the Seventh Circuit, the balance of the harms and the public interest should be considered on a sliding scale relative to the likelihood of success on the merits. That is, the more likely the plaintiff is to succeed on the merits, the less the balance of harms must tip in its favor. See id.

**A. Plaintiffs Have A Strong Likelihood Of Success On The Merits.**

Moody Bible's actions violate a variety of its contractual obligations, federal regulations and anti-discrimination statutes. Plaintiffs have alleged several counts arising from Moody Bible's actions, and have a strong likelihood of success on every one of them. Those relevant to the requested TRO and preliminary injunction are discussed below.

**1. Moody Bible's Actions Violate The HAP Contract And Incorporated Federal Regulations.**

The HAP Contract is a valid and enforceable contract, interpreted in accordance with federal common law. See Henry Horner Mothers Guild v. Chicago Housing Auth., 780 F. Supp. 511, 515 (N.D. Ill. 1991) (enforcing HUD housing contracts pursuant to federal common law). Further, Plaintiffs have standing as third-party beneficiaries to enforce the contract and to assert claims for Moody Bible's breaches. Holbrook v. Pitt, 643 F.2d 1261, 1270-73 (7th Cir. 1981) (holding tenants can raise claims as third-party beneficiaries under federal housing contracts); Henry Horner Mothers Guild, 780 F. Supp. at 515 (recognizing applicants as third-party

beneficiaries to federal housing contract); see also Elliot v. Chicago Housing Auth., No. 98 C 6307, 1999 WL 519200, at \*9 (N.D. Ill. July 14, 1999).

There is no doubt that Moody Bible's actions violate the terms of the HAP Contract and incorporated federal regulations. Section 1.3 of the HAP Contract states: "The Contract Units are to be leased by the Owner to eligible Lower-Income Families ("Families") for use and occupancy by such Families solely as private dwellings." Exhibit A to the HAP Contract defines Contract Units as the 201 apartments at Morningside. (HAP Contract, Ex. A, at "Exhibit A".) In violation of the HAP Contract, approximately half of these units have been converted to student dormitories or corporate apartments, and are no longer leased to "eligible Lower-Income Families for use and occupancy as private dwellings."

Section 1.10(a) states: "Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising." Section 1.10(e) further requires Moody Bible to "process applications for admission ... in accordance with applicable HFA or Government requirements." The referenced regulations, in turn, require Moody Bible to maintain a waiting list of applicants for the property and to fill vacancies from eligible individuals on the list. See 24 C.F.R. § 883.318 (1975) (made applicable through 24 C.F.R. § 883.105(a)); HUD HANDBOOK 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs (2004); See also 24 C.F.R. § 5.653 (setting eligibility standards). Moody Bible must also update the list, and regularly apprise applicants of their status on the list. (Id.) Moody Bible no longer fills vacancies from a waiting list, and does not appear to even maintain a waiting list. (Sutton Aff., Ex. F, at ¶ 6; Camarigg Aff., Ex. G, at ¶ 6; Willage Aff., Ex. I, at ¶ 4.) Instead, any vacant unit is turned into a dorm room or a corporate apartment, and made available to students, or in some cases to wealthy donors to the Moody Bible Institute. This conduct is a clear breach of the HAP Contract and the incorporated regulations.

The HAP Contract also obligates Moody Bible to "maintain and operate the Contract Units and related facilities so as to provide Decent, Safe and Sanitary Housing." (HAP Contract, Ex. A, at ¶ 1.8(a)). Moody Bible has breached this obligation as well. The Section 8 units are not maintained in the same manner as the units that have been converted to dorm rooms. These units suffer from mold contamination, chipping paint, substandard flooring, clogged plumbing and other problems. (See IHDA Inspection Report, Ex. H.) Moody Bible, however, refuses to

rehabilitate the units, and instead uses the rent subsidies to rehabilitate only the units it plans to make available to its students. (Essex Aff., Ex. D, at ¶ 7; Williams Aff., Ex. E, at ¶ 7.)

Moody Bible cannot deny that its conversion of approximately 100 units at Morningside into student dorms and corporate apartments violates the terms of the HAP Contract. Instead, Moody Bible appears to believe that its violations of that contract are excused by its 1994 Prepayment Agreement with IHDA. According to Moody Bible, the Prepayment Agreement allows it to admit students as tenants at Morningside after Moody Bible prepays the mortgage on the property. (See Prepayment Agreement, attached as Exhibit L.) Because Moody Bible did just that in 1999—thanks in part to a contribution from Jerry Jenkins—Moody Bible believes its actions are allowed.

Moody Bible's reliance on the Prepayment Agreement cannot excuse its conduct. Because the Prepayment Agreement directly contradicts the HAP Contract in numerous ways, it is unenforceable and therefore cannot have the effect Moody Bible claims. First, the HAP Contract states that it "comprises the entire agreement between the parties ... with respect to the matters contained herein, and neither party is bound by any representations or agreements of any kind except as contained herein or except as contained in agreements entered into in writing *which are not inconsistent with this Contract.*" (HAP Contract, Ex. A, at ¶ 1.1(i) (emphasis added).) Because the occupancy terms of the Prepayment Agreement are inconsistent with the HAP Contract, they are unenforceable.

Though Moody Bible apparently believes the Prepayment Agreement constitutes a subsequent modification of the HAP Contract, this argument ignores that Moody Bible and IHDA cannot unilaterally amend the HAP Contract. HUD is also a party to the HAP Contract, having expressly approved and executed the agreement. (HAP Contract, Ex. A, at p. 8.) The HAP Contract provides HUD with a variety of substantive rights, particularly with respect to the reduction of covered units. Section 1.12, for example, provides the circumstances in which the number of Contract Units may be reduced. Importantly, this provision only allows IHDA to reduce the number of Contract Units "with [HUD] approval," and in no way authorizes Moody Bible to reduce the number of units on its own. (HAP Contract, Ex. A, at ¶¶ 1.12(a) & (b)). Because there is no question that HUD is a party to the HAP Contract, with valid and enforceable rights under the agreement, IHDA and Moody Bible cannot simply amend the HAP Contract without HUD's consent. Cf. Robinson v. Ada S. McKinley Cmty. Servs., Inc., 19 F.3d

359, 363 (7th Cir. 1994) (party cannot unilaterally amend a contract); Horwitz v. Alloy Auto. Co., 656 F. Supp. 1039, 1044 (N.D. Ill. 1987) (“No contract can be modified by one of the contracting parties without the knowledge and consent of the remaining parties to the agreement.”)

**2. Moody Bible’s Refusal To Rent To Seniors And Disabled Persons Violates The Fair Housing Act.**

The Fair Housing Act makes it unlawful “To discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of ... that buyer or renter.” 42 U.S.C §3604(f)(1)(A). In addition to intentional discrimination, the Fair Housing Act prohibits actions that have a discriminatory impact, which is undeniably happening here. Prior to the conversion, all 201 units at Morningside were occupied by disabled persons, primarily senior citizens. (August 24, 2006 Letter, Ex. C.) Since it began converting units at Morningside, Moody Bible has reduced the disabled residency in the building by 50%, and will continue to 100% if allowed to proceed on its current path. (August 24, 2006 Letter, Ex. C; Essex Aff., Ex. D, at ¶ 8; Williams Aff., Ex. E, at ¶ 8; Prepayment Agreement, Ex. L, at § 3.)

This is sufficient to state a § 3604 Fair Housing Act violation. See Metropolitan Housing Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977). To determine whether a discriminatory impact claim amounts to a violation, courts use a four factor test: (1) the strength of the plaintiff’s showing of discriminatory effect; (2) whether there is some evidence of discriminatory intent; (3) the defendant’s interest in taking the complained of action; and (4) whether the relief requested would require the defendant to provide housing for members of the group suffering discrimination, or merely restrain the defendant from interfering with other property owners who seek to provide such housing. Id.; Hispanics United of DuPage County v. Village of Addison, 988 F. Supp. 1130, 1151 (N.D. Ill. 1997). Applying those factors to this case demonstrates the Plaintiffs are likely to succeed in establishing violations of the Fair Housing Act.

First, Moody Bible’s actions have had, and will continue to have, a strong discriminatory effect, as units at Morningside available to the disabled have already been reduced by 50%, and Moody Bible plans to eliminate the units entirely as they become vacant. (August 24, 2006 Letter, Ex. C; Essex Aff., Ex. D, at ¶ 8; Williams Aff., Ex. E, at ¶ 8; Prepayment Agreement, Ex. L, at § 3.) Second, there is significant evidence of discriminatory intent as Moody Bible has

affirmatively told applicants that it no longer rents to seniors, (Camarigg Aff., Ex. G, at ¶ 6), and has told others that it no longer rents to seniors or the disabled. (Willage Aff., Ex. I, at ¶ 4.) With respect to the third factor, Moody Bible's interest is to convert Morningside into a student dormitory with several corporate apartments. This interest is significantly undercut, however, because it is in direct violation of the contractual and regulatory obligations Moody Bible voluntarily agreed to in obtaining financial assistance for developing the property. Finally, although Plaintiffs do seek to compel Moody Bible to resume providing housing to disabled persons, the suit would not require Moody Bible to develop any additional housing. Instead, the suit merely seeks to compel Moody Bible to comply with its contractual commitments. Compare Metropolitan Housing, 558 F.2d at 1293 (developing fourth factor with apparent concern for cases involving construction of additional housing). Because Moody Bible's actions satisfy these four factors, Plaintiffs have a strong likelihood of success on the merits of their Fair Housing Act Claim.

**3. Moody Bible's Retaliation Against Plaintiffs Violates The Fair Housing Act.**

Section 3167 of the Fair Housing Act makes it unlawful to retaliate against people for exercising their rights, or encouraging others to exercise their rights, under the Act. 42 U.S.C. §3167. As set out in 24 C.F.R. § 100.400(4) (2006), Section 3167 prohibits "Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part." It also prohibits "Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act." 24 C.F.R. § 100.400(5) (2006). A retaliation claim under § 3167 need not demonstrate an actual underlying violation of the Fair Housing Act. See Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n, 388 F.3d 327, 330 (7th Cir. 2004). Instead, Plaintiffs must show "(1) [they] engaged in statutorily protected activity; (2) defendant took adverse action...; and (3) causal connection exists between adverse action and protected activity." See Neudecker v. Boisclair Corp., 351 F.3d 361, 364 (8th Cir. 2003).

Despite this statutory prohibition, Moody Bible has engaged in a pattern and practice of interference, threats, and intimidation against Plaintiffs in retaliation for their efforts to organize and enforce their rights under the Fair Housing Act. First, after Plaintiffs and their attorneys held

a meeting in a common area at Morningside, officials representing Moody Bible delivered a memo demanding that any future meetings take place only after arrangements were made with Moody Bible. (Memorandum of August 21, 2006; Ex. K.) Prior to the memo, students and senior and disabled residents alike were permitted to use the common area without prior approval, and it appears that students remain able to do so. Second, Moody Bible sent a letter to the residents threatening to “terminate the federal housing assistance program in 2008” if it “cannot find a reasonable solution with IHDA and HUD.” (Letter of August 24, 2006, Ex. C.) Moody Bible made this threat despite lacking the authority to unilaterally cancel the HAP Contract.

Moody Bible’s retaliatory conduct is clearly actionable under § 3617, which has been “broadly applied to reach all practices which have the effect of interfering with the exercise of rights under the federal fair housing laws.” See Nevels v. Western World Ins. Co., 359 F. Supp. 2d 1110, 1122 (W.D. Wash. 2004) (citations omitted). Moreover, Moody Bible began its pattern of retaliation only after Plaintiffs began to organize with the other senior and disabled tenants of Morningside to enforce their Fair Housing Act rights. Moody Bible’s recent conduct satisfies all of the elements of a § 3617 claim. Plaintiffs therefore have a strong likelihood of success on the merits of their § 3617 claims.

**B. Plaintiffs Have No Adequate Remedy At Law And Will Suffer Irreparable Harm Without Preliminary Injunctive Relief And A TRO.**

There can be little doubt that Plaintiffs do not have an adequate remedy at law for Moody Bible’s unilateral decision to transform Morningside into Jenkins Hall. As an initial matter, courts presume irreparable injury (and no adequate remedy at law) where the statute itself provides for injunctive relief. See Illinois Bell Tel. Co. v. Ill. Commerce Comm’n, 740 F.2d 566, 571 (7th Cir. 1984). The Fair Housing Act provides for injunctive relief, 42 U.S.C. § 3613(c), and courts in the Northern District have held that the presumption of irreparable injury applies in Fair Housing Act cases. See, e.g., North Shore-Chicago Rehabilitation, Inc. v. Village of Skokie, 827 F. Supp. 497, 509 (N.D. Ill. 1993). Therefore, the Court should presume irreparable injury and inadequate remedy at law for Plaintiffs’ Fair Housing Act claims.

Even without this presumption, Plaintiffs still satisfy these requirements. The loss of approximately 100 units of affordable housing for Chicago’s low-income seniors and disabled persons has left at-risk individuals scrambling for housing. For example, Plaintiff Jewell Sutton

has been forced to rely on the uncertain charity of relatives. Plaintiff Elizabeth Camarigg has been forced to pay a disproportionate share of her monthly income on rent. At this point, at least 100 other people are in the same situation due to Moody Bible's actions, and the number grows each time Moody Bible converts another unit to student or corporate housing. The affordable housing being lost will not be replaced unless Moody Bible's improper conduct is stopped. This loss of affordable housing is particularly troublesome because it affects housing available to the disabled. Approximately 20% of disabled renters in Illinois are severely rent burdened, compared to 14.4% of non-disabled renters. (See Declaration of Janet Smith, attached as Exhibit M, at ¶ 3.) The loss of affordable housing, and the prospect of homelessness that it creates, demonstrates irreparable injury and inadequate remedy at law. See Roe v. Anderson, 966 F. Supp. 977, 985 (E.D. Cal. 1997); McNeil v. New York City Housing Authority, 719 F. Supp. 233, 254 (S.D.N.Y. 1989).<sup>1</sup> Finally, as Moody Bible continues to move students into Morningside, it will become more difficult to move them out at the conclusion of this action; therefore, Moody Bible should not be allowed to continue converting Morningside into a dormitory while this suit is pending. Damages alone cannot make the Plaintiffs whole, nor can they begin to redress the injury to the class of people that Plaintiffs seek to represent.

**C. The Balance Of Harms And Public Interest Favors Preliminary Injunctive Relief.**

An injunction requiring Moody Bible to comply with its obligations is undoubtedly in the public interest. In violation of contracts with the state and federal agencies dedicated to preserving sources of affordable housing, Moody Bible is slowly depleting Chicago's available stock of such housing for low-income seniors and persons with disabilities. Both the state of Illinois and the federal government, however, have expressly stated policies of promoting affordable housing for the elderly and disabled. For example, Illinois recently passed a Comprehensive Housing Plan Act, Ill. Pub. Act 094-0965 (2006), which requires a focus on the housing needs of certain "underserved populations," including low-income seniors and persons with any form of disability. Id. at § 15(a). Similarly, Executive Order 13217 makes it the policy of the United States to promote "community-based alternatives for individuals with disabilities." 66 F.R. 3315.

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<sup>1</sup> Organizational Plaintiff Jane Addams Senior Caucus has suffered irreparable harm to its members who live and wish to live at Morningside, and has been forced to divert its limited resources to this issue. (See Declaration of Lori Clark, attached as Exhibit N.)



The balance of harms also supports preliminary injunctive relief. While Moody Bible may experience some inconvenience finding alternative housing for students, the school is well situated to do so. First its students pay significantly more to live in the dorms than the senior and disabled residents of Morningside, and therefore will be better able to afford market rates in the area. Second, Moody Bible's resources dwarf those of the displaced low-income seniors and disabled persons. Indeed, Moody Bible reported revenue of over \$90 million including net rental income of over \$1 million, and net assets of over \$143 million, in its 2004 tax return. Suffice to say, Plaintiffs lack any resources even approaching this. Moreover, Moody Bible, like any other college, has staff and resources dedicated to housing its students, and is therefore well situated to find alternatives outside Morningside.

**D. The Proposed TRO And Preliminary Injunctive Relief Are Limited In Scope And Will Not Impose An Undue Hardship On Moody Bible.**

Plaintiffs seek a TRO and a Preliminary Injunction pursuant to Fed. R. Civ. P. 65 that:

1. Enjoins the Moody Bible Institute from moving any additional students into the residential property known as Morningside. (TRO & Preliminary Injunction).
2. Enjoins the Moody Bible Institute from converting any additional residential units at Morningside I into dormitory rooms, corporate apartments, or for any other use other than low-income housing for senior and disabled persons. (TRO & Preliminary Injunction).
3. Enjoins Moody Bible from revoking any parking spaces currently assigned to senior and disabled residents of Morningside;
4. Requires Moody Bible to create and maintain a waiting list of applicants seeking to lease units at Morningside for use in selecting new residents as units become vacant. (Preliminary Injunction Only.)

Attached as Exhibits O and P are proposed orders for the Court's use in preparing the TRO and Preliminary Injunction.

Although Plaintiffs seek a final injunction requiring Moody Bible to relocate its students and to comply with its obligations by making all 201 units available to low-income senior citizens and non-senior disabled persons, the requested preliminary relief merely maintains the status quo. Moody Bible would not be required to relocate students now residing at Morningside until a final injunction is granted, but would not be able to continue its pattern of depleting the available units at Morningside.

## **II. PLAINTIFFS SHOULD NOT BE REQUIRED TO POST A BOND.**

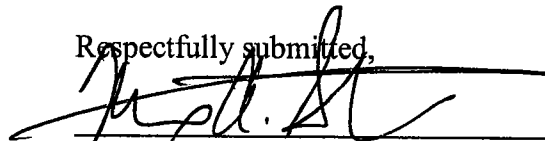
A bond may be required as a condition of granting preliminary injunctive relief. Fed. R. Civ. P. 65(c). The amount of the bond is within the discretion of the Court and serves to provide security for any costs or damages that might be incurred by a party wrongfully enjoined. Even if the defendants could prove potential damages, the Court has the discretion to waive the bond requirement in a proper case, especially if indigent parties are involved. Wayne Chem., Inc. v. Columbus Agency Serv. Corp., 567 F.2d 692, 701 (7th Cir. 1977) (“Under appropriate circumstances bond may be excused, notwithstanding the literal language of Rule 65(c). Indigence is such a circumstance.”) (internal citations omitted); Pratt v. Chicago Hous. Authority, 848 F. Supp. 792, 797 (N.D. Ill. 1994); see also Kenneth Arms Tenant Ass’n v. Martinez, No. Civ. S-01-832 LKK/JFM, 2001 U.S. Dist. LEXIS 11470, at \*52–53 (E.D. Cal. July 2, 2001) (bond set at \$1 where suit was brought on behalf of indigent named plaintiffs and organizational plaintiffs who were nonprofit corporations). Ample authority also exists supporting a waiver of the bond if plaintiffs establish likelihood of success on the merits or if significant issues of public policy are at stake. ex rel Van De Kamp Cal. v. Tahoe Reg’l Planning Agency, 766 F.2d 1319, 1326 (9th Cir. 1985), amended on other grounds 775 F.2d 998 (9th Cir. 1985); Bass v. Richardson, 338 F. Supp. 478, 491 (S.D.N.Y. 1971).

### **CONCLUSION**

For the reasons stated above, the Court should grant Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction, and enter orders (a) immediately granting the Temporary Restraining Order as set out in Plaintiffs’ Proposed Order Granting a Temporary Restraining Order, and (b) granting a preliminary injunction as set out in Plaintiffs’ Proposed Order Granting Preliminary Injunction, after affording Moody Bible an opportunity to be heard.

Dated: September 5, 2006

Respectfully submitted,

  
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