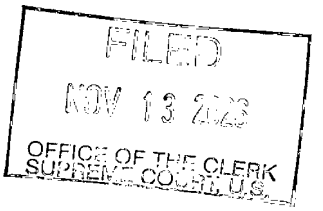
No. 26-6185



IN THE
Supreme Court of the United States

ANTONIA BLACKWELL,
Petitioner,

v.

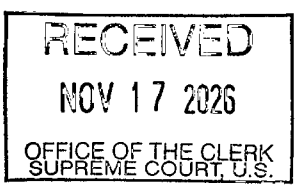
THE PEARL,
Respondent.

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

ANTONIA BLACKWELL
Petitioner, Pro Se
No mailing address (homeless);
please contact by email or telephone
kranberry99@yahoo.com
(385) 334-6113



QUESTION PRESENTED

Petitioner, a Black tenant who paid her rent in full and on time every month, disputed undisclosed fees her landlord added to that rent under a lease addendum that she did not sign and whose signature lines, the landlord's and hers alike, are blank (R. 15; Trial Tr. 107:7-13). She complained of discrimination to the state civil-rights agency. The landlord then refused her rent and made her an offer, set down in writing that day by her then-counsel, to let her stay through June, dismiss the fees to date, and give her a positive reference "in return for you dismissing your Discrimination Claim"; when she refused, it sued to evict her, abandoned the fees in court, and was never required to prove them. (App. H; App. B ¶¶ 29 n.7, 38; App. A at 2.) The Utah trial court held that her dispute of the fees was not protected activity because "disputing lawfully assessed fees" is not protected (App. B ¶ 38), and it never addressed her agency complaint or the offer; the Court of Appeals declined to review that holding and affirmed on the ground that her nonpayment of the same fees was a legitimate reason to evict her (App. A at 3 n.3). The decision is an unpublished order that no federal court other than this one can review.

The lower courts are divided on what Section 3617 requires, and this Court has not spoken. The Seventh Circuit, sitting en banc, has observed that "[c]ourts are split" on whether a Section 3617 claim depends on a violation of another provision of the Act, and held that it does not. Bloch v. Frischholz, 587 F.3d 771, 781-82 (7th Cir. 2009) (en banc). The Sixth Circuit, agreeing, identified the Fifth Circuit as holding the opposite. Hidden Vill., LLC v. City of Lakewood, 734 F.3d 519, 529 (6th Cir. 2013). On the related question whether a complaint is protected when the grievance behind it fails, the federal courts construe Section 3617 together with Title VII's anti-retaliation provision, Bloch, 587 F.3d at 779, and the Tenth Circuit, whose rule governs the federal courthouse in the same city, holds that a plaintiff may maintain a retaliation claim "based on a reasonable good-faith belief that the underlying conduct violated Title VII." Crumpacker v. Kan. Dep't of Hum. Res., 338 F.3d 1163, 1172 (10th Cir. 2003); see Love v. RE/MAX of Am., Inc., 738 F.2d 383, 385 (10th Cir. 1984) (opposition protected when "based on a mistaken good faith belief that Title VII has been violated"). Federal courts applying Section 3617 itself hold the same: a

tenant "does not have to establish that the conditions or actions she protested or opposed actually constituted discrimination under the FHA, but only that she had a 'good faith, reasonable belief'" that they did. Kris v. Dusseault Family Revocable Tr. of 2017, No. 18-cv-566-LM, 2019 DNH 164, slip op. at 13 (D.N.H. Sept. 24, 2019) (citing Broome v. Biondi, 17 F. Supp. 2d 211, 219 (S.D.N.Y. 1997)). This Court reserved that question in Clark County School District v. Breeden, 532 U.S. 268, 270 (2001) (per curiam), and has never addressed it under Section 3617. The Utah courts applied neither rule: they denied protection because the fee dispute was later resolved against the tenant, on fees the landlord had abandoned in court and was never required to prove, imposed under an addendum whose signature lines are blank.

The question presented is:

Whether a tenant who has paid her rent in full and on time every month, who in good faith disputes undisclosed fees her landlord has added to that rent, and who then complains of discrimination to a civil-rights agency, loses the protection of the Fair Housing Act's anti-retaliation provision, 42 U.S.C. § 3617, where the landlord has made her an offer, recorded in writing, to let her stay through June, dismiss the fees, and forgo eviction in return for dismissing that complaint, and then sues to evict her for nonpayment of fees it abandons in court and never proves.

PARTIES TO THE PROCEEDING

Petitioner Antonia Blackwell was the defendant and counterclaimant in the trial court and the appellant below.

Respondent The Pearl was the plaintiff in the trial court and the appellee below.

Petitioner is an individual, so no corporate disclosure statement is required. Sup. Ct. R. 14.1(b)(ii), 29.6.

RELATED PROCEEDINGS

Third Judicial District Court, Salt Lake County, Utah:

The Pearl v. Blackwell, No. 230401251 (findings of fact, conclusions of law, and order entered January 22, 2025; landlord's motions for appellate attorney fees and for forfeiture of Petitioner's cash bond pending on remand).

Utah Court of Appeals:

Blackwell v. The Pearl, No. 20250245-CA (order denying petition for extraordinary relief entered March 20, 2025).

The Pearl v. Blackwell, No. 20250324-CA (judgment entered May 5, 2026; rehearing denied June 3, 2026).

Supreme Court of Utah:

The Pearl v. Blackwell, No. 20260871-SC (petition for writ of certiorari denied August 24, 2026).

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Appendix G: Excerpts of briefs showing where the federal question was raised and passed upon (Sup. Ct. R. 14.1(g)(i)), each reproduced with its cover and the pages cited in this petition: Brief of Appellant, The Pearl v. Blackwell, No. 20250324-CA (Utah Ct. App. Aug. 20, 2025) (pp. 15, 18, 22, 24, 28, 35, 36-44, 48, 49); Brief of Appellee (Sept. 17, 2025) (pp. 14, 24, 25, 31, 32, 39); Reply Brief of Appellant (Oct. 17, 2025) (pp. 10, 12, 13, 15-17, 20, 21); Petition for Writ of Certiorari, The Pearl v. Blackwell, No. 20260871-SC (Utah July 6, 2026) (pp. 1, 7-9, 14-20)

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INTRODUCTION

The record presents the following, each established in the Statement below. The lease the landlord filed to evict her was fourteen pages of a forty-page document: an electronically signed contract that, as counsel put it, "came to be printed out, pages cut out, and scanned in a copy machine for production in court," its margins "partially cut-off," and "parsed into a little over a dozen pages." No witness with knowledge of its signing ever authenticated it, and the charges Petitioner disputed were imposed under an addendum in that remnant signed by no one. (R. 5 ¶ 4; R. 6-19; R. 15; R. 314-15; Opening Br. 24, 28, 35.) A tenant who paid her rent in full and on time every month was evicted for "nonpayment." (App. B ¶¶ 32 n.8, 40; Trial Tr. 175:11-15.) The undisclosed fees that supplied the "nonpayment" were ones the landlord abandoned in court and was never required to prove. (App. B ¶¶ 12 n.2, 29 n.7; App. A at 2.) Most of the balance was late fees, charged under a lease clause for late rent, to a tenant who never paid rent late and whose payment arrived every month; the landlord's own ledgers, reviewed by the Utah Antidiscrimination and Labor Division, the state fair-housing agency, show it. (Pl. Tr. Exh. A at 1, ¶ 6; UALD Determination at 6-7, 10.) Two months before the notice to vacate, the landlord's own ledger showed her in credit, by $173.57, after a $500 credit from its regional manager; five weeks later the same ledger showed her owing $854.42. (UALD Determination at 7-8.) So how was the default manufactured? The landlord refused her rent, sued for the rent it refused, and was awarded it three times over. (R. 530; MSJ Hrg. Tr. 38:9-14; App. J at 4 n.5.)

The landlord's reason for the eviction is in writing: on April 4, 2023, its counsel conveyed an offer, set down that day by Petitioner's then-counsel and confirmed by the landlord's counsel at oral argument, to let her stay through June, dismiss the fees to date, and give her a reference "in return for you dismissing your Discrimination Claim." (App. H; Pet. for Reh'g 12.) The notice to vacate came before her agency complaint; the refused rent, the conditioned offer, and the eviction suit all came after it, and no court analyzed any of the three under Section 3617. The order of events is itself the method: the undisclosed fees put a choice to her, pay charges she had never agreed to or be in "default," and the default the landlord then sued on was the one it had built. The statute makes

it "unlawful to coerce, intimidate, threaten, or interfere with any person . . . on account of his having exercised or enjoyed . . . any right granted or protected by" the Act. 42 U.S.C. § 3617. That email was in front of every decisionmaker, and every decisionmaker accepted a different reason. The state agency found her prima facie case, called a settlement offer "a routine part of the litigation process," accepted the landlord's explanation that she had not moved out by the date in its notice, and went no further. (UALD Determination at 18, 20-21.) The trial court received it as an exhibit, heard Petitioner argue it in closing, and wrote its findings as if it did not exist, adopting instead the landlord's litigation reason, nonpayment. The Court of Appeals had it on rehearing and did not mention it. Three decisionmakers held the one document that states the landlord's reason, and each accepted another: the agency, that she had stayed past the date in the notice; the courts, nonpayment of charges the landlord had abandoned in court and never proved. None asked the question the document itself poses: can a landlord tell a tenant that she may stay in her home only if she drops her discrimination complaint? It is the only question the statute asks of this record, and the only one no one answered. (UALD Determination at 11 n.3, 18; Trial Tr. 172:6-14, 203:5-8; App. B ¶¶ 33-43, 40; App. A; Pet. for Reh'g 12-14; App. D.)

The only witness who was present when the lease was formed was found not credible; the two witnesses who did not work there when the lease was signed were found credible. (App. B ¶ 27; Trial Tr. 46:5-18, 169:4-16; R. 955, 1078.) Four months later, the same judge, quoting her motion, listed among the issues in the case whether "witnesses for The Pearl made '[f]alse [s]tatements in [c]ourt,'" and found that the case "presents serious issues on the merits that warrant appellate review," though he found she had not shown a likelihood of success on them. (App. E at 4.) He did not go back to his findings; he left them standing and sent the issues up. The higher court deferred to those findings. Deference presumes the trial judge saw something the reviewing court could not. What does it presume when the trial judge himself has found the issues serious enough to warrant the reviewing court's review, and the reviewing court defers to his findings without mentioning that he said so? (App. B ¶ 27; App. E at 4; App. A at 3.) That one credibility finding carries everything. It is what made the unsigned addendum part of the lease, the fees "lawfully

assessed," her dispute of them unprotected, and her nonpayment of them a "legitimate" reason to evict her. (App. B ¶¶ 26-27, 31, 38, 43 n.10.) The Court of Appeals shielded it from review on the premise that the trial judge could "view[] the witnesses firsthand" and "assess their demeanor," when the judge, minutes into her testimony, had told her to turn off her camera, and the record does not show it came back on. As counsel put it on rehearing, the judge "had no opportunity to observe Ms. Blackwell's demeanor during her testimony," and "no opportunity to compare her demeanor to Pearl's witnesses. He saw only a blank screen." (App. A at 3; Trial Tr. 8:18-19, 13:22-14:2; Pet. for Reh'g 7-8.) And the finding was made against a document. The addendum's signature lines are blank. As counsel put it on rehearing, "[n]o credibility finding can supply a signature where none exists." (R. 15; Pet. for Reh'g 9 (citing Anderson v. City of Bessemer City, 470 U.S. 564, 575 (1985)).) A finding that decides a federal claim cannot be insulated from review by demeanor the record does not show the judge observed, or used to supply a signature the document does not have.

The Court of Appeals said it need not decide whether her complaint was protected, and affirmed on a ground that holds only if it was not. (App. A at 3 n.3.) On that logic Section 3617 is a dead letter: a tenant who disputes a charge, complains of discrimination, and withholds the disputed charge can always be evicted for "nonpayment," and the complaint protects her from nothing. (See infra Statement of the Case, Part D.) The unrepresented tenant was held to "the same standard of knowledge and practice as any qualified member of the bar," and the represented landlord was relieved of its burden of proof. (App. A at 2, 4.) The Court of Appeals granted the landlord's request for its appellate attorney fees, in an amount still to be set, for defending against her appeal a judgment that, her counsel told the court, was not served on her when it was entered, as Utah's own rules require. The certificate on the trial court's findings lists her as emailed a copy; her counsel represented that she never received it and that the court's docket showed the electronic notice to her had failed. The landlord concedes that her name "did not appear on the certificate of service" for the judgment; it mailed notice sixteen days later, on the day she, having learned of the judgment only when she contacted the court's self-help center, moved to vacate it for lack of notice. Counsel argued that under Utah law a judgment entered without the required notice is void. (App.

B at 14; Appellee Br. 39; Opening Br. 18, 22, 48-49; Reply Br. 21 (citing Utah R. Civ. P. 58A(g)).) The Court of Appeals held the question unpreserved and never decided it. (App. A at 4.) Petitioner does not ask this Court to decide that question of Utah law, or any other. She sets it out, with the rest, because it is part of how a tenant who complained of discrimination came to owe more than she ever withheld. The one question presented is federal: whether her complaint was protected under Section 3617. The landlord now seeks, in fees, more than double a judgment that already includes the rent trebled. (App. A at 5; Dkt. 241; App. J at 4.) The Court of Appeals did all of this in an unpublished order that, under its own rule, "will not stand as precedent." (App. A at 1 (quoting Utah R. App. P. 30(e)).) It binds her completely and binds no one else. It appears in no reporter, so the next tenant whose federal protection is taken this way will not find it, the next court will not have to answer it, and a federal right can go on being denied one unpublished order at a time, with nothing anywhere to show that it is happening. What cannot be seen cannot be corrected, and what cannot be corrected will be repeated. The only court that reviewed the judgment on the merits sat with two judges against whom Petitioner had filed a formal judicial-conduct complaint, in a separate matter, eight months earlier. The notice of argument did not name the panel; her court-appointed counsel learned its composition the day before argument and moved to recuse both judges, the first such motion, she told the court, in nearly two decades of practice. The Presiding Judge denied the motion, reasoning that a judicial-conduct complaint "does not automatically require disqualification" and noting counsel's acknowledgment that "there is no indication of any actual bias." Neither judge stepped aside. One signed the order; both sat on the panel that denied rehearing; the Supreme Court of Utah then declined to review. (Emergency Mot. 1-4, 15; App. I at 1-5; App. A at 5; App. D; App. C.) Petitioner does not ask this Court to review that ruling. She notes only that the judges who decided every question against her were judges she had asked, on the record, not to decide her case at all; that no other court looked; and that the order they issued does not mention the April 4 offer, the court's own published Pepperwood decision, which binds it and which it did not cite, or the contradiction counsel identified between its two holdings: that the fees were "simply not an 'essential element[]'" the landlord had to prove, and that her nonpayment

of those same fees was the legitimate reason to evict her. Counsel told the court it had to choose: "Either the fees mattered to the eviction," and the landlord had to prove them, "[o]r the fees did not matter," and "they cannot serve as the 'legitimate, nondiscriminatory rationale' for the eviction . . . . The Court cannot maintain both." It chose neither, and denied rehearing. (App. A at 2, 3 n.3; Pet. for Reh'g 10-11; App. D.)

The lease the landlord sued on, the one no witness with knowledge of its signing ever authenticated, adds, for any obligation assigned to a collection agency or attorney, "a collection fee of forty percent (40%) of the debt/obligation assigned," with interest "at the rate of twenty-four percent (24%) per annum compounded daily until paid." (Pl. Tr. Exh. A at 5; R. 314-15.) Her security deposit was never accounted for. The Court of Appeals held her claim to it unpreserved, and noted counsel's statement at argument, "not reflected in the record," that it had been credited against the judgment. (App. A at 5 & n.5.) If it was not credited, the record will never say so; the only word on the question in the court's order is a lawyer's. A lawyer's unrecorded word was enough to go into the order. The tenant, without a lawyer, was held to "the same standard of knowledge and practice as any qualified member of the bar" (App. A at 4), and under that standard her arguments were thrown out as "not supported by citation to the record" and as "raised in passing." (App. A at 4 n.4, 5.) The court applied one rule to the party with counsel and the opposite rule to the party without: the landlord could put a fact before the court by simply saying it, and the tenant could not prove a fact set down in writing the day it happened. (App. A at 4, 5 n.5; App. H.) The burden ran in one direction. The landlord was excused from proving the charges its eviction rested on, from producing the instrument it sued on, and from calling the one witness who was present when that instrument was signed. The tenant was required to contest, in the form the rules prescribe, the authenticity of a document no witness with knowledge of its signing ever authenticated; to prove every element of her counterclaims; and then, against the deference owed a judge who had told her to turn off her camera, to prove that she had told the truth. (App. A at 2, 3; App. J at 3-4; App. B ¶¶ 27, 31; R. 236, 314-15, 640-41.)

The other residents who asked the same questions were not evicted; the only Black tenant was. (Trial Tr. 68:6-12, 111:5-8; UALD Determination at 17.) No court below could explain how a tenant who paid every month was evicted for nonpayment; how charges the landlord dropped in court remained owed; how fees of the kind the Federal Trade Commission later sued Greystar entities, the corporate family that managed her building, over, alleging "mandatory hidden fees," were "lawfully assessed" against her; how a trial judge's finding that the case "presents serious issues on the merits that warrant appellate review" became, on appeal, deference to that same judge; how the one document that states the landlord's reason became the one document no court would read; how an agency and two courts, on this record, decided every question of liability for the landlord and not one for a tenant who never missed a rent payment; or how the price of asserting a federal right against retaliation came to include the fees of the lawyers who defended against it, granted in an amount still to be set, on a record that told every court that a mother and her child were without a home and that the judgment they were being ordered to pay was what made it "impossible to secure even temporary housing." (Trial Tr. 185:23-25; App. E at 4; App. A at 5; Reply Br. 21; App. B ¶ 38; Stipulated Order ¶ 2, FTC v. Greystar Real Estate Partners, LLC, No. 1:25-cv-00165-CNS (D. Colo. filed Dec. 2, 2025).) An eviction, a trebled judgment, and a fee award to come on top of it, against a tenant with no income, are not a record anyone rents to; Petitioner does not expect to be housed while they stand. None tried. This Court is the only one left that can require an answer.

OPINIONS BELOW

The order of the Utah Court of Appeals (App. A) is unpublished. Under Utah R. App. P. 30(e), an order of that court "will not stand as precedent." The order denying rehearing (App. D) and the order of the Supreme Court of Utah denying certiorari (App. C) are unpublished. The findings of fact, conclusions of law, and order of the Third Judicial District Court (App. B), its order granting summary judgment on the unlawful-detainer claim (App. J), and its order on pending motions (App. E) are unpublished.

JURISDICTION

The Utah Court of Appeals entered judgment on May 5, 2026 (App. A), and denied a timely petition for rehearing on June 3, 2026 (App. D). The Supreme Court of Utah denied a timely petition for a writ of certiorari on August 24, 2026 (App. C), so the Court of Appeals is the highest court of the State in which a decision could be had. This petition is filed within 90 days of that order. Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 818 of the Fair Housing Act, 42 U.S.C. § 3617, provides:

> "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."

The regulation of the Department of Housing and Urban Development implementing Section 3617, 24 C.F.R. § 100.400, provides in relevant part:

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

STATEMENT OF THE CASE

Citations to "R." are to the record on appeal in the Utah Court of Appeals, The Pearl v. Blackwell, No. 20250324-CA. "MSJ Hrg. Tr." is the transcript of the March 13, 2024 summary-judgment hearing, and "Trial Tr." is the transcript of the December 13, 2024 bench trial, both in the Third Judicial District Court, No. 230401251. "Opening Br.," "Reply Br.," "Appellee Br.," and "Pet. for Reh'g" are the parties' filings in No. 20250324-CA, cited by their internal page numbers; the petition for rehearing is reproduced in full at Appendix F, and the cited pages of the briefs are reproduced at Appendix G. "Emergency Mot." is Appellant's Emergency Motion to Continue Oral Argument and for Recusal of Judges Oliver and Orme, filed February 18, 2026, in that appeal. "Answer & Countercl." is Petitioner's April 13, 2023 Answer and Counterclaim in No. 230401251. "Pet. for Cert." is Petitioner's petition for a writ of certiorari in the Supreme Court of Utah, No.

20260871-SC, cited by its internal page and excerpted at Appendix G. "UALD Determination" is the September 1, 2023 determination of the Utah Antidiscrimination and Labor Division in No. 23-H-0033, filed in the trial court and part of the record on appeal (R. 233; see Appellee Br. 14; Reply Br. 15), cited by its internal page. It is not reproduced in the appendix. "App." is the appendix to this petition.

A. The tenancy and the disputed charges.

Petitioner Antonia Blackwell is a Black woman. She was the only tenant of her race in her building, as she stated to the state civil-rights agency, which recorded the statement without contradiction from the landlord; the point was pressed on appeal. (UALD Determination at 17 (noting Petitioner's statement that she "was the only Black tenant residing at Respondent Pearl Property, and thus all other tenants were not of Complainant's race"); Reply Br. 15.) She paid her rent in full and on time every month through March 2023; the landlord's manager agreed at trial that "[t]he ledger's rent payment directly looked good." (Trial Tr. 175:11-15; R. 1084; Answer & Countercl. 7 ¶ 3.) The trial court found that she nonetheless "refused to pay fees she agreed to pay pursuant to the Lease and Addendum." (App. B ¶ 31.)

The disputed charges came from a lease addendum bearing blank signature lines. The landlord charged her fees that she maintained she had never agreed to pay, set out in that addendum. (R. 15.) The welcome letter she received before moving in, which the landlord's counsel described at trial as outlining "all of the charges that you'll be charged moving forward," showed rent of $2,550 and "$140 fees," a total of $2,690, the amount she paid every month. (Trial Tr. 25:5-12; R. 934; see App. B ¶ 22 n.6 (welcome letter admitted as Plaintiff's exhibit K).) The disputed amount for which the landlord sued was $883.59. (App. B ¶ 12 n.2.) On January 28, 2023, she wrote to the landlord's manager disputing the charges. On January 30, two days later, the manager posted a notice to vacate on her door that "gave Ms. Blackwell until March 31, 2023 (60 days) to vacate the property." (App. B ¶¶ 40-41; Trial Tr. 54:4-9.) The same day, she wrote back: "I never signed the utility addendum and it was received -- it was received if not at least a month after I moved in. It was two to three months after. I did not sign it, so if someone else did, it's forgery. If

you guys are saying I signed one, I know 100 percent I did not." (Pl. Tr. Exh. H, read into the record at Trial Tr. 107:7-13; R. 1016.) Her position that she had never signed the addendum was thus stated to the landlord in writing on the day the notice was posted, before any agency complaint or lawsuit existed. Months earlier, when charges first appeared on her account, the landlord's community manager had written to her that "[t]his has been fixed, it was a setting issue. I apologize for the inconvenience." (Reply Br. 13, 20; see Def. Tr. Exh. F; R. 605.) The landlord later told the agency that the manager's reversals concerned late fees, not the utility charges (UALD Determination at 7), and the trial court credited the manager's successor's testimony that fees were waived "as a courtesy" (App. B ¶ 49).

The disputed balance was mostly late fees, and the lease's late charge is a charge for late rent. The lease sets rent at $2,550 a month and provides: "If you don't pay all rent on or before the 3rd day of the month, you'll pay a late charge. Your late charge will be the greater of: (1) a flat rate of $75, or (2) 10% of your total monthly rent payment." (Pl. Tr. Exh. A at 1, ¶ 6; R. 6.) It describes late charges as "liquidated damages for our time, inconvenience, and overhead in collecting late rent." (Pl. Tr. Exh. A at 5.) It also provides that "[a]ll payment obligations under this Lease Contract shall constitute rent." (Id. at 1, ¶ 6.) Each $255 late fee was ten percent of the $2,550 rent. (Reply Br. 12.) From July through October 2022, Petitioner paid $2,690 each month against charges that exceeded it by between $8.86 and $27.07; each month the landlord charged a $255 late fee on that difference and then reversed it, and its regional manager told the agency that those balances "did not require the charging of a late fee" under the landlord's policy. (UALD Determination at 6-7.) The manager had assured Petitioner in September that she would "not be responsible for paying the late fees if you are paying your rent by the 3rd." (Reply Br. 13 (quoting R. 92 ¶ 21).) The landlord's manager, shown the email at trial, agreed: "There's nothing on this email indicating that you've paid late." (Trial Tr. 148:5-6; R. 1057.) In November and December the landlord charged two more $255 late fees and reversed neither; of the $590.17 balance on its ledger on December 4, $510 was those two late fees. (UALD Determination at 6-7.) In between, on November 29, it had credited her account $500, leaving her with "a credit of $173.57" (id. at 7), and

she wrote the next day: "I've never paid my rent late and have always paid prior to the 1st of the month." (Reply Br. 13 (quoting Def. Tr. Exh. B).) The landlord told the agency the remaining charges were utilities she was responsible for. (UALD Determination at 7.) The sequence matters. The balances on which the late fees were charged consisted of the disputed charges themselves, imposed under the addendum with blank signature lines (R. 15) and, as shown below, never documented at trial and later abandoned; by December, the late fees charged on those balances were most of the balance the landlord carried on its own ledger, a ledger whose figures did not agree with the landlord's welcome letter or its summary-judgment motion (App. B ¶ 29 n.7) or, as Petitioner testified, with its other ledgers (Trial Tr. 166:9-14; R. 1075); and that balance is the "nonpayment" the courts below treated as the legitimate reason for her eviction (App. B ¶¶ 32 n.8, 40), while the other residents who raised the same questions about the same charges were not evicted (Trial Tr. 68:6-12, 111:5-8).

Other residents asked the same questions, and none was evicted for it. The landlord's manager testified that he had "talked to a lot of residents that have had those issues" and was "sure there were other residents within that building that had questions with charges." (Trial Tr. 111:5-8.) Asked whether anyone among the "[m]any" eviction notices he had processed had been "kicked out for asking questions," he answered, "No." (Trial Tr. 68:6-12.) The manager also testified that the one neighbor Petitioner identified had paid the fees, and the trial court so recorded. (App. B ¶ 32 n.9.) On the manager's own account, then, many residents raised the same questions about the same charges and none was evicted for it; the one tenant who received a notice to vacate two days after raising them, and who did not pay the disputed charges, was the only Black tenant in the building.

The landlord could not document the charges, and then abandoned them. Its manager had no documentation at trial that the pest-control service billed to her had been provided (Trial Tr. 80:10-81:10). Nor could he document the second of two trash charges on her November 2022 statement: a $25 "door-to-door pickup" charge and a separate $2.45 "trash rebill," which he said was "[b]ased on usage"; asked for proof of her usage, he answered, "I do not have proof on me right now; no." (Trial Tr. 72:3-73:4; R. 981-82.) The landlord later abandoned its claim to the fees. (MSJ

Hrg. Tr. 8:18-9:2; R. 1163-64.) The findings record that the landlord "is no longer seeking judgment for the contested past due amounts of $883.59 as sought in its Complaint," and that "[t]his was reaffirmed by counsel at subsequent hearings." (App. B ¶ 12 n.2 (quoting Rule 54 Motion at 3).) The trial court itself noted that Petitioner "correctly noted that some of the numbers related to the disputed fees in The Pearl's original summary judgment motion did not match the numbers listed in The Pearl's ledger . . . or the welcome letter," though it found the discrepancy was not shown to be intentional. (App. B ¶ 29 n.7.) These are the charges whose nonpayment the courts below treated as the landlord's legitimate reason for the eviction and as placing Petitioner's dispute outside the protection of the Act: charges the landlord could not document at trial as to the pest-control service or the usage-based trash charge, was never required to prove, abandoned in court, and had stated in different amounts in its own summary-judgment motion, its ledger, and its welcome letter (App. B ¶ 29 n.7), and, as Petitioner testified, in ledgers that did not agree with one another. (Trial Tr. 166:9-14; R. 1075.)

B. The discrimination complaint, the refused rent, and the offer.

On March 8, 2023, Petitioner filed a race-discrimination complaint with the Utah Antidiscrimination and Labor Division, the state civil-rights agency. (R. 233-43.) In mid-March she wrote to the landlord asking to stay through June 30, 2023; the landlord's manager recalled receiving the email, and the only reply in the record is an undated, unsigned statement that "the non-renewal is still in standing and we are still going to proceed with the non-renewal and for a move out date of 3/31/23." (Def. Tr. Exh. G (R. 602-03, 640-41); Trial Tr. 173:11-14; R. 1082; UALD Determination at 10.) The agency held a resolution conference with both parties on March 23, 2023, which produced no settlement. (UALD Determination at 11.) On March 31, 2023, she wrote to the landlord's manager: "Since I haven't heard back regarding my tenancy, and still do not have a guarantee of a positive reference, I am assuming it is ok to pay the rent today for the month of April for $2690." (Def. Tr. Exh. G (R. 602-03, 640-41); R. 530.) The landlord refused the payment. Its counsel later explained that the landlord "didn't want to take a settlement agreement for a payment that would have voided our (Unintelligible), essentially," and that "[m]y client was

interested in seeing a vacate date." (MSJ Hrg. Tr. 38:9-14; R. 1193.) The landlord's position statement to the agency was dated April 3, 2023. (Pet. for Reh'g 4 (citing R. 621).) She could not stay, because her rent was refused and her request to remain was not granted, and she could not leave, because she had no reference.

The next day the landlord's counsel conveyed an offer to Petitioner's then-counsel, who set it out in writing that day. (Def. Tr. Exh. G (R. 602-03, 640-41); App. H.) Under its terms, the fees to date would be dismissed, Petitioner would stay through June, paying rent and the ongoing fees, and move out by June 30, 2023, and the landlord would not file an eviction and would give her a positive reference, all "in return for you dismissing your Discrimination Claim." (Id.) The offer thus tied both of the things Petitioner needed to the withdrawal of her complaint. The landlord had already refused the rent that would have let her stay; the positive reference she would need to rent elsewhere was offered only as part of the exchange for dismissal. (R. 530; R. 602-03; see UALD Determination at 3 (recording Petitioner's allegation that the new management company "declined to accept her April 2023 rent payment or provide her with a positive rental reference").) Petitioner refused. Six days later, on April 10, 2023, the landlord sued to evict her, seeking the disputed fees, rent, and treble damages for the same month in which it had refused her rent. (R. 1-2.) The $7,395 judgment it obtained is that month's rent, computed by the trial court as "$85.00 x 3 x 29 days," the 29 days of April that Petitioner remained after the rent she tendered was refused. (App. J at 4 n.5; R. 349 n.5.) The landlord thus refused the April rent, sued for not receiving it, and was awarded it three times over.

The landlord's own account of its reason confirms what the offer was for. The day before the offer, its counsel told the state agency that the notice to vacate had been served "because of unpaid utilities billed pursuant to the lease agreement." (Pet. for Reh'g 4 (quoting R. 621).) Its manager testified, and the trial court found credible, that he would "have been willing to not proceed with an eviction against Ms. Blackwell if she had paid the outstanding balance[.]" (App. B ¶ 40.) On appeal the landlord told the Court of Appeals that Petitioner "could have remained under a new lease agreement if she had just paid the balance owing." (Appellee Br. 32 (citing R. 1012).)

Yet when she tendered the rent, the landlord refused it; and in the April 4 offer the landlord itself proposed to "[d]ismiss all fees and costs to date." (Def. Tr. Exh. G (R. 602-03, 640-41).) The balance, by the landlord's own offer, was negotiable. The one term that did not move was the dismissal of her discrimination complaint.

No court ever analyzed the April 4 offer. The written offer was received at trial as Petitioner's exhibit, without objection (Def. Tr. Exh. G; Trial Tr. 172:6-14, 173:17-20; R. 1081-82), and Petitioner argued it in closing: "Telling me that I can only stay if I drop my fair housing claim, which I'm entitled to do, which is also in writing, which is also listed in this evidence here, is a violation of the Fair Housing Act." (Trial Tr. 203:5-8; R. 1112.) The trial court's findings do not mention the offer; they analyze retaliation only as to the January 30 notice to vacate. (App. B ¶¶ 33-43.) Months before trial, while encouraging the parties to discuss settlement, the court had told them that Utah Rule of Evidence 408 "doesn't let you bring in settlement communications," and that "if one of you make an offer or a counter-offer, those sort of things, don't believe that it's going to come into evidence. It's not." (MSJ Hrg. Tr. 43:22-44:8; R. 1198-99.) Petitioner had told the court minutes earlier, at the same hearing, that "[o]n April 4th, they did offer a conditional" arrangement "only if I dropped my fair housing claim." (MSJ Hrg. Tr. 41:16-18; R. 1196.) Petitioner's counsel argued on rehearing that this advisement excluded the Section 3617 evidence before trial, operating as a blanket exclusion that explained the findings' silence, and that it was wrong: Rule 408 by its terms permits such evidence "for another purpose," and the offer was not offered to prove liability on the eviction claim but to establish retaliatory motive under Section 3617. (Pet. for Reh'g 13-14 (quoting Utah R. Evid. 408(b)(1)).) Whatever the explanation, no court has analyzed the offer under Section 3617. (Id. at 12.)

The omission matters because the offer is not evidence about some other claim; it is the conduct the statute describes. Section 3617 forbids coercion or interference "on account of" a person's "having exercised or enjoyed" a fair-housing right. 42 U.S.C. § 3617. A landlord that conditions acceptance of rent and a rental reference on the withdrawal of a pending fair-housing complaint has done that, whether or not the tenant accepts. A landlord may settle a discrimination

claim. What it may not do is make the tenant's housing the price of the claim: withhold her rent, withhold the reference she needs to rent elsewhere, and offer both back only if she abandons the complaint. If a written offer of that kind is not interference "on account of" the complaint, it is hard to say what would be. The question the courts below never asked is when, on any reading of Section 3617, a tenant is protected, if not then. Cf. Bloch, 587 F.3d at 782 (landlord who "threatens to evict" a tenant on a prohibited ground "has plainly violated § 3617, whether he actually evicts the tenant or not"). The document was in the trial record, received without objection. (Def. Tr. Exh. G; R. 602-03.) Yet the trial court decided the retaliation claim by asking whether the charges Petitioner disputed were owed (App. B ¶ 38), not whether tying her rent and her reference to the withdrawal of her complaint was interference on account of that complaint. If the Act can be applied so that the act of coercion, admitted and argued, is never examined because it was phrased as an offer, the statute's core prohibition is one a landlord can avoid by choosing its words.

The state civil-rights agency reached the offer only to set it aside. It found that Petitioner "establishe[d] . . . her prima facie case" of retaliation, based on her agency complaint and the eviction suit filed five weeks later. (UALD Determination at 20; see Appellee Br. 14 (noting that Petitioner filed the agency's documents in the trial court).) It included the April 4 email in its determination over the landlord's objection, because the email "sheds light on the parties' history." (Id. at 11 & n.3.) But it addressed the offer only as a possible protected activity of Petitioner's, concluding that "[d]eclining a settlement offer is not a protected activity" and that "making a settlement offer is not a violation of the Act but is a routine part of the litigation process." (Id. at 18.) It did not ask whether an offer conditioned on dismissal of the pending complaint was interference on account of that complaint. It then concluded that Petitioner "points to no evidence that would indicate that Respondent's legitimate, non-retaliatory reasons are lacking in credibility," and found no reasonable cause. (Id. at 21.) The agency found the prima facie case, treated the condition attached to the offer as routine, and went no further.

C. The eviction proceedings.

At summary judgment, the landlord did not authenticate the lease on which it sued. Its own electronic-signature pages, which it attached to the complaint, stated that Petitioner had signed a forty-page document, but the landlord filed only fourteen pages, those signature pages among them. (R. 6-19.) The other twenty-six pages were not filed with the complaint or the summary-judgment motion; a longer version of the lease was admitted at trial as Plaintiff's exhibit A, after possession had already been decided on summary judgment. (R. 6-19; App. B ¶ 23; Appellee Br. 24 (citing R. 641).) The addendum that created the disputed charges, as noted, bears blank signature lines. (R. 15.) The landlord's verified complaint stated only that "[t]his action is based on a residential rental agreement," without identifying the fourteen pages as that agreement. (R. 5 ¶ 4.) Its supporting affidavit did not state that those pages were a true and correct copy, and it came from a manager who claimed no knowledge of the lease's formation. (R. 314-15.) The landlord never called the one witness who was present when the lease was formed. (R. 236; R. 640-41.) Petitioner, then without counsel, opposed summary judgment in writing, denying that she had agreed to the fees and challenging the authenticity of the lease. (R. 171; R. 586-88.) She had not started without counsel. Her answer and counterclaim were filed by an attorney, as the trial judge later recalled, and she told the court she had paid "$2,000 a week" for that representation when the case began. (Answer & Countercl.; Trial Tr. 187:12-15, 190; R. 1096, 1099.) By the summary-judgment hearing in March 2024 she had no lawyer. The court had continued the hearing sixty days "so that she could have time to find an attorney"; she told it she had "contacted well over 100 attorneys in the State of Utah" without finding one, and that she and her son were homeless. (MSJ Hrg. Tr. 6, 12; R. 1161, 1167.) She opposed summary judgment and tried her counterclaims herself. Counsel came only on appeal, when the Court of Appeals, on its own motion, appointed pro bono counsel on April 24, 2025. (Order, The Pearl v. Blackwell, No. 20250324-CA (Utah Ct. App. Apr. 24, 2025).) The trial court nonetheless treated the landlord's factual assertions as undisputed because Petitioner had not contested them in the format that Utah R. Civ. P. 56(a)(2) prescribes, so her written denials were given no effect, and it granted summary judgment on the unlawful-detainer

claim. (App. J at 3-4; R. 348-49.) The Court of Appeals quoted the governing rule, that a movant bearing the burden of persuasion "cannot seek summary judgment without producing affirmative evidence in support of the essential elements of its claim," and then affirmed because the landlord's facts were ones that Petitioner "did not dispute." (App. A at 1-2 (quoting Salo v. Tyler, 2018 UT 7, ¶ 26, 417 P.3d 581, 587).) Petitioner's counsel had pointed the court to its own precedent, Pepperwood Homeowners Ass'n v. Mitchell, 2015 UT App 137, 351 P.3d 844, in which the same law firm that represents the landlord here had obtained summary judgment on "a ledger" and "an affidavit from one of its agents" without attaching the governing instrument "to its summary judgment motion or its complaint," id. ¶ 2, 351 P.3d at 846, and the defendant "did not respond" to the motion at all, id. ¶ 3, 351 P.3d at 846. The Court of Appeals nonetheless reversed, as plain error, because "there is no evidence of an instrument obligating [the defendant] to pay" and the motion "failed to demonstrate its entitlement to judgment as a matter of law," id. ¶¶ 10-11, 351 P.3d at 848, vacating the attorney-fee award as well, id. ¶ 16, 351 P.3d at 849. (Pet. for Reh'g 2; Pet. for Cert. 7-9.) The order below does not mention Pepperwood. (App. A.) At summary judgment, where the landlord's eviction claim was decided without a trial, the landlord was never required to produce the complete instrument, and it never produced a signed addendum. That unsigned addendum is the source of the charges whose "lawfully assessed" status later cost Petitioner her federal protection. (App. B ¶ 38.)

Petitioner's discrimination and retaliation counterclaims under the Fair Housing Act were then tried to the court. (App. B ¶¶ 17-18.) The trial was conducted by video. Shortly after Petitioner began testifying, the court told her, "why don't you turn off your camera for a minute while you're testifying," because of an internet lag; nothing in the record shows that the camera was turned back on. (Trial Tr. 13:22-14:2; R. 922-23.) The court found that "the Lease was signed by Ms. Blackwell and that it included the Addendum," and that her testimony that the addendum was not part of the lease was "not credible." (App. B ¶¶ 26-27.) She was the only witness at trial who had been present when the lease was formed. The lease is dated March 14, 2022. (Trial Tr. 125:17-18; R. 1034.) The landlord's property manager testified that he began working at the property in November 2022

(Trial Tr. 46:5-18; R. 955), and the manager for the company that replaced him testified that it took over "towards the end of March" 2023, or, as he agreed, a date that "could be close to" March 7, 2023, and that he verified the fees from "[t]he ledgers that were taken over." (Trial Tr. 169:4-16, 175:1-2; R. 1078, 1084.) The landlord did not call the manager who had signed the lease on its behalf. (Trial Tr. 126:14-19; R. 1035; R. 236.) The court found "credible the evidence presented by The Pearl related to these issues" (App. B ¶ 31), and found not credible the one witness who had been there. When the landlord's property manager was called, he was sworn in the courtroom, and the court directed its clerk to "fix the camera . . . so that Ms. Blackwell can see Mr. Rutherford"; no corresponding instruction was given so that the court could see Petitioner. (Trial Tr. 44:11-23; R. 953.) The Court of Appeals deferred to the credibility finding because the trial court had the opportunity to "view[] the witnesses firsthand" and "assess their demeanor." (App. A at 3 (quoting Staszkiewicz v. Thomas, 2024 UT App 183, ¶ 19, 562 P.3d 723, 730 (quoting Richins v. Weldon, 2023 UT App 147, ¶ 65, 541 P.3d 274) (cleaned up)).) On rehearing, Petitioner's counsel argued that deference of that kind rests on the trial judge's ability to see the witness, invoking this Court's explanation that credibility findings receive heightened deference because "only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said," Anderson v. City of Bessemer City, 470 U.S. 564, 575 (1985), and that where the trial judge could not see the witness, an appellate court reviewing the transcript stands in the same position as the trial judge. (Pet. for Reh'g 7-8.) Counsel also invoked the second limit Anderson states: a trial judge may not "insulate his findings from review by denominating them credibility determinations," because "[d]ocuments or objective evidence may contradict the witness' story," 470 U.S. at 575, and argued that the documents here, the addendum's blank signature lines and the landlord's inconsistent ledgers, did exactly that. (Pet. for Reh'g 9.) Counsel also noted that the transcript contains more than 700 passages marked "(Unintelligible)," so that the audio record on which any inference from tone of voice would have to rest was itself degraded; the record contains no indication the camera came back on, and the record shows the court could not reliably hear her either. (Id. at 7-8.) Deference premised on observing a witness has

no footing where, after the first minutes of her testimony, the record does not show that the factfinder could see the witness, and shows that he lacked an intact record of her voice. Rehearing was denied without addressing the point. (App. D.) The court awarded treble damages of $7,395 (App. J at 4; R. 349) and entered judgment for that amount after trial. (Appellee Br. 39 (citing R. 659).) Petitioner's name did not appear on the certificate of service for the judgment, though the certificate on the findings lists her as emailed a copy (App. B at 14), which her counsel represented she never received (Opening Br. 49); the landlord states that it mailed her notice of the judgment on February 7, 2025, and that she had learned of it by that day; Petitioner's brief states that she learned of it on February 6, 2025, when she contacted the court's self-help center. (Appellee Br. 39; Opening Br. 49.)

D. How the federal question was raised and decided below.

Petitioner invoked the Fair Housing Act in her first responsive pleading, which alleged that the notice to vacate "was served because Ms. Blackwell is African American and because she argued that she should not be charged the fees that were taken off then added back in with $250.00 late fees for each month." (Answer & Countercl. 3 ¶ 5.) The same pleading alleged that she "paid timely each and every month all of the disclosed rent and fees of $2,690," that in December 2022 the landlord gave her a $500 credit and represented that she "was current when she paid her December 2022 rent payment," and that in January 2023 it "then told Counterclaimant that she owed $800 in fees." (Id. at 7 ¶¶ 3, 11-13.) Her retaliation claim was tried with both parties' consent and decided as a claim under the Fair Housing Act; the trial court applied federal precedent. (App. B ¶ 18; R. 646-47 n.4.) The court "assume[d] that the underlying activity was Ms. Blackwell's disputation of the fees." (App. B ¶ 37.) It then held that she "has not cited any authority suggesting that disputing lawfully assessed fees is a protected activity under the FHA," and that because "the Lease clearly provided for the disputed fees," she "has not established that the fee dispute was a protected activity under the FHA." (App. B ¶ 38; R. 651.) The court credited the landlord's manager, who testified that he posted the notice to vacate after Petitioner "sent him an email that he believed made clear that Ms. Blackwell was not going to pay the disputed fees and made

allegations of fraud," and that he would have been willing not to proceed with an eviction "if she had paid the outstanding balance." (App. B ¶ 40.) In a footnote, the court added that even if Petitioner had engaged in protected activity, the landlord had a "legitimate, nondiscriminatory rationale" for the notice (App. B ¶ 43 n.10), which it identified as her failure to pay the fees (App. B ¶ 32 n.8; R. 650 ¶ 31).

On appeal, Petitioner identified her counterclaims as claims under the federal Fair Housing Act (Opening Br. 15; Reply Br. 10; App. G) and argued that the trial court applied the wrong federal standard for protected activity (Opening Br. 36-44; Reply Br. 15-17; App. G). The landlord defended the judgment under the same federal fair-housing cases, noting that the Utah and federal Acts "are so similar . . . that it is appropriate to look to federal law as persuasive authority when interpreting the [Utah Fair Housing Act]." (Appellee Br. 25 & n.5 (quoting Malibu Inv. Co. v. Sparks, 2000 UT 30, ¶ 27 n.11, 996 P.2d 1043); see App. B ¶ 20 n.4 (same).) The Court of Appeals stated that the record was "not entirely clear" whether the counterclaims arose under the federal Act (App. A at 2 n.2), and it declined to decide the protected-activity question, stating that it "need not reach this issue because the district court did address the burden shifting." (App. A at 3 n.3.) It affirmed instead on the trial court's alternative finding that the landlord had a "legitimate, nondiscriminatory rationale" for the notice (id. (quoting App. B ¶ 43 n.10)), which rested on nonpayment of the same fees, the fees that were undisclosed and later abandoned. The court did not hold that Petitioner's complaint was unprotected; it said it need not decide. But the two halves of the order cannot both be true. If disputing the charges was protected activity, nonpayment of them was not a legitimate reason to evict her. The court said it would not decide the first question, and then decided the case as if it had. On that logic, a tenant who disputes a charge, complains of discrimination, and withholds the disputed charge while the dispute is pending can always be evicted for "nonpayment." Her complaint protects her from nothing. And here the landlord's own reason is in writing: it would let her stay "in return for you dismissing your Discrimination Claim." (App. H.) Counsel put the same point to the court on rehearing: either the fees mattered to the eviction, in which case the landlord had to prove them, or they did not, in which case they "cannot

serve as the 'legitimate, nondiscriminatory rationale'" for it. (Pet. for Reh'g 11.) Rehearing was denied. (App. D.) In affirming the eviction, the same court had held that the fees were "simply not an 'essential element[]'" of the landlord's claim, so the landlord was never required to prove them. (App. A at 2.) Petitioner pressed the federal question again on rehearing (Pet. for Reh'g 12-15; App. F), which was denied (App. D), and in her petition to the Supreme Court of Utah, which presented it as a question for review (Pet. for Cert. 1, 14-20, The Pearl v. Blackwell, No. 20260871-SC (Utah)) and denied review (App. C).

The panel that decided the appeal included two judges against whom Petitioner had filed a formal judicial-conduct complaint. In June 2025, in a separate matter, Petitioner filed a complaint with the Utah Judicial Conduct Commission against Judges Oliver and Orme and asked them to recuse; the court resolved that filing without a separate ruling on the recusal request. (Emergency Mot. 2-4.) Eight months later, the same two judges were assigned to this appeal. The notice of oral argument did not identify the panel; when Petitioner's court-appointed counsel learned its composition the day before argument, she moved to continue the argument and to recuse both judges, stating that in nearly two decades of practice she had never before moved to recuse a judge. (Id. at 1-2, 15.) Each judge certified the motion to the Presiding Judge of the Court of Appeals (App. I at 4-5), who denied it on February 25, 2026. The Presiding Judge reasoned, quoting a state ethics opinion, that the filing of a judicial-conduct complaint "does not automatically require disqualification" (App. I at 1-2 (quoting Utah Ethics Advisory Comm., Informal Op. 05-3 (Nov. 28, 2005))), that the complaint as Petitioner described it "appears meritless on its face, because it simply challenges a ruling the judges made," and that Petitioner's counsel had acknowledged "that there is no indication of any actual bias." (App. I at 1-3.) Neither judge recused. The order affirming the judgment was signed by Judge Oliver, and the panel that denied rehearing consisted of Judges Orme, Mortensen, and Oliver. (App. A at 5; App. D.) That order does not mention the April 4 offer, the Pepperwood decision, or the contradiction counsel identified between its own two holdings, and it recorded the landlord's out-of-record statement about the security deposit as made

"without contradiction" while discounting Petitioner's assertions for want of record citations. (App. A; App. D; Pet. for Reh'g 10-14.)

The same order applied its rules unevenly. It held that Petitioner's pro se motion challenging the judgment for lack of notice "consisted of little more than a handful of bullet points," and that "parties who represent themselves will be held to the same standard of knowledge and practice as any qualified member of the bar." (App. A at 4 (quoting Jones v. State, 2020 UT App 125, ¶ 19, 473 P.3d 1190, 1196 (quoting Allen v. Friel, 2008 UT 56, ¶ 11, 194 P.3d 903) (cleaned up)).) It declined to credit other assertions by Petitioner because they were "not supported by citation to the record." (App. A at 4-5 n.4.) In the next footnote, it recorded the landlord's statement at oral argument that Petitioner's security deposit "was credited as a payment towards the judgment," noting that the statement was made "without contradiction" and was "not reflected in the record." (App. A at 5 n.5.) No record cite was required of the landlord for that assertion; Petitioner's assertions without record cites were disregarded.

The federal question thus arises against a stark procedural backdrop. A Black tenant who complained of discrimination lost her home. The addendum that created the disputed charges has blank signature lines, and the landlord sued on fourteen pages of a forty-page lease that no witness with knowledge of its signing ever authenticated. The tenant, the only witness who had been present when the lease was formed, was found not credible after she was told to turn off her camera, while the landlord's witnesses, neither of whom worked there when the lease was signed, were found credible. The tenant, who had paid for counsel until she could not and then could find none, was held to the standard of a licensed attorney, while the represented landlord was never required to prove the charges on which the eviction rested. The appeal was decided by a panel that included two judges her counsel had moved to recuse. The landlord's offer to let her stay if she dropped her discrimination complaint was never analyzed by any court. Her name was left off the certificate of service for the money judgment. And at the end she was told that the federal statute enacted to protect tenants who complain did not protect her, because the charges she disputed were owed. After entering judgment, the trial judge himself stayed the garnishment. He determined that

Petitioner had not demonstrated a likelihood of success, but found that she had "established that the case presents serious issues on the merits that warrant appellate review"; the issues she identified included whether the landlord's witnesses "made '[f]alse [s]tatements in [c]ourt.'" (App. E at 4.) Petitioner does not ask this Court to review the state courts' application of state summary-judgment, evidence, notice, or recusal law, or the credibility finding. Those circumstances are recounted because they show how the rule adopted below operates, and why the single federal question it decided warrants this Court's review.

REASONS FOR GRANTING THE PETITION

The courts below held that a tenant who disputes a charge, and loses that dispute, was never protected by the Fair Housing Act's anti-retaliation provision when she made it, or, in the alternative, that her nonpayment of the disputed charge was a legitimate reason to evict her. Either way, protection turned on the outcome of the dispute rather than on the good faith with which it was raised. That rule contradicts the text of Section 3617 and the regulation implementing it (Part I.A-B); resolves a question this Court expressly reserved in Breeden, in a manner stricter than any position the Court has considered, on an issue the courts of appeals themselves describe as split (Part I.C); and conflicts with the rule applied by the federal courts sitting in Utah, so that a tenant's federal protection now depends on which courthouse hears her claim (Part I.D). The case presents the question cleanly, as a federal question decided below and outcome-determinative here (Part II). The rule will recur, no other federal court can correct it, and it operates through unpublished orders that leave no trace (Part III). At a minimum, because the Court of Appeals expressly declined to decide whether the correct federal standard was applied, the judgment should be vacated and the case remanded for that court to decide it (Part IV).

I. The question is important and unsettled, and the decision below resolves it against the text of Section 3617 and the governing regulation.

A. The statute protects a tenant "on account of" her having exercised her rights, without regard to whether she prevails.

Section 3617 does not stop at interference with the exercise of fair-housing rights. It separately forbids coercion "on account of his having exercised or enjoyed" those rights. 42 U.S.C. § 3617. That clause reaches conduct that occurs after the right has been exercised, and it contains no requirement that the person have prevailed on the underlying dispute. That reading accords with how this Court has long read the Act. In Trafficante v. Metropolitan Life Insurance Co., the Court observed that "complaints by private persons are the primary method of obtaining compliance with the Act," agreed with the Solicitor General that such complainants act "as private attorneys general in vindicating a policy that Congress considered to be of the highest priority," and gave the Act's standing provision "a generous construction" for that reason. 409 U.S. 205, 209, 211-12 (1972). A statute enforced primarily by private complaints cannot protect those complaints only when they succeed. That is this case. The notice to vacate followed Petitioner's written dispute of the charges by two days, and the eviction suit followed her agency complaint, her refused rent, and her refusal of the April 4 offer. (App. B ¶ 40; R. 1-2; R. 233-43; R. 530; R. 602-03.) Whatever a court later concluded about the charges, the acts for which she was penalized were the exercise of the rights the statute names.

Courts have read the statute that way. In Stackhouse v. DeSitter, the court held that "§ 3617 may be violated absent a violation of § 3603, 3604, 3605 or 3606," because reading it otherwise "would render § 3617 superfluous." 620 F. Supp. 208, 210 (N.D. Ill. 1985). The court explained that the statute's later clauses prohibit "coercive acts taken against persons who already have exercised their rights to fair housing," and that in those circumstances "the coercive or threatening conduct which violates § 3617 occurs after the enumerated rights have been exercised, and these rights might not be violated themselves." Id. at 211. The Seventh Circuit, sitting en banc, reached the same conclusion. Reading Section 3617 as dependent on a violation of another provision

"would make § 3617 entirely duplicative of the other FHA provisions; though its language is unique in the FHA, § 3617 would have no independent meaning." Bloch, 587 F.3d at 781-82. "For instance, if a landlord rents to a white tenant but then threatens to evict him upon learning that he is married to a black woman, the landlord has plainly violated § 3617, whether he actually evicts the tenant or not." Id. at 782. The Second Circuit has likewise held that a complaint to HUD and a letter threatening suit under the Act "were protected activities," and that dismissal of the underlying discrimination claims against a defendant "does not require dismissal of the retaliation claim" against him. Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown, 294 F.3d 35, 45 n.1, 54 (2d Cir. 2002), superseded by statute on other grounds as recognized in Jackson v. N.Y.C. Dep't of Educ., 768 F. App'x 16, 17 (2d Cir. 2019). The Sixth Circuit agrees: "Section 3617 nowhere says that it comes into play only when a violation of one of these other sections has also occurred," and a plaintiff who "does not contend that the defendants ever violated the underlying housing rights protected by §§ 3603-3606" may still proceed, because "[t]he statute requires no more." Hidden Vill., 734 F.3d at 528-29. The Seventh Circuit has applied the rule to a landlord's response to a tenant's complaints. In Wetzel v. Glen St. Andrew Living Community, LLC, the tenant alleged that after she complained, management restricted her use of the premises and "attempted to build a case for her eviction." 901 F.3d 856, 867 (7th Cir. 2018). The court held that a Section 3617 retaliation claim requires only protected activity, an adverse action, and a causal connection, and that "[p]roof of discriminatory animus is not on the list," because anti-retaliation provisions protect people "not because of who people are, but because of what they do." Id. at 868. The same court had earlier recognized that a person may be "driven from his home and thus 'interfered' with in his enjoyment of it" by "economic pressure" as well as by violence. Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n, 388 F.3d 327, 330 (7th Cir. 2004) (citing Middletown, 294 F.3d at 43-44). (Halprin read Section 3617 as tied to Section 3604 and reinstated the claim there only on the strength of HUD's regulation, id. at 330-31; the en banc court in Bloch later held that Section 3617 has "independent meaning," 587 F.3d at 781-82.) And the housing courts that have addressed the question directly apply the same good-faith standard the employment courts apply. A tenant "does

not have to establish that the conditions or actions she protested or opposed actually constituted discrimination under the FHA, but only that she had a 'good faith, reasonable belief' that the defendant's acts or practices violated the FHA." Kris v. Dusseault Family Revocable Tr. of 2017, No. 18-cv-566-LM, 2019 DNH 164, slip op. at 13 (D.N.H. Sept. 24, 2019) (tenant evicted after complaints to housing authority); accord Broome v. Biondi, 17 F. Supp. 2d 211, 219 (S.D.N.Y. 1997) (Section 3617 claimant "did not have to establish that the conduct she opposed was in fact a violation of the Federal Fair Housing Act . . . , but only that she had a 'good faith, reasonable belief that the underlying actions of the [Beekman defendants] violated the law'" (quoting Abel v. Bonfanti, 625 F. Supp. 263, 267 (S.D.N.Y. 1985))). Accord Arnal v. Aspen View Condo. Ass'n, Inc., 226 F. Supp. 3d 1177, 1188 (D. Colo. 2016) ("A violation of Section 3617 may be shown even absent other violations of the FHA."); see also Statement of Interest of the United States at 4, Arnal v. Aspen View Condo. Ass'n, Inc., No. 1:15-cv-01044 (D. Colo. July 15, 2016), ECF No. 90 (collecting court of appeals decisions to the same effect).

B. The agency that administers the Act reads it the same way.

The Department of Housing and Urban Development's regulation implementing Section 3617 lists, as conduct the statute forbids, "[r]etaliating 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," and "[r]etaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority." 24 C.F.R. § 100.400(c)(5), (6). Neither provision conditions protection on whether the complaint or report ultimately succeeds.

C. This Court reserved the underlying question in Breeden, and the rule below goes further than any position the Court has considered.

This Court has not decided whether a federal anti-retaliation provision protects a person who opposes a practice she reasonably believes to be unlawful but that is not ultimately found unlawful. In Clark County School District v. Breeden, which arose under Title VII's anti-retaliation provision, 42 U.S.C. § 2000e-3(a), the Court described the Ninth Circuit's rule protecting opposition to "practices that the employee could reasonably believe were unlawful," and stated that

it had "no occasion to rule on the propriety of this interpretation." 532 U.S. 268, 270 (2001) (per curiam) (citing Trent v. Valley Elec. Ass'n Inc., 41 F.3d 524, 526 (9th Cir. 1994)). The Court has never addressed the question under Section 3617. Petitioner's claim arises under the Fair Housing Act, not Title VII, and the two statutes are worded differently in a way that matters here, as shown below. Title VII decisions are nonetheless the natural starting point, because the standard the courts below applied was borrowed from them and because the courts construe the two statutes together. "Title VIII is the functional equivalent of Title VII, and so the provisions of these two statutes are given like construction and application." Bloch, 587 F.3d at 779 (quoting Kyles v. J.K. Guardian Sec. Servs., Inc., 222 F.3d 289, 295 (7th Cir. 2000)). The Second Circuit applies the Title VII retaliation framework to Section 3617 claims, Middletown, 294 F.3d at 54, and the trial court here took its burden-shifting framework from the same source. (App. B ¶¶ 20, 33.) And if anything, Section 3617's text is the broader of the two: Title VII protects opposition to a practice "made an unlawful employment practice," 42 U.S.C. § 2000e-3(a), while Section 3617 protects a person "on account of his having exercised or enjoyed" a right, with no qualifier about the lawfulness of what she opposed.

The question is live. This year the Supreme Court of Florida rejected the reasonable-belief standard for that State's private-sector whistleblower statute and disapproved an intermediate appellate decision that had borrowed the standard from Title VII, because the statute protects an employee who objects to a practice "which is in violation of a law, rule, or regulation." Gessner v. Southern Co., No. SC2024-1835, slip op. Parts I.B, II.A, III (Fla. May 28, 2026). Section 3617 contains no such language. It protects a person "on account of his having exercised or enjoyed" fair-housing rights. 42 U.S.C. § 3617.

The lower courts have also divided on the closely related question whether a Section 3617 claim depends on proof of an underlying violation of the Act. The Seventh Circuit, sitting en banc, observed that "[c]ourts are split on the issue," collecting decisions on each side, and held that Section 3617 has "independent meaning." Bloch, 587 F.3d at 781-82. The Sixth Circuit, adopting the same reading, catalogued the other side: "the Fifth Circuit had held that a violation of §§ 3603-

3606 is indispensable to a § 3617 claim," the Seventh Circuit had earlier "twice reserved the question," and another Seventh Circuit opinion "implied that the defendants' interpretation was right." Hidden Vill., 734 F.3d at 529 (citing McZeal v. Ocwen Fin. Corp., 252 F.3d 1355 (5th Cir. 2001) (unpublished), and Halprin, 388 F.3d at 330). The division was deep enough that the Sixth Circuit granted the individual defendants qualified immunity on the ground that the rule was not clearly established. Id. The two divisions ask the same question: whether protection under Section 3617 depends on the outcome of the matter the tenant complained about. The Fifth Circuit's rule makes it depend on proof of an actual violation; the decision below makes it depend on the tenant prevailing in the dispute that prompted her complaint. The Seventh and Sixth Circuits, and the courts that apply the good-faith standard, hold that it depends on neither. The decision below lies beyond either side of that division. Courts that require an underlying violation at least ask whether the tenant exercised a right the Act protects; the courts below assumed that Petitioner's fee dispute was the relevant activity (App. B ¶ 37) and denied protection because she lost the dispute. Under that rule the question never arises, because the answer is supplied by the outcome.

The decision below adopted a rule stricter than any this Court has entertained. The trial court's holding turned not on whether Petitioner's belief was reasonable or held in good faith, but on whether she was right: because the charges she disputed were later found owed, she was held to have engaged in no protected activity. The record shows what that rule demands of a tenant. The charges here were imposed under an addendum bearing blank signature lines (R. 15); the landlord's own manager had described charges on her account as a "setting issue" that "has been fixed" (Reply Br. 13, 20; see Def. Tr. Exh. F; R. 605); the landlord stated them in amounts that did not agree with one another (App. B ¶ 29 n.7); and at trial it could not document that the pest-control service billed to her had been provided or the usage behind the second trash charge (Trial Tr. 72:3-73:4; 80:10-81:10). A tenant who declines to pay charges imposed under a document she has not signed, and who says so in writing on the day she is told to leave, is not acting unreasonably by any measure the law applies anywhere else; no one is ordinarily bound by a writing to which she did not assent. Under the rule below she is unprotected all the same, because a factfinder later resolved the

question of her assent against her on the testimony of two witnesses who were not present when the lease was formed. That is a rule under which the protection turns on the outcome of the very dispute it exists to protect. Respondent defended the judgment on exactly that premise, telling the Court of Appeals that "[t]he issue is not whether a tenant is entitled to dispute fees" but "whether a tenant is entitled to withhold payment of fees that are in fact due and owing." (Appellee Br. 31.) That was the landlord's theory from the start. At closing, its counsel told the trial court that "serving someone a three-day . . . pay or vacate is retaliating against them, but it's not retaliating against them because they're a member of a protected class." (App. B ¶ 36 (quoting counsel).) Section 3617 contains no such limitation; it protects a person "on account of his having exercised or enjoyed" fair-housing rights, whatever the retaliator's view of her protected class. (Bloch lists an intent to discriminate as an element of the interference claim before it, 587 F.3d at 783; the same court has since held that a Section 3617 retaliation claim requires no such showing, Wetzel, 901 F.3d at 868.) The courts have rejected that limitation. This Court has explained that an anti-discrimination provision "seeks to prevent injury to individuals based on who they are, i.e., their status," while an anti-retaliation provision "seeks to prevent harm to individuals based on what they do, i.e., their conduct," and that the latter exists "to secure that primary objective by preventing an employer from interfering (through retaliation) with an employee's efforts to secure or advance enforcement of the Act's basic guarantees." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 63 (2006). Its "primary purpose" is "[m]aintaining unfettered access to statutory remedial mechanisms." Robinson v. Shell Oil Co., 519 U.S. 337, 346 (1997); accord Burlington, 548 U.S. at 64. The housing courts apply the same understanding: "A majority of courts apply a standard to FHA retaliation claims that does not require proof of intentional discrimination based on the plaintiff's membership in an FHA-protected class," because anti-retaliation provisions protect people "not because of who people are, but because of what they do." Kris, 2019 DNH 164, slip op. at 10-11 (collecting decisions of the Second, Third, Fourth, Seventh, Ninth, and Eleventh Circuits, and quoting Wetzel, 901 F.3d at 868 (citing Burlington, 548 U.S. at 63)). The trial court, for its part, took the elements of the claim from the Ninth Circuit (App. B ¶ 33 (citing Walker v. City of Lakewood, 272 F.3d 1114, 1128 (9th Cir.

2001))), the court whose reasonable-belief rule Breeden described, see Trent, 41 F.3d at 526, while applying a protected-activity standard that circuit does not. Whether federal anti-retaliation protection survives the complainant's loss on the underlying dispute is "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c).

D. The decision conflicts with the rule the federal courts in Utah apply, so a tenant's federal protection depends on which courthouse hears her claim.

The federal court of appeals for the circuit that includes Utah answers the question the other way. Under Title VII's analogous anti-retaliation provision, the Tenth Circuit long ago held that opposition is protected when "based on a mistaken good faith belief that Title VII has been violated." Love, 738 F.2d at 385, quoted in Crumpacker, 338 F.3d at 1171. After Breeden, which the Tenth Circuit read to foreclose claims resting on an unreasonable belief, id., it protects opposition "based on a reasonable good-faith belief that the underlying conduct violated Title VII," so that people are able "to report what they reasonably believe is discriminatory conduct without fear of reprisal," and the prohibition of retaliation reaches cases "even when the underlying conduct may not constitute a violation of Title VII." Id. at 1172. "[A]n actual violation is not required to maintain a retaliation claim under Title VII." Id. at 1171 n.5. Federal courts applying Section 3617 itself apply the same standard, asking only whether the tenant had a "good faith, reasonable belief" that the practice she opposed violated the Act. Kris, 2019 DNH 164, slip op. at 13 (citing Broome, 17 F. Supp. 2d at 219). The United States has taken the same position under Section 3617 itself. In a Fair Housing Act case in the Tenth Circuit, it advised the court that a plaintiff "need only show that he had a reasonable belief that he was acting to protect fair housing rights to be entitled to protection from retaliation under § 3617," and that "[a]s a matter of law, even if he were mistaken in his belief that he was protecting fair housing rights, he is still protected from retaliation," a rule it described as "consistent with Title VII and Americans with Disabilities Act case law in this circuit." Statement of Interest of the United States at 5, Arnal v. Aspen View Condo. Ass'n, Inc., No. 1:15-cv-01044 (D. Colo. July 15, 2016), ECF No. 90 (citing Crumpacker, 338 F.3d at 1171-72). The court in that case then held that a Section 3617 violation "may be shown even absent other

violations of the FHA." Arnal, 226 F. Supp. 3d at 1188. Had Petitioner's claim been heard in the federal courthouse in Salt Lake City, that is the rule that would have governed it. It was heard in state court because the landlord sued there, and tenants in eviction cases do not choose the forum. Under the decision below, the same federal statute now means one thing in the state courts of Utah and another in the federal courts sitting in the same State, and the party that selects the forum is the one the statute regulates. A federal right should not depend on the forum.

II. This case is a sound vehicle.

First, the question was decided below, and it is a federal question. The trial court decided it, applying federal precedent. (App. B ¶¶ 37-38; R. 646-47 n.4.) It did not hold that Petitioner's dispute was unrelated to discrimination; it assumed the dispute was the relevant activity and denied protection only because the fees were, in its view, "lawfully assessed." (Id.) Petitioner pressed it on appeal as a federal question, and the landlord defended it under federal fair-housing law. (Opening Br. 15, 36-44; Reply Br. 10; Appellee Br. 25 & n.5.) After entering judgment, the trial judge himself, while determining that Petitioner had not shown a likelihood of success, found that she had "established that the case presents serious issues on the merits that warrant appellate review," in a ruling that described the issues she identified as including whether she "provided prima facie evidence of discriminatory treatment under the Utah and/or Federal Fair Housing Acts." (App. E at 4.) The Court of Appeals declined to review it (App. A at 3 n.3), leaving the trial court's holding in place. That court's remark that the record was "not entirely clear" whether the claims arose under federal law (App. A at 2 n.2) cannot be reconciled with a record in which every party, and both courts, treated them that way.

Nor does any state-law ground stand in the way. Neither court below made a plain statement that it rested on an independent state ground. The trial court applied federal precedent to claims it treated as arising under "the Utah and/or Federal Fair Housing Act," and Respondent relied on the same federal cases. (App. B ¶¶ 20, 33; Appellee Br. 25 & n.5.) In that posture, this Court "will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." Michigan v. Long, 463 U.S. 1032,

1041 (1983). Counsel put the point to the Court of Appeals on rehearing: the footnote "cannot work only one way." Either the federal claims were before the court, in which case "the failure to engage with § 3617" was error, or they were not, in which case "they were never fully and fairly adjudicated and cannot serve as a bar to subsequent federal proceedings." (Pet. for Reh'g 14-15 & n.1.) The court denied rehearing without choosing. (App. D.)

Second, the answer is outcome-determinative. The trial court and the Court of Appeals used different labels, "no protected activity" and "legitimate, nondiscriminatory rationale," but both rested on the same finding: that the disputed charges were owed. (App. B ¶¶ 31-32 & n.8, 38; R. 650-51; App. A at 3 n.3.) The "legitimate reason" the Court of Appeals accepted was that Petitioner did not pay the very charges she was disputing. If Section 3617's protection does not depend on whether she was right about those charges, that reason is the protected dispute restated, and it cannot defeat the claim on that basis alone. The Court of Appeals also relied on fees it had separately held the landlord never needed to prove (App. A at 2), and that the landlord had abandoned (MSJ Hrg. Tr. 8:18-9:2; R. 1163-64; App. B ¶ 12 n.2). Petitioner's counsel put the contradiction to the Court of Appeals on rehearing: the same order held that the charges were not an "essential element[]" the landlord had to prove and then treated her nonpayment of those charges as the legitimate reason for her eviction; "[t]hese two holdings are irreconcilable." (Pet. for Reh'g 11; App. A at 2, 3 n.3.) The court denied rehearing without addressing the point. (App. D.) Petitioner told the Utah Supreme Court the same, and it denied review. (Pet. for Cert. 19; App. C.) The charges themselves, mandatory monthly fees added on top of the advertised rent, are of the kind that has since drawn federal enforcement against the company that managed the building when they were imposed. See infra Part III. Nor does the question require the Court to disturb any credibility finding: whether Section 3617 protects a tenant who reasonably and in good faith disputes a charge does not depend on whether the factfinder believed her account of the addendum. The point of the undocumented, unproven, and abandoned charges is not that the trial court's finding that they were owed was wrong; Petitioner does not ask this Court to revisit it. The point is that a tenant who questioned charges her landlord could not document at trial as to one of the

services billed, never had to prove, and gave up in court was, on any view, acting reasonably and in good faith when she questioned them. If the statute protects such a tenant, the courts below applied the wrong rule. If it does not, no tenant is protected until she has first won the dispute, which is the rule this petition asks the Court to reject.

Third, the link between the dispute and the notice is in the findings themselves. The trial court credited the landlord's own manager, who testified that he posted the notice to vacate after Petitioner "sent him an email that he believed made clear that Ms. Blackwell was not going to pay the disputed fees and made allegations of fraud," and that he would have been willing not to proceed with an eviction "if she had paid the outstanding balance." (App. B ¶ 40.) The notice followed the dispute by two days, the kind of "very close" timing that supports causation on its own. Breeden, 532 U.S. at 273 (quoting O'Neal v. Ferguson Constr. Co., 237 F.3d 1248, 1253 (10th Cir. 2001)). The trial court's contrary conclusions are that Petitioner "failed to establish that the eviction was retaliatory" (App. B ¶ 42), that she "failed to meet her burden to prove that retaliation was the real reason" for the notice (id. ¶ 43 n.10), and that her evidence that the nonpayment was a pretext was "not credible" (id. ¶ 47). Each rests on the premise that nonpayment of the disputed charges was a legitimate reason, which is the question presented; none finds that the notice was unconnected to the dispute, and ¶ 40 ties the notice to her email about the fees.

III. The rule below will recur, and only this Court can correct it.

The rule adopted below is not confined to these facts. It supplies a method for defeating the federal protection that any housing provider can repeat. A provider can add charges to a tenant's account under an addendum no one signed, decline to document them, and serve a notice to vacate when the tenant asks about them. If the tenant then complains of discrimination, the provider can refuse her rent and thereby create the very default it then sues on, withhold the reference she would need to rent elsewhere, sue, abandon the charges in court once the eviction no longer depends on them, obtain a judgment establishing that the charges were nonetheless owed, obtain a judgment for the refused rent three times over under a treble-damages statute, and thereby strip the tenant of the anti-retaliation protection she held when she complained. At no point in that sequence is the

provider required to prove the charges that began it. Nor does the sequence end with the judgment. The provider can then seek its attorney fees on top of the trebled rent, so that the tenant who paid every month stands to owe more in fees than in judgment (Dkt. 241; Dkt. 244 at 2); the eviction and the money judgment follow her into every rental application she makes; and the fair-housing complaint that started it is answered, at the agency, by a finding that she made out her prima facie case and a conclusion that a settlement offer is "a routine part of the litigation process" (UALD Determination at 18, 20), and, in the courts, by a holding that she was never protected because she lost the dispute (App. B ¶ 38; App. A at 3 n.3). That is not a hypothetical; it is this record. (App. B ¶¶ 12 n.2, 29 n.7, 38; App. A at 2, 3 n.3.) On this record the sequence ends with a mother and her six-year-old son without housing (App. E at 4; Trial Tr. 185:23-25), living in a hotel at the time of trial (Trial Tr. 8:5-7; R. 917), after paying "$2,000 a week" for counsel at the outset of the case until she could no longer, the rate "most lawyers would charge in order to defend a case like this" (Trial Tr. 6, 190; R. 915, 1099) and, as she told the court, contacting "well over 100 attorneys in the State of Utah" without finding one to take the case (MSJ Hrg. Tr. 12; R. 1167), and now facing the landlord's demand for its own fees on top of the judgment (Dkt. 241). And the tenants on whom the sequence will be run are, by definition, the ones the Act was written to protect: the rule disarms only a tenant who has complained of discrimination, and it does so because she complained. Petitioner, as she told the agency without contradiction, was the only Black tenant in her building. (UALD Determination at 17.) That sequence inverts the statute. Conduct Congress made unlawful becomes a litigation strategy, and the protection Congress created disappears whenever the retaliating party prevails on the underlying dispute. This Court has agreed that "it would be destructive of" the purpose of an anti-retaliation provision "for an employer to be able to retaliate with impunity against an entire class of acts," Robinson, 519 U.S. at 346, and that if a person who reports discrimination "could be penalized with no remedy, prudent employees would have a good reason to keep quiet," since "[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination." Crawford v. Metro. Gov't of Nashville & Davidson Cnty., 555 U.S. 271, 129 S. Ct. 846, 852 (2009) (quoting Brake, Retaliation, 90 Minn. L.

Rev. 18, 20 (2005)). The rule below penalizes an entire class of acts, the good-faith dispute of a housing charge that is later resolved against the tenant, and it does so after the fact, when the tenant can no longer choose silence. A construction of Section 3617 that works this way does not enforce the federal guarantee. It undermines it, wherever the rule is followed. And the cost of complaining does not stop at the loss of a home. Because the landlord prevailed, the Court of Appeals granted its "request for an award of attorney fees reasonably incurred on appeal" (App. A at 5), in an appeal in which Petitioner's Section 3617 claim was one of the issues decided. The order does not on its face apportion the fees between the landlord's defense of its eviction and its defense against her retaliation claim. (Id.) Under the rule adopted below, a tenant who reports discrimination can lose her home, lose her federal protection, and then be made to answer for the fees of the lawyers who defended against her complaint.

The disputes that trigger the rule are not rare. The charges Petitioner questioned were mandatory monthly fees added to a rent figure that had been quoted to her as a single total (Trial Tr. 25:5-12; R. 934), imposed under an addendum no one signed (R. 15), for at least one service the landlord's manager could not document (Trial Tr. 80:10-81:10). Fees of that kind are the subject of ongoing federal enforcement. The Federal Trade Commission and the State of Colorado sued Greystar entities, the corporate family that managed Petitioner's building when the charges were added, on a complaint that, as the resulting stipulated order recites, "charges that Defendants participated in deceptive acts or practices . . . in their Home Rental Services, including by charging mandatory hidden fees." Greystar resolved the action by a stipulated order providing for $24 million in monetary judgments, in which the defendants "neither admit nor deny any of the allegations in the Complaint." Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief ¶¶ 2-3, § IV, FTC v. Greystar Real Estate Partners, LLC, No. 1:25-cv-00165-CNS (D. Colo. filed Dec. 2, 2025). Whether or not any particular fee is ultimately owed, a tenant who questions one is doing what the statute protects. Under the rule below, she does so at the risk of her federal protection, and the more common the fee dispute, the more often that risk is realized.

This record shows what that rule leaves behind. At every level, the landlord's offer to let Petitioner stay "in return for you dismissing your Discrimination Claim" was left unaddressed. The state agency treated the making of the offer as "a routine part of the litigation process" and then concluded that Petitioner "points to no evidence" that the landlord's stated reason lacked credibility. (UALD Determination at 18, 21.) The offer was received in evidence at trial and argued in closing (Trial Tr. 172:6-14, 203:5-8), and the trial court's findings never mention it (App. B ¶¶ 33-43). In the Court of Appeals, Petitioner argued that conditioning continued housing on dismissal of a discrimination complaint is retaliation per se under Section 3617: "[i]t is per se protected activity to complain about discrimination, even if an underlying [dispute] about lease fees is later contractually rejected," and using the eviction suit "to force a Black female tenant to waive her FHA rights and drop her retaliation and discrimination claims" is "per se discriminatory." (Opening Br. 36-44, 44.) As Petitioner's reply brief noted, the landlord's brief did not answer that argument (Reply Br. 17), and the Court of Appeals did not reach it. Petitioner's rehearing petition recounted that the landlord's counsel confirmed the offer's substance at oral argument. (Pet. for Reh'g 12.) The court's order does not mention the offer, and the court denied rehearing after Petitioner raised it again. (App. A; Pet. for Reh'g 12-14; App. D.) The Supreme Court of Utah denied review. (App. C.) No court has analyzed the offer under Section 3617. (Pet. for Reh'g 12.) Petitioner's fair-housing claims have thus passed through a state agency and three state courts without any of them applying the governing federal standard to the full record. The result is that Petitioner is paying for having complained of discrimination: with the apartment she lost, with a treble-damages award on the rent the landlord refused to accept, and with a fee award now sought on top of it, all for "nonpayment" of charges the landlord abandoned and never proved (App. B ¶ 12 n.2; App. J at 4 n.5; Dkt. 241), while the one document that would have shown why she was evicted sat in the record, admitted without objection, and no court read it against the statute.

The posture of this case makes this Court's review uniquely necessary. The decision below is a state court's construction of a federal civil-rights statute, entered by an order that "will not stand

as precedent." Utah R. App. P. 30(e). A litigant in Petitioner's position has no intermediate federal forum. A final state-court judgment on a federal question may not be taken to a federal district court or court of appeals for correction, and this Court's jurisdiction under 28 U.S.C. § 1257(a) is the only federal review available. That jurisdiction exists to ensure that federal law is not left misapplied by the courts of the States. If this Court does not act, the construction of Section 3617 adopted below will stand, uncorrected by any federal court. And because the order is unpublished, it will stand unseen. No future tenant will find it, no future court will be bound by it or asked to distinguish it, and nothing prevents the same construction from being applied again, one unpublished order at a time. A rule that forfeits federal protection whenever a disputed charge is later resolved against the tenant need never be announced to take effect; it need only be applied in orders that do not stand as precedent. The same is true of the court's departure from its own published authority. Pepperwood, Salo, and Staszkiewicz are published decisions that bind the Court of Appeals. The order below did not cite Pepperwood at all, and, as counsel argued on rehearing, it quoted Salo and Staszkiewicz while reaching results counsel contended those decisions foreclose. (Pet. for Reh'g 2-8.) Because the order is unpublished, whatever departure occurred appears in no reporter and binds no one. A tenant treated differently from the published rule has no way to show it, because the order that treated her differently is, by rule, not law. This Court's review is the only point at which such a rule becomes visible. Because the United States has already stated its position on the question under Section 3617, in the Tenth Circuit (Statement of Interest of the United States at 5, Arnal, No. 1:15-cv-01044, ECF No. 90), the Court may wish to invite the views of the Solicitor General.

For Petitioner, the consequences are not abstract. She and her six-year-old son (MSJ Hrg. Tr. 18:5-6, 23:2-3; R. 1173, 1178) left their home in April 2023 under a stipulated order entered in this eviction case (App. B ¶ 5), and they have been homeless on and off since and continuously since September 2024. At trial in December 2024 she told the court: "The last two years, I've been homeless for a total of six months." (Trial Tr. 185:23-25; R. 1094.) By the time the trial court stayed the garnishment in May 2025, it recorded her statement that she and her "minor child are currently homeless and have been since September 2024," that the garnishment made it

"impossible to secure even temporary housing," and that her "[c]hild's education and welfare are directly impacted by the ongoing homelessness situation"; on those representations, and its finding that the case "presents serious issues on the merits that warrant appellate review," it granted the stay. (App. E at 4-5.) What remains is an eviction judgment and a treble-damages judgment against her (App. B; R. 349; R. 659), and the Court of Appeals' grant of the landlord's request for appellate attorney fees on top of them, in an amount not yet set (App. A at 5). On remand, the landlord has moved for $15,330 in appellate fees, 43.5 hours at $350 an hour (a total it has since conceded should be $15,225), for defending a $7,395 judgment in an unpublished order; the motion is pending. (Mot. for Att'y Fees, No. 230401251, Dkt. 241 (June 10, 2026); Opp'n, Dkt. 244, at 2 (July 8, 2026); Reply in Supp. of Mot. for Att'y Fees at 1 (Aug. 27, 2026).) The landlord thus stands to collect, in fees for defending the judgment, more than twice the judgment itself, which was in turn three times the rent it refused. Each of those sums rests on charges the landlord abandoned and was never required to prove. None rests on a missed rent payment. No court found that Petitioner ever missed one; the trebled judgment is for the single month of rent the landlord refused to accept (R. 349 n.5), and her statement to the landlord on the day the notice was posted, read into the record by the landlord's own witness, was that she had been paying $2,690 "since I moved in, on time, every month." (Trial Tr. 106:17-21; R. 1015.) An eviction judgment follows a tenant into every application for housing she makes afterward; a money judgment follows her beyond that. Petitioner said as much at trial: "I knew that I wasn't going to be able to get another place and you guys had kicked me out of my current place, which wasn't right." (Trial Tr. 153:9-11; R. 1062.) The trial court has already recorded her statement that she and her child have been homeless since September 2024 (App. E at 4); unless the judgment is disturbed, a tenant who paid her rent on time every month will carry an eviction, a treble-damages judgment, and a fee award into every rental application she makes for years to come. Petitioner has exhausted every court the State provides. If this Court does not act, the construction of Section 3617 adopted below will stand, and so will everything built on it. The question whether a Black tenant who complained of discrimination was

protected by the federal statute when she did so will have been answered, for her, by a rule that no court will ever examine again.

This Court has not hesitated to review an unpublished decision applying a federal anti-retaliation provision. In Breeden, the Court granted certiorari and summarily reversed an unpublished decision of a court of appeals construing Title VII's anti-retaliation provision. See 532 U.S. 268.

IV. At a minimum, the Court should summarily reverse or vacate and remand.

If the Court concludes that plenary review is not warranted, the error below is clear enough to warrant summary disposition, as in Breeden. Alternatively, because the Court of Appeals expressly declined to decide whether the trial court applied the correct federal standard for protected activity (App. A at 3 n.3), the Court should grant the petition, vacate the judgment as to Petitioner's Section 3617 claim, and remand for that court to decide the federal question under the correct standard. Such a remand would require no more than that the Court of Appeals decide a question it has already acknowledged was presented to it.

CONCLUSION

Petitioner, the only Black tenant in her building, complained to a civil-rights agency that her landlord was treating her differently. The landlord answered by refusing her rent, offering, in terms her counsel set down in writing that day, to let her stay only "in return for you dismissing your Discrimination Claim" (App. H), and suing to evict her six days after the offer. The Utah courts held that her dispute of the fees was not protected by Section 3617, because that dispute was later resolved against her, never addressed her complaint or the offer, and sustained the eviction on the ground that she had not paid those same charges, which the landlord abandoned and was never required to prove. No court examined the offer under the statute. Under the rule applied below, a tenant's federal protection depends on how the dispute that prompted her complaint comes out, a question this Court reserved in Breeden, that the Seventh and Sixth Circuits have answered the other way under Section 3617 itself, and that the Tenth Circuit, whose rule governs the federal courthouse in the same city, answers the other way as well. The question is federal, it was preserved

at every stage, the Utah courts answered it in a way that conflicts with the federal courts of appeals, with the federal courts applying Section 3617, and with the regulation of the agency Congress charged with administering the Act, and no court but this one can correct a state court's reading of a federal statute.

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition and summarily reverse the judgment of the Utah Court of Appeals as to Petitioner's claim under 42 U.S.C. § 3617, or, because the Utah Court of Appeals did not decide whether Petitioner's complaint was protected and said it "need not reach" the question (App. A at 3 n.3), should grant the petition, vacate that judgment, and remand with instructions to decide, under the correct federal standard, whether Petitioner engaged in protected activity.

Respectfully submitted,
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