20-7706
NO._____

In The
Supreme Court of the United States

JAKARA VESTER,
Petitioner

v.

HENLOPEN LANDING HOMEOWNERS ASSOCIATION, INC., and PREMIER PROPERTY AND POOL MANAGEMENT, LLC.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fair Housing Act ("FHA") is a policy enacted by Congress to provide, within constitutional limitations, for fair housing throughout the United States. (42 U.S. Code §3601(et seq.)) By outlawing individual acts of discrimination, you will foster integration. The 1968 FHA was enacted when racially discriminatory rules, laws, covenants, etc. were blatant and overt. It would be another 20 years before families and the disabled would gain protection under the Acts.

Like all things in life, discriminatory acts evolve. Now, intentional discriminatory and retaliatory acts exist in a continuum of subtlety and are cloaked in ordinarily permissible actions; but when actions are applied in a disparate manner or as a *result* of an unfavored but protected activity—without any legitimate reason—those acts are no longer permissible. The disparate treatment ***is*** proof of discriminatory animus. When housing-providers ignore, disregard, dismiss the disabled, it ***is*** intentional discrimination and when inaction deprives the disabled from equal housing, they are liable for violating the FHA. To determine indirect, pretextual discrimination, the Courts must apply the elements and burdens of proof properly and consider the entirety of all the circumstances of the alleged discriminatory acts.

This Court has held that the language of the FHA prohibiting discrimination in housing is "broad and inclusive," (*Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972)) (*City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995)) and requires a "broad and liberal construction," but sometimes too broad and liberal interpretation and application may frustrate rather than promote justice and not serve to effectuate the plain and clear language of the FHA. This Court must provide clear direction to provide equal justice under the law. Victims of discrimination should not be revictimized by State Courts when they issue erroneous decisions because they are not bound by the federal precedent and fail to properly apply elements of FHA discrimination

claims or dismiss a victim's complaint because the pro se party is unable to navigate the complicated rules and procedures of appeal. The case below illustrates the injustice that occurs when the victim is denied their choice of law because the Respondent files a retaliatory lawsuit in a respected "Corporation Court" with little to no experience and scant to nil FHA binding case law. This Court must make it clear that housing providers cannot ignore reasonable-accommodation requests and avoid liability for their discriminatory actions by bullying the disabled and cannot hide their discriminatory acts in pretextual claims of settlement negotiations.

It is clear, for *8 years*, Petitioner ("Vester"[1]) requested reasonable and necessary accommodations from Respondents, Henlopen Landing Homeowners Association ("HLHA") for variances from §8.2.1[2] of HLHA's "Declaration" to install a 6ft-fence enclosing their garage side-door to protect and prevent their autistic 6 year-old son ("ZV")—who frequently eloped undetected from the home—from drowning (again) in the adjacent community stormwater-ponds and to provide a safe outdoor play area without fear that ZV would dart into the street.

It is clear, for *8 years*, Respondents ("Henlopen Landing Homeowners Association" ("HLHA") and its property management company, Premier Property and Pool Management, ("PPPM")—admittedly—knew ZV is autistic and had "special-needs" but ignored, failed to respond and refused Vester's multiple requests to fence-in her garage side-door and never affirmatively approved the requested height of the fence without ever requesting further information or

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[1] The Vesters and their four children, a biracial family (Russell is African-American and JaKara is Caucasian), moved to HLHA in January 2011 because of the proximity to the Sussex Autism Consortium their 5 y/o autistic son ("ZV") would attend school.

[2] "Fences...shall be prohibited within the front-yard area of the lots and *in general* shall not be closer to the front of the lot than one-half (1/2) of the length of the side of the dwelling unit. The height of any such fence...along the side of a unit shall not exceed 4ft (4'-0")."

providing Vester an opportunity to present documentation that would prove ZV's disability-related-needs.

Vester's counterclaims finally went to trial to determine ***only*** if the accommodations Vester *requested* were reasonable and necessary.[3] However, the Court found Petitioner's §3604(f)(3)(B) claim failed because, "the Vesters have, however, failed to prove...that they *requested* a reasonable accommodation[4] from the Association." (MO: p.29) "Because the Vesters did not request an accommodation for their son's autism, the accommodation claim must fail." (MO: p.30) Despite finding all the prongs of a §3604(f)(3)(B) refusal to accommodate claim were met. Illogically, the Court found no request had been made, but "Vesters ***still*** seek an accommodation for their child's autism in the location of the fence, [HLHA] should act on ***this request*** promptly, based on Vesters' *true reason* for applying for the variance, as an accommodation for their child's disability, as well as the information ***submitted by Vester since the variance was denied***." (MO: p.36)

Petitioners filed a motion for reargument, because the Court's 8/1/19 opinion showed a "misapprehension of fact" because the Court failed to recognize the subsequent requests on record and HLHA's admissions, (DI-181: p.2-p.4:¶3) and, misunderstood/overlooked the legal principle and controlling decisions that would have changed the earlier decision. At oral argument, the Court showed its unfamiliarity of FHA law, "But there was no formal request... with a new application that recited the accommodation?" (DI-189: p.4: ¶19-p.5:¶22) After explaining to the Court that the FHA does

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[3] "Whether the evidence shows that the request for accommodations were necessary to afford the Vester's equal opportunity to use and enjoy the dwelling and if proven whether the evidence shows the requested accommodations were reasonable." (DI-161: p.22:¶12)

[4] To be clear, the Court uses the term "reasonable-accommodation" as a term coined by the Court specific to specific requests under the FHA; does not mean the accommodation requested is unreasonable because the Court orders HLHA to address Vesters fence variance request. (MO:p.30, MO:p.36)

not require formal written requests, Petitioners argued the Court "erred as a matter of law" and failed to recognize that HLHA's refusal to engage in an interactive process and/or request further information if it was "skeptical" of ZV's disability-related-need for the requested accommodation.(DI-189: p.5: ¶22-p.11:¶24) The Court's ignorance of FHA law is evident, HLHA was "...not skeptical...they were told something else..."(DI-189: p.8:¶6-¶18) even though the Court found Vester's request "*pretextual*" and assumed she had a protective reason for not disclosing ZV's disability. The Court denied the motion for reargument because, "Look, my view of this is the same as it was when I wrote the decision. I think it is *inappropriate* in a case where a homeowner makes...*pretextual* applications, and then once the matter is in litigation there are attempts to settle the matter or resolve issues, to consider that as a Fair Housing Act request for an accommodation. It seems to me that it would be inequitable to do so; that it would not be consistent with the policy of the law. And so, I deny it here. If I'm wrong you can take an appeal..." (DI-189: p.14: ¶13-¶22) "...that doesn't strike me as the kind of scenario that warrants finding that the fact that this matter went forward to a determination in court rather than an immediate capitulation by the Homeowners Association is a violation of the Fair Housing Act. And if I'm wrong, Counsel, I'm wrong. But that's how I view it. So I'm denying the motion for reargument." (Reargument tr p. 15: ¶8-¶16)

1) If a State Court is not bound by any precedent in determining FHA violations, is it obligated to apply the established principle of law of its Circuit or other similarly situated caselaw? *i.e.*; If a FHA reasonable accommodation claim defendant admits to receiving and refusing/not responding to requests for reasonable accommodations can the Court provide a novel defense never advanced by a defendant, and find the §3604(f)(3)(B) claim failed because the plaintiff failed to make a request? (MO:p.30)

2) Is a housing-provider entitled to wait for a court's instruction/decision on whether a requested accommodation is reasonable and necessary before it approves the request? Or is the housing-provider liable for violating §3604(f)(3)(B) at the time it refused a reasonable and necessary request for an accommodation so that a disabled person may equally use and enjoy a dwelling? (DI-189: p.15:¶6-18)

3) When does an accommodation request trigger a housing-provider to consider the request for accommodation? Is it "inappropriate" (DI-189: p.14:¶13-¶22) to consider subsequent requests for reasonable accommodations (and/or disability-verification) if they are produced after the filing of a housing discrimination complaint with HUD/DDHR if the housing provider closed the request, denied an appeal, refused to engage in an interactive process?

a) Must the requestor disclose sensitive, personal, and private health information when the request for accommodation is publicized and/or may subject the disabled and/or requestor to embarrassment and/or discriminatory harassment? In other words, must the disabled forfeit their constitutional right of privacy in exchange for their constitutional right of equal protection/equal access?

b) Or; is the "request" element satisfied when the housing-provider has notice of a disability and desire for an accommodation in rules, policies, practices, or services? Thereby shifting the burden unto the housing-provider to make "appropriate inquiries" to affirmatively grant *reasonable* accommodations *necessary* for the *disabled* to *equally use and enjoy* a dwelling in compliance with the FHA? (As defined by the 3rd and 11th Circuits)

4) Is a housing provider liable under the FHA for refusing a request for reasonable and necessary accommodations when the refusal points to the housing provider failing to engage, short-circuiting, and/or stonewalling the "interactive process" even if the request for accommodation may not appear to be directly to any known disability?

i.e., Must a housing provider supply an explanation for denying a requested accommodation, offer alternative accommodations, provide an opportunity for the requestor to appeal/present documentation to support the disability-related-need for the requested accommodation prior to denying the requested accommodation?

5) Is discriminatory animus/ intentional discrimination an essential element of a §3617 retaliation claim? Or rather, is the focus of a retaliation claim on whether the Defendants actions were motivated by Plaintiff's exercise of a right granted or protected under the FHA?

5) Must Courts apply liberal construction to *all* pro se filings, including civil appellate briefs, motions, etc. and hold pro se briefs and motions to less stringent formatting standards than those drafted by lawyers in order to preserve the pro se civil litigant's protected interest in a meaningful opportunity to be heard, to amend an error of law and/or to serve in the interest of justice? Should a Court assume a Pro Se party is knowledgeable of "rules" outside of the explicitly stated Rules of the Court? (i.e.; "proper-spacing" and "improper-spacing" will cause a miscalculation of *some* word processing programs) Must a Court exercise "special care" and consider any available less severe remedies that would not prejudice or harm the other party before dismissing an appeal/claim? Would dismissing an appeal/court filing upon a civil pro se litigant's failure to strictly comply with the Court's technical formatting rules deprive the litigant of equal protection and due process protection under the Constitution when the non-compliance was a result of "incompetence" or less than "professional expectations" of attorneys? i.e., if an inexperienced pro se litigant exceeds the word-limit by depending upon the word processer's inaccurate "word-

count"—as instructed by the Court Rules[5]—must the Court consider the pro se's informal request to exceed the wordcount if the "Court finds Vester erred in relying upon Microsoft Word's word count and finds Vester's Opening Brief to be over the word limit" or even accept the *technically* non-compliant brief when doing so would not prejudice or harm the opposing party by affording opposing party the same extension and would serve in the interest of justice? [6]

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[5] Rule 14(d)(i): The person preparing the certificate must state the number of words in the brief and ***may rely on the word count of the word processing program used to prepare the brief.***

[6] The Court found inadvertent spacing errors caused by an inexperienced user caused an inaccurate wordcount in Microsoft Word though the Court never stated what it found the word count to be or how it determined the conflicting count.

LIST OF PARTIES

Petitioner here and Appellant below is Jakara Vester. Russell Vester (estranged husband) and JaKara Vester together were Counterclaim Plaintiffs/Respondents below. (Mother to four bi-racial children, one of whom is autistic.)

Respondents here and Appellees-Counterclaim Defendants/Petitioner below are Henlopen Landing Homeowners Association, Inc. ("HLHA") (A non-profit Delaware corporation that is responsible for, *inter alia*, enforcing the terms, rules, and restrictions of the Declaration of the planned community of Henlopen Landing whose property therein is subject to the Covenants, Conditions, and Restrictions ("Declaration") which is governed by Delaware Uniform Common Interest Ownership Act ("DUCIOA") and Premier Property & Pool Management, LLC,("PPPM") A/K/A Premier Property Management ("Premier"). HLHA's former Property Management Company

RELATED PROCEEDINGS

-*Henlopen Landing Homeowners Ass'n, Inc. v. Vester*, C.A. No. 7229-VCG (Del. Ch. Aug. 15, 2017) (Oral Argument and Order for Summary Judgement; Dismissing HLHA's claims as moot without prejudice to HLHA's opportunity to file a fee request) (DI-148)(Pet. App. J)

-*Henlopen Landing Homeowners Ass'n Inc. v. Vester* No. 7229-MA, 2015 WL 5316864 (Del. Ch. Sept. 14, 2015) (Letter Opinion involving exceptions to the February 25, 2015, Final Report granting Vesters' Motion to Amend issued.)(DI-86)

-*Henlopen Landing Homeowners Ass'n, Inc. v. Vester*, C.A. No. 7229-MA (Del. Ch. Feb. 25, 2015)(Master's Opinion involving Vesters' Motion to Amend)(DI-61)(Pet. App. K)

-*Henlopen Landing Homeowners Ass'n, Inc. v. Vester,* No. 12-308-RGA-CJB, 2013 WL 1704889 (D. Del. Apr. 19, 2013) ("mere act of bringing state court action to enforce restrictive covenant did not violate FHA, so removal under §1443(1) was improper") (5/14/2013; Final order remanding case to Court of Chancery for lack of subject matter jurisdiction) (Pet. App. L)

PETITION FOR WRIT OF CERTIORARI

Petitioner ("Vester") respectfully prays that a writ of certiorari issue to review the judgements below.

OPINIONS BELOW

Vester v. Henlopen Landing Homeowners Ass'n, No. 417, 2019 (Del. Oct. 15, 2020) (Under Supreme Court Rule 29(b) appeal dismissed(Pet. App. A)

Henlopen Landing Homeowners Ass'n v. Vester, C.A. No. 7229-VCG (Del. Ch. Aug. 30, 2019) ("Final Order") (Pet. App. C)

Henlopen Landing Homeowners Ass'n v. Vester, C.A. No. 7229-VCG (Del. Ch. Aug. 1, 2019) ("Memorandum Opinion", "MO", Partial Order) (Pet. App. B)

JURISDICTION

The Delaware Supreme Court entered its judgement on October 15, 2020. (Pet. App. A). A timely petition for rehearing and rehearing en banc was denied on 11/13/20. (Pet. App D). Per this Courts March 19, 2020 Order, and November 13, 2020 "Guidance Concerning Clerk's Office Operations" concerning the COVID Pandemic State of Emergency; "the deadline to file any petition for writ of certiorari due on or after [March 19, 2020] is extended to 150 days from the date of the lower court judgement...or order denying a timely petition for rehearing." The Jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

STATUTORY PROVISIONS INVOLVED

(see appendix for inclusive list)

Constitutional

Fourteenth Amendment's Equal Protection Clause/ Due Process Clause

Statutes

42 U.S. Code § 3601. (*et seq.*) **Fair Housing Acts**

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

42 U.S. Code § 3604 - Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

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

(f)(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A)that person; or

(B)a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C)any person associated with that person.

(f)(3) 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

42 U.S. Code §3617: Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

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STATEMENT

In **June 2011**, Petitioner ("Vester"[7]) requested reasonable accommodations from Respondents, Henlopen Landing Homeowners Association ("HLHA") for an "exception" to §8.2.1 "Declaration"[8] through their Property Manager, Premier Property and Pool Management, ("PPPM") to install a 6ft-fence enclosing their garage side-door to protect and prevent their autistic 6 year-old son ("ZV")—who frequently eloped undetected from the home—from drowning (again) in the adjacent community stormwater-ponds and to provide a safe outdoor play area with access to his outdoor toys in the garage; thereby preventing ZV from learning how to operate the gates safety-latch. The purpose of the fence is to keep ZV in a safe and secured area. ZV also has asthma and an immunodeficiency disorder, so it is important to maintain a clean home. Vesters garage opens into the laundry room that they use as a "decontamination-area."

1st Reasonable Accommodation Requests

Vester initially verbally requested a 6ft solid fence to enclose her entire property but was refused. Vester followed HLHA's Board Member, "J. Sydnor," instructions when completing her ARB application requesting variances for the fence. Sydnor didn't believe a variance was required for the location of the fence since she and other owners, were allowed to fence-in their garage side-doors. Because the ARB-applications are publicized and Vester received negative feedback[9] after disclosing ZV's autism on the

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[7] The Vesters and their four children, a biracial family (Russell is African-American and JaKara is Caucasian), moved to HLHA in January 2011 because of the proximity to the Sussex Autism Consortium (school) their 6y/o autistic son ("ZV") would attend.

[8] "Fences,...shall be prohibited within the front-yard area of the lots and *in general* shall not be closer to the front of the lot than one-half (1/2) of the length of the side of the dwelling unit. The height of any such fence...along the side of a unit shall not exceed 4ft (4'-0")."

[9] Vester received noise violations because neighbors were upset by the noise "emanating from the property" when Vester's children played

community webpage, Sydnor advised not to disclose ZV's diagnosis's. Sydnor believed ZV's multiple disability-related-needs were too complicated to understand and advised Vester to state, ZV had "special-needs" and explain her fears that ZV would drown in the adjacent ponds. Sydnor believed Vester's application would not be denied if she requested to fence-in the garage side-door "to allow us the ability to let our dog outside through the garage...so we won't be forced to track...mud thru our home" because she received permission for the same reason; Vester agreed because it addressed both of ZV's needs for the enclosure. (JX11/A47:¶3) Vester's application also requested permission to install a small driveway extension. Sydnor said she would forward Vester's concerns to the rest of the Board. Vester submitted ARB-Application and fee to PPPM. **7/1/11**; Vester met with HLHA's Architectural Review Board ("ARB") and discussed ZV's disability-related-needs for the fence height and location. Mitchell Crane, HLHA Board-Member, was present at the meeting.
HLHA's attorney asked Crane about the 7/1/11 meeting, did Vester "ask for a fence extension based on a handicap?" Crane replied, "[t]he request was based on a *special-needs child*." (MCD:p.115:¶17-p.116:¶6) Crane testified that Vester indicated she wanted to enclose the garage side-door for the *safety of her son*; "they wanted their child...to be able to *access the future fenced-in yard through the side-door*." (MCD:p.25:¶2-¶16) Vester testified that the meeting was very confrontational and felt like she had to defend her right to live in HLHA. Though the meeting was meant to discuss the fence request only, HLHA now wanted to discuss the driveway, though it had already been verbally approved since HLHA did not require approval for driveway modifications. Vester said she was extending the

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outside, Vester reached out on the community webpage and explained her child has autism and encouraged people to talk with her instead of calling in complaints, some committee members responded with comments like, "...autism's just an excuse for bad parenting..."

driveway to provide a safer place for her children to play blacktop games. HLHA only expressed concerns that the driveway might cause a tripping hazard because of the "swales" between the properties and didn't want it to look like the extended driveway Vester referenced in her request. (It had 2 different slopes; the extension sloped towards their neighbor, and the existing driveway towards the street.) HLHA requested a statement from the contractor that the driveway-extension "slope would be interior not exterior."

HLHA's Knowledge of Disability and Request

HLHA knew from 7/1/11, Vester's accommodation request was based upon ZV's needs, and conditioned their "approval" to actually prevent the 6ft. fence. Crane—lawyer and former judge—advises HLHA, "they could not deny a reasonable-accommodation," (MCD: p.95:¶1-11) and testified that the fence location was denied, because he thought the garage-door was inaccessible and "why should the Board have to accommodate when Vester refused to accommodate by letting the child go out the back door, which was for adults only?"(MCD: p.101:¶13-21) Vester was never given any explanation.

HLHA fabricated a defense for refusing reasonable-accommodations by exploiting Vester's written request. That defense however could be supported only if HLHA could preserve the impression that it had no knowledge of Vester's true need for enclosing the garage side-door.

Denial of Requested Accommodation & Request For Appeal; Intentional Discrimination

7/1/11; HLHA relayed their decision to PPPM.(A55)

7/2/11; Vester faxes 2nd driveway proposal, showing the driveway "will grade all the way to the road" to PPPM.

7/7/11; PPPM told Vester her application was approved, then emailed, "you are welcome to begin work on your projects now" attaching HLHA's conditional approval,

> "After a presentation from the Vesters regarding the *needs of their child,* the Board decided to grant approval for a [6']

fence. The case for hardship was established. As a *condition of approval* the fence cannot be more than ½ the way up the side of the house which faces Lot 142." (cannot enclose garage side-door) (JX13/JX19)

The Court found, HLHA permitted 4ft.-fences in the same location Vester sought—without a variance. Vester believed, HLHA intentionally conditioned the approval so she wouldn't install the fence because they knew that one without the other wouldn't prevent ZV from accessing the ponds and traffic, making the fence useless. Respondents violated §3604(f)(2), by intentionally placing conditions on the accommodation that other homeowners were afforded but the Court found HLHA was just enforcing the Declaration. Vester immediately responded to PPPM and requested HLHA's reason for denying the fence location, requested information on appeal process, asked HLHA to "reconsider their decision or *at least justify*" why other owners were permitted 4ft-fences in the same location, even under the same reason, but she was not. She asked that HLHA look again at the 2nd driveway proposal (previously faxed to PPPM and attached in the email) because it addressed their concerns regarding the appearance ("conform to existing driveway") and direction of the slope; asking, "If by interior you mean that the grading is towards the street and exterior is towards [neighbors' lot.]" (JX13: ¶#2-#3).

The Court considered this email a 2nd "pretextual-request" and the reason Vester's request for the appeal process was denied. HLHA knew both the location and height were tantamount in preventing ZV from accessing the ponds but denied Vester an opportunity to appeal nor provided an explanation to prove a non-discriminatory motive.

7/7/11; PPPM responds they will forward Vesters concerns to HLHA and let Vester know the Board's response. (JX15)

7/13/11; Vester requested a status update.

7/14/11; PPPM responded, "All has been approved."[10]

Disparate Treatment/Retaliation/HLHA's Refusal to Engage in "Interactive-Process"

8/3/11; Contractor installs Vester's driveway extension.
8/5/11; Vester discovered her pool keycard was deactivated.
8/8/11; Vester visits PPPM's office and Jami Ferro tells Vester her keycard was deactivated because her application was not approved and she "performed unauthorized work." While in PPPM's office, Vester re-emailed Ferro the 7/14/11 email-approval, attaching the referenced 2nd proposal. PPPM also printed a "CCR report" showing PPPM "called in approval" and no violation existed. The driveway wasn't listed, because, HLHA never required prior approval for driveways.(A88) The Court found HLHA has been "inconsistent" with what it required for driveways, from nothing prior to Vester's request, to a contractors-statement (after the lawsuit) but Vester alone—an engineer-report. The record shows several owners have modified their driveways without an application and were not penalized. PPPM promised to reactivate Vesters keycard, understanding the loss caused a hardship since Vester used the pool in treating her son's autism.(MO:p.18)
8/8/11-8/10/11; Vester tried contacting PPPM/HLHA several times and was actively ignored. She emailed PPPM and individual Board-members proving she had received approval and provided suggestions for resolve, referenced the approval email/ongoing communication from PPPM, and the attached 2nd driveway proposal and "CCR report." Frustrated, she said if the keycards were not reactivated by the end of the day, she would be seeking the advice of an attorney. (JX82/JX12) Respondents never replied nor asked Vester for the referenced 2nd proposal.

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[10] Respondents aver they never sent the 7/14/11 "approval" email and the 7/7/11 was altered to say, "you may begin work on your projects now"; but produced the same 7/7/11 email and never provided an alternative response to Vester's 7/7/11 or 7/14/11 emails.

8/11/11; Vester filed an online Housing Discrimination Complaint (Intake) with DDHR, alleging Respondents had discriminated against her and her family based on race, familial status, and disability.(JX22)
8/15/11; Vester attended HLHA's Board meeting seeking resolve for the driveway, keycards, and fence, HLHA told her to shut-up, Vester announced filing a housing discrimination complaint.
8/22/11; HLHA responds to Vester's announcement, via their attorney, demanding a "certificate of non-effect" for the driveway, from a licensed engineer due in 10 days or a lawsuit will be initiated. The Court found there were no drainage concerns and HLHA had never required any other homeowner to provide the opinion of an engineer on storm-water drainage. (MO: p.24, p.25, p.26,)

DDHR Complaint; HLHA Lawsuit Against Vesters

8/11/11-11/22/11; HLHA is "unresponsive" to DDHR's invitations for "early-stage" conciliation so an official complaint was filed **11/23/2011**. (JX22-JX23)
12/21/11; Respondents receive Vester's DDHR's Complaint and Questionnaire. (JX25) A Fact-Finding Conference ("FFC") was scheduled for **1/11/12** but HLHA claims they are still working on DDHR's Questionnaire so the FFC is rescheduled. But Verifications for DDHR's Questionnaire, Motion to Dismiss, and Deed Enforcement Petition are all signed and dated **12/31/11**. (JX24)
1/13/12; HLHA responds to Questionnaire with a motion to dismiss/request for attorney's fees and threatens filing a lawsuit against Vester to enforce deed restriction; threating legal fees and injunctive-relief. (JX25:¶18) HLHA's answers "ARB application was denied." (JX25:¶27:¶7)
1/27/12; Vester obtains counsel, files objections to HLHA's dismissal motion and requests to amend the DDHR complaint to make the nature of the discriminatory conduct alleged clear. (JX83)
2/7/12; HLHA responds by filing deed enforcement action in Delaware's Court of Chancery; alleging Vester "intentionally" violated HLHA's Declaration because she "knowingly" did not receive approval and claimed the

driveway required a "certificate of non-effect" from a "licensed engineer," "inappropriately planted trees," and "stored trashcans in violation of Declaration." HLHA never sent notice of the alleged violations prior to filing enforcement action, nor responded to Vester's inquiries about what a "certificate of non-effect" entailed.

Court Fails to Rule on Subsequent Accommodation Requests on the Record/Vester's Counterclaims

2/17/12; Vester's attorney, emails HLHA's attorney requesting the "scope of work" HLHA approved regarding Vester's accommodation request for the height and location of the fence and states, "If I don't hear from you by the end of the month...I will assume that Vester's request for a reasonable accommodation...was and remains denied." (JX29) HLHA's attorney replies, the email made it "clear" Vesters "request was based upon the need for a reasonable accommodation for [ZV's] disabilities" and would "request [HLHA's] position." HLHA never responds nor approves *any* part of the fence request. Vester's lawyer breached HLHA's "defense" by sending an "official" reasonable-accommodations request. The request put on the record and put HLHA on notice that *both* the height and location of the fence were needed to accommodate ZV's disabilities.

2/29/12; DDHR's FFC is held with HLHA (Crane) and PPPM (Ferro) and their attorney. Vester and her attorney personally serve Respondents the amended DDHR complaint and the 2nd driveway-proposal. (A157-A158)

3/1/12: Petitioner emails Respondents confirming HLHA's statement that the 2nd driveway proposal satisfied HLHA's concerns regarding the driveway; asks what else does HLHA require to get Vester's keycards reinstated as it caused a hardship in treating ZV's autism. HLHA admits receiving the email but never responds. (JX30)

3/19/12; Vester removes the case to the District Court of Delaware under 28 U.S.C. §1443(1), files Counterclaims against HLHA for violations of Federal and State FHA Laws; HLHA opposes removal.

4/17/12; HLHA responds to Vester's counterclaims, defend their refusal, stating; Vester was seeking "preferential

treatment not protection from discrimination." (JX32: p.7: ¶3-¶4) For the 1st time, Vester is given a reason for HLHA's denial; HLHA believed the accommodation was unnecessary and "demands strict proof thereof." (JX31/32: ¶12-¶14) HLHA admits they did not respond to Vester's 2/17/2011 accommodation request because it was not "necessary and appropriate." (JX31/32: ¶29-¶30)
5/11/12; Vester provides HLHA with verification of ZV's disability/related-needs for the requested fence from ZV's physician. **5/14/13**; Court remands case back to Chancery Court for lack of standing. (*see app L*)
5/24/12; at the request of HLHA's attorney, Vester's lawyer submits a request directly to HLHA, for the fence as an accommodation for ZV's autism and encloses the physician's verification. (JX33/JX34) HLHA never replied. HLHA never requested any further information nor offered any alternative. **5/24/18**; Vester submits another request and verification letter. (JX73/JX74) HLHA never responds.
8/24/12; HLHA admits all alleged violations are resolved (JX48) but reopens the same charges in Chancery Court on **5/24/13**; (DI-12) still seeking injunctive relief to remove the driveway. Jerry Elliott, HLHA Board member, testified that HLHA continued its lawsuit against Vester "because we are just looking for some, some process to settle the whole, this whole matter." (JED:p.100:¶20-p.101¶13) Proving HLHA's intention of a retaliatory counterweight in violation of §3617.

Court's Initial Findings/HLHA's Admissions §3604(b)/(f)(2) & §3617 Claims

HLHA admits their policy and practice is to work with homeowners to resolve alleged violations. The Court found HLHA's lawsuit against Vester was "contemplated in October 2011" and though HLHA had not brought legal action against anyone *but* Vester and "certainly not before providing notice to the homeowner of a violation"—but remained silent on Vester's assertions that HLHA's actions violated the Delaware Uniform Common Interest Ownership Act ("DUCIOA") (privileges can only be suspended for non-payment of dues) and HLHA's own

Declaration; both require notice and opportunity to remedy any alleged violation prior to fines and initiating litigation—instead, found HLHA's "Petition of the driveway alteration was *substantive and reasonable*...the trees and trashcans...were an attempt to lard the complaint...a *hard litigation tactic*" (MO:p35) and without explanation on how (or if) the Court applied the elements of §3617 claims; found HLHA sued Vester because even though Vester "acted in good-faith" and relied upon—HLHA's agent's—approval when she installed the driveway-extension, HLHA's Declaration *technically* required explicit approval from HLHA's ARB,[11] the Court initially reasoned, HLHA's litigation was *not* a response to Vester's DDHR Complaint; "not for reasons of discrimination or wrongful retaliation" but "fulfilling its duty under the declaration." (MO:p.35) Never responding to Vester's assertions that less harsh treatment—afforded other homeowners[12]—would serve HLHA's legitimate purpose. HLHA *admitted* to treating Vester more harshly because no other homeowner had disregarded PPPM's stop work order. However, Jeff Rice (PPPM) testified he never even spoke to Vester.

Retaliation Claims §3617/Case Law Conflicts

The FHA makes it unlawful "to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed...any right granted or protected by §§3603, 3604, 3605, or 3606 of this title." (42 U.S.C. §3617) The Courts are split on whether §3617 requires a showing of "intentional discrimination," whether in whole or part, *motivated* the *actions* of the defendant; some finding discriminatory intent is a "pivotal

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[11] The Court's finding is overreaching and non-sensical at best; HLHA admitted (DI-161: p.14:¶43-44) and PPPM testified, (JFT: p.10-p.11, p.47: ¶6-11) HLHA/ARB never directly communicated with owners; all communication went through the property-manager, just like most HOA's. Ignored the record; PPPM repeatedly mishandled ARB applications and no other owner was punished.

[12] No action, a letter, ***ask*** Vester or Contractor for statement, ***just look at the driveway slope***.

element." "To prevail on a §3617 claim, the Plaintiff must demonstrate: that (1) she is a protected individual under the FHA, (2) she was engaged in the exercise or enjoyment of her fair housing rights, (3) Defendant coerced, threatened, intimidated, or interfered with the plaintiff on account of her protected activity under the FHA, and (4) the defendants were motivated by an intent to discriminate." (*Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009))
In "*Wetzel*", defendants asserted Wetzel's retaliation claim failed because it lacked an *allegation* that the defendants were motivated by discriminatory animus. The lower court agreed with the defendants' arguments regarding the intentional discrimination claims and dismissed the retaliation claims without further discussion. *Wetzel's* Appeal Court found, "if we were to read the FHA's anti-retaliation provision to require that a plaintiff allege discriminatory animus, it would be an anomaly." "Like all anti-retaliation provisions, it provides protections not because of who people are, but *because of what they do*" therefore, §3617 claims are determined by the same 3 elements as other anti-retaliation provisions. (*Wetzel v. Glen St. Andrew Living Cmty., LLC*, 901 F.3d 856, 868 (7th Cir. 2018))
Some Courts state; "To prevail on a §3617 retaliation claim,[Vester] must demonstrate that (1) she engaged in a protected activity; [*sought reasonable accommodations and filed DDHR Complaint/FHA counterclaims]* (2)[HLHA] subjected [Vester] to an adverse action (3) a causal link exists between the protected activity and the adverse action;" [*HLHA's unfounded concerns regarding driveway/ demanding contractors plan—after Vester requested accommodations for the safety-fence when other homeowners didn't need ARB approval for driveways; escalated to demanding an engineer-report—**7 days after** Vester announce she filed DDHR-Complaint; escalating to initiation of litigation against Vester—**10 days** after Vester obtained an Attorney thereby preventing HLHA's dismissal of the DDHR-Complaint; continued keycard deactivation and continued lawsuit for deed enforcement—after Vester*

provided engineer-report, refused to dismiss her FHA claims, persisted with accommodation requests.] (*Lloyd v. Presby's Inspired Life*, 251 F. Supp. 3d 891, 904(E.D. Pa. 2017))[13] Finding discriminatory animus is determined; "Where the time period between the protected activity and the alleged retaliation is unusually close, it may be sufficient on its own to create an inference of causation. If the timing is not "unusually suggestive," however, courts then evaluate whether "the proffered evidence, looked at *as a whole*, may suffice to raise the inference."" (Id.[14]) *Haws v. Norman*, No. 2:15-cv-00422-EJF (D. Utah Sep. 20, 2017) addresses retaliation claims following requests for reasonable accommodations. "Requiring the plaintiff to show an intent to discriminate based on disability would narrow the scope of the statute considerably with no basis in the statutory language" since"[HLHA] could well wish to retaliate for such advocacy for reasons other than discrimination...to discourage others from similarly advocating for their perceived rights in the future or because the advocacy is bothersome. These motives do not reflect an intent to discriminate based on disability but do violate the FHA if acted upon." "Retaliatory actions include any action that "could well dissuade a reasonable [plaintiff] from making or supporting a charge of discrimination." (*Id*[15]) Even if this Court were to determine that intentional discrimination/discriminatory animus is required under §3617, "the requirement of a causal connection between the request for accommodation [protected act] and the purported prohibited retaliation adequately addresses intent; that is, of whether the defendant acted the way he

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[13] "Citing *" (*Madison v. Phila. Hous. Auth.*, No. 09-3400, 2010 WL 2572952 (E.D. Pa. June 23, 2010))(**Walker v. City of Lakewood*, 272 F.3d 1114, 1128 (9th Cir. 2001))

[14] **Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 283–84 (3d Cir. 2000) at 280 (**Kachmar v. SunGard Data Sys., Inc.*, 109 F.3d 173, 177 (3d Cir. 1997)).

[15] *(*Burlington N. & Santa Fe R. Co. v. White*) 548 U.S. 53, 57 (2006)

did as a *response* to the plaintiff's protected *activity* or for some other reason." ("*Haws*") Under either framework, once [Vester] establishes a prima facie case of retaliation, [HLHA] has the burden of showing it had a legitimate non-discriminatory reason for the adverse action; If it can do so, the burden shifts back to [Vester] to prove pretext, which requires a showing that the proffered nondiscriminatory reason is unworthy of belief/lacks veracity because less-harsh actions would serve "legitimate purpose."

Court Contradicts Initial Findings; Factual Findings Support Legal Findings of §3617/ §3604(b)/(f)(2) Violations

The Court initially and improperly found Vester's claims failed because, "***Once Vester threatened legal action, [HLHA] insisted on a professional engineer's report on drainage,*** in compliance with the Declaration but *not consistent with the prior practice with other homeowners*" (MO:p. 26); In other words, the Court failed to properly apply legal analysis of §3617 claims because the Court believed HLHA was permitted to enforce the Declaration, so HLHA could not act "for reasons of discrimination." At Oral Argument on Vester's motion for reargument and HLHA's mootness fees for the deed enforcement action, the Court contradicts its initial findings; "The matter devolved into litigation ***largely over the fence issue...then*** [HLHA] demanding something that ***hadn't been demanded of other homeowners***...an engineer report...*was part of a* ***litigation tactic***. It *doesn't* seem to me that it was *required*, because it was ***not required*** *of anyone else.*" (OA: p.17: ¶5-¶13) "***Once this was in litigation***", (Vester's DDHR complaint), [HLHA] made "makeweight claims" against Vester. "The litigation over the driveway, as I've said, was in part ***a result of the other litigation in this matter***...the engineer report...did not benefit [HLHA]... there was not a drainage problem...Vesters acted in good-faith." "I think this could have been settled by simply writing a letter to the Vesters..." "I am convinced could have been achieved without litigation." (OA:p.17¶17-

p.19¶24) The factual findings support finding HLHA disparately treated Vester, acted with discriminatory animus, as a ***result*** of Vester filing a DDHR claim against HLHA. The Court's overreach and legal errors vindicated HLHA's claims and aided in depriving Vesters of their rights. The Courts blatant error begs remedy and justice.

Reasonable Accommodation Claims §3604(f)(3)(B) "Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference of benign neglect" (*Saville v. Quaker Hill Place*, 531 A.2d 201, 206 (Del. 1987)) It is long standing, under every civil rights law, in every reasonable accommodation claim, that a request can be in *any form* and at *any time.* This applies only in theory. If the request is not granted, the disabled are without a record of the request and will likely fail in adjudicating their rights. Because engaging in an interactive-process is not required of the provider, a burden is placed upon the disabled to anticipate a denial and create an admissible record just for a 50/50 chance of adjudicating their right to the same housing access others receive automatically. There continues to be conflict among the courts, housing providers and the disabled on the required content of an accommodation request; resulting in costs to the parties and courts and causes delay/denial of necessary accommodations granting equal housing access to the disabled. Often defendants are awarded summary judgement on §3604(f)(3)(B) claims, because Courts find plaintiffs prevented defendants from fully considering the request because the plaintiff failed to provide defendant the requested additional verification of the disability-related-needs believing the defendant is not entitled to private and sensitive medical information. Courts fail to consider, often the information sought is sensitive and the disabled are not guaranteed protection of their private information. And like here, the requestor may not wish for their neighbors to have information subjecting the family to harassment and judgement. Courts disagree on how much information is too much or too little and the statute and regulations are

silent. Often those with invisible disabilities were prefer they stay invisible. *(see App M case ex.)*

Court's Factual Findings Contradict Findings of Law

"A refusal occurs when the disabled is *1st* denied reasonable accommodations, irrespective of the remedies granted in subsequent proceedings."*(Revock v. Cowpet Bay W. Condo. Ass'n*, 853 F.3d 96, 111 (3d Cir. 2017))[16] Even though the Court failed to rule on Vester's subsequent requests, the Court's factual-findings support the legal-finding; HLHA violated §3604(f)(3)(B); 1) KV is disabled; *HLHA admitted* 2) HLHA knew of KV's disability; *HLHA "was aware of [ZV's] special-needs, because Vester requested a variance [for fence-height] on the same grounds"* (MO:p.30 -p.31) 3) Vester requested a ***reasonable*** accommodation; *"HLHA approved at least one home's garage side-door enclosure" (MO:p.10-p.11)* and 4) the requested accommodation is necessary to afford Vesters equal opportunity to use and enjoy their dwelling; *[ZV] "...is an elopement risk due to his autism," (MO:p.29-p.30) the fence location variance, like the height exception was intended to accommodate [ZV's] special-needs by allowing him access to the backyard through the garage." (MO: p.8)* 5)HLHA refused their request; *HLHA admitted/"Vesters* ***still*** *seek an accommodation for their child's autism in the location of the fence, [HLHA] should act on* ***this request*** *promptly, based on Vesters' true reason for applying for the variance, as an accommodation for their child's disability, as well as the information* ***submitted by Vester since the variance was denied."*** *(MO. p.36) "Nothing herein relieves [HLHA] from addressing Vesters* ***current*** *fence variance request..." (MO:p.30)* "Even though refusal may be accompanied by other acts, refusal alone is violative of §3604(f)(3)(B))."[17] "If an accommodation is required under the FHA, the reason for the denial is irrelevant in establishing that a violation

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[16] Quoting: *Groome Res. Ltd.* , 234 F.3d at 199 (quoting *Bryant Woods Inn, Inc. v. Howard Cty.* , 124 F.3d 597, 602 (4th Cir. 1997)

[17] *Smith v. Powdrill, 2013 WL 5786586, at *8 (C.D.Cal. Oct. 28, 2013)

occurred." (*Castellano v. Access Premier Realty, Inc.,* 181 F. Supp. 3d 798, 808 (E.D. Cal. 2016)) [18] Like disparate-impact claims, the liability for refusing to grant reasonable-accommodations "refers to the *consequences* of actions and not just the mindset of actors" (*Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507 (2015)) The Court ignored the most essential element to §3604(f)(3)(B) claims; HLHA actively and intentionally ***refused*** *reasonable* and *necessary* accommodations that would protect a *disabled* child and provide the family *equal use* and *enjoyment* of their home for 8 years. Instead, the Court blamed the victim for not making a "formal" request. (OA: p.4: ¶19-p.5 ¶22)

The Court Need Not Determine if Vester Failed to Request an Accommodation

Even after the Court found in HLHA's favor, Respondents argue, the Court wasn't required "to make a decision on whether or not, if a subsequent request had come in, [HLHA] could consider the prior reasons pretextual...in consideration of a future request...I don't think you ever had to reach that." (OA: p.12: ¶7-¶18) HLHA continues to argue that the subsequent requests should be excluded from the record. (OA: p.13: ¶18-p.14: ¶7) (DI-183: ¶5-¶7) Even if the subsequent requests were excluded, you can't unring a bell, the subsequent requests show what information HLHA had before it when it continued to refuse the requested accommodation. Furthermore, the Court already found, 3 request and refusals on the record;

> "The limited record in this case indicates that [Vesters] were denied their initial request for the extension of their fence on 7/7/2011. A renewed request was made after the initiation of this litigation. As alleged in [Vesters'] counterclaim, this request was made to HLHA's

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[18] *Rodriguez v. Morgan, 2012 WL 253867, at *4 (C.D.Cal. Jan. 26, 2012).

> attorney on 2/17/2012, and it *made clear* that the *failure to approve the requested accommodation by the end of February would be considered a denial.* No response allegedly was made to this request or to another request for a fence extension that was made on 5/24/2012. (Henlopen Landing Homeowners Ass'n, Inc. v. Vester, C.A. No. 7229-MA, at *14-15 (Del. Ch. Feb. 25, 2015)) "[*T*]*hree separate requests* for an extension of the fence, *each request* allegedly for an exception to the community's fence restrictions as a reasonable accommodation for a disabled child. The 1st *denial* occurred on 7/7/2011, the 2nd *denial* constructively occurred on 2/29/2012, and it is unclear when the 3rd *denial constructively* occurred since there was no specific deadline given. However, *more than eight months had passed between the first denial and [Vesters'] second request. **The first denial was sufficiently permanent to trigger a reasonable person to protect his rights.***" (*Id.* at *15)

The ***1st denial*** was enough because it does not matter why HLHA denied the ***requested*** accommodation when the requested accommodation is reasonable and necessary to afford a *disabled* person *equal use* and *enjoyment* of a dwelling. The Court found the requested accommodation reasonable and necessary it need not overreach and find Vester failed to make a request after 8 years! Court cannot fault Vester because HLHA sat on its hands and failed to seek further information to assuage doubts of necessity, Vester's subsequent requests are part of the complaint and should be adjudicated even if the Court found the initial request was insufficient.

HLHA attempted to prove Vester an unreliable witness as a defense for intentionally refusing blatantly reasonable and necessary accommodations after their intentional avoidance of an "interactive process" failed upon the receipt of subsequent accommodation requests. Even though HLHA admits to receiving and not responding to subsequent requests, admits they made no inquiry; they object to the admission of the requests/verifications

subsequent to—HLHA's failure to engage in an interactive dialogue—under Rule 408 "protected settlement-negotiations." (DI-161: p.27: ¶2-p.35: ¶10) (DI-181, DI-186: fn3) The Court deemed all exhibits admitted (*See App III-A*) and acknowledges the subsequent requests and verifications but without explanation, limits its review of §3604(f)(3)(B) claims to the 6/27/11 *request* (DI-95: Counts #11-18) and never addresses the subsequent requests. (DI-95: Counts 31-37)

Other Courts have found statements made during mediation or after claims have been filed with the courts are excluded, however in these cases, the disabled failed to engage in an interactive process prior to filing suit. (*Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262 (Fla. Dist. Ct. App. 2012) (*see app M*) The Court recognized HLHA's insinuations and emphasized that Vester's initial written request was "pretextual" and found Vester's testimony credible; (MO: p.8, p.9, p.10-11, p.21, p.28, p.30, p.31) "the fence location variance, like the height exception was *intended* to accommodate [ZV's] special-needs by *allowing him access to the backyard through the garage*." (MO: p.8) But did not address HLHA's liability for stonewalling the interactive process that would have allowed Vester an opportunity to make ZV's needs clear and present the 2nd driveway proposal.

The Court Ignored Established Precedent and Provided a Defense Never Advanced by Respondents Ruling is "Inconsistent With the Policy of the Law" (DI-148: p.14: ¶21-¶22)

"Due to the paucity of case law interpreting DFHA provisions, Delaware courts often look for guidance to federal decisions construing identical or parallel provisions of the FHAA." *(Walker v. City of Wilmington*, C.A. No. 8607-VCP, at *17 n.36 (Del. Ch. Sep. 5, 2014))[19] §3604(f)(3)(B)

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[19] * *Samuelson v. Mid-Atl. Realty Co.*, 947 F. Supp. 756, 759 & n.3 (D. Del. 1996) (Delaware Supreme Court would employ the same

claims are not dependent upon a "formal" request; instead, one must prove the accommodation is reasonable and necessary to afford a disabled person equal use and enjoyment of a dwelling and was refused. The 3rd Circuit explicitly excludes a "freestanding-request" as a prima facia element; because "...it is a ***refusal,*** not a request that is in the text of §3604(f)(3)(B)." *(Revock)* To satisfy the request-element "[HLHA] must have had an idea of ***what*** accommodation [Vester] sought prior to [HLHA] incurring liability for refusing it."(*Id.*[20]) For example, if she asked HLHA for a fence around her property, then took HLHA to Court for refusing to fence in the ponds, Vester's claims would most likely fail since HLHA had not been given an opportunity to make an informed decision on the request before incurring liability for refusing. Even though 11th Circuit's framework of §3604(f)(3)(B) claims require "(2) he *requested* a *reasonable* accommodation;"[21] the 11th Circuit defines a "request" as "any circumstances sufficient to **cause** [HLHA] to **make appropriate inquiries** about the *possible need* for an accommodation."(*Revock* [22]) If the Court used the framework requiring one must "*request* a reasonable accommodation" the Court must also consider HLHA's failure "to make appropriate inquiries" before denying Vester's request. HLHA cannot simply refuse a ***reasonable*** request because it assumes the accommodation is unnecessary. The Court's findings made it clear that ignoring reasonable and necessary accommodation requests and intentionally treating a protected class member disparately is permissible if an HOA is simply enforcing the Declaration; setting contradictory precedent in Delaware.

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reasoning as federal courts in interpreting the FHAA and therefore applying the analysis of an analogous FHAA issues).

[20] *"*Tsombandis v. W.Haven Fire Dep't.*,353 F.3d 565,578(2d Circ.2003)"

[21] * Bhogaita v. Altamonte Heights Condo. Assn. Inc., No. 6:11-cv-1637-Orl-31DAB (M.D. Fla. Jan. 3, 2012)))

[22] *"*Hunt v. Aimco Props., L.P.*,, 814 F.3d at 1226 (11th Cir. 2016)"

*"*Conneen v. MBNA Am. Bank, N.A.*, 334 F.3d 318, 332 (3d Cir.2003)

Court Must Consider the Entirety of the Case When Determining Reasonable Accommodation Claims

In *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1121-22 (D.C. 2005), the Court overturned the trial court's ruling finding the tenant's accommodation request for was vague and untimely because she failed to detail the desired accommodation until months had passed after she 1st requested an accommodation. The Court recognized, "cases involving requests for "reasonable accommodation" are highly fact-specific, requiring case-by-case determination, and that circumstances ***occurring between the request for accommodation and the eventual trial can affect the result***" and found, "principal responsibility for any delay in pinning down the details of [Vester's] request, and in working out [an accommodation], lay with [HLHA]."*(Id.)*

HLHA is Liable for Violating §3604(f)(3)(B) Because HLHA Never Requested Further Information, Ignored Appeal Requests and Subsequent Reasonable Accommodation Requests

"Although neither statutory language in the FHA nor its implementing regulations expressly require an "interactive-process" for resolving requests for accommodations, several courts have indicated that the Act's statutory scheme inherently imposes such a requirement." (*"Douglas"*) The Court found, HLHA knew Vester requested variances to install a 6ft.-fence based upon ZV's "special-needs," at that point, if HLHA believed Vester's need to access the yard through the garage and to "prevent dirt from coming into the home" was unrelated to ZV's disabilities, HLHA must request additional information before denying any *reasonable* request. HLHA's denial of Vester's request based on their lack of knowledge of the extent of his autism is simply a ruse to avoid the penalty for violating the FHA. It is telling, HLHA approved the height request based upon Vester's statements alone yet denied the location request even after it had received verification from ZV's doctor. The Court must presume, had HLHA initially requested further information, Vester would have provided the substantial

documentation she provided after the request was denied. "If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue."(*Jankowski Lee Associates v. Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996)) ""*Jankowski"* did not fashion an independent basis for liability out of the landlords' failure to inquire. Instead, the decision rested on a violation of §3604(f)(3)(B)."[HLHA] had a duty to make a reasonable accommodation. They did not make a reasonable accommodation, so they violated the FHA." The 1st, 3rd, 6th 7th, and 9th circuit's find that the interactive process matters only if it sheds light on whether the elements of the statutory claim have been met. (Howard v. HMK Holdings, No.18-55923 (9th Cir. Feb. 23, 2021)

Breakdown in Interactive Process Points to Liability in a Reasonable Accommodation Refusal

Once a request for accommodation is made, "[HLHA] *must* at least attempt to open a dialogue with [Vester] to *explore* accommodation options in good-faith before saying no." ("*Douglas*") Some Courts find housing-providers "short-circuit the interactive process" by not accommodating owner's repeated requests and are liable under the FHA for refusing reasonable accommodations. (*Astralis Condo. Assn. v. Sec'y, U.S. Dept. of Hous. & Urban Dev.*, 620 F.3d 62, 68 (1st Cir. 2010) "even if the FHA imposes no affirmative obligation, evidence of a landlord engaging in an interactive process with a tenant is relevant to the refusal inquiry." (*Wilkerson v. Fujinaka Props., LP*, No. 2:19-cv-02381 WBS CKD (E.D. Cal. Apr. 1, 2020))

Even if Vester's first requests failed to make ZV's needs clear, the duty to provide reasonable accommodation is a continuing one, and not exhausted by one effort. (*Bultemeyer v. Fort Wayne Community Sch.*, 100 F.3d 1281, 1285 (7th Cir.1996)) Congress never intended for housing-discrimination victims to file separate lawsuits for each and every accommodation denial; §3610(D): "Complaints...may be reasonably and fairly amended at any time."

HUD/DOJ do not require housing providers to be "mind-readers" when presented with accommodation requests, so "in *response* to a request for a reasonable accommodation, housing-providers may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability...(2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation...*[this] can usually be provided by the individual [herself]." (HUD/DOJ Joint Statement "Reasonable Accommodations under the FHA)*
Though FHA's statutes and Regulations pose no direct liability for failing to engage in an "interactive-process" as in Title VII claims, HUD/DOJ encourages "[a]n interactive process in which the housing-provider and the requester discuss the requester's disability-related-need for the requested accommodation and possible alternative accommodations" because it "is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider." There is no demand for an interactive process because the statute is so clear; refusing a reasonable and necessary accommodations—no matter the reason—***is*** a discriminatory act in violation of the FHA and providers will be held liable. But what happens when Courts fail to uphold the statute and blame victims of discrimination for not making a "good-enough" request for an otherwise, reasonable accommodation? This is just like blaming a woman for being raped because her skirt is too short.

HUD's/DDHR's Mandatory Conciliation Efforts
The Court's decision undermines the intent and purpose of the FHA and punishes aggrieved persons for seeking out the enforcement powers of HUD by refusing to consider the subsequent accommodation requests that were submitted after the filing of Vester's HUD complaint because they were, as the Court found, "attempts to settle the matter or resolve issues" as part of FHA's required conciliatory

process. 42 U.S. Code §3610; "During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint." The Court's decision deprives the disabled of their right to equal use and enjoyment of a dwelling by refusing to allow reasonable and necessary accommodation requests to be "consider[ed] as a FHA request for an accommodation." The Court has created a novel duty and inappropriate burden upon the disabled to make a "formal" accommodation request and denies the disabled the opportunity to make their needs clear. It illegally takes the power invested in HUD by Congress to enforce the FHA through attempting mandatory conciliatory actions. Aggrieved parties are left with no way to request an accommodation and there is no incentive for the housing provider to make the accommodation.
It has created a novel affirmative defense for housing providers; just ignore the request. And if a HUD complaint is filed that requires talking out the points of contention, simply object to the admission of subsequent requests and call them "protected settlement negotiations." [23] [24]

Interactive Process Liability

The FHA states "it is unlawful"...to refuse to make reasonable accommodation...when such accommodations may be necessary to afford the disabled equal opportunity to use and enjoy a dwelling. The FHA does ***not*** say; fair and equal housing is *only* available if you can overcome judicial obstacles and prevail in court. If housing-providers were held liable for not engaging in an interactive process before denying the requested accommodation, they would be unable to simply ignore a request. If the accommodation

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[23] https://www.hud.gov/sites/documents/80241C11FHEH.PDF

[24] *Conciliation*: attempted resolution of issues raised by a complaint, or ***by the investigation of a complaint***, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary.(24 CFR §103.9)

was still refused, there would be a clear record which would assist in expediting adjudication. Holding a provider accountable to engage in *"a process of communication for the purpose of determining a reasonable accommodation for the disability"* would enable the parties to come to an agreement that would satisfy both parties in providing equal use and enjoyment for the disabled and preventing expensive and damaging litigation for the provider.

When a housing-provider makes no attempt to understand a requestor's inquiries, and there is no culpability imposed upon a housing-provider for failing to assist in providing a *reasonable* accommodation where is the incentive for a housing-provider to provide the *necessary* accommodations? The disabled must file complaints/lawsuits just so they *might* be awarded what everyone else receives innately. How is that equitable and fair? Housing-providers rely on the fact pro se complaints are easily dismissed on legal technicalities. If the disabled are in a position to navigate the complicated process of filing a HUD Complaint, they often cannot wait 497 days[25] or more for HUD to complete its investigation. Even if a charge is issued, the disabled will be forced to disclose personal, private, embarrassing and often stigmatized disability medical information. Made even more traumatizing when you are forced to publicly disclose this information to your neighbors, neighbors who may have already harassed them. And even still, there is no guarantee. DDHR had not even started its official investigation when Vester voluntarily dismissed her HUD complaint on 2/2/15; more than 3 years after she filed her complaint.

The Court didn't give weight to the extraordinary efforts and sacrifices Vester's entire family made just to keep ZV alive and safe, never acknowledging that this case

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[25] https://lawyerscommittee.org/wp-content/uploads/2015/08/The-Future-of-Fair-Housing-National-Commission-on-Fair-Housing-and-Equal-Opportunity.pdf

could have looked vastly different if ZV had died. (*Sackman v. Balfour Beatty Cmtys., LLC*, CV 113-066 (S.D. Ga. Sep. 8, 2014))

Delaware Supreme Court Dismisses Appeal for Inadvertently Exceeding Word Count

Vester was denied the opportunity to have the lower court's decision reviewed because Delaware's Supreme Court found Vester,—a inexperienced pro se party—exceeded the 10,000-word limit imposed by Rule 14(d)(i). The Court never revealed their wordcount findings so Vester must assume the Court was correct. Vester submitted 4 Briefs, each stricken for exceeding the wordcount. Though "proper-spacing" errors existed since the 1st submission, the error was not brought to Vester's attention until after the 3rd Brief. 1st Brief: Vester contacted the Court Clerk because her computer died, and she only had an emailed copy of the rough draft to submit before the deadline. The Clerk recommended submitting what she had, and she would be able to resubmit a handwritten brief of 35 pages ***if*** she had no access to a word processer. Rule(d)(iii) 2nd Brief: The pandemic struck. Vester, a single mom to 3 school-aged children—1 with an immunodeficiency disorder, malabsorption disorder, and autism—is overwhelmed with keeping her children safe, fed and schooled and has no support. (Vester's family still has not left their home nor allowed visitors.) The family has limited resources and is sharing 1 computer for everything, but because the Rules state the 35-page limitation is only for those "***without access to a word processing program,***" Vester submitted her 2nd brief using the 10,000-word limit rule. This brief was stricken at Respondents request because they found the word count was *18,604*. Vester replied to Respondents Letter to the Clerk stating she had relied upon the wordcount in Word and included screenshots. Vester asked "if the Court should find [she] erred in relying upon Word's wordcount and finds the Brief over the word limit, [she] respectfully requests leave from the Court to allow the submitted brief in consideration of the extraordinary long nature..." of the case. The Court did not

respond to Vester's informal extension motion but found Vester's inexperience caused an inadvertent failure to check the footnotes box which caused the miscalculation. The Court gave less than ***4-days*** to resubmit a "Word Version" Brief and "Certificate of Compliance." Rule 15(iv) prevented Vester from submitting a formal Motion to exceed wordcount because Motions must be submitted 5 days before due-date, or the appeal would be dismissed automatically. Vester timely submitted her 3rd Brief, reduces her 76 footnotes to 28. Respondents motioned for dismissal because they found the Brief had 11,864 words (down from 18,604) because "...spacing after certain punctuation caused the inaccurate wordcount..." Vester denied any "spacing errors" because she was not a typist or proficient with Word, she was unaware of any rule that required a space after punctuation or that the omission would distort Microsoft's wordcount. In hindsight, the spacing errors existed in earlier submissions but were not addressed by the Court. Vester focused on submitting the Brief on time, complying with the Courts Rules and followed Rule 14(d)(i), "the person...***may rely on the wordcount of the word processing program used to prepare the brief.***" Despite the wordcount being within the amount the Clerk could approve without a ruling from the Court, the Court ignored Vester's informal request for leave to extend the wordcount, struck the brief and illustrated the "proper-spacing" that occurs after commas and periods and ordered Vester to resubmit a brief in less than 8 days. 4th Brief: The Clerk struck the brief for exceeding the word count without further explanation or identifying the errors and issued show cause for "repeatedly violating the rule." Show Cause: Vester explained that her "repeated violations" were unintentional and were a result of her inexperience with Word/legal briefings, incompetent typing abilities, COVID, and her son's immune deficiency prevented her from accessing resources usually available to pro se parties and was unable to have her brief peer-reviewed. She contested "repeatedly" violating the rule because spacing errors had always existed but were not

brought to her attention prior to her 4th brief and she addressed each error when she was made aware of the mistakes to the best of her ability. She didn't think her brief exceeded the word limits because she used spell check and spaced after every punctuation as the court instructed. The Court dismissed Vester's appeal because she had 3 opportunities to comply with Rule 14 but failed and dismissed her motion to exceed the wordcount as moot. Vester received the dismissal which—for the 1st time—identified the brief as 62-pages and confirmed with the Clerk that the wrong brief was submitted to the Court. Vester filed a motion for reargument based on the new findings and explained, because of COVID's health concerns and the short time allowed to resubmit, Vester had to submit her filings through FSXpress of which she was unfamiliar. The Court sent Vester filings through USPS knowing she had no access to FSX case filings because (per FSX), the Court had not added Vester as a party to the case, so she had no idea the wrong brief was filed with the Court, until the Order alerted her of the wrong page count. The "correct brief" was 58-pages. The Court denied the motion for reargument without explanation.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because of the importance of the constitutional questions presented. This Court knows "that legal lapses and violations occur, and especially so when they have no consequence."(*SC Mach Mining LLC v. EEOC*) This occurs in Courts as well, appellate Courts are the checks and balance meant to rectify the wrongs that have occurred in the lower, less experienced Courts. But they are useless if the bar is too high to hurdle. The Court strayed from this Court's precedent "discrimination includes *not making reasonable accommodations* to the known physical and mental limitations...*unless* [the housing provider] can demonstrate that the accommodation would impose an undue hardship." (*US Airways, Inc. V. Barnett(00-1250) 535 U.S. 391 (2002) 228 F.3d 1105*)) regardless of the non-existence of state case law, the court had an obligation of due diligence and

consider the case law before it and make a uniform ruling but failed to do so. The court failed to hold Vester's appeal Brief "to less stringent standards than formal pleadings drafted by lawyers" and deprived her the right to be heard and remedy error in the name of justice (*Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)) The State Courts disregarded precedent set by this Court the United States Supreme Court must intervene.

The State Court's Unsupported and Contradictory Decision Diverts So Far from This Court's/Circuit Court's Decisions/ Intent/Purpose of the FHA; It Demands This Court's Review or Risk Setting Precedent in Delaware, Dividing the Courts, Denying Rights to the Disabled

The FHA does not require accommodations that are not related to a person's disability, but when an accommodation is reasonable and necessary to afford equal access to housing, the housing-provider must grant the accommodation. But this seemingly simple concept has produced a muddled, often self-contradictory body of case law. Disability statutes provide little guidance to the judges and this Court's precedent recognizing the FHA's "broad and inclusive"[26] compass has allowed Courts a "generous construction" resulting in a lack of uniformity leading to confusion, inconsistent enforcement, and deprivation of rights.

The Delaware Court of Chancery has a national reputation in the business community and is responsible for developing corporate case-law. The Court essentially affirmed that an HOA's Declaration supplants the U.S. Constitution. The Courts ruling invites HOA's to blatantly ignore unsavory accommodation requests, and/or amend their Declarations to keep the disabled out. This is troubling when more than 53% of owner occupied households are within HOA's and will increase as most

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[26] (City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995)) (Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 209, 212 (1972))

local governments require developers to form HOA's to unburden local governments of costs of roads/utilities. This Court must make it clear that denying reasonable accommodations is unacceptable, not only to protect the disabled but all homeowners within the community who will have to pay the legal fees related to denying reasonable accommodations/enforcing the HOA's Declaration. The FHA is a statute over which everything is litigated, which comes at a great financial and emotional expense to all involved. The vagueness of the terms, and the inconsistent enforcement of the FHA will continue to cause damaging litigation and deprive the disabled fair and equal housing.

Court's Decision Unsupported by Law, Contradicts Findings of Fact/Record

The FHA is a federal statute, and therefore claims of discrimination is a question of federal law. When Congress has not provided statutory guidance, the issue should be resolved according to federal law. Courts are bound to support their decisions by case law but when there is no similar state caselaw the State-Court should look to similar federal cases to support its decision. Unfortunately, it is not bound to any decision outside of their own appellate court or this Court, thereby creating an uncertainty. Americans access to fair and equal housing should not depend upon the State in which they reside. Delaware FHA case-law is scant to nil so this Ruling will be detrimental to the FHA's purpose. HOA's can and will simply amend their Declaration/CCR's to "legally" keep those they find unsavory out of their communities. The Court's opinion adds further impediments upon the disabled in obtaining fair and equal treatment in the essential need for safe housing within America's communities. The State Court's unsupported decision departs so far from the accepted and usual course of judicial proceedings and Federal Circuit's decisions that it demands review. Injury can be traced to the State Court's overreaching, ignorance of the law, and/or erroneous interpretation of federal statutes, and the injury can only be redressed by a favorable decision in this Court. Federal review of federal law is required when State courts

are not bound by federal-case-law and yet have it within both their power and proper role to render binding judgments on federal-law issues, subject only to review by this Court. When a Court assists in depriving someone of their Constitutional Rights, this Court must intervene before the Court's ruling sets root and sprouts rotten fruit, that will bury the hard won ground to equal opportunity for everyone. The absence of any supporting case law in this case is enough to warrant review.

The Court improperly applied liability to Vester for failing to "make a request for reasonable accommodations for her son's autism." The Courts' rationale makes as much sense as faulting a wheelchair bound person for failing to wheel themselves up 100 steps to fill out the "proper" forms to request an accommodation for ramp.

Delaware Supreme Court Fails to Give Extra Care to a Pro Se Litigant to Assure a Dismissal Will Not Perpetuate the Deprivation of Constitutional Rights

Delaware is one of the few states without an intermediate appeals court, limiting the opportunity for review to just the Supreme Court, so it should pay extra care to assure pro se parties are not discouraged from asserting their rights and should want to make sure the lower courts don't deviate so far from precedent so as to invalidate laws and not serve justice. The Court disregarded this Court's precedent failing to construe pro se pleadings liberally by ignoring Vester's initial informal request to exceed the word-limit; "should the Court find Ms.Vester *erred in relying upon Microsoft Word's word count and finds [the Brief] to be over the word-limit,* Vester respectfully requests leave from the court to allow the submitted [Brief]..." The purpose of procedural rules is to level the playing field between parties. Pro Se parties are already at a disadvantage. This Court guarantees that all filings submitted by pro se litigants are to be held to less stringent standards than formal pleadings drafted by lawyers, so that their lack of knowledge will provide a "shield" protecting the core of due process; a meaningful opportunity to be

heard. But when Courts hold pro se litigants to the same professional standards expected of attorneys—especially when forma pauperis pro se litigants do not choose to appear pro se—the "shield" transforms into a "sword" in the hands of the opposing represented party. When Courts dismiss cases upon technical errors simply because a pro se litigant's ineptness, causes unintentional noncompliance with procedural rules; Courts deter meritorious suits and hinder pro se litigants. The Courts break their own rules by not interpreting the rules "so as to do substantial justice" It's especially troublesome considering most pro se pleadings involve protecting one's civil rights[27] and the effectuation of laws protecting these rights is dependent upon private suits in which, the Solicitor General says, the complainants act not only on their own behalf but also "as private attorneys general in vindicating a policy that Congress considered to be of the *highest priority*." (*Shannon v. United States Dept. of Housing Urban Dev.*, 436 F.2d 809, 818 (CA3)). Courts justify the burden caused by treating prisoners in a lenient manner, because a prisoners inequity extends beyond the inability to pay for counsel, including limited access to legal materials, sources of proof and access to assistance from outside resources. Vester—a single mother to an immune-deficient child during a pandemic—has been self-quarantining inside of her home for the duration of appeal below and through no fault of her own, is subject to even less access to the necessary resources than most prisoners are guaranteed and should have received at least the leniency afforded pro se prisoners. "This duty to accommodate is perfectly consistent with the well-established due process principle that, "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts. (*Boddie*,

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[27] Indigent litigants asserting discrimination claims are unable to obtain counsel even on a contingent fee basis therefore have no choice but to proceed pro se.

401 U.S., at 379) *(Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004))

This Case Presents an Opportunity for This Court to Set Precedent That Will Significantly Curtail Discrimination Against Our Most Vulnerable Population. There Is No Contradiction of Fact

The disabled have been viewed as less than or ignored for far too long. People in authority think they know the needs of the disabled better than the disabled know themselves. In 1927 this Court upheld a state's right to forcibly sterilize a person considered unfit to procreate. (Buck v. Bell, 274 U.S. 200 (1927) It only took 70 years, but this Court affirmed a state's obligations to provide covered program services to eligible individuals with disabilities in the most integrated setting appropriate to their needs. (*Olmstead v. L. C,* 527 U.S. 581 (1999)) But where will they go if HOA's are resistant to granting accommodations that will enable the disabled to live in the communities. If HOA's are entitled to wait until a judge tells them a requested accommodation is reasonable and necessary it will either overwhelm the legal system, dissuade the disabled from asserting their rights because who should wait 8 years for a necessity. The disabled are seeking accommodations so they can have the same autonomy as everyone else. But lawsuits and hearings force the disabled to publicize private and sensitive information further traumatizing those with invisible disabilities and will subject them to harassment when their neighbors are assessed fees to engage in lawsuits. When HOA's are permitted to ignore reasonable accommodation requests, there's no incentive to accommodate. Congress enacted the FHA over 50 years ago prohibiting discrimination in housing based on race, religion, national origin, and sex to remedy the inequity that stemmed from unequal housing. It would take another 20 years before Congress would add disability as a protected class making clear the acts that constitute a discriminatory housing practice and declared these acts as unlawful conduct and subject to penalties for violating the

acts therein. Most housing complaints are based upon disability discrimination, more than double than those based on race. HUD estimates much more go unreported. Disability 4,767 - Race 2,002 - Retaliation 979 (https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO%20Report%20Final%20-%20Web%20Version.pdf) (2019) The FHA is an announcement for change, a promise for equality, protection, and accountability. The FHA specifically provides penalties to vindicate the public interest to dissuade similar actions in the future, to ensuring fair housing throughout the United States. It's important to assure that every court's decision upholds—not hinders—the FHA's purpose and intent because housing providers will shape their actions based upon Court rulings. If the Courts opinion stands, HOA's who decide they don't want to permit a particular accommodation, are permitted to simply ignore the request claiming the request was somehow deficient. The FHA, unlike other disability statutes, only suggests an interactive process because the rule is clear. If the requested accommodation is reasonable and necessary and it's refused, IT IS A VIOLATION. Simple. Congress never intended to burden the disabled with "formal/proper" requests. It is on the Provider to accommodate and request further information IF the reason for the accommodation is not clear. Instead providers either ignore the request and hope it goes away or demand too much information, not to help determine a reasonable accommodation but to try and prove the accommodation isn't needed. Sadly, in order to change actions and attitudes, the Courts must make an example of what could happen if you disobey. But they are failing, despite the abundance of info available on how to respond to requests for accommodation, the disability complaints continue to rise. If providers actually believed the FHA bore teeth, the numbers would go down. Congress never intended for the FHA to only protect those who were able to afford attorneys and willing to risk the retaliation that comes from asserting their right to equality. In other words, the rights guaranteed under the

Constitution are not limited to only those with the skill and ability to overcome the barriers of the tedious rules of the court; but sadly that is where we are. The Courts can't change a person's prejudices, but it can prevent them from ***acting*** on them and that will only happen if this Court makes it clear that discrimination is punishable and will not be tolerated. With that change all people will integrate, and fears and misunderstandings will dissipate, exposure breeds tolerance and understanding. The FHA has the potential to be the most powerful tool in ending discrimination, but it will never achieve its potential when Courts fail to uphold the Act's purpose, when the burden is displaced onto the disabled to prove that the request was enough to trigger the provider to act, and the provider has no incentive to act. Finding a place to live, fulfills the basic needs of shelter but also provides a sense of comfort and security. When the disabled encounter housing discrimination it creates devastating obstacles to an essential part of life; safe shelter. While no two cases are alike, and FHA requires case by case analysis; precedential decisions serve to guide providers to resolve fair housing matters informally or they open the door evading consequence for discriminatory acts. Ending discrimination in housing is dependent upon the protected classes seeking enforcement of their rights, but there is no protection from retaliation when the burden of proof is unattainable.

This Court could set precedent holding housing-providers liable for stonewalling the interactive process. By making it clear providers are obligated to affirmatively act every time a request for an accommodation is before them—no matter the form of the request, the uncertainty of the nexus of the unknown/invisible disability—to engage in good-faith with the requester to determine a reasonable accommodation.

This case is an ideal vehicle to consider these important issues. The facts are not contested and the elements of a §3604(f)(3)(B) claim are met. The Court ordered HLHA to grant the accommodation, it just found it was Vester's fault for not making the request clear the 1st

time, in contradiction to the FHA and case-law. And failed to hold HLHA accountable for short-circuiting the interactive process that is essential in every reasonable accommodation claim. If HLHA had allowed Vester to appeal, or if HLHA had asked for verification more than 8 years ago they could not deny the accommodation is necessary. This case goes beyond that as well, the fact that HLHA had an explicit accommodation request and verification in hand 8 months after the denying the initial request and STILL did nothing points directly to HLHA's discriminatory intent. Because the Court found Vester's request for accommodation was pretextual, proves it only took a conversation with Vester to determine ZV's needs are real, but HLHA ignored her and tried to shut her up with a retaliatory lawsuit. dispositive question is whether HLHA is liable for violation of the FHA.

This Court has recognized that "[j]udicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." (*U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994)

Conclusion

The Petition for a writ of certiorari should be granted.

Respectfully submitted,
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STATUTORY PROVISIONS INVOLVED

I. Constitutional

Fourteenth Amendment's Equal Protection Clause/ Due Process Clause; "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (*Shelley v. Kraemer*, 334 U.S. 1, 8 n.4 (1948)

The Court below deprived Vester of due process of the law, erroneously enforced Section 12 of HLHA's Declaration by awarding legal fees to HLHA when HLHA's discriminatory and ultra vires enforcement of HLHA's Declaration denied Vester equal use and enjoyment of their property thereby depriving Vester of liberty and property.

The action of the lower courts in granting equitable relief in the enforcement covenants constituted state action denying Vester, equal protection of the laws in violation of the Fourteenth Amendment.

Article I, Section 8 of the Constitution

II. Statutes

42 U.S. Code § 3601. (*et seq.*) **Declaration of policy**

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

42 U.S. Code § 3604 - Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(b)To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,

because of race, color, religion, sex, familial status, or national origin.

(f)(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A)that person; or

(B)a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C)any person associated with that person.

(f)(3) 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

42 U.S. Code §3617: Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S. Code §3610 - Administrative enforcement; preliminary matters

(a)Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(B)Upon the filing of such a complaint—

(i)the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii)the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii)each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv)the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C)If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D)Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B)Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's

belief that the person to whom the notice is addressed is properly joined as a respondent.

(b)Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(f)Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

(A)within the jurisdiction of a State or local public agency; and

(B)as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint...

42 U.S. Code § 3613 - Enforcement by private persons

(a)Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B)The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2)An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b)Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c)Relief which may be granted

(1)In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The

United States shall be liable for such fees and costs to the same extent as a private person.

42 U.S.C §3602 Definitions

(h) "***Handicap***" means, with respect to a person—

(1)a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2)a record of having such an impairment, or

(3) being regarded as having such an impairment,

(l)"**Conciliation**" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

28 U.S.C §1443 - Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1)Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2)For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S. Code § 1447 - Procedure after removal generally

(a)In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b)It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c)A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under

section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d)An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e)If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

Title 6 - Commerce and Trade
CHAPTER 46. FAIR HOUSING ACT
§4601 Declaration of purpose and construction.
Universal Citation: 6 DE Code § 4601 (2015)

(a) Purpose. — This chapter is intended to eliminate, as to housing offered to the public for sale, rent or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation, gender identity or disability, and to provide an administrative procedure through which disputes concerning the same may effectively and expeditiously be resolved with fairness and due process for all parties concerned.

(b) Construction. — This chapter shall be liberally construed to the end that its purposes may be accomplished and all persons may fully enjoy equal rights and access to housing for themselves and their families. Furthermore, in defining the scope or extent of any duty imposed by this chapter, including the duty of reasonable accommodation, higher or more comprehensive obligations established by otherwise

applicable federal, state or local enactments may be considered.

§4603 Discrimination in sale or rental of housing and other prohibited practices.

(a) For purposes of paragraphs (b)(1)-(5) of this section, the unlawful discrimination against a person on the basis of a specified protected status refers to the protected status of:

(1) That buyer, renter or aggrieved person;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(3) Any person associated with that buyer or renter.

(b) Except as exempted by § 4607 of this title, it shall be unlawful:

(1) To discriminate in the sale or rental, to refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation, gender identity or disability.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation, gender identity or disability.

(6) [Repealed.]

(c) Nothing in this section requires that a dwelling be made available to persons with disabilities whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§4603A Discrimination in sale or rental of housing and other prohibited practices; additional provisions relating to discrimination against persons with disabilities.

(a) For purposes of this chapter, discrimination on the basis of a individual's disability includes, but is not limited to:

(1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) 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;

§4602 Definitions

(6) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent and the Commission.

(10) "Disability" means, with respect to a person:

a. A physical or mental impairment which substantially limits 1 or more of such person's major life activities;

b. A record of having such an impairment; or

c. Being regarded as having such an impairment, but such term does not include current, illegal use of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802) or Title 16 of Chapter 47, Uniform Controlled Substances Act.

(11) "Discriminatory housing practice" means an act that is unlawful under § 4603, § 4604, § 4605, § 4606 or § 4618 of this title.

(12) "Division" means the Division of Human Relations.

(13) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by 1 or more families, together with any land which is offered for sale, rent or exchange therewith and also means any vacant land which is offered for sale,

lease or exchange for the construction or location thereon of any such building, structure or portion thereof. "Dwelling" also includes the public and common use areas associated therewith.

(14) "Familial status" means: one or more individuals who have not attained the age of 18 years being domiciled with:

a. A parent or another person having legal custody of such individual or individuals; or

b. The designee of such parent or other person having such custody, with the written permission of such parent or other person; or

c. Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(15) "Family" includes a single individual.

§4610 Administrative enforcement; preliminary matters.

(b) Investigative report and conciliation. —

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Division, the Division shall, to the extent feasible, engage in conciliation with respect to such complaint.

§4618 Interference, coercion or intimidation.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by § 4603, § 4604, § 4605 or § 4606 of this title.

III. Regulations

24 CFR §100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to ***impose***

different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(4) ***Limiting the use of privileges, services or facilities*** associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

(6) Conditioning the terms, conditions, or privileges relating to the sale or rental of a dwelling, or denying or limiting the services or facilities in connection therewith, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of imposing different terms, conditions, or privileges relating to the sale or rental of a dwelling or denying or limiting services or facilities in connection with the sale or rental of a dwelling.

24 CFR § 100.202 General prohibitions against discrimination because of handicap

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of -

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether...a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.

24 CFR §100.204 Reasonable accommodations

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1):

A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of §100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2):

Progress Gardens is a 300-unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of §100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

24 CFR §100.400 Prohibited interference, coercion or intimidation

(a) This subpart provides the Department's interpretation of the conduct that is unlawful under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

(4) 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.

(5) 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.

(6) Retaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority.

24 CFR § 100.7 Liability for discriminatory housing practices.

(a) *Direct liability.*

(1) A person is directly liable for:

(i) The person's own conduct that results in a discriminatory housing practice.

(ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee

or agent, where the person knew or should have known of the discriminatory conduct.

(iii) *Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.*

(2) For purposes of determining liability under paragraphs (a)(1)(ii) and (iii) of this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person.

(b) *Vicarious liability.* A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.

[81 FR 63074, Sept. 14, 2016]

24 CFR §100.201 Definitions

Handicap means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

(a) Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological...special sense organs; *respiratory*, including *speech* organs...*digestive*; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and *specific learning disabilities.* The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual,

speech and hearing impairments, cerebral palsy, **autism**, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Del. R. Evid. 408

Rule 408 - Compromise Offers and Negotiations

(a)Prohibited Uses. Evidence of the following is not admissible on behalf of any party either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:**(1)** furnishing, promising, or offering - or accepting, promising to accept, or offering to accept - a valuable consideration in order to compromise the claim; and**(2)** conduct or a statement made during compromise negotiations about the claim.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Del. R. Evid. 408

Amended November 28, 2017, effective January 1, 2018.

***Comment**: This rule generally tracks F.R.E. 408.*

This rule modifies existing Delaware case law. See Hudson v. Williams, Del. Super., 72 A. 985 (1908).

D.R.E. 408 was amended in 2017 in response to the 2011 restyling of the Federal Rules of Evidence. The amendment is intended to be stylistic only. The pre-2017 "Comment" to D.R.E. 408 was revised only as necessary to reflect the 2017 amendments. There is no intent to change any result in ruling on evidence admissibility.

Fed. R. Evid. 408- Compromise Offers and Negotiations

(a) PROHIBITED USES. Evidence of the following is not admissible-on behalf of any party-either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering-or accepting, promising to accept, or offering to accept-a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim-except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) EXCEPTIONS. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

28 APPENDIX U.S.C. § 408

NOTES OF COMMITTEE ON THE JUDICIARY, SENATE REPORT NO. 93-1277

This amendment adds a sentence to insure that evidence, such as documents, is not rendered inadmissible merely because it is presented in the course of compromise negotiations if the evidence is otherwise discoverable. A party should not be able to immunize from admissibility documents otherwise discoverable merely by offering them in a compromise negotiation.

NOTES OF CONFERENCE COMMITTEE, HOUSE REPORT NO. 93-1597

The Senate amendment also provides that the rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. The House bill was drafted to meet the objection of executive agencies that under the rule as proposed by the Supreme Court, a party could present a fact during compromise negotiations and thereby prevent an opposing party from offering evidence of that fact at trial even though such evidence was obtained from independent sources. The Senate amendment expressly precludes this result. The Conference adopts the Senate amendment.

COMMITTEE NOTES ON RULES-2006 AMENDMENT

"The amendment does not affect the case law providing that Rule 408 is inapplicable when evidence of the compromise is offered to prove notice" Fed. R. Evid. 408

NOTES OF CONFERENCE COMMITTEE, HOUSE REPORT NO. 93-1597 *The House bill provides that evidence of admissions of liability or opinions given during compromise negotiations is not admissible, but that evidence of facts disclosed during compromise negotiations is not inadmissible by virtue of having been first disclosed in the compromise negotiations. The Senate amendment provides that evidence of conduct or statements made in compromise negotiations is not admissible. The Senate amendment also provides that the rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. The House bill was drafted to meet the objection of executive agencies that under the rule as proposed by the Supreme Court, a party could present a fact during compromise negotiations and thereby prevent an opposing party from offering evidence of that fact at trial even though such evidence was obtained from independent sources. The Senate amendment expressly precludes this result. The Conference adopts the Senate amendment.*

IV. State Court Rules [7]

Delaware Supreme Court Rule 29(b):

"Involuntary dismissal upon notice of the Court. —The Court may order a complaint, petition or appeal dismissed, sua sponte, upon notice of the Court. Dismissal upon notice may be ordered for lack of subject matter jurisdiction, for untimely filing of an appeal, for appealing an unappealable interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate.

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7 https://courts.delaware.gov/rules/pdf/SupremeCourtRules-11-1-19.pdf

Delaware Supreme Court Rule 13: Form of briefs, appendices and other papers.

(a) Briefs and appendices. —

(i) Typed. —All text, including text in footnotes, shall be in Times New Roman 14-point typeface. Unrepresented parties without access to a typewriter or word processing program may submit papers in legible handwriting. Case names must be italicized or underlined.

Delaware Supreme Court Rule 14. Briefs and appendices; contents.

(d) Length of Briefs.

(i) Type-volume limitation. Without leave of Court, an opening or answering brief shall not exceed 10,000 words, and no reply brief shall exceed 5,500 words. Where there is a cross-appeal, the answering/opening brief on cross-appeal of appellee shall not exceed 14,000 words and the reply/answering brief on cross-appeal of appellant shall not exceed 10,000 words...

The front cover, material required by paragraphs (b)(i) and (ii), signature block, and any footer included pursuant to Rule 10.2(5), do not count toward the limitation. All other text must be counted toward the limitation.

(ii) Certificate of compliance. (A) Any brief subject to Rule 14(d)(i) must include a certificate of compliance by counsel or an unrepresented party that the brief complies with the typeface requirement of Rule 13(a) and type-volume limitation of Rule 14(d)(i). The person preparing the certificate must state the number of words in the brief and ***may rely on the word count of the word processing program used to prepare the brief.***

(B) Form R is a suggested form of a certificate for compliance. ***Use of Form R is sufficient to meet the requirements of paragraph (d)(ii)(A) of this rule.***

(iii) Page limitations for unrepresented parties ***without access to a word processing program***. Without leave of Court, an opening or answering brief shall not exceed a total of thirty-five pages and a reply brief shall not exceed

twenty pages, exclusive of appendix. Where there is a cross-appeal, the answering /opening brief on cross-appeal of appellee shall not exceed fifty pages and the reply/answering brief on cross appeal of appellant shall not exceed thirty-five pages, exclusive of appendix. The reply brief on cross-appeal of the appellee, if any, shall not exceed twenty pages. In the calculation of pages, the material required by paragraphs (b)(i) and (ii) of this rule is excluded and the material required by paragraphs (b)(iii) through (vi) of this rule is included.

(iv) Footnotes shall not be used for argument ordinarily included in the body of a brief.

(v) Extensions. The Court looks with disfavor upon motions to exceed the type-volume or page limitation, and such motions will be granted only for good cause shown. Any motion filed pursuant to this section must be filed at least five days before the due date for the filing of the brief to which it relates.

Rule 15. Briefs and appendices; time for service and filing.

(iv) Untimely motions for extensions. —If a motion for extension is filed ***less than five days in advance of the due date,*** the motion will ordinarily be denied unless the moving party demonstrates not only exceptional circumstances for the extension but also exceptional circumstances justifying the late filing of the motion, demonstrating that the latter circumstances did not exist or could not with due diligence have been known or communicated to the Court earlier. (v) Untimely submissions may not be filed. —The Clerk of the Court may not accept for docketing an untimely filed brief or appendix unless the filing party first obtains leave to file out of time under the provisions of this Rule. If leave is not obtained, the Clerk of the Court will take the appropriate action as directed by the Court, which action may include dismissal of the appeal if the appellant has not filed a timely brief or, in the case of the appellee, a decision by the Court on the basis of the record and papers that have been timely filed. (vi) Motions for extensions filed after due date. —No motion for an extension filed after the due date for the brief or appendix will be entertained unless the party requesting the

extension demonstrates that the interests of justice require the relief requested notwithstanding the failure to comply with this Rule. In such a case an extension may be granted in the discretion of the Justice for a period of not more than three days. (vii) Exceptional circumstances defined. — "Exceptional circumstances" for purposes of this Rule means serious or disabling illness or injury; death of an immediate family member; act of God; state or national emergency; or other circumstances of similar unavoidable nature. (viii) Certification for untimely motions; sanctions. —Any motion filed by an attorney under subsection (iv) or subsection (vi) shall include a certification from the attorney identifying all other motions for extensions filed in all other cases during the six months preceding the date of the current motion and noting which, if any, of those prior motions were filed under subsection (iv) or subsection (vi). Any attorney who, during the preceding six months, has filed more than two such out-of-time motions, will be subject to discipline for a performance deficiency under Supreme Court Rule 33.

Rule 102. General provisions.

(a) Construction. —***These Rules shall be construed so as to do substantial justice*** and to provide for the speedy and efficient determination of proceedings in this Court.

(b) Conduct of attorneys and litigants. —Attorneys and litigants shall conduct themselves before the Court in a manner *consistent with the letter and spirit of these Rules.* **Attorneys** are expected to take all necessary steps to avoid unreasonable delays and are expected to present all matters and *papers to the Court with the highest professional competence and integrity.*

(c) Meaning of terms. —All terms in these Rules shall have their usual meanings. Use of the singular shall include the plural. Reference to "trial court" shall refer to any tribunal to which a direct appeal to this Court shall lie.

Rule 33. Sanctions and discipline for performance deficiency.

(a) Sanctions. —Upon failure of a party or counsel to comply with any rule or order, the Court may enter an appropriate sanction against the offending party or counsel,

or both, after notice and opportunity to be heard. Such sanction may include the award of reasonable attorneys' fees and the determination of an appeal against the offending party. Disciplinary action, including imposition of a fine, may be taken against any offending counsel. The term "counsel" shall be deemed to include counsel admitted pro hac vice.

(b) Performance deficiency defined. —The Court may also take disciplinary action against an attorney admitted to practice before it and those admitted pro hac vice for unprofessional conduct constituting performance deficiency, as hereafter defined, for which referral to the Board on Professional Responsibility may or may not also be warranted. *Performance deficiency shall be generally understood to mean* ***unacceptable performance by an attorney which is not attributed to incompetency*** *and which appears to be the result of inattention, neglect, lack of diligence or other conduct not becoming an officer of the Court.* Discipline for performance deficiency may be imposed for:

(i) Persistent failure to abide by or comply with the rules, orders or other directives of the Court or its staff;

(ii) submission of briefs, oral argument or other communications to the Court or its staff that are either lacking in candor or grossly below customary professional standards.

(c) Disciplinary action for performance deficiency. — Disciplinary action for performance deficiency may include one or more of the following sanctions against the offending attorney:

(i) Costs. —Imposition of costs, expenses and reasonable attorneys' fees;

(ii) Fine. —A fine in such amount as the Court determines;

(iii) Disqualification. —Disqualification from submitting papers and appearing before the Court for a period of up to 90 days; (iv) Reprimand. —A private or public reprimand; or (v) Other sanction. —Such other sanction as the Court deems appropriate including but not limited to referring the matter to the Office of Disciplinary Counsel. In the event the Court shall conclude that performance

deficiency discipline may be appropriate, the Clerk shall forward to the lawyer-respondent a notice directing the lawyer-respondent to show cause why the lawyer-respondent should not be subjected to performance deficiency discipline. The notice shall state with precision the particular performance relied upon and may include as an attachment a recitation of the infractions of the rule, order or other directive, the brief or briefs or other communications in question and/or a transcript of the oral argument in question. The notice shall direct the lawyer-respondent to respond within 10 days after receipt of the notice and to indicate in such response whether a hearing is requested. The lawyer-respondent's response shall attach a current and complete record of all the lawyer-respondent's prior disciplinary matters in Delaware or any other jurisdiction. The Court, upon the expiration of the time for a response, shall take such action as it deems appropriate; provided, however, that no action shall be taken without a hearing if one is requested in a response.

Rule 34. Nonconforming papers.

The Court may strike any brief, appendix, motion or other paper or document which does not conform to these Rules or which is not within the bounds of professional propriety.

Delaware Uniform Rules of Evidence

Article I. General Provisions

Rule 101. Scope; Definitions.

(a) Scope. These Rules apply to proceedings in the courts of this State. The specific courts and proceedings to which the Rules apply, along with exceptions, are set out in Rule 1101

Comment This rule largely follows F.R.E. 101, except that it refers to the courts of this State rather than the United States.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts.

(a) Scope. This Rule governs judicial notice of an adjudicative fact only, not a legislative fact.
(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
(1) is generally known within the trial court's territorial jurisdiction; or
(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
(c) Taking Notice. The court:
(1) may take judicial notice on its own; or
(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
(d) Timing. The court may take judicial notice at any stage of the proceeding.
(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
(f) Instructing the Jury. Upon request, the court must instruct the jury to accept the noticed fact as conclusive.
Comment
This rule largely tracks F.R.E. 201 except for 201(f) (see discussion below).
This article is limited to adjudicative facts. In the interests of uniformity, the Committee rejected a proposal that this rule be expanded to cover legislative facts. See Davis, "Judicial Notice," reprinted in Weinstein, pp. 201-22; McCormick §§ 328, 331; F.R.E. Advisory Committee's note to article II.
The Committee recognized that courts sometimes judicially recognize legislative facts without giving the parties an opportunity to comment on the facts proposed to be judicially noticed. While recognizing that this may sometimes be unfair, the Committee did not think it should address this problem at this time.

ADDITIONAL CITATIONS

("ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION §20:5 (July 2020) (3 part retaliation claims :citing cases applying similar test across federal circuits) (*Bryant v. City of Norfolk,* Civil Action No. 2:20CV26 (RCY) (E.D. Va. Feb. 26, 2021)

https://crsreports.congress.gov/product/pdf/RL/95-710/23

https://lawyerscommittee.org/wp-content/uploads/2015/08/The-Future-of-Fair-Housing-National-Commission-on-Fair-Housing-and-Equal-Opportunity.pdf

https://www.hud.gov/offices/fheo/library/huddojstatement.pdf

https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO%20Report%20Final%20-%20Web%20Version.pdf

https://scholarworks.iupui.edu/bitstream/handle/1805/14800/Jones_2017_subtle.pdf?sequence=1

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4573&context=uclrev

Autism-Society.org

https://equalrightscenter.org/wp-content/uploads/making-home-accessible-toolkit-9.5.pdf

https://www.hud.gov/sites/dfiles/ENF/documents/6228-F-01%20Preserving%20Housing%20and%20Neighborhood%20Choice.pdf