In the

SUPREME COURT OF THE UNITED STATES

No. _____

MARK HASTINGS, MARCIA DUCHARME, AND NANCY NEWBURY,

Plaintiffs,

NANCY NEWBURY,

Plaintiff–Appellant–Petitioner,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; CHURCH COMMUNITY HOUSING CORPORATION, INC., et al.,

Defendants–Appellees.

On Application for Emergency Stay of First Circuit Denial of Stay Pending Appeal
To The Honorable Ketanji Brown Jackson, Associate Justice
Of the Supreme Court of the United States
And Circuit Justice for the First Circuit

RESPONSE OF CHURCH COMMUNITY HOUSING CORPORATION AND CHRISTIAN BELDEN TO PETITIONER'S EMERGENCY APPLICATION FOR STAY PENDING APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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DISCLOSURE STATEMENT

Respondent Church Community Housing Corporation (CCHC) is a non-profit organization organized under the laws of the State of Rhode Island "to provide decent affordable housing for low and moderate income people." It has no parent corporation, and no corporation owns ten (10) percent or more of its stock. Respondent Christian Belden is CCHC's executive director.

ARGUMENT

The CCHC Defendants object to Petitioner Nancy Newbury's fourth appellate motion for a stay. Counting Petitioner's unsuccessful motion for preliminary injunction in the district court, she has now filed what are, essentially, five motions for stay, and none of the previous four have been granted. Magistrate Judge Sullivan commented during the hearing in the district court that Petitioner's multiple pleadings had caused "chaos." (Transcript of June 27, 2024 hearing included in the CCHC Defendants' First Circuit Appendix, p. 21).[1] Then, in her Report and Recommendation (R&R), she said that plaintiffs, including Petitioner, had "bombarded" the Department of Housing and Urban Development (HUD)—which regulates CCHC—with comments about the CCHC Defendants' proposal to build West House II and integrate certain of the facilities of West House I with West House II. (CCHC Appendix, p. 107). Petitioner has had ample opportunities to seek her relief.

[1] The CCHC Defendants' Brief and Appendix were docketed in the First Circuit in No. 24-2134, on May 15, 2025. The CCHC Defendants will cite to the pages of their Appendix as "CCHC App., p. ___."

To summarize the proceedings below, Petitioner filed suit in the District of Rhode Island against the HUD Defendants and alleged that she was a resident of a senior living facility called West House I, that the residents of the newly-constructed West House II would be younger than those of West House I (55+ compared to 62+), and that the West House II residents would likely have drug or mental disability issues such that allowing them access to the common areas and parking lot of West House I would endanger the residents of West House I. She added the CCHC Defendants in her amended complaint and asserted state law claims against them. (U.S.D.C.-R.I. Case No. 1:24-cv-00084, ECF #12). Petitioner's motion for preliminary injunction against the HUD Defendants requested that the court rescind HUD's approval of the CCHC proposal. The Magistrate Judge recommended that Petitioner's motion be denied. (CCHC App., pp. 114-15). The District Court found Petitioner's claim to be so speculative that she lacked standing. (CCHC App., pp. 150-53). It noted that even if Petitioner had standing, it would have denied her motion for a preliminary injunction. (CCHC App., pp., 154, n. 4). The District Court granted the HUD Defendants' motion to dismiss. It dismissed the state law claims against the CCHC Defendants pursuant to 28 U.S.C. § 1367(c). Petitioner appealed to the First Circuit where she has filed three motions for stay. None have been granted.

Petitioner fails to address the correct standard for the remedy she seeks. Petitioner is not requesting a stay to preserve the status quo; she is seeking an injunction to undo what has been done, i.e., the partial integration of the

operations of the two West Houses. This injunction "'demands a significantly higher justification' than a request for a stay" because it "'grants judicial intervention that has been withheld by lower courts.'" Respect Maine PAC v. McKee, 562 U.S. 996, 996 (2010) (per curiam), quoting, Ohio Citizens for Responsible Energy, Inc. v. NRC, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers). The Supreme Court issues such relief only when the applicant's entitlement to relief is "indisputably clear." Hobby Lobby Stores, Inc. v. Sebelius, 568 U.S. 1401, 1403 (2012) (Sotomayor, J.), quoting, Wisconsin Right to Life, Inc. v. Federal Election Comm'n, 542 U.S. 1305, 1306 (2004), (Rehnquist, C.J., in chambers). Petitioner's alleged rights are doubtful, at best, and far from clear. Moreover, the Magistrate Judge found an injunction would cause substantial harm to CCHC, the residents of West House II, and the public interest, which is for more senior housing. (CCHC App., p. 112).

Petitioner asserts she has federal court standing simply because there has been an alleged violation of a federal procedural regulation, i.e., 24 C.F.R. § 245.410. That regulation requires a mortgagor to provide notice to project tenants thirty days before making a request to HUD for approval of certain actions. First, the Magistrate Judge doubted that the regulation applied, based on HUD's argument. (CCHC App., p. 84). Second, Petitioner fails to address the Supreme Court's recent decisions on standing which hold that even when a plaintiff alleges a violation of a federal statute or regulation, she must still show she has a "concrete" injury that is "imminent" and results from the violation of the federal

law. TransUnion LLC v. Ramirez, 594 U.S. 413, 442 (2021); Spokeo v. Robins, 578 U.S. 330, 341 (2016). Petitioner did not allege a concrete, imminent injury resulting from the failure to comply with that regulation (or any other federal law). Moreover, while Petitioner did cite the general policies set forth in HUD Handbook 4350.1 Rev-1, Chapter 16, the Magistrate Judge found that it was "long established that this Handbook 'is not mandatory'; thus, 'it is clear no [tenant] private cause of action could be implied from it.'" R&R, p. 23-24, quoting Harrison v. Hous. Auth. of City of Coll. Park, 445 F. Supp. 356, 358-59 (N.D. Ga. 1978) (CCHC App., pp. 102-03). Petitioner has no standing.

Regardless, the Magistrate Judge also found that HUD required the CCHC Defendants to respond to Petitioner's numerous concerns; they did so; and HUD considered those responses. (CCHC App., pp. 91-93). HUD confirms this. (CCHC App., pp. 8-9). Petitioner does not identify any specific complaint she raised to which HUD and the CCHC Defendants failed to respond, if not agree. Instead, Petitioner now recites a litany of new and different "injuries," which were not raised with HUD, or in the district court, and for which there is no evidence in the record. For example, Petitioner now complains that the West House II residents have larger pets and leave doors open. These kinds of complaints, even if substantiated, do not give rise to federal jurisdiction. See, Falzarano v. U.S., 607 F.2d 506, 511 (1st Cir. 1979). They are garden variety landlord-tenant issues routinely handled in state courts.

Finally, Petitioner complains that she allegedly could not conduct

discovery, could not present live testimony at the June 27, 2024 hearing, and could not argue against the HUD Defendants' motion to dismiss. The record belies all these complaints. Petitioner filed her motion for preliminary injunction without conducting any discovery and suggested at the hearing that the court consolidate the hearing on preliminary injunction with a trial on the merits. (CCHC App., pp. 38-39). Not once did she request discovery. At the hearing, the Magistrate Judge specifically raised the issue of whether there might be live testimony, but Petitioner did not indicate a desire to present any. (CCHC App., pp. 24-25). Petitioner filed a response to the motion to dismiss on June 10, 2024. (U.S.D.C.-RI docket, ECF #33). At the hearing, she argued against the motion. (CCHC App., pp. 72-74, 76-78). Lastly, Petitioner filed post-hearing materials respecting the motion to dismiss. (U.S.D.C.-R.I. Docket, ECF #45, 46). The Magistrate Judge specifically stated in an August 20, 2024 text order that she considered all these materials in rendering the R&R. Petitioner has been heard.

CONCLUSION

For these reasons, the court should deny the emergency application for stay pending appeal in the United States Circuit Court for the First Circuit.

Appellees Church Community Housing Corporation and Christian Belden

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CERTIFICATE OF SERVICE

On May 19, 2025, I served a copy on the pro se Petitioner and on the Special Assistant United States Attorney by sending a copy via email and U.S. Mail, first class postage prepaid, to:

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