**No. 07-14761-HH**

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**IN THE**
**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

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MATTHEW SCHWARZ, GULF COAST RECOVERY, INCORPORATED,
JOHN DOE I and JANE DOE V,
Plaintiffs-Appellants,

v.

CITY OF TREASURE ISLAND, and
CITY OF TREASURE ISLAND
CODE ENFORCEMENT BOARD,
Defendants-Appellees.

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Appeal from the United States District Court
Middle District of Florida, Tampa Division, No. 8:05-CV-1696-T-30-MSS
The Honorable James Moody, District Judge, Presiding

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# MOTION OF *AMICI CURIAE* THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, THE NATIONAL FAIR HOUSING ALLIANCE, OXFORD HOUSE, INC., THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, AND THE CARON FOUNDATION REQUESTING LEAVE TO FILE BRIEF

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## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to F.R.A.P. 26.1 and Circuit Rule 26.1-1, counsel for *Amici* The National Law Center on Homelessness & Poverty, The National Fair Housing Alliance, Oxford House, Inc., The Judge David L. Bazelon Center for Mental Health Law, and the Caron Foundation hereby certify that the Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellants in their Initial Appellate Brief lists all interested parties known to counsel to *Amici*, except for the following additional interested persons:

(1) Allen, Michael, counsel for *amici*

(2) Caron Foundation, *amicus curiae*

(3) Hahn, Mary J., counsel for *amici*

(4) Oxford House, *amicus curiae*

(5) The Judge David L. Bazelon Center for Mental Health Law, *amicus curiae*

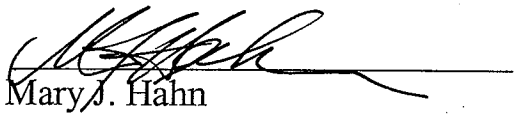
(6) The National Law Center on Homelessness & Poverty, *amicus curiae*

(7) The National Fair Housing Alliance, *amicus curiae*

(8) Relman, John P., counsel for *amici*

Counsel for *Amici* further certify that The National Law Center on Homelessness & Poverty, The National Fair Housing Alliance, Oxford House, The Judge David L. Bazelon Center for Mental Health Law, and the Caron Foundation

are each non-governmental organizations that do not have any parent corporations. None of the *amici* are publicly traded companies and do not issue stock.



Mary J. Hahn

## I. INTRODUCTION

Pursuant to Fed. R. App. P. 29 and Circuit Rule 29-1, *Amici* The National Law Center on Homelessness & Poverty, The National Fair Housing Alliance, Oxford House, The Judge David L. Bazelon Center for Mental Health Law, and the Caron Foundation ("*Amici*"), hereby respectfully move for leave to file the attached brief as *amici curiae* in support of Plaintiffs-Appellants supporting reversal on the issue of the meaning of "dwelling" under the Fair Housing Act ("FHA"), 42 U.S.C. § 3602(b). As far as *Amici* are aware, this Court has yet to analyze the term "dwelling" under the FHA as it applies to temporary or transitional housing, and the analytical framework adopted by this Court will have a significant impact on thousands of people living in such housing in the United States every year. *Amici* limit this brief to the single issue of whether the group recovery homes in this case constitute "dwellings" under the Fair Housing Act ("FHA"), 42 U.S.C. § 3602(b).[1]

In denying Plaintiffs-Appellants' motion for preliminary injunction, a panel of this Circuit declared that whether these homes are dwellings within the meaning

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[1] Counsel for *Amici* contacted counsel for Plaintiffs-Appellees Matthew Schwarz, Gulf Coast Recovery, Inc., John Doe and Jane Doe, and counsel for Defendants-Appellees City of Treasure Island and City of Treasure Island Code Enforcement Board. Counsel for Plaintiffs-Appellees consented to the filing of this brief. Counsel for Defendants-Appellees did not consent. *Amici* thus respectfully submit this motion for leave to file the attached *amicus* brief. This motion is accompanied by *Amici*'s proposed brief, as required by Fed R. App. P. 29(b), (e).

of the FHA is a "close and complex" question, and that this Court will "conduct a more thorough review following the district court's final decision regarding injunctive relief." *See Schwarz v. City of Treasure Island*, 243 Fed. Appx. 587, 588 (11th Cir. 2007). *Amici*'s proposed brief provides an analysis of the extensive caselaw used by other courts in addressing whether temporary or transitional housing like the group homes in this case are "dwellings" and will assist this Court in conducting its "more thorough review" of this complex question.

## II. PRIOR ACTIONS

Pursuant to Circuit Rule 27-1, *Amici* state that no prior actions related to this motion have been made. This motion is the first motion by *Amici* in this action.

## III. ARGUMENT

*Amici* The National Law Center on Homelessness & Poverty, The National Fair Housing Alliance, Oxford House, Inc., The Judge David L. Bazelon Center for Mental Health Law, and the Caron Foundation are nationally recognized advocates for people who are homeless or have low incomes, people affected by discrimination in housing, people with disabilities, and people recovering from drug and alcohol addiction.

Hundreds of thousands of individuals in the United States make their homes in temporary or transitional housing every year, including group homes for recovering addicts and alcoholics like the one in this case. As people who often

require transitional or temporary housing to meet their critical needs, the diverse populations represented by *Amici* are especially impacted by this Court's review of the scope of the FHA and the application and enforcement of the FHA to such transitional or temporary housing.

Preservation and enforcement of the protections provided by the Fair Housing Act ("FHA") are crucial to *Amici*'s missions to ensure access to housing for some of the most vulnerable members of our society, and each are dedicated to the vigorous enforcement of the Fair Housing Act to effectuate its purpose. This Circuit has recognized that Congress intended the FHA to have a broad reach in order to "rid the entire housing market of discrimination." *Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1477 (11th Cir. 1993).

Yet the district court, ignoring well-established caselaw, took a narrow view of the scope of the FHA and held that the properties in this case do not meet even the threshold qualifications as "dwellings" for protection under the FHA. Unlike other federal courts faced with this issue, the district court's analysis required proof that an individual views the residence as his permanent home, ignoring the resident's intent to use the property as his residence during his recovery period, and confused the substantive merits of the Appellants' claims with the threshold issue of whether these group homes are "dwellings." If adopted by this Court, this analysis would effectively result in a broad exemption for virtually all housing

types except an individual's permanent and primary residence, leaving a significant portion of the housing market subject to discriminatory practices.

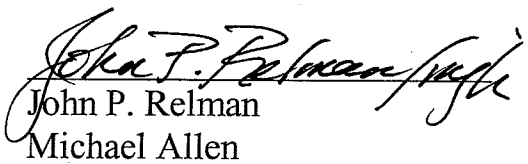
In light of the importance of the application of the FHA to a large and diverse group of people and this Circuit's recognition of the complexity of the issue at stake, *Amici* respectfully request that this Court grant them leave to file the attached *amicus* brief to ensure that the Court has the benefit of a full presentation of the extensive caselaw on the meaning of "dwelling" under the FHA. Further, *Amici*'s proposed brief provides the unique perspective of leading national advocates who have significant experience with issues related to the Fair Housing Act.

## III. CONCLUSION

For the forgoing reasons, *Amici* respectfully request that this motion be granted.

December 18, 2007

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of December 2007, I served one original and one copy of the foregoing Motion of *Amici Curiae* Requesting Leave to File Brief, accompanied by copies of the proposed brief, *see* Circuit Rule 27-1(a)(1), (d)(10), by Federal Express to the Clerk of Court, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street N.W., Atlanta, GA 30303, (404) 335-6100, and one copy of the motion on the following counsel:

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# BRIEF OF *AMICI CURIAE* THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, THE NATIONAL FAIR HOUSING ALLIANCE, OXFORD HOUSE, INC., THE JUDGE D. BAZELON CENTER FOR MENTAL HEALTH LAW, AND CARON FOUNDATION IN SUPPORT OF PLAINTIFFS-APPELLANTS SUPPORTING REVERSAL ON THE DEFINITION OF DWELLING

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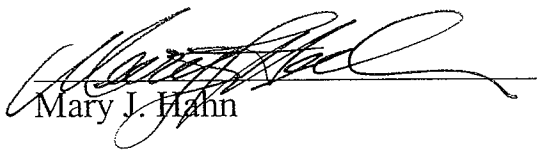
Counsel for *Amici* further certify that The National Law Center on Homelessness & Poverty, The National Fair Housing Alliance, Oxford House, Inc., The Judge David L. Bazelon Center for Mental Health Law, and the Caron

Foundation are each non-governmental organizations that do not have any parent corporations. None of the *amici* are publicly traded companies and therefore do not issue stock.



Mary J. Hahn

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**MISCELLANEOUS**

## STATEMENT OF ISSUES

1. Whether the district court erred in concluding that temporary housing used by individuals in a drug and alcohol recovery program do not constitute "dwellings" under the Fair Housing Act, 42 U.S.C. § 3602(b), despite finding that life at the properties "closely mirror[] everyday life;" by relying on a resident's ultimate intent to reside permanently elsewhere rather than the resident's intent to use the property as his residence during his recovery period; and by relying exclusively on the average length of stay at the properties despite evidence that some residents remain at the properties for lengthy periods of time.

## STATEMENT OF INTEREST OF *AMICI CURIAE*

*Amici* The National Law Center on Homelessness & Poverty, The National Fair Housing Alliance, Oxford House, Inc., The Judge David L. Bazelon Center for Mental Health Law, and the Caron Foundation are nationally recognized advocates for people who are homeless or have low incomes, people affected by discrimination in housing, people with disabilities, and people recovering from drug and alcohol addiction. *See* Addendum. *Amici* limit this brief to the single issue of whether the group recovery homes in this case constitute "dwellings" under the Fair Housing Act ("FHA"), 42 U.S.C. § 3602(b).

The district court's analysis is contrary to the plain language of the statute and constitutes a significant departure from well-established caselaw that has given an expansive reading to the term "dwelling" so that individuals living in temporary, group housing are fully protected under the FHA. The district court's narrow analysis could lead to the elimination of protections for a diverse array of populations – veterans with disabilities, domestic violence survivors, people with disabilities, victims of natural disasters, people who have been homeless, and people recovering from substance abuse problems – all of whom face severe and persistent discrimination in the housing market that significantly impedes their ability to find stable and supportive living environments.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the Fair Housing Act ("FHA") "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. This Circuit has recognized that Congress intended the FHA to have a broad reach in order to "rid the entire housing market of discrimination." *Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1477 (11th Cir. 1993); *see also, e.g., Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 208, 211, 93 S. Ct. 364, 367, 368 (1972).

To promote this goal, the FHA prohibits discrimination in the sale or rental of *any* building, or even a portion of a building, so long as it is "occupied as, or designed or intended for occupancy as, a residence." 42 U.S.C. § 3602(b). Under this broad and inclusive language, courts have consistently held that Congress intended the FHA to reach virtually all housing types, ranging from permanent residences, such as single-family homes, to temporary and transitional housing, such as homeless shelters, hospices, summer bungalows, timeshares, and group homes where recovering addicts and alcoholics live together in a mutually supportive environment.

The residences at the Gulf Coast properties, which are leased on a monthly basis to people recovering from alcohol and substance addictions, fall squarely within the category of dwellings that are protected by the FHA. The district court,

ignoring well-established caselaw, took a narrow view and held that these properties do not meet even the threshold qualifications as "dwellings." Unlike other federal courts faced with this issue, the district court required proof that an individual views the residence as his permanent home, ignoring the resident's intent to use the property as his residence during his recovery period, and confused the substantive merits of the Appellants' claims with the threshold issue of whether these group homes are "dwellings." If adopted by this Court, this analysis would result in broad exemptions for virtually all housing types except an individual's permanent and primary residence. This is a result never contemplated by Congress, and is at odds with federal court decisions from around the country.

## FACTUAL BACKGROUND

This Court's analysis of the definition of the meaning of "dwelling" under the FHA will significantly impact the protections afforded to the hundreds of thousands of individuals in the United States who make their homes in temporary or transitional housing every year. Such housing plays a vital role in meeting the critical needs of a diverse array of populations, all of which face significant discrimination and require protection under the FHA. A ruling that effectively exempts this widely used housing from the coverage of the FHA would seriously undermine the congressional purpose of completely eradicating discrimination from the housing market.

Nearly 200,000 homeless people used transitional housing during a three-month period in 2007 alone. *See* U.S. Dep't Hous. & Urban Dev., *Annual Assessment Report to Congress* 46 (Feb. 2008); Martha Burt, *Characteristics of Transitional Housing for Homeless Families*, Urban Inst. 9 (Sept. 7, 2006) (documenting that use of transitional housing has increased 60% between 1996 and 2004). The goal of such housing is to provide a stable environment to help homeless people transition to permanent housing.

Veterans account for approximately 26% of the homeless population; nearly half a million veterans were homeless in 2006. *See* Mary Cunningham, et al., Nat'l Alliance to End Homelessness, *Vital Mission: Ending Homelessness Among Veterans*, 3, 14 (Nov. 2007). Last year, Florida had the third largest population of homeless veterans in the nation. *Id.* at 17. Given the high rates of homelessness among veterans, the Department of Veterans Affairs has provided over 19,000 transitional housing beds for homeless veterans nationwide. *Id.* at 12.

Individuals evacuated from natural disaster areas whose homes have been destroyed must also resort to temporary housing until they can transition into permanent homes. In the wake of Hurricanes Katrina and Rita, thousands of displaced people, who are disproportionately African American and Latino, remain without permanent housing more than two years after the hurricanes. *See, e.g.*, Katy Reckdahl, *On the Streets*, Times Picayune, Aug. 6, 2007; Bill Sasser, *Surge*

*in Homeless Hits New Orleans*, Christian Science Monitor, Mar. 28, 2007.

Survivors of domestic violence, who are often socially and economically isolated, also have a great need for temporary housing. Domestic violence victims often return to their batterers when they cannot find a viable option for housing, and roughly 25% of homeless women report that they became homeless because of domestic violence. *See* A. Correia, *Housing and Battered Women*, Nat'l Resource Ctr. on Domestic Violence (March 1999); Jana L. Jasinski, et al., *The Experience of Violence in the Lives of Homeless Women: A Research Report* 2, 65 (2005).

Hundreds of thousands of seniors and people with disabilities in need of supportive services less intensive than those provided in nursing facilities live together in group homes that create a family-like setting located in residential neighborhoods. Operators of these group homes provide residents with critical basic services, such as bathing, dressing, and cooking, but allow them to live independently without unnecessary institutionalization. *See, e.g.*, *Nevels v. Western World, Inc.*, 359 F. Supp. 2d 1110, 1114 (W.D. Wash. 2004); *North Shore-Chicago Rehabilitation Inc. v. Village of Skokie*, 827 F. Supp. 497, 503 (N.D. Ill. 1993); *see also* Charles Phillips et al., U.S. Dep't of Health and Human Services, *Report on the Effects of Regulation on Quality and Care: Analysis of the Effect of Regulation on the Quality of Care in Board and Care Homes* (Dec. 1995), *available at* http://aspe.hhs.gov/daltcp/reports/b&crpt.htm (documenting

widespread use of adult family homes for elderly and disabled).

Similarly, as many as a million people with mental illnesses live in group homes or board and care homes because of the shortage of mainstream housing opportunities. *See, e.g.,* U.S. Dep't of Health and Human Servs., Substance Abuse and Mental Health Services Administration, *Transforming Housing for People with Psychiatric Disabilities* (2006), *available at* http://download.ncadi.samhsa.gov/ken/pdf/SMA06-4173/Housing_booklet.pdf.

Tens of thousands of individuals recovering from alcohol or drug addictions live in group homes during their recovery. *See, e.g.*, Oxford House, *History and Accomplishments*, *available at* http://www.oxfordhouse.org/UserFiles/File/oxford_house_history.php (documenting over 24,000 individuals living in Oxford House homes over course of year). These homes provide a supportive, drug- and alcohol-free environment that can significantly reduce the potential for a relapse. *See, e.g., Conn. Hosp. v. City of New London*, 129 F. Supp. 2d 123, 132 (D. Conn. 2001); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993).

## ARGUMENT

### I. The Supreme Court Has Required that the Fair Housing Act Be Construed Broadly, and Courts Have Found a Diverse Array of Temporary Dwellings to Be Protected Under the Broad and Inclusive Language of the FHA

In construing the statutory language of the FHA, the Supreme Court has

declared that the "language of the Act is broad and inclusive" and requires that it be given "generous construction." *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731, 115 S. Ct. 1776, 1780 (1995) (quoting *Trafficante*, 409 U.S. at 209, 212). The expansive reading of the FHA is intended to "vindicate[e] a policy that Congress considered to be of the highest priority." *Trafficante*, 409 U.S. at 211, 93 S. Ct. at 367 (internal quotation marks omitted). Courts have cautioned that any exemptions from the FHA must be narrowly construed. *See City of Edmonds*, 514 U.S. at 731-32, 115 S. Ct. at 1780.

The FHA prohibits discrimination in the sale or rental of "a dwelling to any person because of race, color, religion, sex, familial status, or national origin" or "because of a handicap." 42 U.S.C. § 3604(a), (f). Under the FHA, a "dwelling" is defined as

> any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

42 U.S.C. § 3602(b). Thus, a threshold question for coverage is whether the building in question is occupied as, or intended for occupancy as, a "residence."

To determine whether a dwelling is intended to be used as a "residence," courts have consistently looked to the ordinary dictionary definition of "residence" as articulated by *United States v. Hughes Mem'l Home*, 396 F. Supp. 544, 549

(W.D. Va. 1975) (internal quotation marks omitted): a residence is "a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit." Under this definition, whether a dwelling is occupied or intended to be occupied as a "residence" turns on two critical factors: (1) whether the residents "view their rooms as a residence to return to;" and (2) whether the residents intend to "remain for more than a brief period of time." *See, e.g.*, *Lakeside Resort Enters., L.P. v. Bd. of Supervisors of Palmyra Township*, 455 F.3d 154, 157 (3d Cir. 2006); *Hovsons v. Township of Brick*, 89 F.3d 1096, 1102 (3d Cir. 1996); *Lauer Farms, Inc. v. Waushara County Bd. of Adjustment*, 986 F. Supp. 544, 559 (E.D. Wis. 1997).

Courts have employed a flexible standard and examine the totality of circumstances when analyzing these two factors to determine whether the dwelling satisfies the statutory requirement of being "intended to be occupied as a residence." *See, e.g.*, *Conn. Hosp.*, 129 F. Supp. 2d at 134; *Villegas*, 929 F. Supp. at 1328. Where the strength of the tenants' intent to use the dwelling as a residence is strong, for example, courts have found this factor can be given greater weight than the length of stay. *See Cohen*, 174 F. Supp. 2d at 323 n.11; *Villegas*, 929 F. Supp. at 1328; *Woods*, 84 F. Supp. at 1173-74. Courts have also looked to a wide variety of facts as evidence that a tenant intends to use the dwelling as a

residence, including, but not limited to, whether residents cook and eat together, clean and maintain the property, return to the homes on a nightly basis for their stay, receive mail at the premises, have no alternative housing or have alternative housing that is far away from the dwelling in question; and hang pictures or otherwise decorate their space within the dwelling, *See, e.g.*, *Lakeside Resort*, 455 F.3d at 159-60; *Hovsons*, 89 F. 3d at 1102; *Cohen*, 174 F. Supp. 2d at 322-23; *Conn. Hosp.*, 129 F. Supp. 2d at 133-35; *Villegas*, 929 F. Supp. at 1328;

Under this framework, courts have found a diverse array of temporary and transitional housing types constitute residences under the FHA, including group homes for children, homeless shelters, hospices, timeshares, summer homes, temporary housing for seasonal workers, and group homes for people recovering from alcoholism and drug addictions.[1] This Circuit has previously applied the

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[1] *See, e.g.*, *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041 (9th Cir. 2007) (homeless shelter); *Lakeside Resort*, 455 F.3d at 157 (drug rehabilitation facility); *Hovsons*, 89 F.3d at 1102 (nursing home); *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996) (homeless shelter); *Walker v. Todd Vill.*, 419 F. Supp. 2d 743, 748 (D. Md. 2006) (pad in trailer park); *Cohen v. Township of Cheltenham*,174 F. Supp. 2d 307 (E.D. Pa. 2001) (group home for children); *Lauer Farms*, 986 F. Supp. at 559-60 (housing for migrant farm workers); *Louisiana Acorn Fair Hous. v. Quarter House*, 952 F. Supp. 352 (E.D. La. 1997) (timeshare unit); *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324 (D. Or. 1996) (migrant farm worker cabins); *Hernandez v. Ever Fresh Co.*, 923 F. Supp. 1305 (D. Or. 1996) (temporary farm labor camp); *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995) (shelter for homeless women and their children); *Baxter v. City of Belleville*, 720 F. Supp. 720 (S.D. Ill. 1989) (hospice); *Hughes*, 396 F. Supp. at 544 (group home for children). *But see, e.g.*, *Schneider v. County of Will*, 190 F. Supp. 2d 1082, 1087 (N.D. Ill. 2002) (commercial bed-and-breakfast is not a dwelling);

FHA to a group home used as an alcohol and drug rehabilitation center. *See Elliott v. City of Athens*, 960 F.2d 975 (11th Cir. 1992).

## II. Gulf Coast Properties Are "Residences" Protected By the FHA

In this case, Appellant Gulf Coast Recovery Inc. provides group housing to people recovering from alcohol or substance addictions. (Report and Recomm. 4, Docket No. 83, July 17, 2006) ("Report").)[2] If a Gulf Coast client chooses to live at one of the various properties owned and managed by Gulf Coast and/or one of its officers ("Gulf Coast properties"), he enters into a short-term lease to stay in a bedroom at a property. (*Id.* at 5-6.) On average, residents remain at Gulf Coast properties for roughly four weeks. (*Id.* at 24.)[3] However, there is no time limit on the length an individual is allowed to remain at the Gulf Coast properties, and some residents stay for significantly longer periods. (*Id.* at 20, 24.) Appellant John Doe I, for example, remained at Gulf Coast for four and a half months. (*Id.* at

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*Patel v. Holley House Motels*, 483 F. Supp. 374 (S.D. Ala. 1979) (commercial motel is not dwelling); *United States v. Mintzes*, 304 F. Supp. 1305 (D. Md. 1969) (vacant land held for commercial use is not a dwelling).

[2] In granting Defendants-Appellees' motion for summary judgment, the district court incorporated by reference Magistrate Judge Scriven's analysis of the meaning of the term "dwelling" in her Report and Recommendation denying Plaintiffs-Appellants' motion for preliminary injunction and made no further factual findings on the record. (Order 12-13, Docket No. 239.) As such, *Amici* rely on the facts as described in Magistrate Judge Scriven's Report.

[3] *Amici* note that Appellants' opening brief indicates that the average length of stay at Gulf Coast properties is significantly longer, with an average of two months, and at least one resident has remained for over a year. (Ps. Initial App. Br. 26.)

24.)

### A. "Intent to Return"

The first step in the inquiry is to determine whether individuals living at the Gulf Coast properties, or in a portion of one of the properties, intend to return to the building as their "residence." In this case, the court found that Appellants have presented evidence that the living arrangements at Gulf Coast "closely mirror everyday life." (*Id.* at 4.) Just like any person in a month-to-month rental agreement, residents at Gulf Coast properties lease the premises, cook for themselves, clean up the property, and return to it every night. (*Id.* at 4.) Courts have repeatedly recognized that these factors are sufficient indicia of individuals' intent to treat the premises as their residence during their recovery period. *See, e.g.*, *Lakeside Resort*, 455 F.3d at 159-60; *Conn. Hosp.*, 129 F. Supp. 2d at 134-35; *Cohen*, 174 F. Supp. 2d at 323; *Hughes*, 396 F. Supp. at 549.

The district court's contrary conclusion is largely based on the faulty assumption that the residents must consider these homes to be their permanent, and only, place of residence. Such a definition of "residence" would essentially eviscerate coverage under the FHA for virtually all types of temporary housing that courts have repeatedly held to be covered by the FHA.

### 1. The District Court's Analysis of a Resident's "Intent to Return" Conflated the Concept of Domicile with Residence and Failed to Consider the Intent of the Resident During His Stay in Recovery

Although the district court acknowledged that one of the residents of the Gulf Coast properties, Appellant Doe I, had lived at Gulf Coast for four and a half months, it concluded that Doe's stated intent ultimately to return to California after his treatment "undermines Appellants' arguments that Mr. Doe I's stay was anything other than transient." (Report 22.) This conclusion is contrary to the plain language of the statute, regulations promulgated by the Department of Housing and Urban Development ("HUD"), and numerous court decisions finding that temporary housing constitutes a "residence" for the duration of the individual's stay.

The district court's focus on Appellant Doe's ultimate intent effectively limits the coverage of the FHA to the place of an individual's *domicile*, i.e., the state where he makes his permanent residence. Many courts have rejected such a restrictive view of the FHA's coverage. *See, e.g.*, *Conn. Hosp.*, 129 F. Supp. 2d at 134-35 (finding that halfway house is dwelling despite expectation that residents would stay only for duration of treatment); *Woods*, 884 F. Supp. at 1173-74 (finding that shelter is dwelling, even though goal of shelter is to locate permanent housing for residents); *Villegas*, 929 F. Supp. at 1328 (finding that temporary nature of dwellings does not undermine coverage under Act).

Rather than consider where the resident ultimately intends to live, as the district court did here, these courts have consistently held that the relevant inquiry turns on whether the resident, *while living at the dwelling in question*, treats it as a home and returns to it during the period of his tenancy.

In its recent decision, *Lakeside Resort*, the Third Circuit addressed facts closely analogous to those presented in this case. In *Lakeside Resort*, the court examined the intent of residents of a drug- and alcohol-treatment center and found that because they considered the center to be their home, conducted themselves in a familial manner while living there, and returned to those homes on a daily basis, the residents intended for these facilities to be their residences while they stayed at the treatment center. *See Lakeside Resort*, 455 F.3d at 160; *see also, e.g.*, *Conn. Hosp.*, 129 F. Supp. 2d at 134-35 (halfway house for recovering addicts deemed residence).

The Third Circuit's approach is consistent with the analysis used by other courts. In *Lauer*, *Villegas*, and *Hernandez*, three different district courts agreed that seasonal housing provided to migrant farm workers is covered by the FHA, despite the fact that these workers ultimately intended to return to their permanent homes at the end of the harvesting season, because they would use this temporary housing as their residences for the duration of their employment on the farms. *See Lauer Farms*, 986 F. Supp. at 559-60; *Villegas*, 929 F. Supp. at 1328; *Hernandez*,

923 F. Supp. at 1308.

Likewise, in *Woods*, the district court held that homeless women and children could consider a temporary shelter to be their residence, and rejected the defendant's argument that the shelter could not be considered a residence because it was not intended to provide permanent housing. *Woods*, 884 F. Supp. at 1173-74; *see also, e.g.*, *Cohen*, 174 F. Supp. 2d at 323 (holding that "a resident's ultimate intent . . . is not dispositive" and that home for children was dwelling even though they would ultimately be removed).

These judicial interpretations are consistent with the plain language of the statute. The plain meaning of "residence" includes "a temporary or permanent dwelling place." *Hughes*, 396 F. Supp. at 549; *see also Lakeside Resort*, 455 F.3d at 156. A "temporary" residence presupposes that a resident intends eventually to move on to another, more permanent dwelling.

HUD, as the agency charged with interpreting the FHA, has explicitly recognized that the term "dwelling" encompasses temporary housing such as "dormitory rooms," "sleeping accommodations in shelters intended for occupancy as a residence for homeless persons," and "timesharing properties." *See* 24 C.F.R. § 100.201; Preamble I, 24 C.F.R. Ch. 1, Subch. A, App. I, 54 Fed.. Reg 3232, 3238 (Jan. 23, 1989); *see also Louisiana ACORN*, 952 F. Supp. at 358. Residents in these types of property intend ultimately to return to other, permanent housing, but

HUD nonetheless considers them protected under the FHA for the duration of their tenancy.[4]

Applying these principles, Appellant Doe I's ultimate intent to return to California as his permanent residence does not suggest that he did not view the Gulf Coast property as his residence for the duration of his stay there. Instead, the district court's findings that life at these residences "closely mirror[s] everyday life," with Appellant Doe and other residents engaging in everyday activities such as cooking together and cleaning, are the relevant factors to consider in the analysis. (Report 4.)

### 2. Housing Choice Does Not Diminish the Protections of the FHA

The district court also implicitly found that because Appellant Doe I was not actually or constructively homeless and had the ability to pay for alternative housing, the Gulf Coast property could not be considered his residence.[5]

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[4] This agency interpretation of the meaning of "dwelling" is entitled to great deference. *See Massaro*, 3 F.3d at 1480 (showing judicial deference to HUD's interpretation of FHA); *see also Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 104 S. Ct. 2778 (1984).

[5] *Amici* note that the district court's finding that Appellant Doe I was not constructively homeless ignored that his family, not Appellant Doe I, paid for his housing while he lived at the Gulf Coast property. (Report 21.) There can certainly be situations where an individual is constructively homeless where she is able to live at certain housing associated with a drug treatment program because her family is willing to pay for such housing but is constructively homeless because she has no other option for housing.

*Amici* fully agree that where an individual is actually or constructively homeless, courts can accord great weight to this fact in determining whether the dwelling is actually "intended for occupancy as" the individual's residence. 42 U.S.C. § 3602(b). This fact can be highly instructive on the evidentiary question of whether the individual considers the dwelling to be his residence and "intends to return" to it because, from a practical standpoint, a homeless individual would "have nowhere else to go." *Woods*, 884 F. Supp. at 1173-74; *see also Conn. Hosp.*, 129 F. Supp. 2d at 126, 134; *Baxter*, 720 F. Supp. at 731; 24 C.F.R. § 100.201 (noting that sleeping accommodations in shelter are covered "dwellings" under FHA).

However, to the extent that the district court's analysis suggests that the converse is true – that the ability to pay for alternative housing can be used to determine that a particular home is not a covered "dwelling" – *Amici* respectfully disagree. Such a suggestion ignores contrary caselaw finding that a dwelling need not be an individual's only, or even primary, residence. *See, e.g.*, *Columbus Country Club*, 915 F.2d at 882 (bungalows used only during the summer months); *Louisiana ACORN*, 952 F. Supp at 358-59 (recreational timeshare units).

By its very nature, the FHA prohibits discrimination that narrows the ability to enjoy housing *of one's choice*.[6] The financial ability of an owner or renter to go

[6] For example, if an African-American family is denied the right to rent or

elsewhere in the face of such discrimination should not disqualify the housing in question as a "dwelling" or diminish the protections of the owner or renter under the FHA.[7] Rather, this Court's focus should be on those factors that other courts have determined have more relevance to whether a dwelling is "occupied as, or

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purchase a house in a wealthy, but predominantly white, neighborhood based on their race, that denial would unquestionably violate the Act even if they are not homeless and could purchase or rent another dwelling elsewhere. *See, e.g.*, *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1452-53 (4th Cir. 1990); *United States v. Mitchell*, 580 F.2d 789 (5th Cir.1978), *superseded by statute on other grounds*; *see also* 114 Cong. Rec. 2272, 2275 (1968) (statement by Sen. Mondale) ("All that legislation such as this would do would be to eliminate the discriminatory business practices which might prevent a person economically able to do so from purchasing a home regardless of his race.")

[7] Indeed, in amending the Fair Housing Act in 1988 to cover people with disabilities, Congress specifically intended to ensure that people with disabilities would be free to choose where they live and not be isolated from mainstream society. *See* Comm. on the Judiciary, U.S. House of Representatives, H.R. Rep. 100-711: Fair Housing Amendments Act of 1988, at 18, reported in 1988 U.S.C.C.A.N. 2173, 2179; *see also id.* ("The Fair Housing Amendments Act . . . is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. . . . and mandates that persons with handicaps be considered as individuals."); *see also, e.g.*, *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994) (finding that drafters of FHA intended that people with disabilities have the right to reside in housing of their choice, and not housing in other parts of municipality they may not choose); *U.S. v. City of Jackson*, 318 F. Supp. 2d 395, 416 (S.D. Miss. 2002) (finding that FHAA "guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice"); *Babylon*, 819 F. Supp. at 1185 n.10 ("[The FHA] dictates that a handicapped individual must be allowed to enjoy a *particular* dwelling, not just some dwelling somewhere in the town.); *Horizon House Dev. Servs., Inc. v. Township of Upper Southhampton*, 804 F. Supp. 683, 695 (E.D. Pa. 1992) (emphasizing access by people with disabilities to housing of their choice).

designed or intended for occupancy as, a residence." 42 U.S.C. § 3602(b). Just as any other renter in the market place, Appellant Doe I is free to exercise his right to live in a residence of his choice by residing at Gulf Coast.

### 3. A Resident Need Not Receive Formal Treatment in the Home for the Home to be Considered a "Residence"

The district court also found that the absence of formal clinical treatment in the home weakened the argument that these homes are residences. (Report 22-23.) As far as *amici* are aware, the lack of formal clinical treatment in the home has never been considered a factor in determining whether housing constitutes a "residence," and nothing in the statute, regulations, or caselaw suggests that it should be. The vast majority of FHA cases in this country involve the sale or rental of housing that is not related to treatment programs at all, and there is no basis for requiring group homes for recovering drug addicts and alcoholics to meet a more onerous standard.[8]

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[8] To the extent that the district court perceived the lack of clinical treatment in the home as evidence that these clients do not gain anything by living together at Gulf Coast properties, such a finding is squarely contradicted by the undisputed facts before the Court. The City stipulated that "there is a therapeutic value to recovering alcoholics and addicts living together in a group setting generally." (Report 5.) This is consistent with the findings by numerous other courts that living with other individuals committed to recovering from substance abuse problems provides a supportive, drug- and alcohol-free environment that significantly helps to reduce relapse. *See, e.g.*, *Conn. Hosp.*, 129 F. Supp. 2d at 132; *Babylon*, 819 F. Supp. 1179.

### 4. Former Use as Residential Building is Instructive, But Not Dispositive

The district court also suggested that the previous use of property as a residence is an indicator of a present intention to use the property as a residence. (Report 26.) While the previous use of a property may be considered, the statutory definition of "dwelling" does not require a prior residential use before the coverage of the FHA is triggered. *See Lakeside Resort*, 455 F.3d at 159 n.8 (hotel converted to drug and alcohol treatment center); *Baxter*, 720 F. Supp. at 731 (office building converted to hospice). In fact, the FHA specifically covers buildings that are "designed" or "intended" to be used as residences, as well as "vacant land," for which no prior use exists. 42 U.S.C. § 3602(b); *see also United Farmworkers of Florida Hous. Project, Inc. v. City of Delray*, 493 F.2d 799, 802 n.4 (5th Cir. 1974).[9]

* * * * *

In sum, to satisfy the first element of the analysis, all that is required is that the tenants intend to use the dwellings as their residences for the duration of their stay. The Gulf Coast residents, who cook, clean, maintain, and return daily to the premises during their recovery, clearly satisfy this intent requirement. Ultimately,

[9] In any event, the Gulf Coast property analyzed by the district court had been previously used as a single-family residence, which suggests that the house is intended to be used as a residence. The fact that Gulf Coast now rents rooms within that single-family house to several individuals, rather than rent the house in its entirety, does not alter the residential nature of the property.

their intent is a question of fact that is soundly within the province of the jury, and cannot be resolved on summary judgment.

### B. Intent to Stay for a Significant Period of Time

In the second step of the analysis, Appellants must show that the residents of Gulf Coast properties intend to remain in those homes for "any significant period of time." *Lakeside Resort*, 455 F.3d at 158 (quoting *Columbus Country Club*, 915 F.2d at 881). While courts generally agree that one or two nights' stay such as one would expect at a commercial bed-and-breakfast or motel is insufficient, *see, e.g.*, *Lakeside Resort*, 455 F.3d at 157 (indicating that stay must be more than "brief period of time"); *Schneider*, 190 F. Supp. 2d at 1087, no "magic number" is required, and other factors, such as the strength of the tenants' intent to use the dwelling as a residence, can be given greater weight when determining whether the dwelling satisfies the statutory requirement of being "intended to be occupied as a residence." *See Cohen*, 174 F. Supp. 2d at 323 n.11; *Villegas*, 929 F. Supp. at 1328 ("[T]he length one expects to live in a particular place is not necessarily determinative."); *Woods*, 84 F. Supp. at 1174.

In deciding that residents of Gulf Coast properties fail to satisfy this second requirement, the district court focused exclusively on the average period of time that residents remain at Gulf Coast and found, without explanation, that an average stay of four weeks is insufficient. (Report 24.) This analysis misses two critical

factors. First, the district court failed to acknowledge that other courts have found that average stays of similar, and even shorter, periods of time are sufficient. Second, the court specifically disregarded evidence that some residents, like Appellant Doe, stay at Gulf Coast for significantly longer periods than the average length of stay.

### 1. A Length of Stay of One Month is Sufficient

Courts have found stays of an average of 14.8 days, one month, six weeks, and several months are all sufficient to qualify as "more than a brief period of time." *Lakeside Resort*, 455 F.3d at 157 (average of 14.8 days, and presuming that thirty-day stay would be sufficient); *Conn. Hosp.*, 129 F. Supp. 2d at 135 (six weeks); *Villegas*, 929 F. Supp. at 1328 (four or five months); *Project Life Inc. v. Glendening*, 1998 WL 1119864 at *2 n.4 (one month). In fact, month-to-month rental agreements are not unusual in the traditional housing market and are no less worthy of FHA coverage than longer term leases.[10] The average one-month residency terms at Gulf Coast should not be treated any differently simply because they involve people with disabilities.[11]

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[10] The wide use of month-to-month rentals is exemplified by the number of form agreements available on the internet. *See, e.g.*, http://www.findlegalforms.com/xcart/customer/home.php?cat=632; http://forms.lawguru.com/p19878/google/?gclid=CPrpocq5oZACFUWoGgod3lMd7A; http://www.ilrg.com/forms/lease-res/us/fl

[11] In their initial brief, Appellants state that the average length of stay is actually

### 2. Even Where an Average Length of Stay is Short, It is Sufficient Under FHA that Some Residents Use the Building as a Residence for Longer Periods of Time

In addition, even where the average length of stay is short, it is not alone dispositive. *See Lakeside Resort*, 455 F.3d at 158-59. The FHA requires consideration of two additional factors.

First, by its explicit terms, the Act not only covers dwellings that are actually occupied as a residence, but also dwellings "designed or intended for occupancy[] as a residence." 42 U.S.C. § 3602(b). Thus, even if the actual stays at Gulf Coast properties are short, those dwellings may still qualify as residences under the FHA if they are intended for longer-term stays. In *Lakeside Resort*, for example, the Third Circuit found that, although the average stay was 14.8 days at a particular drug treatment facility, the facility was "intended to accommodate 30-day stays as a matter of course and even longer stays on occasion." 455 F.3d at 158-59. Because the facility was "intended" to accommodate extended stays, the Third Circuit held that the average length of stay "does not itself deprive the . . . facility of its residential status." *Id.* Similar to *Lakeside Resort*, Gulf Coast intends for clients who choose to reside at its properties to stay for the duration of their treatment program, which runs between sixty and ninety days, and allows clients to continue to reside there indefinitely if they so choose. (Report 5, 20.)

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two months, which is significantly longer than a transient visit one would expect at a commercial hotel. (Ps. Initial App. Br. 26.)

Second, the average length of stay only represents the mean, and does not account for significantly longer stays by residents, such as Appellant Doe who stayed for nearly five months and another resident who stayed for over a year. (Report 4; Ps. Initial App. Br. 26.) The FHA, however, broadly defines a covered "dwelling" as "any building, structure, *or portion thereof*" that is used as a residence. 42 U.S.C. § 3602(b). Under this broad definition, courts have found that, even if significant turnover results in a low *average* length of stay, the building is a residence as defined by the FHA so long as some rooms are used for extended stays. For example, in *Lakeside Resort*, the Third Circuit concluded that, although many residents would likely leave the drug treatment facility quickly because of funding constraints, thereby decreasing the average length of stay, others were likely to use rooms within the facility for extended periods and "thereby satisf[y] with ease the significant-stay factor." 455 F.3d at 159. The Ninth Circuit similarly had "little trouble" finding that a homeless shelter, which included both emergency beds and transitional housing units, was occupied as a residence because at least some parts of the shelter provided for longer-term stays. *See Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1048 n.2 (9th Cir. 2007). Here, the evidence shows that at least some residents remain at the Gulf Coast properties for months at a time, and thus easily establishes "an intent to remain for significant period of time." *Lakeside Resort*, 455 F.3d at 159.

### C. The District Court Relied on Factors that Have No Bearing on the Threshold Question of Whether These Residences Constitute "Dwellings"

In finding that these homes do not constitute "residences" under the FHA, the district court introduced three other factors into its analysis that, as far as *amici* are aware, have never been relied on by any other court and have no foundation in the statute itself.

First, the district court stated that a "very important factor" is whether or not there is a "critical shortage of supportive housing in the state for recovering substance abusers." (Report 26-27 (internal quotation marks omitted).) There is no statutory, legislative, or other basis for considering the availability of housing in answering the *threshold* question of whether these homes are dwellings under the FHA, and the district court cited to none.[12] If it is true that the City has not previously impeded the operation of group homes, this fact may affect liability issues, such as whether officials intentionally discriminated against Appellants, but does not have any bearing on whether these group homes constitute "dwellings"

[12] Although the district court states that the court in *Connecticut Hospital* considered the shortage of housing in its analysis, the opinion does not rely on this fact in determining whether group homes for recovering addicts are dwellings under the Act. The critical shortage of housing in that case was mentioned only in a footnote in the factual background portion of the opinion. *Conn. Hosp.*, 129 F. Supp. 2d at 126 n.7.

under the FHA. [13]

Second, the district court suggests that this case can be distinguished from the majority of cases holding that temporary residences constitute dwellings for FHA purposes because the City's enforcement actions were based on turnover rates rather than a zoning ordinance limiting the maximum number of unrelated residents living in a single home. (Report 27.) The question of whether these homes meet the FHA's definition of dwellings, however, is distinct from the issue of which method the City used in allegedly discriminating against Appellants.[14]

Third, the district court analyzed the merits of Appellants' claims, finding that the City had not failed to provide a reasonable accommodation to them, and improperly considered this finding in determining whether Gulf Coast properties are dwellings. (Report 27-30.) However, the issue of whether these homes are dwellings under the FHA is antecedent to, and independent from, the ultimate issues of liability in this case.

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[13] *Amici* note that segregation of group homes in particular neighborhoods may still violate the Act because they can limit the housing choices of people with disabilities. *See supra* note 7.

[14] In fact, cases involving the issue of whether temporary housing is covered by the Act are based on a variety of theories of liability, including denial of housing on the basis of race, *Hughes*, 396 F. Supp. at 544; denial of housing to women and families with children, *Cmty House*, 490 F.3d 1041; refusal to sell based on religious beliefs, *Columbus Country Club*, 915 F.2d at 882; hostile living environment on the basis of gender, *Woods*, 884 F. Supp. at 1171-72; and refusal to rent because the prospective renter had children, *Hernandez*, 923 F. Supp. 1305.

## CONCLUSION

*Amici* respectfully request that this Court find that the appropriate analysis of the term "dwelling" under the Fair Housing Act focuses on (1) whether the resident, while living at the dwelling in question, treats it as a home and returns to it during the period of his tenancy and (2) whether the building is intended to be used as a residence and whether some portion of the property is used by residents for longer term stays, and does not turn exclusively on the average length of stay. Under this analytical framework, *Amici* respectfully submit that residences at Gulf Coast are "dwellings" covered by the Fair Housing Act.

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. Using the word count function provided by Microsoft Word 2003, this brief contains 6,717 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

I further certify that this brief complies with the typeface and type style requirements of Rule 32(a)(5)-(6) of the Federal Rules of Appellate Procedure. This brief has been prepared in proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman.

Counsel for *Amici Curiae*

## ADDENDUM

*Amici* present this addendum with additional information about their respective organizations and interests in this case.

*The National Law Center on Homelessness & Poverty ("NLCHP")* is a not-for-profit organization based in Washington, D.C., established in 1989 to advocate for homeless and low-income people nationwide. One of the primary causes of homelessness is the shortage of available affordable housing across the country. Other leading causes of homelessness are substance abuse and mental illness—and the lack of available services to help address these problems—and domestic violence. Through litigation, policy advocacy and public education, NLCHP advocates for the creation of transitional and permanent housing opportunities and increased access to services for people who are homeless, formerly homeless, or at serious risk of becoming homeless.

The homeless population in the United States on whose behalf NLCHP advocates is demographically diverse, and includes people of all races, genders, ethnicities, ages, and household types. Over one-third of the homeless population in the United States is comprised of children. Approximately 32% of homeless people are women, and roughly 25% of homeless women report that they became homeless as a result of domestic violence. A substantial percentage of homeless people in the United States are persons with disabilities, and roughly 86% of

homeless people report having experienced an alcohol, drug, or mental health problem during their lifetime. Approximately 23% of homeless adults are veterans. While all racial groups are affected by homelessness, minorities are disproportionately afflicted, comprising about 59% of the homeless population.

Another group of persons who are homeless or at risk of homelessness is persons who have lost their housing due to natural disasters, most recently brought to the national consciousness by the devastation of Hurricane Katrina. Many Katrina victims left with few or no housing options after the hurricane are members of minority groups and/or persons with disabilities. NLCHP has been actively involved in efforts to protect the rights of these persons to housing and rental housing assistance, including serving as co-counsel in two national class action lawsuits in federal court.

NLCHP has also published national reports on local opposition to housing and services for homeless people. Preservation and enforcement of the protections provided by the federal Fair Housing Act is crucial to NLCHP's mission to ensure access to housing for the most vulnerable members of our society. NLCHP has extensive experience with questions of federal law affecting homeless and low-income people.

*The National Fair Housing Alliance ("NFHA")* is a non-profit corporation that represents approximately 97 private, non-profit fair housing organizations

throughout the country. NFHA was founded in 1988 to lead the battle against housing discrimination and ensure equal housing opportunity for all people. Through education, outreach, policy initiatives, advocacy and enforcement, NFHA promotes equal housing, lending and insurance opportunities. Relying on the Fair Housing Act, NFHA and its members have undertaken important enforcement initiatives in cities and states across the country; those efforts have contributed significantly to the nation's efforts to eliminate discriminatory housing practices.

*Oxford House, Inc.* is a 501(c)(3) national, nonprofit umbrella organization for a network of approximately 1,278 individual Oxford Houses that at any one time have more than 9,000 residents in recovery from alcoholism and drug addiction. Founded in 1975, the national network of Oxford Houses has grown from 13 houses in 1988 to its present size as a result of its basic concept and enactment of §2036 of the Federal Anti-Drug Abuse Act of 1988, PL 100-690, PL 100-690, codified as amended at 42 USC 300x-25. In the last decade, more than 250,000 individuals recovering from alcoholism and/or drug addiction have lived in one of Oxford Houses located in 41 states. The vast majority has stayed clean and sober.

The basic concept of Oxford House™ is that groups of six or more individuals recovering from alcoholism and drug addiction can rent an ordinary single-family house in a good neighborhood and establish a self-run, self-supported

Oxford recovery home. The group home is granted a charter by the umbrella organization – Oxford House, Inc. – that mandates three basic conditions: (1) the group must be democratically self-run with the residents following the system of operation contained in the Oxford House Manual©, (2) the group must be financially self-supporting paying all household expenses including rent to the landlord, and (3) the group must immediately expel any resident that returns to using alcohol and/or illegal drugs in or outside of the home. Oxford Houses are low cost for taxpayers because they rely on fair market rental, rather than purchase, of single-family houses and are democratically run by the residents themselves without any paid staff. They are effective because residents can live in them as long as they need to gain sobriety comfortable enough to avoid relapse and the charter and system of operation mandate immediate expulsion of any resident returning to alcohol or drug use.

All the residents of Oxford Houses are in recovery from alcoholism and/or drug addiction and are a protected class under the federal Fair Housing Act (FHA) and American's with Disability Act (ADA). *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); *see also Oxford House v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. (1991), *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991). Any effort to limit the application of the federal FHA protections to recovering alcoholics and drug addicts by narrowly defining

dwelling thwarts the ability of Oxford House, Inc. to help groups of six or more recovering individuals to establish individual Oxford Houses. Without reasonable protection under civil rights laws, few if any Oxford Houses could be established because the concept requires fair market access to rental of suitable single-family homes in good neighborhoods. A restricted definition of dwelling thwarts fair market access to suitable housing – particularly when the definition is linked to duration of residency.

An Oxford House™ depends upon immediate expulsion of any resident that returns to use of alcohol and/or illegal drugs. Such individuals must always be short-term residents or Oxford House, Inc. would be forced to revoke the charter permitting the group to operate as an Oxford House. Likewise, the differences between human beings in their ability to develop sobriety comfortable enough to assure long-term abstinence varies among individuals. The combination of the structured sober living environment of an Oxford House™ and the open-ended residency for those following the Oxford House system of operation is essential to reducing the national alcoholism and drug addiction problem.[15] A profile of

[15] The most recent TEDS (Treatment Episode Data Set) report [SAMSHA US Department of Health and Human Services, 2006] shows approximately 25 million drug addicts and alcoholics in need of treatment. It also shows that of the approximately one million getting formal treatment only 40% are in treatment for the first time. The recycling of individuals in and out of treatment can be stopped only if treated individuals are given an opportunity to become comfortable enough with abstinent behavior to avoid relapse.

Oxford House residents in 15 states is provided at the website: www.oxfordhouse.org as the last item under the category "Publications/ General."

Utilization of Oxford Houses is essential for most individuals recovering from alcoholism and/or drug addiction if they are likely to stay clean and sober. Oxford House, Inc. representing the men and woman presently living in, running and supporting the existing network of Oxford Houses has a direct interest in making certain that the FHA and ADA continue to safeguard their existence. Moreover, it is in the national interest to encourage the establishment of many more Oxford Houses, which appear to be the only cost-effective way to assure a successful transition from addiction to recovery without relapse. Therefore, the organization submits this Amicus Curiae Brief.

*The Judge David L. Bazelon Center for Mental Health Law* is a national legal advocacy organization representing adults and children with mental disabilities. The Center seeks their full integration into the community by protecting their rights to choice and dignity and expanding their access to residential and treatment services. The Center advocates broad enforcement of the Fair Housing Act so that people with disabilities may have protection against discrimination in all of the settings in which they live.

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NIAAA and NIDA sponsored studies of Oxford House outcomes by De Paul University in Chicago verify the remarkable outcome results of Oxford Houses. *See generally* compilation of DePaul studies at www.oxfordhouse.org.

*The Caron Foundation* is a not-for-profit foundation organized under section 501(c)(3) of the IRS Code whose mission is to provide a caring treatment community in which all those affected by alcoholism or other drug addiction may begin a new life. Now in its sixth decade of providing quality services, Caron provides specialized care for chemically dependent individuals who have completed a primary treatment program but need a transitional therapeutic environment to assist in their recovery. Because people in recovery —especially during the initial stages of their recovery— need peer support from others in recovery and need to be away from people who use drugs and alcohol, Caron also provides housing for these individuals, who are in active recovery from addiction and alcoholism, as part of the therapeutic environment. These individuals live together in a sober living environment for anywhere from two weeks to two months to two years. While they are residing in Caron's sober housing, these individuals receive mail; coordinate housekeeping, laundry, and other chores; cook their own meals; buy their own bedding and towels; are responsible for their own schedules; have their own keys; and live together as a family.

Over the years, Caron and its residents have been subjected to discrimination by local governmental and entities who seek to exclude sober housing through zoning and other measures. Caron has litigated against several local governments in Florida, and is currently listed by the Department of Justice as an aggrieved

party in a Fair Housing Act case, United States of America v. City of Boca Raton, Case No. 06-80879-CIV-Middlebrooks/Johnson. The matters asserted in Amicus Brief are relevant to the threshold inquiry to be made by this Court-whether transitional housing, which is an essential component of long-term treatment and recovery, can qualify as a "dwelling" under the FHA, even if the person resides there for as few as three weeks. Caron has a longstanding interest in this issue. The availability of fair housing protection is profoundly important to people in recovery. Absent such protection, many individuals will not be able to live in sober housing, and will return to their old "triggers," which will increase the likelihood of relapse.

## CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of December 2007, I served one original bound copy and six additional bound copies of the foregoing Brief of *Amici Curiae* The National Law Center on Homelessness and Poverty, The National Fair Housing Alliance, Oxford House, The Judge David L. Bazelon Center, and The Caron Foundation in Support of Plaintiffs-Appellants in Support of Reversal on the Definition of Dwelling by Federal Express to the Clerk of Court, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street N.W., Atlanta, GA 30303, (404) 335-6100, and one copy of the same on the following counsel:

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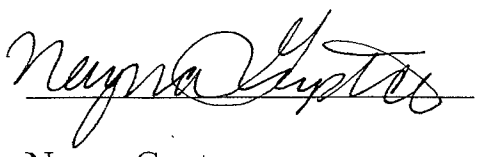

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