No_____

IN THE SUPREME COURT OF THE UNITED STATES
ON PETITION FOR U. S. SUPREME COURT WRIT OF CERTIORARI

DOROTHY BINNS,
Petitioner,
v.
THE CITY OF MARIETTA GEORGIA.
Respondent.

From The United States Court of Appeals for the 11th Circuit of Georgia No. 16 - 14924
Before The Honorable Appeals Court Judges – Marcus, Wilson and Martin
The United States District Court for the Northern District of Georgia, Atlanta Division
Before The Honorable, United States District Judge Leigh Martin May
District Court Docket Number: 1:13 – cv – 1637 LMM

This Petitioner Dorothy Binns, filing Pro Se individually and on behalf of a class of all similarly situated Petitioners and Economically Challenged Seniors living with Disabilities hereby on this day August 7, 2018 file my Petition for Writ of Certiorari in the United States Supreme Court

---

Pro Se Petitioner, Dorothy Binns
9030 Southcrest Ct Jonesboro, GA 30238
Dorothybinns7@gmail.com
770.745.7707

Attorneys for Respondent, Daniel White
Haynie, Litchfield, Crane, & White P.C.
222 Washington Avenue Marietta, GA 30060
dwhite@hlclaw.com
770.422.8900

THIS PETITIONER'S PETITION FOR A U. S. SUPREME COURT WRIT OF CERTIORARI

i.

THE QUESTION PRESENTED

24 C. F. R 982.316(a)(7) provide that Public Housing Authorities (PHA's) MUST provide a larger bedroom unite size to accommodate an approved live in aide if needed as a reasonable accommodation. 42 U. S. C. sec. 3604 of the Fair Housing Act (FHA) and 3603 of the title and except as made exempt by sections 3603(b) and 3607 of the title makes clear that "It shall be unlawful to refuse to make Reasonable Accommodations in rules, policies, practices and services when such Accommodations may be necessary to afford such a person the opportunity to use and enjoy a dwelling" if that Accommodation Request is not responded to , then it is the same as a denial and on the other hand , if that request is denied then that Disabled Individual has the right to a due process hearing/appeal to assert their right and Entitlement to those benefits under the 14th Amendment and 42 U. S. C 1983. **The Question here is:**

Whether the Lower Courts violated any of these or other pertinent Laws, or rules, Overlooked, misapplied, neglected or made any vital legal errors in their Holdings and affirming of the District Court's Decision of this Petitioner Claims in any way including the issues that were to be addressed or improperly addressed by the lower Courts, the abandonment of the Americans With Disabilities Act (ADA) and 504 Rehabilitation Act of 1973 (RA) claims and the dismissal for all the other claims involved?

LIST OF PARTIES

This Pro Se Petitioner - Dorothy Binns is a Senior living with Disabilities and was a participant in the Respondent's Housing Choice Voucher Program.

The Respondent - The City of Marietta Georgia was the Administer of the former Housing Choice Voucher Program and is the only other party to this proceeding.

Table of Contents

IV.

TABLE OF AUTHORITIES

Page

A.

CITATIONS

B.

REGULATIONS

C.

ACTs

D.

U. S. CONSTITUTION

E.

F. R. C. P.

F.

OTHERS

V.

TABLE OF APPENDICES

1.

OPINIONS BELOW

This Pro Se Petitioner Dorothy Binns respectfully petition this Honorable High Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the 11th Circuit regarding my civil claim Dorothy Binns v. The City of Marietta Georgia. On August 3, 2017 The U.S. 11th Circuit Court of Appeals delivered their Unpublished Opinion Affirming the U.S. Northern District Court of Georgia's Grant of Summary Judgment Order in favor of the Respondent – see Appendix A. On June 6, 2016 the U.S. Northern District Court of Georgia delivered its prior mentioned Order Granting Summary Judgment to the Respondent which soon after rendered a Judgment to this Pro Se Petitioner to pay all Court cost – see Appendix B and Appendix I.

2.

JURISDICTION

The U.S. 11th Circuit Court of Appeals entered its judgment on August 3, 2017 (App. A) A Petition for Rehearing En Banc was filed on October 25, 2018 (App. B (a). The Petition for Rehearing En Banc was denied on January 3, 2018 (App. C). An Application for Extension of Time was entered to this Honorable High Court on March 9, 2018 (App. D) and was Granted on March 14, 2018 (App. F). On September 12, 2016 the U.S. 11th Circuit Court of Appeals Granted this Petitioner an Accommodation of Additional Extension of time for filings (App. G) This Petitioner's application satisfies the express procedural requirements of Supreme Court Rule 14. This Court would have subject matter

jurisdiction to hear my Petition for a Writ of Certiorari because this Petitioner asserts claims under the ADA, 504 RA, FHA, 42 U. S. C. 1983 and the Free Exercise and Due Process Clauses of the Constitution, which provide federal question jurisdiction and 28 U. S. C. § 1257(a).

3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIII of the Civil Rights Act of 1968, 42 U. S. C. §§ 3601-3619, 3631 (1976) Sec. 804. [42 U. S. C. 3604] Discrimination in sale or rental of housing and other prohibited practices as made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title. For purposes of this subsection, discrimination includes (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. **Sec. 818 [42 U. S. C. 3617]** Interference, coercion, or intimidation; enforcement by civil action. **24 C. F. R. § 982.316, 24 C. F. R. § 982.402(b) (6), (7) and (8),** concerning effect of live-in aide on family unit size.) Americans with Disabilities Act, 42 U. S. C. 12131 et seq., 504 of the Rehabilitation Act of 1973, 29 U. S. C. 701 et seq., and Fair Housing Act of 1990. Retaliation Violation of the Equal Protection clause of the of the 14th Amendment of the US constitution that is Actionable Under 42 U. S. C. 1983 and Disparate Impact as well as Disparate Treatment and Due Process Title 24 › Chapter IX › Part 982 › Subpart L › Section 982.555 24 C. F. R 982.555 - Informal hearing for participant. F. R. C. P. # 15. Amended and Supplemental Pleadings: (a) AMENDMENTS BEFORE TRIAL. (1) Amending as a Matter of Course. Also, **28 U. S. C. §2403(b)** may apply to this proceeding.

4.

BACKGROUND AND STATEMENT OF THE CASE

This Petitioner is a sixty six (66) years wise Senior living my life with Disabilities. The allegations of this civil claim relates to a similar claim that this Petitioner filed against the Respondent for violations of the same kind that began fifteen years ago in 2003, and has continued to this day (see *(Binns v. City of Marietta Housing Authority, No. 1:07-cv-0700-RWS, 2010 WL 1138453 (N.D. GA.)* On May 14, 2013 this Petitioner filed a second claim against the Respondent who in turn filed a counterclaim against me. The District Court without a hearing granted Summary Judgment to the Respondent and dismissed me of all claims on June 10, 2016 and ordered this Petitioner to pay all court cost. This Petitioner filed an appeal of the District Court's decision during the same time the Petitioner dropped their counterclaim. On August 03, 2017 the Appeals Court Affirmed the decision of the District Court stating that "This record reflects no abuse of discretion by the district court in denying Binns's motions for leave to file untimely briefing," this "Petitioner argued that the district court erred in granting the City summary judgment on her claims for retaliation, harassment, and conspiracy. This argument fails." They conclude that the district court correctly granted summary judgment to the City on this Petitioner's Due Process claim. The Court stated that "the regulations do not require the Public Housing Agency to provide a separate bedroom for a live-in aide "and that this Petitioner "failed to show that her requested accommodation was reasonable, as her request was contrary to what the federal regulations require Public Housing Agencies, such as the City, to provide." "The court found the City's denial of Binns's request for a larger subsidy did not amount to a failure to provide a reasonable accommodation

because the City's actions were consistent with the relevant federal regulations and that the district court was right" and therefore stating that my request for accommodation was unreasonable. The Court demand this Petitioner's ADA and 504 RA claim Abandoned and dismissed the Desperate Treatment claim then dismissed the Desperate Impact for lack of statistical evidence. On October 25, 2017 this Petitioner filed a request for Rehearing En Banc which was denied on January 03, 2018. On January 11, 2018 this Petitioner received from the Appeals Court an order to pay Court Cost. On March 08, 2018 this Petitioner filed an application for extension of time to file a petition for writ of certiorari which was returned granting extension until June 02, 2018. There were vital questions of grave human and public interest to financially Challenged Seniors and Persons living with Disabilities that was determined adversely by the lower courts. After challenging the Respondent in a federal lawsuit that came to settlement at the end of 2010, I received a voucher and became a participant in the Respondent's Housing Program. I began receiving alleged hostile personality from the Respondent's Agent which was also the major decision maker. This Petitioner received opposition to practically every request that was made to the Housing Authority even before I was briefed into their housing program. This and other kinds of alleged violations continued on throughout my participation in the housing program. Therefore, two years later on May 14, 2013 this Petitioner filed another federal claim against the Respondent. The questions that I ask here today concern such vital issues of: the Americans with Disabilities Act (ADA) of 1990 and the 504 Rehabilitation Act of 1973, the Fair Housing Act – title VIll of the Civil Rights Act of 1968, 42 U. S. C. sec. 3601 – 3619,3631(1976), sec. 804. [42 U. S. C. 3604] applicable by 803(b) and 807. sec. 818 [42 U.S.C.3617]. Due

Process under 42 U. S. C. 1983 and the 14th Amendment of the U.S. Constitution. Retaliation of the FHA and Equal Protection clause and HUD regulations at 24 C. F. R. § 982.402 which require that if Seniors and Persons Living with Disabilities request Reasonable Accommodation and is approved by the P H A to have a live-in aide, they are eligible for an additional bedroom unit for that aide, 24 C. F. R. 982.316 42 USC 1983 due to the Panel's failure to recognize the Reasonable Accommodation Requests that were denied by the Respondent, or not responded to and without Due process Hearings, and/or the violation of the Respondent's faulty Policies, Practices, Procedures and lack of proper training that caused a Disparate Treatment and/or Disparate Impact given the participating Seniors and Persons living with Disabilities that were affected by the Respondent's alleged faulty Policies, Practices and Procedures. Lastly involved in this claim are violations of Retaliation, Harassment and Conspiracy.

5.

REASONS FOR GRANTING THIS PETITION

This case is uniquely significant, complex and presents extraordinarily important issues meriting a carefully prepared Petition. However, In addition to involving extraordinarily important issues it will raise important constitutional questions of great human and public interest to both financially challenged Seniors and Persons living with Disabilities residing in Public Subsidized Housing that this Court should resolve. The Merits of this claim deserve this Court's immediate attention and will bring much greater clarity that will speed the review in future claims of this kind. Furthermore, the issue of a separate bed room for an approved aide has not federally been clearly

judicated. The verbiage needs to be made clear to be properly understood. The issue of Due Process and accommodating Persons living with Disabilities in HUD Housing Programs is an issue that this Honorable High Court has dealt with for years many times reaching conflicting results. This case grants an excellent vehicle for resolving the conflict and setting a precedence that will draw a line in the sand that will allow the adoptment of a practical rule that will further the goal of the civil rights laws as well as the Dignity of living in Subsidized Housing for Under Privileged Seniors and Persons Living with Disabilities all over these United States. With the ever-shrinking benefits to HUD's Housing Programs. If this decision of not allowing the accommodation of an additional bedroom for an approved aide is allowed to pass, it will wreak havoc for Underprivileged Seniors and Persons living with Disabilities all around the Country. The Appeals Court stated that because this Petitioner "asked for a larger subsidy than § 982.401(d)(2)(ii) provides, we conclude her proposed accommodation was not reasonable. The City was therefore entitled to summary judgment on her failure-to-accommodate claim" The Appeals Court misapprehend the rule of law and made conclusions even though the record contains no evidence to support their reasoning. The Appeals Court made clearly erroneous assessment of the evidence when they allowed the District Court to dismiss this Petitioner's Motion for Summary Judgment and three other vital Motions as untimely when the docket showed that they were all filed timely. That action caused a Grave Prejudice to my claims. As a result of neglect or misjudgments of the evidence and making decisions based on erroneous conclusions of law and fact the Appeals Court shunned their duty to properly address the issues of the District Court which erroneously granted summary judgment to the Respondent and dismissed this

Petitioner of all claims. There is a conflict among the circuits regarding the view on abandonment or waiver of claims. Other Circuits hold that a person cannot waive or abandon a constitutional claim without their consent before a three year period. Other's believe as I do that it is a violation of a person's dew process right to access to the Court. There is also a split in the conflicting beliefs of the Circuits regarding the necessity of statistical data in Desperate Impact claims. The Merits of this claim deserve this Court's immediate attention and will bring much greater clarity that will speed the review in future claims of this kind.

6.

ARGUMENTS

THE ADA, THE 504 R A AND THE FHA PROVES IN IT'S LANGUAGE THAT THE LOWER COURTS DID NOT PROPERLY ACCESS MY CLAIM

a. The Fair Housing Act of 1990 (FHA) Sec. 804. [42 U. S. C. 3604]

This argument was used to speak to the allowance of the ADA, the Rehabilitation Act as well as the FHA in my Opening Brief to the Appeals Court and the District Court. **The three are very Comparable.** The District Court as well as the Appeals Court pointed out that I had proven the first two elements of the FHA but that I did not prove that the requested accommodation was reasonable. First, the two elements that were proven along with the evidence that was provided to the Court's record by me which should have been shown in the light most favorable to this Petitioner and the request by my

doctor was enough for a reasonable Jury to make an informed decision regarding my claim. Second, My Doctor stated the terms of my disability and his professional opinion of reasonableness of the accommodation when he wrote the letter requesting the accommodation which is all that is required from the Act. The City was out of line when they began to second guest and overrule the doctor's professional recommendation. Regarding the third element, in 2013 after two years of my making accommodation request and denials from the City and after finding out that this Petitioner had filed a federal lawsuit in the U.S. Northern District court as well as with HUD, the City finally granted my request yet never formally notified me until a year later during the process of a Counterclaim against this petitioner. I must point out the fact that there is nothing in the record that reflected a change in their policy regarding the additional room request for an approved live in aide. Therefore, if the request for an additional room was unreasonable in 2011 when the request was first made and ignored, requested again and then denied, then appealed and denied again, then how can the City justify providing the requested accommodation two years later if the same accommodation was not reasonable from the beginning? This is a total contradiction of their original position. The Appeals Court was in error when holding that "The City was therefore entitled to summary judgment on Binns's failure-to-accommodate claim". "In a unanimous opinion by Justice Samuel Alito, the court held that the federal funding statute **(18 U.S.C. § 3599(f))** means what it says — and that the U.S. Court of Appeals for the 5th Circuit erred in interpreting the "reasonably necessary" language to effectively require a prisoner to prove the likelihood of success on the merits in his habeas case before receiving such funding "source:

http://www.scotusblog.com/2018/03/opinion-analysis-justices-unanimously-reverse-5th-circuit-funding-capital-habeas-petitions/ - Justia › US Law › US Case Law › US Supreme Court › Volume 584 › Ayestas v. Davis › Syllabus -

b. The District Court and the Appeals Court's decision allowed for the violation of **42 U. S. C. §3604(f)(3)(B)** by allowing the City's refusing to engage in the mandated interactive process and discuss with this Petitioner the alternatives that would effectively address my needs as a disabled individual and provide this Petitioner's reasonable accommodation. Under the FHA, the denial of an accommodation "can be both actual and constructive, as an indeterminate delay has the same effect as an outright denial." *Groome Resources Ltd. v. Parish of Jefferson, 234 F.3d 192, 199 (5th Cir. 2000)....* "Under the Fair Housing Act . . . a violation occurs when the disabled resident is first denied a reasonable accommodation, irrespective of the remedies granted in subsequent proceedings." (such as the granting of latter request) *Bryant Woods Inn, Inc. v. Howard Cnty., Md., 124 F.3d 597, 602 (4th Cir. 1997).* The Appeals Court decision allowed for a violation of HUD's regulation **24 C. F. R. §982.316(a)** which made the program inaccessible and unusable to this Petitioner for two years by failing to provide the multiple request of reasonable accommodation of an additional bedroom for an approved live in aide despite my status as a disabled person and my need for the supportive services a live-in aide can provide. These actions caused grave interference with the piece and enjoyment of my unit. **42 U. S. C. § 3604(b), § 3604(f)(3)(B)**; of the FHA , **24 C. F. R. § 100.204(a) (2012) and 24 C. F. R. §**

100.65 (2012) prohibits discrimination against any individual in the terms, privileges or conditions, of sale or rental of a dwelling and in the delivery of services or facilities in the connection with the housing action because of a protected characteristic **42 U. S. C. § 3604(f)(2); 24 C. F. R. § 100.65 (2012).** "A reasonable accommodation is a change in a rule, policy, practice or service when such change may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. **42 U. S. C. § 3604(f)(3)(B); 24 C. F. R. § 100.204(a) (2012)**".... " "It is unlawful to," coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of my having exercised or enjoyed, or on account of my having aided my son or encouraged any other person in the exercise or enjoyment of, any right granted or protected under **sections 803, 804, 805 or 806 of this title. 42 U. S. C. § 3617; 24 C. F. R. § 100.400(b), (c)(l) and (c)(2) and (c)(5) (2012).**" **Section 100.400(c)(5)** 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.**

c. **24 C. F. R 982.316(a)(2) Live in Aides:** According to HUD regulations, Public Housing Authorities (P H As) are required to approve a live in aide if needed as a reasonable accommodation for a disabled household. For household members who require an attendant not for employment but simply to assist in activities of daily living, written certification from a doctor or other professional would be appropriate. **24 CFR 982.316(a) (7) Bedroom Size:** P H As must provide a larger bedroom size unit to accommodate a live-in aide, if needed as a reasonable

accommodation. Housing Choice Voucher Program (H. C. V. P.) regulations require that a P H A must include any approved live-in aide when determining the family unit size. Some examples include: • Example: A single person with a disability is eligible for a zero- or a one-bedroom unit. • Example: A single person with a disability living with an approved aide who is a single person is eligible for a two-bedroom unit. See *United States v. Alaska Housing Finance Corp.* Case 3:10-cv-00049-JWS March 12, 2010, "The HUD issued complaint, filed on March 12, 2010, alleged that the Alaska Housing Finance Corporation (A H F C), the state's housing authority, discriminated on the basis of disability when, in providing a Section 8 housing voucher to the complainant, it rejected her request for a reasonable accommodation for an extra bedroom for her exercise equipment that she needed for rehabilitation. The Court issued a consent decree that included standard injunctive relief and required A F H C to allow the complainant to rent a unit with an extra bedroom as a reasonable accommodation."

d. The Appeals Court stated that "the regulations do not require the Public Housing Agency to provide a separate bedroom for a live-in aide." However, the information here which was also provided in my Summary Judgment statement as well as my Opening Brief to the Appeals Court show quite the contrary proves neglect of the Rule of Law. Many disabled voucher-holders sought, as a reasonable accommodation, an allowance in their vouchers for an extra bedroom to accommodate a live-in aide. ***Cf. United Techs. Corp. v. Am. Home Assur. Co., 118 F. Supp. 2d 181, 188 (D. Conn. 2000)*** (suggesting that an insurer may

engage in a "procedural[ly] unfair practice[]" by failing to respond to insurance claims within a reasonable time) ***Steed v. Ever-Home Mortg. Co., 477 Fed. Appx. 722, 726 (11th Cir. 2012)*** (noting "Georgia courts consider federal court interpretations of the FHA as persuasive and rely on those interpretations in construing the Georgia [Fair Housing Act]"); *State ex rel. Claypool v. Evans, 757 N.W.2d 166, 170–72 (Iowa 2008)* (interpreting Iowa fair housing law consistently with federal law precedents)" The Appeals Court stated that this Petitioner "has failed to show a protected property interest in the government benefit she sought" My entitlement to the benefit of Reasonable Accommodation, a Due Process Hearing and an additional room for a live in aide provides a valid Property Interest. As formally stated by the District Court, 42 U. S. C 3604(f): "To prevail on a failure to accommodate claim, this Appellate must show four elements. See *United States v. Hialeah House. Auth,. 418 F. App'x 872, 875 (11TH Cir.2011) (Citing Hawn v. Shoreline Towers Phase I Condo. Ass'n. Inc., 347 F. App'x 464 (11th Cir. 2009))*. A. That I am Disabled within the means of the FHA, B. That I requested a Reasonable Accommodation, C. That the Accommodation was necessary to afford this Appellant the opportunity to use and enjoy my dwelling and D. That the Appellee refused to make the Accommodation."

e. This Petitioner is and has been commonly known as an otherwise qualified person with a disability within the meaning of the FHA and this has been verified by the Department of Social Security Disability, was given a Disability Preference in the Respondent's Housing Choice Voucher Program (H C V P) and

my Disability is undisputed by the Respondent. See Response No. 24 Respondent's response to this Petitioner's Request for Admissions. This Petitioner requested a Reasonable Accommodation from the Respondent on several occasions.

As made applicable by 42 u. s. Code section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful— **(B)** a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. The Respondent violated 42 U.S. Code section 3604(B) of the Federal Fair Housing Act by failing to grant reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford this Petitioner equal opportunity to use and enjoy my dwelling."

7.

Title VIII of the Civil Rights Act of 1968, 42 U. S. C. §§ 3601-3619, 3631 (1976) (housing)

after confirming that the interference provision of the ADA was modeled after the retaliation language contained in the FHA, the court made clear the following elements that would be needed to prove a retaliation claim under the FHA: (a) that the plaintiff engaged in activity protected by the FHA; (b) that the plaintiff was engaged in, aided (or encouraged others) to exercise or otherwise enjoy their FHA-protected rights; (3) the defendant coerced, threatened, intimidated, or interfered on behalf of the statutorily protected activities; and (d) the defendant was motivated by an intent to discriminate.

8.

American's With Disabilities Act (ADA)

"The ADA (Americans with Disabilities Act) was passed in 1990, and seems to pick up where the Rehabilitation Act left off. Borrowing from the §504 definition of disabled person, and using the familiar three-pronged approach to eligibility (has a physical or mental impairment, a record of an impairment, or is regarded as having an impairment), the ADA applied those standards to most private sector businesses, and sought to eliminate barriers to disabled access in buildings, transportation, and communication. To a large degree, the passage of the ADA supplants the employment provisions of §504, reinforces the accessibility requirements of §504 with more specific regulations". SOURCE:

https://en.wikipedia.org/wiki/Section_504_of_the_Rehabilitation_Act

Della F. EUBANKS et al. v. Mike HALE. 1980596. 752 So.2d 1113 [752 So.2d 1169] 08.20.1999 Supreme Court of Alabama. July 2, 1999. Opinion on Return to Remand August 20, 1999. Opinion on Return to Second Remand November 5, 1999. [752 So.2d 1119] Congress passed the ADA in 1990 on the basis of the following findings: The Congress finds that – "(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population is growing older; "(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

"(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

"(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

"(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, over-protective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

"(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

"(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

"(8) The Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

"(9) The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."

42 U. S. C. § 12101(a) (emphasis added). Congress further declared: "It is the purpose of this chapter – "(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;"

"(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;"

"(3) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U. S. C. § 12101(b) (emphasis added)".

"The United States Supreme Court has repeatedly held that `[i]t is basic to [the] constitutional command [of the Supremacy Clause] that all conflicting state [laws] be without effect.'" *Cantley v. Lorillard Tobacco Co., 681 So.2d 1057, 1059 (Ala.1996) (quoting Maryland v. Louisiana, 451 U.S. 725, 746, 101 S. Ct. 2114, 68 L.Ed.2d 576 (1981))*. "Therefore, when federal and state laws conflict, the federal law triumphs and preempts the conflicting state law." Id. It does so in this case."

"Public entity" is defined as "any State or local government; ... department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U. S. C. § 12131(1)(A) and (B). The term "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U. S. C. § 12131(2)".

9.

Section 504 of the Rehabilitation Act of 1973 29 U. S. C. § 701 et seq.,

Section 504 states (in part): "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." "Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U. S. C. § 701 et seq., is American legislation that guarantees certain rights to people with disabilities. It was one of the first U.S. federal civil rights laws offering protection for people with disabilities.[1] It set precedents for subsequent legislation for people with disabilities, including the Virginians with Disabilities Act in 1985 and the Americans with

Disabilities Act in 1990." "In addition to its responsibility for enforcing other federal statutes prohibiting discrimination in housing, the US Department of Housing and Urban Development(HUD) has a statutory responsibility under Section 504 to ensure that individuals are not subjected to discrimination on the basis of disability by any program or activity receiving HUD assistance. Section 504 charges HUD's Office of Fair Housing and Equal Opportunity with enforcing the right of individuals to live in federally subsidized housing free from discrimination on the basis of disability". See *"Barnes v. Gorman, 536 U.S. 181 (2002)". Onecle.com. Onecle Inc. p. 185. Retrieved September 20, 2016.* Any housing that receives federal assistance, such as Section 8 public housing, is subject to Section 504 regulations and requirements.

10.

THE APPEALS COURT SHOULD NOT HAVE HELD THAT THIS PETITIONER'S ADA AND 504 REHABILITATION ACT CLAIM WAS ABANDONED BECAUSE THIS PETITIONER DID NOT INTENTIONALLY ABANDON MY CLAIMS EXCEPT FOR REASONS OF EXCUSABLE NEGLECT

The Appeals Court Stated that this Petitioner did not address the substance of my ADA and 504 RA claims in my opening brief so they were therefore deemed Abandoned. I oppose this holding; first because the ADA, 504 RA and the FHA are so comparable to each other and speak to most of the same rules I used the same argument to speak to the three because I had in both briefs to the courts gone almost twice the amount of words of my limit and had to delete many of my arguments not understanding that this elimination would cause my claim to be abandoned. This was due to Excusable

neglect and should not be held against this Petitioner. **Excusable neglect** refers to a legitimate excuse for the failure to take some proper step at the proper time. "A court must look beyond the cause of the neglect to the interests of justice, considering both the need to afford litigants a day in court and to ensure prompt adjudication. Whether the dilatory party acted in good faith, whether the opposing party was prejudiced, and whether prompt remedial action took place are factors to consider." See *[Rutan v. Miller, 213 Wis. 2d 94, 570 N.W.2d 54 (Ct. App. 1997)].* Second, this holding of Abandonment of claim is in conflict with several other circuits. Several recent cases have held that" a defect in compliance with this latter requirement may be cured by amendment, and that a dismissal is not proper unless actual prejudice is shown." *Ingram v. DOT, 07 FCDR 2198 (Ga. Ct. App. 6/29/07); Backenstro v. DOT, 284 Ga. App. 41 (2007); Camp v. Coweta Co., 280 Ga. 199, 202 (2006); Shiver v. DOT, 277 Ga. App. 616 (2006).* Johnson v. Zerbst, 304 U.S. 458, 464 (1938). '[C]ourts indulge every reasonable presumption against waiver' of fundamental constitutional rights. Aetna Ins. Co. v. Kennedy ex rel. Bogash, 301 U.S. 389, 393 (1937)." College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666, 682 (1999)." **Courts have applied two principles limiting its application. First, the Court held in Johnson v. Zerbst 26 that a waiver, to be effective, must be an "intentional relinquishment or abandonment of a known right."** § 14A.02 (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938)"

11.

THE APPEALS COURT OVERLOOKED, NEGLECTED, MADE VITAL LEGAL ERRORS AND MISAPPLIED FEDERAL AND CONSTITUTIONAL LAW

DUE PROCESS:

The Appeals Court stated that This Petitioner alleges that the Respondent had a de facto tenure policy, arising from rules and understandings officially promulgated by the federal rules of 24 CFR ... and others which fostered entitlement of this Petitioner to an opportunity of proving the legitimacy of my claim to these benefits. Their failure to provide This Petitioner an opportunity for a hearing violated the Fourteenth Amendment's guarantee of procedural due process as well as the FHA. The Respondent argued that they had no obligation to provide a hearing. "For at least a quarter-century, this Court has made clear that, even though a person has no "right" to a valuable governmental benefit, and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest". ***Speiser v. Randall, 357 U. S. 513, 357 U. S. 526***. "Such interference with constitutional rights is impermissible. We have applied this general principle to denials of welfare payments, **Shapiro v. Thompson, *394 U. S. 618, 394 U. S. 627 n. 6;* Graham v. Richardson, *403 U. S. 365, 403 U. S. 374***". https://supreme.justia.com/cases/federal/us/408/593/case.html - ***U.S. Supreme Court - Page 408 U. S. 597 - Perry v. Sindermann, 408 U.S. 593 (1972)*** This Honorable High Court has made clear in *Roth, supra,* at 408 U. S. 571-572, that "property" denotes a broad range of interests that are secured by "existing rules or understandings." **Id. at 408 U. S. 577.** A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his or

my claim of entitlement to the benefit and that he or I may invoke at a hearing. **Ibid."**

Source: = https://supreme.justia.com/cases/federal/us/408/593/case.html U.S. Supreme Court - Page 408 U. S. 601 - *Perry v. Sindermann, 408 U.S. 593 (1972)" Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) No. 71-162*

This Petitioner had a Property interest in the Reasonable Accommodation Requested Benefit and the Respondent's decision not to accommodate the request in the time permitted deprived me of the interest in "property" and violated my Fourteenth Amended Constitutional Right to Procedural Due Process. The Court concluded that "Sindermann's lack of a contract or tenure did not defeat his constitutional claims, because the government may not deny a person a benefit as a consequence of exercise of a constitutionally protected right". See ***Bosse v. State, 400 P. 3d 834 2017"***. Also see ***GUNASEKERA v. IRWIN 748 F.Supp.2d 816 (2010).*** Furthermore, the Court of Appeals of Indiana stated that "To have a property interest in a benefit, a person must have a legitimate claim of entitlement to it, derived from statute, legal rule or mutually explicit understanding and stemming from a source independent of the Constitution such as state law" see ***City of Fort Wayne v. Pierce Mfg., Inc., 853 N.E.2d 508 2006*** The Appeals Court in their Legal error neglected to properly include all of the due process violations as well as other errors of law in the assessment of my claim. It must be noted that most of the requested accommodations were either denied without Due Process or given no response at all which is also considered to be a denial. This

Petitioner requested a Reasonable Accommodation from the Respondent on several occasions.

Title 24 › Chapter IX › Part 982 › Subpart L › Section 982.555 24 CFR 982.555 - Informal hearing for participant.

(a) When hearing is required. (1) "A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:"

(i) "A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment. (ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule". **(iii) "A determination of the family unit size under the PHA subsidy standards.** (iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA subsidy standards, or the **PHA determination to deny the family's request for an exception from the standards."**

(v) "A determination to terminate assistance for a participant family because of the family's action or failure to act (see **§ 982.552)".**

On February 16, 2011 This Petitioner Requested a Reasonable Accommodation of a live in aide that was denied on March 7, 2011 without opportunity of a due process hearing. *see Ex 36 = Request for Reasonable Accommodation dated February 16, 2011, Ex 37 = Physician's recommendation, by Dr. Jean Joseph Philippe, supporting requirement and*

need for live-in aid/care giver, dated August 19, 2010, 39 = Physician Disability Certification, dated February 22, 2011 and then Ex 38 = D. Bradwell's notice of New Admissions Briefing on March 17, 2011 and Denial of request for live in aide Dated March 7, 2011 – All District Court exhibits are Docketed at Docket # 61 = Plaintiff's Motion for Summary Judgment 02/26/16 (Ex 36- 02.16.2011,Ex 37- 08.19.2010, Ex 39 – 02.22.2011 and Ex 38 – 03.07.2011 - @ D. C. docket # 61). On March 16, 2011 this Plaintiff submitted another Accommodation Request for a live in aide. On March 17, 2011 I presented a request for appeal of the Accommodation Request that was Denied on March 7th, 2011. On April 12, 2011 this Petitioner was approved to have the assistance of a live in aide but I was advised that my subsidy would remain a two bedroom unit, accommodating only my son and myself. Therefore on April 21, 2011, I appealed the decision to not allow the additional bedroom and was never responded to. That same day I left an application in the office for Respondent's the Agent a request for self-sufficiency that again was never responded to. See *Ex 40 – 03.07.2011, Ex 41- 03.16.2011 and Ex 42 - 03.16.2011 @ D. C. docket # 61.* On April 23, 2012 I made an email request for another Reasonable Accommodation and an appeal of the decision to reduce the number of bedrooms assigned to my voucher. On May 15, 2012 after attending an appeal regarding my request for accommodation I was again denied. On May 23, 2012, I submitted a request for an Exception to the Established Subsidy Standard, a Financial Hardship Exemption and Exemption to Minimum Rent Requirement that again was never responded to. These denials and nonresponses were applied to this Petitioner directly after entering into the Respondent's Settlement agreement which allowed this Petitioner up to a five (5) bedroom unit in their housing

program. See Ex 48 – 04.21.2012, Ex 49 – 04.23.2012, Ex 50 – 04.24.2012, Ex 51 – 04.18.2012, Ex 54 – 05.15,2012, Ex 55 – 05.23.2012, Ex 56 – 05.23.2012 and Ex 57 – 05.25.2012 @ D. C. docket # 61. On November 21, 2012, this Petitioner submitted another request for Financial Hardship Exemption to the Exception to the Minimum Rent Requirement. On November 30, 2012, I received a letter denying my request once again. Because of excessive wordage *see details of pages 39 to 41 of this Appellant's Open Brief to this Court dated 10/25/16. See Ex 64 - 11.21.2012, Ex 65 – 11.26. 2012 and Ex 72 – 11.30.2012 @ D.C. docket # 61*. These instances show how the Appeals Court made Grave Legal Errors and possibly violated the rule of law as applied to the established material facts of Law while viewing the assessment of my claim. This Petitioner's Entitlement to the Federal Benefits of which I was denied Established a "Property" Interest protected by the Fourteenth Amendment of the U.S. Construction. Most often, this Honorable High Court have applied the principles of "impermissible interference with constitutional rights to denials of public employment" which also applies in Housing. See *United Public Workers v. Mitchell, 330 U. S. 75, 330 U. S. 100 , Board of Regents v. Roth No. 71-162 408 U.S. 564 (1972) and Perry v. Sinderman No. 70-36 408 U.S. 593 (1972).* The Appeals Court stated that this Petitioner "has failed to show a protected property interest in the government benefit she sought" My entitlement to the benefit of Reasonable Accommodation, a Due Process Hearing as well as an additional room for a live in aide provides a valid Property Interest. *See,* e.g., *Spell v. McDaniel, 824 F.2d 1380, 1387 (4th Cir. 1987)*.

12.

THIS PETITIONER'S RETALIATION CLAIM SHOULD NOT HAVE BEEN DISMISSED

Section 100.400(c)(5) 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.**" ***http://www.tacinc.org/media/13288/Live-in_Aides.pdf***. The satisfy of this burden by this Petitioner may be obtained by showing that the Employer's or Housing Agent's reasons for its action are pretextual. This Petitioner may demonstrate pretext by displaying that the Employer's or Housing Agent's proffered explanation is False and not the real reason for the action. See generally *Foster v. Univ. of Maryland-Eastern Shore, 787 F.3d 243, 252-53 (4th Cir. 2015)*. This Petitioner has proven through the preponderance of my evidence provided to the Court's Record that the reasons for the actions taken were False, Contradictory and not backed up with Material Fact. The discrepancies and false statements provided by the Respondent's only witness which was also the major decision and policy maker of the housing program and the major provider of the violations that have been charged. Her false and contradictory Affidavit statements were pointed out by this Petitioner's Material Facts in this Petitioner's Open Brief. (In the interest of this Honorable High Court's word count requirement, this Petitioner will refer to the formally stated proof of the lacking credibility of the Respondent's Only witness that has been listed in my Opening Brief to the Appeals Court at 1. The District Court's major point of Reliance ... pages 17 to 28 with exhibits mentioned are located at District Court (D. C.) docket # 61 = Motion for Summary Judgment).

13. DISPARATE IMPACT AND DISPARATE TREATMENT SHOULD NOT HAVE BEEN DISMISSED

The decision of the Appeals Court in **applying an incorrect legal standard of the law**, allowed for the Respondent's policy that caused a discriminatory effect on Underprivileged Seniors as well as the Protected Group of Persons Living with Disabilities. Furthermore, this was different from the treatment of Seniors and Disabled program participants in all of the surrounding Housing Authorities in Georgia and other states. This Petitioner in my Research could find no other Housing that had a policy that violated the federal laws of the ADA, RA and the FHA by openly stating that ". No additional bedroom will be allocated to accommodate a disability. "The Respondent's Agent that perpetrated the discriminatory effect through the bias interference and coercement of her actions was the major decision maker regarding policy and the management of the Respondent's housing program. Because of the complaint filed against the Respondent prior to this one, this Petitioner has tolerated violations of my federal rights and other indifferent treatment every since I became a part of the Respondent's Housing Program. (In the interest of this Honorable High Court's word count requirement, this Petitioner will refer to the formally stated proof of Retaliation and Harassment that has been listed in my Opening Brief to the Appeals Court at pages 71 to 82 with exhibits mentioned are located at District Court (D. C.) docket # 61 = Motion for Summary Judgment). . *See Burgess v. Fisher, 735 F.3d 462,*

478 (6th Cir. 2013) ("A plaintiff can make a showing of an illegal policy or custom by demonstrating one of the following: (1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom or tolerance or acquiescence of federal rights violations."). The Appeals Court over looked or neglected to properly assess one of the most vital entries of alleged interference and harassment which began at the beginning of my entry into the Respondent's Housing Program. As was claimed on this Petitioner's original claim as well as my Summary Judgment and Opening Brief of Appeal, The Respondent's Agent and major Decision Maker addressed this Petitioner with Hostility from the very beginning of our first encounter. On April 17, 2011 this Petitioner came to the Respondent's housing program to attend a briefing to receive a section 8 housing voucher that the Respondent provided to me as a result of a settlement agreement regarding a prior Pro Se claim of similar charges against the Respondent. By then this Petitioner had already requested an accommodation from the Respondent's Agents and was denied, requested another accommodation and appealed the denial of my first accommodation request. On April 22, 2011 the Respondent's major decision-making Agent sent this Petitioner a letter stating that their Housing Authority would no longer administer my voucher and that my voucher had been transferred to another Housing Authority in the County which she had referred to in the briefing as "the Generic Housing Authority". This was done without my consent and against my will. I called the Housing Authority and spoke to the Agent and expressed my disapproval and informed her that I would be at risk of losing my voucher because I would have to go back in line

to wait for a briefing. She stated to me that it was too late. That the transfer had already been done. She stated to me that" the settlement agreement stated that we had to give you a voucher, it did not say that we had to administer it. Therefore we have transferred it to the other Housing Authority" I immediately called the Respondent's Attorney which had prior to my agreement assured me that I would not be harassed and stressed my disagreement. On March 28, 2011 after email correspondence e mail from the Attorney stating that he was sorry to "put the brakes on this Process but the Respondent cannot port my voucher without my permission. He then suggested to the Agent (The major decision maker) to send me a letter rescinding the attempt to port my voucher. The same day the She sent me a latter rescinding the porting attempt. It was two weeks after that on April 12, 2011 that my request for live in aide was approved. Reading the e mail correspondences between the Respondent's Agents sheds some light on the mindset and reasoning of the Housing Agents. The letter shows that they though that this Petitioner would port out in a few months and when I did not they decided to harass me until I did. The e mail correspondences that I received hidden in my file was during an Open Records Request that I made a couple of years later. (The Lord works in mysterious ways). See Ex 44 – 03.22.2011, Ex 43 – 03.22.2011, Ex 45 – 03.28.2011, Ex 46 – 03.28.2011, Ex 47 – 04.12.2011 @ D. C. docket # 61. Also see - *Graham*, 473 U.S. at 165-66 (quoting *Monell* , 436 U.S. 658, 690 n.55).

Desperate Impact:

To establish personal liability, "it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." **Owen v. City of**

Independence, *445 U.S. 622 (1980)* (municipality liable for damages flowing from constitutional violations that it caused through the execution of its policy or custom).

14.

MY42 U.S.C.1983 ENTITLEMENT

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of an y State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." "The Florida appellate court affirmed dismissal of the §1983 claim against the school board, relying on the Florida Supreme Court's decision in *Hill v. Department of Corrections, State of Florida*, 513 So.2d 129 (Fla. 1987) (holding that Florida's statutory waiver of sovereign immunity did not permit suits against state and its agencies under §1983), cert. denied, 108 S.Ct. 1024 (1988). "On review, the U.S. Supreme Court reversed the Florida court's dismissal of the §1983 claim, holding "that state courts cannot use sovereign immunity as a justification for refusing jurisdiction over §1983 claims. 110 S.Ct. at 2446. (1) The school district as a body politic and corporate In 1978, the U.S. Supreme Court held that municipalities and other local governments, including school districts, are "persons" under §1983 and that municipal liability could be imposed for injuries inflicted due to governing policy or *custom Monell v. Department of Social Services of City of New York, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018* (1978). Monell. was reaffirmed in *Leatherman v. Tarrant County Narcotics*

Intelligence & Coordination Unit, 507 U.S. 163, 122 L.Ed.2d 517, 113 S. Ct. 1160 (1993), in which the Court held that a successful §1983 claim requires the plaintiff to plead and prove that the alleged constitutional violation occurred as a result of a custom or policy of the governmental entity. Subsequently", the Supreme Court ruled that "a school district may not be held liable under §1983 for its employees' violation of a teacher's contract rights under a Respondent superior theory. *Jett v. Dallas Independent School District*, 491 U.S. 701, 105 L.Ed.2d 598, 109 S. Ct. 2702, 2723 - 2724 (1989) Generally, one incident of alleged unconstitutional activity is insufficient to demonstrate a custom or policy and thus impose liability under §1983. City of Oklahoma City v. Tuttle, 471 U.S. 808, 85 L.Ed.2d 791, 105 S. Ct. 2427 (1985)." Nonetheless, the Supreme Court has stated that "proof that a municipality's legislative body or authorized decision maker has intentionally deprived a plaintiff of a federally protected right necessarily establishes that the municipality acted culpably. *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 137 L.Ed.2d 626, 117 S. Ct. 1382 (1997). Similarly, the court in **Brown** stated that a finding that an action taken or directed by the municipality or its authorized decision maker itself violates federal law also proves that the municipality is responsible for the plaintiff's injury under §1983." A single act by a person with final decision-making authority can be used to create the subsistence of a municipal policy. *McNabola v. Chicago Transit Authority, 10 F.3d 501 (7th Cir. 1993); Glatt v. Chicago Park District, 847 F.Supp. 101 (N.D.Ill. 1994).* The Equal Protection Clause of the Fourteenth Amendment is enforceable under 42 U. S. C. §1983. This clause provides as follows:

"No state shall . . . deny to any person within its jurisdiction the equal protection of the laws. In general, the states have wide leeway to enact legislation or regulations that affect similarly situated people differently."

I.A.3.a. Establishing a "Property" Interest In Board of Regents v. Roth, "the Supreme Court defined the property interest protected by the Fourteenth Amendment as a "legitimate claim of entitlement" to the item or benefit in question. Such "entitlements" are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law — rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." See *Burgess v. Fisher, 735 F.3d 462, 478 (6th Cir. 2013)* and Id. See, e.g., *Spell v. McDaniel, 824 F.2d 1380, 1387 (4th Cir. 1987)* (Custom or usage has force of law as "widespread practice" when "duration and frequency of the practices warrants a finding of either actual or constructive knowledge by the governing body [or policymaker with responsibility for oversight and supervision] that the practices have become customary among its employees.")

15.

STATISTICS ARE NOT ALWAYS NECESSARY IN 1983 CLAIMS

The Appeals Court stated that this Petitioner has provided no comparative data, statistical or otherwise, to show that elderly and disabled participants are disproportionately impacted by the City's policy of granting only a one-bedroom subsidy for a two-person household including a live in aid. First, if my Opening Brief and other

pleadings were reviewed in their entirety it will show that I did provide data regarding the impact. Secondly, we were impacted by the basic fact that our due process and other federal benefits to which we were entitled were violated as a result of the Respondents faulty policy. *Graham*, 473 U.S. at 165-66 (quoting *Monell* , 436 U.S. 658, *690 n.55).* To establish personal liability, "it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *Owen v. City of Independence, 445 U.S. 622 (1980)* (municipality liable for damages flowing from constitutional violations that it caused through the execution of its policy or custom). Source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Roth*, 408 U.S. at 577, 92 S.Ct. at 2709, 33 L.Ed.2d at 561; *accord, Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); *Thurston v. Dekle*, 531 F.2d 1264 (CA5, 1976). Source: http://scholar.google.com/scholar_case?q=Ehlers+v.+City+of+Decatur,+Georgia,+Ante+Litem+Notice&hl=en& Furthermore, There are several circuits that agree and take the stand that statistics are not necessary to build a 1983 claim if other motivating factors are present. **Jennifer L. Peresie** covered some vital facts regarding the use of statistics as she pointed out in her writings that "Well-meaning judges must play amateur statisticians in order to determine the proper outcome. Moreover, the use of statistics in disparate impact cases creates a false, and highly problematic, sense of objectivity. *Groves v. Alabama State Board of Education, 776 F. Http://ilj.law.indiana.edu/articles/84/84_3_Peresie.pdf1518 (M.D. Ala. 1991),* is illustrative of the difficulty judges face in evaluating statistics."

16.

THE APPEALS COURT DID NOT VIEW THE FACTS AND DRAW THE REASONABLE INFERENCES IN THE LIGHT MOST FAVORABLE TO THIS NONMOVING PARTY THEREFORE, THE RESPONDENTS SUMMARY JUDGMENT SHOULD NOT HAVE BEEN WON.

As stated by the Appeals Court, "We review de novo the district court's grant or denial of summary judgment, viewing the facts and drawing all reasonable inferences in the light most favorable to the nonmoving party." Summary judgment is proper "if the movant shows that **there is no genuine dispute as to any material fact** and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322,106 S. Ct. 2548, 2552 (1986).* The Appeals Court's decisions were based on an erroneous conclusion of the law as well as the material facts of the docket. ***United States v. Roberson,*** *188 B.R. 364, 365 (D. Md. 1995) (citing James v. Jacobson, 6 F.3d 233, 239 (4th Cir. 1993).* Their holdings amounted to the misapplication of the Rule of Law. See, *Charles v. Carey, 627 F.2d 772, 776 (7th Cir. 1980); e.g., In re Gioioso, 979 F.2d 956, 959 (3d Cir. 1992); Clemons v. Board of Educ., 228 F.2d 853, 857 (6th Cir. 1956); and generally Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990).* According to the Federal Rule of Civil Procedure (F. R. C. P) 56(a) "the Court shall grant Summary Judgment **only** if the Movant shows that there is **no** Genuine Dispute as to **any** Material Fact and that the Movant is entitled to judgment as a matter of law." This Rule was not satisfied by the Respondent's Motion for Summary Judgment. The Appeals Court did not view the facts and draw all of the

reasonable inferences in the light most favorable to this Petitioner as the nonmoving party. However, there is no reasonable thinking Man Woman or Jury that would take the view that has been adopted by the District and Appeals Court in this Case. See *Delno v. Market Street Ry., 124 F.2d 965, 967 (9th Cir. 1942)*.

17.

ISSUES NOT ADDRESSED OR IMPROPERLY ADDRESSED BY THE APPEALS COURT

1. The District Court made the false statement that was not in the record provided prejudice to this Petitioner's whole claim and was never addresses by the Appeals Court. The District Court Judge stated that "Defendant discovered that McKinney (the intended caregiver) had been receiving housing assistance for a unit in Charlotte beginning on or about March 12, 2013." This is an untrue statement and is unsupported by the material facts of the record. Mr. McKinney did not receive housing assistance from the Charlotte Housing Program until after January 2014. This information is supported by the material facts of the record. See Ex 61 – 07.13.2012, Ex 15 -02.03.2014, Exh. 16 – 05.09.2014 and Exh. 19 = General Affidavit of Morris McKinney @ D.C. docket 61. The Respondent knew that the District Court's information was erroneous but did or said nothing to correct it.

2. It was stated by the District Court and the Appeals Court that this "Plaintiff alleged that the defendant should have granted her a housing choice voucher

separate from the voucher she already held for her son" This is not a true statement and has also managed to prejudice my claim. This Petitioner has disputed this response with evidence from my first claim against the Respondent yet it continues to be ignored as much of the material facts that I have presented. This Petitioner was not holding a voucher when I applied for housing with the Respondent. I was in the application process of my son's voucher when my application came up from the waiting list. See *Binns v. City of Marietta Housing Authority, No. 1:07-CV-0700-RWS, 2010 WL 1138453 (N.D. GA. Mar. 22, 2010.* The Respondent has never presented a completed application or any other proof to support that statement as in most of the false statements that they have made.

3. Another vital issue not addressed was that fact that the Respondent approved in a settlement agreement a few months before I entered into their housing program that they would allow this Petitioner up to a five (5) bedroom unite as long as everyone qualified. This was admitted by the Respondent in response number nine of this Petitioner's Admissions to Defendant. This sheds light on the Retaliation degree of the claim.

18.

The Appeals Court never verified the material facts surrounding this Petitioner's dismissal by the District Court of four (4) motions that were all timely filled to the District Court's docket.

a. **Motion for Summary Judgment** (61 on the District Court's docket) was dew on 02.26.2016 and was filed at the end of that day. I had just responded to the Respondent's Motion for Summary Judgment (55) and Respondent's statements of facts (60) on 02.22.2016 and then four (4) days later while having medical issues surrounding my Disability I had to prepare and file my Summary Judgment. I knew that I had errors in the motion that I did not have time to fix and information that I was unable to complete because of the Disability issues but in order to be compliant with the Court; this Petitioner filed the Motion on time. There was no valid reason to dismiss the motion. It should also be noted that docketed along with that motion was over One Hundred (100) exhibits admitted by this Petitioner into the record as evidence. This presented a Grave Prejudice to my claim.

b. **Motion to Amend the Motion for Summary Judgment** (62 on the District Court's docket) was just as it stated, not a motion for an extension of time. This Petitioner prior to that had requested Amendments from both of the Judges that had presided over this claim and each time this Petitioner added more information. Filing my title of a motion to amend should not be changed by anyone but me. F.R.C.P. *# 15. Amended and Supplemental Pleadings:* (a) AMENDMENTS BEFORE TRIAL.

(1) ***Amending as a Matter of Course.*** "A party may amend its pleading once as a matter of course within: (A) 21 days after serving it", or

(B) "if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under

F. R. C. P. Rule 12(b), (e), or (f), whichever is earlier." "It is also clear that plaintiffs can cure jurisdictional defects in their original complaints by means of a supplemental pleading." Harris v. Garner, 216 F.3d 970, 993 (11th Cir. 2000) (emphasis in original) (discussing Mathews v. Diaz, 426 U.S. 67 (1976)); see also Harris, 216 F.3d at 997 (referring to "the enormous body of caselaw applying Rule 15(d) to cases in which plaintiffs must supplement their complaints in order to state a case or cure a jurisdictional defect") "The court should apply the same standard for exercising its discretion under Rule 15(d) as it does for deciding a motion under Rule 15(a)." Southwest Nurseries, LLC v. Florists Mut. Ins., Inc., 266 F. Supp. 2d 1253, 1256 (D. Colo. 2003) (citing First Savings Bank v. U.S. Bancorp, 184 F. R. D. 363, 368 (D.Kan.1998) (noting that Rule 15 is intended to facilitate a full adjudication of the merits of the parties' disputes))." See, *e.g., Foxworth v. United States, No. 3:13-CV-291, 2013 U.S. Dist. LEXIS 149012, at *6-7 (E.D. Va. Oct. 16, 2013)*

c. **Motion For Leave to File Sir Reply To The City's Response to My Motion To Amend Motion For Summary Judgment** (68 on the District Court's docket) This Motion was filed timely on 04.14.2016. I now understand that I used the wrong terminology in labeling these two motions however, what should have been taken under consideration is the fact that I am a Senior Citizen with multiple Disabilities and no formal law education and was preparing these legal tasks as Pro Se and should not expect the filings to be perfect.

d. **Motion for Leave to Sir Reply to the City's Response to My Motion for Summary Judgment (70 on the District Court's docket)** This Motion was also filed timely on 04.25.2016. On 04.14.2016 along with the Motion to Sir Reply this Petitioner filed a Motion for Reconsideration (67) of the Court's Order (59) regarding no more extensions of time. The Motion included a request for Reasonable Accommodation from my Doctor explaining to the Court the serious health impact that her order was causing for me. On 04.18.2016 the District Court delivered an Order Granting in part my Reply to the Respondent's Opposition to my Motion for Summary Judgment to be filed on or before 04.25.2016. The other part of the Order was a denial of my request for Reasonable Accommodation of more time to complete the legal task. Since the Court had titled my Motion to Amend as Motion for Extension of time and if the Court was going to allow another extension of time, why not allow the one that mattered the most which was the Motion to Amend my motion for Summary Judgment? With all of this in view, The Appeals Court stated that "This record reflects no abuse of discretion by the district court in denying this Petitioner's motions for leave to file untimely briefing. This Petitioner ask this Honorable High Court; what is more important, the interest of Time or the interest of Justice?

These were vital material facts that were admitted into the record by this Petitioner with supporting evidence that was not considered by the Appeals Court. The Appeals

Court failed to apply the proper legal standard and to follow proper procedures in making the determination of these issues. Their decision was based on erroneous conclusions of law Smith, *180 B.R. 648, 651 n.12 (D. Utah 1995).* This caused a Clear Abuse by the District Court that the Appeals Court should have addressed. see ***"Council of Civil Service, Unions and Others v. Minister for the Civil Service.,[1985] A.C. 374, 410 (H.L.).*** The Appeals Court committed an error of law, and seriously misjudged the evidence and material facts of this case " *United States v. Roberson, 188 B.R. 364, 365 (D. Md. 1995) (citing James v. Jacobson, 6 F.3d 233, 239 (4th Cir. 1993)).*

19.

CONCLUSION

In conclusion, this Petitioner declares that the viewing of this Petition is extremely warranted. This Petitioner again Move this Honorable High Court to use your wise insight to review the Decisions of the lower Courts and Grant this Petitioner's request for favor by allowing the G V R – the Granting of my Petition for Writ of Certiorari, Vacating the decision of the Lower Courts and Remand for reconsideration by the Lower Court where you see the attention is needed in light of all the Disadvantaged Seniors and People living day to day with Disabilities and such other Justice as this Honorable High Court will allow.

Respectfully Submitted,

Dorothy Binns

Dorothy Binns – Pro Se 9030 Southcrest Ct.
Jonesboro, GA 30238 - 770.745.7707