Nos. 15-1111, 15-1112

In the Supreme Court of the United States

BANK OF AMERICA CORPORATION, *et al.*,
Petitioners,
v.
CITY OF MIAMI, FLORIDA,
Respondent.

WELLS FARGO & CO., *et al.*,
Petitioners,
v.
CITY OF MIAMI, FLORIDA,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF AMICI CURIAE ANITA TRAFFICANTE, ET AL. IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

Anita Trafficante is the daughter of Paul and Margaret Trafficante. Paul Trafficante was lead plaintiff in *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205 (1972), which established the Fair Housing Act standing principles that petitioners now seek to roll back. Margaret Trafficante played a vital role in initiating that lawsuit and implementing its settlement, which integrated Parkmerced. Anita Trafficante has an interest in her family's legacy of vigorous Fair Housing Act enforcement in the service of achieving truly integrated and fair housing.

Provident Realty Advisors, Inc. is a private real estate and investment corporation based in Dallas, Texas. Provident has built thousands of units of multi-family housing in Texas and Louisiana, many of them set aside for people with limited income. It has relied on this Court's precedents providing for broad standing under the Fair Housing Act to challenge municipal restrictions on such developments that discriminate against potential residents. It has an interest in ensuring that standing under the Act will continue to be broad enough that it can challenge such discrimination in the future.

Buckeye Community Hope Foundation is a non-profit corporation that, among other things, develops high-quality, affordable housing. Buckeye has

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[1] This brief was not authored in whole or part by counsel for a party. No one other than amicus curiae or its counsel made a monetary contribution to preparation or submission of this brief. Letters of consent to filing from counsel for all parties are on file with the Clerk.

developed affordable housing in eight states and has been or currently is the developer of 90 affordable housing projects; it has partnered in developing many others. Buckeye has relied on the Fair Housing Act's broad standing to challenge race-based opposition to such projects, including in a case that came before this Court. It has an interest in ensuring that the Act will continue to be construed so that it can challenge such discrimination in the future.

The Anderson Group is a family-owned real estate and development company. It attempted to build a mixed-income residential development in Saratoga Springs, N.Y., that was blocked because of opposition to the project's affordable component. The Anderson Group successfully challenged the denial under the Fair Housing Act based on its disparate impact on African Americans and families with children. The Anderson Group has an interest in ensuring that the Fair Housing Act permits it to challenge similar denials of housing projects that further racial integration.

Oxford House, Inc. is a non-profit corporation devoted to creating and maintaining houses for people recovering from drug and alcohol addiction. It is the umbrella organization for more than 2,000 independent Oxford Houses around the country. Oxford House has found it necessary to enforce its rights and those of its affiliates and residents under the Fair Housing Act, including in a case that came before this Court. It has a strong interest in ensuring that it will continue to be able to do so.

Paralyzed Veterans of America is a congressionally chartered veterans-service organization devoted to improving the lives of veterans who have experienced spinal cord injury or disease and all people with disabilities. It has found it necessary to enforce the rights of those it serves through litigation, including under the Fair Housing Act. It has a strong interest in ensuring that it will continue to be able to do so.

SUMMARY OF ARGUMENT

More than forty years ago, when the Fair Housing Act was young, this Court declared in no uncertain terms that standing for private parties to enforce the Act extends to the limits permitted by Article III. This Court recognized that such broad standing is required to realize Congress' vision of a law that truly breaks down discriminatory barriers to housing and promotes residential integration. It found that the Act's enforcement depends on what it termed "private attorneys general," who are not necessarily the direct objects of discrimination but can claim some interest in the matter that satisfies Article III's requirements. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972).

Petitioners now ask this Court to abandon its long-standing jurisprudence regarding the breadth of Fair Housing Act standing, such that plaintiffs must not only satisfy Article III's requirements but also establish that they are within the Act's "zone of interests." In so doing they assert that the premises underlying *Trafficante* were mistaken or are no longer true. They assure this Court that imposing new limits on Fair Housing Act standing will in no way impair the Act's

effectiveness, because "directly injured victims can generally be counted on to vindicate the law." Bank of America Br. at 50 (quoting *Holmes v. SIPC*, 503 U.S. 258, 269 (1992). This statement goes unsupported, as though it were as self-evidently true for victims of housing discrimination as for the purchasers of securities in *Holmes*.

It is not. The reality is that, from *Trafficante* until the present, broad standing for private parties to enforce the Fair Housing Act has been absolutely essential to the Act's "continuing role in moving the Nation toward a more integrated society." *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Cmtys. Project*, 135 S. Ct. 2507, 2526 (2015) ("*ICP*"). Many of the lawsuits that have done the most to "eradicate discriminatory practices" in housing, *id.* at 2521, have been brought by those who are *not* direct victims. Such suits include Fair Housing Act cases that have reached this Court and cases this Court has recognized as "heartland" suits that, by eliminating "artificial barriers to housing," clearly serve the Fair Housing Act's purposes. *Id.* at 2522. That is because, in practice, those harmed most concretely – making them aware of the injury, motivated to remedy it, and able to present a justiciable controversy in court – are not necessarily those against whom the discrimination is directed. Moreover, formidable obstacles often stand between "direct victims" and the courthouse, such that broad standing is essential to vindicate the Act's requirements.

Amici signing this brief have been plaintiffs in such cases or represent such plaintiffs' interests. They file this brief so that this Court, in deciding whether to

retain its long-time Fair Housing Act jurisprudence, will have the benefit of their real-world experience that shaped and then relied upon those rules. *Amici* include:

- **Anita Trafficante**, the daughter of Paul and Margaret Trafficante. Her parents sued over others' exclusion from housing so that all (including but not limited to themselves) could receive the benefits of integration. That story led this Court to articulate the broad standing and private attorney general principles that have been so vital to the Fair Housing Act's effectiveness.

- Three developers of affordable housing, who have successfully challenged discriminatory municipal decisions that "exclude minorities from certain neighborhoods," *ICP*, 135 S. Ct. at 2522, by keeping housing suitable for them from being built. As this Court has recognized, private developers can "vindicate the FHA's objectives" even as they "protect their property rights." *Id. Amici* developers include **Provident Realty Advisors, Inc.**, which (along with a fair housing organization) litigated *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*, which this Court has identified as in "the heartland of disparate-impact suits," *id.*; **Buckeye Community Hope Foundation**, which brought one such suit to this Court in 2003 and is litigating another right now; and **The Anderson Group**, which won such a case at trial and in the Second Circuit.

- Two groups who advocate for the rights of people with disabilities. Both have found it necessary to sue under the Fair Housing Act, which was amended in 1988 to ensure that disability – like race – does not stand in the way of fair housing opportunities and full integration. **Oxford House, Inc.** has engaged in considerable such litigation – including in one case that reached this Court – to protect the rights of people recovering from drug and alcohol addiction to live in community settings conducive to recovery. And **Paralyzed Veterans of America** has sued to ensure that residential, multi-family dwellings are developed and constructed with the accessibility features that the Act now requires and that individuals with disabilities need to fully enjoy those dwellings.

Amici's experiences demonstrate that this Court ruled correctly in *Trafficante* (and its progeny) that broad private standing is essential to vindicating the Act's purposes. Even as the types of housing discrimination that come before this Court and others has changed – even as protected classes are added, disparate-impact liability is recognized, and new forms of discrimination are recognized and combatted – that principle has not. *Trafficante*, the first case in which this Court construed the Fair Housing Act, has been foundational to the Act's successes. This Court should reaffirm it in full.

ARGUMENT

Petitioners ask this Court to jettison what has been a cardinal principle of Fair Housing Act jurisprudence, and one fundamental to the Act's vigorous enforcement. For more than four decades, this Court has held, repeatedly, that Fair Housing Act standing extends to the limits permitted by Article III. Petitioners now ask this Court to limit such standing to those within the Act's "zone of interest," an area they do not attempt to define other than to acknowledge it must include those who are "directly injured victims," Bank of Am. Br. at 50, plus the small set of others whose standing this Court has specifically recognized. They contend that this new restriction is needed to ward off abusive litigation and that it will not diminish the Act's vitality in protecting some of the most vulnerable members of society. Petitioners are wrong on both counts.

The reality is that, in almost all of this Court's previous Fair Housing Act cases, someone other than a "direct victim" of discrimination has sued. The same is true, as well, for a great number of the most important Fair Housing Act cases in the lower courts – those cases that this Court has termed the "heartland" suits that eliminate "artificial barriers to housing" and thus breathe life into Congress' bold vision of a law that truly furthers integration and housing equality. *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Cmtys. Project*, 135 S. Ct. 2507, 2522 (2015) ("*ICP*").

That is not a coincidence. As was true when this Court decided *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), and as is still true today, lawsuits brought by those other than the "direct

victims" of housing discrimination are indispensable to the Act's success. That is because, in practice, those affected by housing discrimination frequently do not know that they have been subjected to discrimination, let alone have the means and ability to challenge it.

Some Fair Housing Act violations involve discrimination that is not disclosed to its direct victims. Such was the case in *Trafficante*, where Parkmerced—the largest rental development in San Francisco—did not tell potential renters they were turned away because they were African-American. Rather, it told them they failed to meet requirements that were non-existent for white applicants. For that reason, current residents – who compared notes after having been mobilized by the parents of *amica* Anita Trafficante – were better situated to fully understand and then challenge the complex's discrimination. ***See* Point I, infra**.

Some Fair Housing Act violations involve housing that never becomes available for anyone – for example, because a municipal law prevents housing from being rented or built. Under those circumstances, it is often impossible to identify specific people who are thereby deprived of housing and can point to a sufficiently concrete and justiciable injury to satisfy this Court's Article III standing precedents. For that reason, fair housing groups and housing developers – such as *amici* Provident Realty, Buckeye Community Hope Foundation, and The Anderson Group – are better situated to challenge such discrimination. ***See* Point II, infra.** And for similar reasons, an organization that fosters group homes for people with disabilities, like *amicus* Oxford House, Inc., is far better positioned to

sue over the refusal to permit such a group home than would be an individual potential resident. ***See*** **Point III, infra.**

And some Fair Housing Act violations are simply so common, blatant, and demoralizing that most "direct victims" simply give up and look elsewhere for housing. That was true in *Trafficante*, where many African-American potential tenants simply did not bother to seek housing from a landlord notorious for supporting segregation. It remains true today for housing visibly built without the accessibility features required for individuals who use wheelchairs to live there. Those directly harmed by such discriminatory design and construction are unlikely to make the futile effort to seek housing there. Fair Housing Act enforcement thus requires involvement of a group such as *amicus* Paralyzed Veterans of America.

Put simply, an Act limited to enforcement actions initiated by direct victims of discrimination would be hobbled to the point of ineffectiveness. And while petitioners hold out the possibility that others could satisfy their newly minted "zone of interest" test, they offer little guidance as to that zone's scope, and those lines they do suggest drawing would leave some of the most important Fair Housing Act plaintiffs on the outside.

Petitioners argue that the respondent's problem is that its injury is a purely financial one that it would have suffered even if the conduct at issue were non-discrimination. Wells Fargo Br. at 9-10. But the same could be said of the housing developers described in this brief. Petitioners' crude attempt at defining a limited "zone of interest" might get them the result

they want, but this Court would hamstring the Act by adopting it.

Nor would any other distinctions work better. As the Congress that passed the Act well knew, and as this Court has recognized, the harms of housing discrimination foreseeably extend well beyond its direct victim. *See Trafficante*, 409 U.S. at 211 ("The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community.'"). Once a party's injury is a sufficiently foreseeable result of discriminatory conduct and otherwise satisfies Article III's requirements, there are no principled reasons for excluding that party from the Act's protections.

The bottom line is that petitioners offer no reason for this Court to reconsider its long-standing rule that private standing under the Fair Housing Act extends to Article III's limits. That rule – articulated for the first time in *Trafficante*, just four years after the Act's passage, and reaffirmed several times since – has proven essential to effectuating the Act's ambitious purpose of eradicating housing discrimination. The Act's proper enforcement requires the combined efforts of a diverse group of private attorneys general who, in asserting their own rights, ensure that the Act's purposes serve us all. That was true when this Court decided *Trafficante*; it was true when this Court reaffirmed *Trafficante*'s rule in 1979 and again in 1982; it was true in the 1990s, when Oxford House and Buckeye initiated litigation that came to this Court; and it has continued to be true ever since.

The lessons of experience matter. In affirming the validity of disparate-impact claims under the Fair Housing Act last year, this Court found highly relevant empirical observations from the decades during which the lower courts had permitted such claims. *ICP*, 135 S. Ct. at 2525. It observed, first, that "residents and policymakers have come to rely on the availability of disparate-impact claims" for enforcing the Act's mandate, *id.*, such that this Court was rightfully wary of unsettling those expectations. And it observed, second, that disparate-impact liability "for the last several decades has not given rise to . . . dire consequences." *Id.* (internal quotation marks omitted; ellipses in original).

Both observations directly apply here. This brief, submitted by Fair Housing Act plaintiffs, presents a representative sample of Fair Housing Act suits by those other than "direct victims." These suits have given vitality to the Act's promise of integrated and inclusive living patterns; it can fairly be said that "residents and policymakers have to come to rely on" them. *ICP*, 135 S. Ct. at 2525. By contrast, petitioners can point to no evidence other than (in petitioners' view) this lawsuit and directly related ones that broad Fair Housing Act standing leads to undesirable litigation. Petitioners' argument is based on logic wholly unmoored from experience, though *Trafficante*'s rule is 44 years old.[2]

This difference is telling. Whereas *amici* present actual cases in which broad Fair Housing Act standing has furthered the Act's purposes, petitioners resort to

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[2] Cf. Oliver Wendell Holmes, Jr., *In the Common Law* (1881).

decrying entirely hypothetical litigation by people (such as local dry cleaners or grocers, *see* BOA Br. at 3) with injuries so removed from the alleged housing discrimination that likely would not have Article III standing. That simply confirms that Article III standing limitations suffice to place reasonable bounds on lawsuits under the Act, leaving no reason for the Act itself to provide further limits.[3]

I. *Trafficante* Recognizes Congress Intended Those Who Are Not "Direct Victims" to Have Standing to Enforce the Fair Housing Act, For "They Too Suffered" From Segregation

Congress enacted the Fair Housing Act in 1968, against the background of civic unrest that created a new urgency to end residential segregation and unify a divided nation. *ICP*, 135 S. Ct. at 2515-16. Just four years later, with that urgency still fresh in mind, this Court held in *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205 (1972), that standing under the Act extends as broadly as Article III permits. The saga behind *Trafficante* was well publicized at the time, and surely influenced this Court's decision. It is worth remembering those facts now, as Petitioners ask this Court to discard much of what it said in *Trafficante* – words that in turn have shaped the Act's enforcement through four decades – by characterizing as dicta what was universally understood at the time as critical to that case's disposition.

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[3] *Amici* express no view as to petitioners' alternative argument that respondent does not satisfy Article III requirements.

Parkmerced was (and remains) a large housing development in San Francisco with thousands of residents, plus commercial tenants – which then included a supermarket, a delicatessen, a hardware store, and even a bank branch – that gave it the feel of a small, self-contained town. It was backed by the nearly infinite resources of its owner, the Metropolitan Life Insurance Company, a company that fought for many years to discriminate in its many landmark housing projects. *See, e.g.*, *Dorsey v. Stuyvesant Town*, 299 N.Y. 512 (1949) (upholding landlord's right to discriminate in tenant selection). In 1963, under pressure from the NAACP and others, Metropolitan Life announced it would accept African-American tenants at its properties, including at Parkmerced. But its race discrimination had only been driven undercover.

Seven years later, Parkmerced was 99% white. It had accepted a handful of non-white tenants, like eventual *Trafficante* plaintiff Dorothy Carr, who had filed or threatened to file suits. Individual enforcement by those "direct victims" improved their own circumstances, but for the vast majority of African-Americans, nothing changed. *See* Br. in Opp. to Mot. to Dismiss at 1-3, *Trafficante v. Metropolitan Life Ins. Co.*, No. C-70-1754 (N.D. Cal.) (filed Dec. 14, 1970).

Not only did Parkmerced give just enough ground to avoid a more comprehensive challenge, but the shifting manner in which it discriminated obscured the big picture for those on the outside. Some potential tenants were turned away on pretextual grounds, making it difficult for them to know for certain they had faced

discrimination,[4] while others were excluded through facially non-discriminatory policies such as preferences for existing residents and their family members. *See* Br. in Supp. of Mot. to Join Additional Defendant at 4 in *Trafficante* (filed Dec. 8, 1970). Many were placed on a "waiting list" from which their turn never came.[5] Most simply did not bother to seek housing at Parkmerced "because of its notorious discrimination." *Id.* at 4. Thus Parkmerced continued to discriminate with impunity, so long as it avoided creating "direct victims" with the wherewithal to sue.

But Parkmerced made one big mistake. It got on the wrong side of Paul and Margaret Trafficante. The serendipity of the events that followed demonstrates that, even with broad standing doctrine, the Act's enforcement often requires unusually devoted plaintiffs.

The Trafficantes were not the most obvious candidates to bring a landmark Fair Housing Act suit. As of June 1969, they had lived for 15 years at Parkmerced, where they paid $185 monthly for a small apartment for themselves and their two children. Paul Trafficante, 48, was the son of Sicilian immigrants. He sold carpets and drapery, though he described himself cryptically in newspaper articles as a "self-employed

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[4] For example, one 34-year-old black woman was turned away on the grounds that "We do not rent to single persons under 35." Shortly thereafter, Parkmerced rented to a white single person under 35. *See Bias Charged to Parkmerced*, S.F. Chronicle, Aug. 19, 1970.

[5] *See* Terry Link, *The Parkmerced Problem*, San Francisco, Apr. 1972, at 31-33.

estimator for engineering projects." Margaret Trafficante, 44, was the daughter of gas-station owners and had once worked for Metropolitan Life. They lived in Parkmerced because it had reasonable rents and a good play space for children, plus it was close to a school.[6]

And then Parkmerced gave the Trafficantes notice that their lease would not be renewed, requiring them to leave by June 30, 1969. It did not explain why. But the Trafficantes believed the action was political: Paul Trafficante spearheaded a group of about 20 Parkmerced families who were openly supportive of a controversial student strike at San Francisco State College, an issue dividing the Parkmerced community. *See Parkmerced Tenant Ouster Laid to Strike Aid*, S.F. Examiner and Chronicle, June 1, 1969. The Trafficantes believed that did not sit well with the leasing manager, who kept a confederate flag in his office and was empowered to act on his beliefs. They found out later that other families supporting the strike received similar letters and quietly left.

The Trafficantes, who believed strongly in the need to stand up for civil rights and free speech, did not. Instead, they sent letters to all of Parkmerced's approximately 3,500 tenants; a small, courageous group of those residents organized to support the Trafficantes. This group publicized the matter to the media, got the backing of the NAACP and other groups, and threatened to sue. Parkmerced quickly backed down and rescinded the non-renewal notice. *See Tenant Wins Parkmerced Battle*, S.F. Chronicle, July 3, 1969.

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[6] *Parkmerced Problem*, *supra* note 5, at 32.

But by then the connections that had been made fighting one discrete action allowed the newly formed group to trade notes, compare their individual treatment, and understand the larger discriminatory policy at work. It was at the party celebrating Parkmerced's decision to permit the Trafficantes to remain that the group formed to fight this battle decided to engage the larger war. As Margaret Trafficante said years later, had Parkmerced simply respected their right to speak about a strike, it might never have been sued for housing discrimination.

The events that followed are better known to this Court. The Committee of Parkmerced Residents Committed to Open Occupancy was formed, with Paul Trafficante as the Chairman and Margaret Trafficante as the Secretary (and, for many years, leading spokesperson). The Committee and several of its members filed suit, challenging Parkmerced's discriminatory policies. Some of these tenant-plaintiffs (such as Dorothy Carr) were African-American, others (such as Paul Trafficante) were white.

In an argument that echoes the one being made now, Parkmerced said none of these tenants had standing to sue, whether they were African-American or white. It argued that all had been accepted to Parkmerced and so none were the "victims" of its policy. Br. in Opp. at 28-29.

The lower courts agreed with Parkmerced. In reasoning strikingly similar to that which petitioners now ask this Court to adopt, the Ninth Circuit reasoned that standing to enforce the Fair Housing Act (as well as 42 U.S.C. § 1982, on which the plaintiffs also relied) was limited to those within the statutes'

"zone of interest." It further reasoned that, for the Fair Housing Act, such "zone of interest" was limited to those who were "direct victims of discriminatory housing practices." *Trafficante v. Metropolitan Life Ins. Co.*, 446 F.2d 1158, 1161-64 (9th Cir. 1971).

This Court reversed. It held that standing under the Fair Housing Act, far from being limited to some imagined "zone of interest," extends as broadly as is permitted by Article III. *Trafficante*, 409 U.S. at 209. Plaintiffs under the Act, this Court found, quoting the Solicitor General, "act not only on their own behalf but also as 'private attorneys general in vindicating a policy that Congress considered to be of the highest priority.'" *Id.* at 211.

All of this was consistent, this Court found, with the understandings of the Act's drafters, who knew well that the harms of housing discrimination were many. The Act's proponents, this Court noted, "emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered." *Id.* at 210. Said this Court: "The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community.'" *Id.* at 211. Accordingly, this Court concluded, it could "give vitality to" the Act's critical private enforcement provision "only by a generous construction" as to standing. *Id.* at 212. Thus, soon after the Act's passage and with legislative purposes still fresh in mind, this Court rejected the conception of the Act now advanced by petitioners: a law aimed primarily at stopping "first-party discrimination," with no interest in "protect[ing] third parties that remotely

and indirectly feel the effects of discrimination," and authorizing private enforcement only by those within the Act's "zone of interests." BOA Br. at 41.

Soon after this Court's decision, the case settled. A consent order was entered in October 1973 that required Parkmerced to take steps to remedy its wrongful conduct, such as advertising in minority areas and integrating its rental office personnel, and to provide detailed reports on the order's implementation. Years more of hard work remained when the bright lights faded in order to make the settlement meaningful. Margaret Trafficante became the settlement's auditor, tracking vacancies and move-ins and otherwise ensuring compliance.

The Trafficantes found it difficult being associated with such a widely known and controversial case against their own landlord, further underscoring the challenges of requiring individual tenants to become named plaintiffs in cases seeking such profound change. As this Court was considering taking the case, Margaret told one reporter that the Trafficantes had been rejected by many of their friends and family, including her aunt, for the stand they had taken. Terry Link, *The Parkmerced Problem*, San Francisco, Apr. 1972, at 32. Anita, who was a teenager when the case was filed, said years later:

> I remember that suddenly I wasn't welcome in some of my friend's homes. That many of our neighbors were upset at us. That we received hate mail and threats.

Paul and Margaret Trafficante divorced in the late 1970s. Margaret returned to Sonoma County, Cal.,

where she grew up; she died this past August. Paul Trafficante and Dorothy Carr stayed in Parkmerced, but it changed around them. When Paul Trafficante died in 2001, his daughter Anita turned in his keys to the leasing manager, who now was an African-American man.

These residents – not the "direct victims" of discrimination – had made the Fair Housing Act's promises a reality at Parkmerced. And in the process, they established the broad Fair Housing Act standing that gave the Act vitality elsewhere as well and that, until now, has been properly considered settled law.

This Court quickly reaffirmed and extended *Trafficante*'s principles. A village and several of its residents sued local realtors for "steering" homebuyers to certain areas of town depending on their race. None of the residents had been steered personally; rather, they were "testers" whose treatment by the realtors proved the discriminatory practice.

This Court found that both the village and the residents had standing. It held that the Fair Housing Act provision at issue, like the one in *Trafficante*, conferred standing to Article III's limit, thus requiring adjudication of the constitutional question of whether the plaintiffs satisfied Article III's requirements (they did). *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 109 (1979)

This Court reaffirmed *Trafficante* again in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). It reiterated that Fair Housing Act standing reaches Article III limits, and thus it once again adjudicated a constitutional dispute rather than a statutory one. *Id.*

at 372-73. It found that Article III confers standing on both testers who receive false information about the availability of housing and on fair housing organizations that divert resources to address discrimination that frustrates their missions. *Id.* at 374, 378-79.

Following *Havens*, fair housing organizations around the country have regularly ferreted out covert discrimination using testers and brought Fair Housing Act claims in their own names, notwithstanding that they are not the direct victims of discrimination. They have become perhaps the leading enforcement mechanism for the Act, receiving and investigating the "overwhelming majority" of housing discrimination complaints. *See* NFHA, *2015 Fair Housing Trend Report* at 17 ("NFHA Report"), *available at* http://www.nationalfairhousing.org/Portals/33/2015-04-30%20NFHA%20Trends%20Report%202015.pdf. This Court's decision in *Havens* (which built on *Trafficante*) made that possible.

Although fair housing organizations are the archetypal organizational plaintiffs, other organizations have relied on *Havens* to bring important Fair Housing Act racial discrimination claims – including before this Court. *See, e.g.*, *Town of Huntington v. Huntington Branch, NAACP*, 488 U.S. 15 (1988); *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Comtys. Project*, 135 S. Ct. 2507 (2015). That is to be expected and welcomed, particularly with respect to claims alleging that a policy has an unjustified disparate impact. Advocacy groups often are better positioned than individuals—who know only how they have been treated—to plead and prove precisely

those details regarding a defendant's larger policy and its impact that this Court has reaffirmed are essential to a disparate impact claim. *See ICP*, 135 S. Ct. at 2523-24.

II. Housing Developers Have Uncovered And Successfully Challenged Many Of The Most Discriminatory Housing Practices

Though petitioners concede that fair housing organizations, like the *Trafficante* tenants, have standing – as they must, under any fair reading of this Court's precedents – that is as far they go. Their cramped conception of FHA standing may not cover housing developers, who have been among the leading enforcers of the Act, including in cases before this Court. Developers play a particularly critical role in challenging municipal zoning decisions and other housing regulations that frustrate the integration of largely white communities. As this Court recognized in *ICP*, such cases are now at the "heartland" of the Fair Housing Act, as the open racism that once characterized housing discrimination is replaced by more subtle but equally exclusionary practices. 135 S. Ct. at 2522.

Municipal zoning and other regulation of housing development often is what determines whether historical patterns of segregation will be dismantled or reinforced. Housing developers have Article III standing to challenge such decisions, even where residents might not. *Compare Vill. of Arlington Heights, Ill. v. Metropolitan Housing Dev. Co.*, 429 U.S. 252, 261-62 (1977) (developer of affordable housing has Article III standing to challenge zoning decision based on its stake in blocked project) *with Warth v. Seldin*,

422 U.S. 490, 502-04 (1975) (potential residents lack Article III standing to challenge ordinance that prevents housing from being built). And housing developers, who are on the front line of such battles, are well-positioned to detect discriminatory practices aimed at excluding potential residents and have the incentive and resources to challenge them. By contrast, potential residents who are excluded may not even know of the discrimination, making them unlikely plaintiffs.

The story of *amicus* Provident Realty exemplifies the manner in which developer standing has furthered the Act's objectives. After Hurricane Katrina damaged or destroyed much of the New Orleans area's housing stock, local officials had to decide how to rebuild and accommodate the needs of the many area residents who suddenly required housing. St. Bernard Parish, which was predominantly white (unlike neighboring parishes and most of the people rendered homeless), enacted a series of rules that ensured it would stay that way. One provided that single-family homes (most of the Parish's existing housing) could only be rented to their owners' "blood relatives," thereby barring outsiders. Another imposed a twelve-month "moratorium" on new multi-family rental properties.

Whatever St. Bernard Parish's intent might have been, the racially discriminatory impact of these policies was obvious. So was the need for a mechanism to strike them down if the Fair Housing Act is to achieve its aims. Accordingly, this Court identified a suit challenging such policies as one of those at the "heartland" of proper Fair Housing Act disparate-impact suits. *ICP*, 135 S. Ct. at 2522. And that suit –

like *Trafficante* – was not brought by the people who were excluded by these discriminatory policies.

First, a fair housing organization, the Greater New Orleans Fair Housing Action Center, sued and secured a consent decree that seemed to bar such blatant Fair Housing Act violations. But the Parish did not follow it. When Provident proposed to build new multi-family housing that included affordable housing units, the Parish enacted a new "moratorium" on multi-family housing just long enough to scuttle the project. So Provident intervened to enforce the consent judgment and give its paper requirements real meaning. *Cf.* Br. for BOA at 25 (breadth of FHA standing is connected to breadth of right to intervene in existing suits). By contrast, people excluded from housing – who did not live in St. Bernard Parish and were denied housing that did not yet exist – were not well positioned to know of the discriminatory policy or that it was denying them affordable housing, much less do anything about it.

Because of Provident's intervention, St. Bernard Parish has gotten the badly needed new rental housing it had denied its own residents as well as those who wanted to move there. Within a month of opening, Provident's projects were almost leased up. *See* Benjamin Alexander-Bloch, *St. Bernard Apartments In Demand, Despite Controversy*, New Orleans Times-Picayune, Feb. 13, 2012, *available at* http://www.nola.com/business/index.ssf/2012/02/controversy_hasnt_quelled_dema.html. The Parish's president acknowledged he had seen no problems with these projects, nor did he anticipate any. *Id.* By every account, Provident's housing in St. Bernard has proven

an unqualified success. It is fully integrated, fully leased, and praised by Parish neighbors.

This case shows how important suits by developers can be. It also demonstrates their error in asserting that the United States can pick up the slack if private enforcement is abridged. Petitioners argue that Congress, in amending the Act in 1988, converted it from one primarily reliant on private enforcement to one in which the federal government will carry the load. *See* BOA Br. at 5 (Congress "substantially rewrote the enforcement mechanisms to shift the emphasis from private to government enforcement").

As a matter of statutory interpretation, this argument is wrong. As an empirical assertion – that federal government enforcement is making superfluous the broad standing that has prevailed since *Trafficante* – it is indefensible.

The United States eventually sued St. Bernard Parish – but only after the litigation by private parties described above had exposed the wrongdoing. *See Justice Department Charges St. Bernard Parish, Louisiana for Limited Rental Housing Opportunities for African-Americans*, *available at* https://www.justice.gov/opa/pr/justice-department-charges-st-bernard-parish-louisiana-limited-rental-housing-opportunities (announcing suit on Jan. 31, 2012). The United States eventually secured a settlement that benefitted victims and otherwise provided for different relief than Provident was positioned to obtain. *See* St. Bernard Parish, Louisiana Agrees to $2.5 Million Settlement to Resolve Housing Discrimination Lawsuits, *available at* https://www.justice.gov/

opa/pr/st-bernard-parish-louisiana-agrees-25-million-settlementto-resolve-housing-discrimination.

United States enforcement actions thus often complement – rather than substitute for – private actions. The Justice Department's ability to bring large-scale, pattern-or-practice suits is vital to full fair housing enforcement, but it remains as insufficient by itself as it was when this Court decided *Trafficante*. Petitioners' statement that the Justice Department has brought "dozens" of such suits over a two-year period, *see* BOA Br. at 5, sounds less impressive as a share of the nearly 20,000 complaints that fair housing organizations affiliated with the National Fair Housing Alliance receive annually. *See* NFHA Report, *supra*, at 17. The Justice Department can only make targeted strikes; as the St. Bernard Parish litigation illustrates, it often concentrates those scarce resources on providing additional remedies for discrimination already unearthed and proven by private plaintiffs.

Another case brought by a housing developer, *amicus* Buckeye Community Hope Foundation, has reached this Court, although state-court approval of the underlying project meant this Court was not presented with a Fair Housing Act question. *See City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Foundation*, 538 U.S. 188 (2003). The facts of that case, unfortunately, typify the opposition many communities still mount to the development of housing for low-income people, who are disproportionately people of color and families.

After Cuyahoga Falls initially approved Buckeye's proposal to build an affordable-housing complex, local citizens began an ugly campaign against it, describing

the proposed residents of Buckeye's project in derogatory and racially charged terms. *See Buckeye Cmty. Hope Found. v. City of Cuyahoga Falls*, 263 F.3d 627, 630-31 (6th Cir. 2001). They initiated a referendum petition to block the development, but the Ohio Supreme Court eventually ruled that the referendum violated that State's constitution, such that the project could go forward. *Id.* at 633. And, as in St. Bernard Parish, the project was built and the sky did not fall.

For Buckeye, history is repeating itself right now in the Village of Tinley Park, Illinois. Tinley Park is another predominantly white community with a long history of opposing integration. Buckeye planned to build a housing complex with affordable units to better serve the area's lower-income households, who are disproportionately African-American families with children. When the planned project became public, members of the Tinley Park community orchestrated a campaign to kill it, invoking negative racial stereotypes. Eventually, they pressured the town's political leadership – which previously had approved the project – into reversing itself. Buckeye has sued Tinley Park to remove this barrier to integration. *See Buckeye Cmty. Hope Found. v. Vill. of Tinley Park*, No. 1:16-cv-4430 (N.D. Ill.) (filed Apr. 19, 2016).

And to cite just one more example, *amicus* The Anderson Group ("TAG") found itself in a similar situation when it attempted to build multi-family housing – much of it affordable housing – in the wealthy and almost entirely white enclave of Saratoga Springs, New York. Before TAG could begin constructing what would have been the town's first

substantial affordable housing development in decades, Saratoga Springs rezoned TAG's land to preclude the planned project, which it stated would change the town's "character." TAG sued, and a jury eventually found the town violated the Fair Housing Act. Last year, the Second Circuit affirmed that finding as to liability, and in particular upheld TAG's standing to challenge Saratoga Spring's conduct. *See The Anderson Group, LLC v. City of Saratoga Springs*, 805 F.3d 34, 45-46 (2d Cir. 2015).

It is unclear whether housing developers would fall within petitioners' vague conception of the Fair Housing Act's "zone of interests." The injuries that give them Article III standing – monetary injuries flowing from the denial of the right to build – would be the same whether that denial was discriminatory, non-discriminatory, or altogether justified. To the extent that petitioners attempt to define those injuries within the Fair Housing Act's "zone of interests," their arguments suggest that developers' would not be. *See* Wells Fargo Br. at 29 (faulting City for failing to plead injuries that "depend on the discriminatory nature of Wells Fargo's alleged conduct"); *id.* at 32 (faulting City for pleading "purely financial injuries").

That is an untenable outcome. Suits by housing developers have been essential to accomplishing the Act's purpose of residential integration. If they cannot bring the suits described above, it may be that no one else can ensure that communities permit the development of projects that lead to real integration.

Other private parties similarly have proven effective plaintiffs in challenging violations of the Fair Housing Act that might otherwise go unremedied,

though they might not fit into petitioner's conception of the Act's "zone of interests." For example, building owners often are better positioned than tenants to challenge discriminatory property insurance policies that preclude those properties' rental to Housing Choice Voucher (Section 8) users or otherwise make housing effectively unavailable based on race, family status, or other protected class. *See, e.g.*, *Viens v. Am. Empire Surplus Lines Ins. Co.*, 113 F. Supp. 3d 555 (D. Conn. 2015).

III. Organizations Have Brought Suits That Dismantle Barriers to Housing for Individuals With Disabilities

While the Act's focus initially was on dismantling racial segregation, its 1988 amendments gave it an additional core purpose – tearing away the barriers, both in architecture and in attitude, that prevent individuals with disabilities from integrating into mainstream society. Here, too, the Act's enforcement has relied on suits by those who are not direct victims. And once again, it is unclear that the organizations who bring these suits are within petitioners' conception of the Act's "zone of interests."

The first case this Court heard involving the post-amendment FHA was brought by a non-profit organization, *amicus* Oxford House, Inc. Oxford House connects and oversees a national network of rental homes in residential areas – now numbering more than 2,000 – for people recovering from drug and alcohol addiction, who are individuals with disabilities protected by the FHA. These homes, which are funded and run by their residents, have proven to be an effective and low-cost way for thousands of people to

live self-sufficiently and avoid relapse while maintaining community integration. Oxford House's centralized training and supervision ensures an ideal environment for residents and peace of mind for the surrounding community.

Nonetheless, while acceptance of Oxford House is greater since the 1988 FHA amendments, discriminatory attitudes persist in many communities. This Court encountered such a situation in *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995). In that case, a city blocked a proposed home for 10 to 12 people, saying the area in question was limited to "families." The city defined that term to include no more than 5 unrelated persons, but did not limit how many related persons could live together. This limitation conflicted with the needs of Oxford House, which has found five residents too few for a house to be financially and therapeutically viable. But the city contended that an FHA provision exempting maximum-occupancy rules protected it from scrutiny.

This Court found otherwise. It held that the FHA's non-discrimination requirement applies to rules, such as the city's, that are "designed to preserve the family character of a neighborhood" rather than limiting the size of households in a non-discriminatory manner. *See Oxford House*, 514 U.S. at 736. Thus, a municipality must defend the necessity of such a requirement just like any other rule interfering with the rights of individuals with disabilities. Usually, it turns out, there are no good reasons for barring Oxford Houses. *See, e.g.*, *Oxford House, Inc. v. City of Baton Rouge, La.*, 932 F. Supp. 2d 683, 694-95 (M.D. La. 2013) (city

should have granted reasonable accommodation from restrictions on group homes).

Oxford House has gone on to be a plaintiff in other cases vindicating the rights of individuals with disabilities. *See, e.g.*, *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 579-80 (2d Cir. 2003) (in case brought by Oxford House along with owner of one such house and its residents, upholding finding of intentional discrimination); *Wai v. Allstate Ins. Co.*, 75 F. Supp. 2d 1 (D.D.C. 1999) (Oxford House among plaintiffs challenging refusal of property insurance company to insure homes rented for certain purposes, including as Oxford Houses). These are often complex cases that would be difficult for any individual plaintiffs to litigate, let alone those recovering from alcohol or drug dependency. Oxford House's ability to litigate on their behalf has been instrumental in effectuating the FHA's 1988 amendments and ensuring that individuals with disabilities are treated fairly in housing.

Amicus Paralyzed Veterans of America similarly has been a plaintiff in litigation combating a different kind of housing-related disability discrimination. Although the FHA's 1988 amendments made it illegal to build new multi-family dwellings that are not physically accessible for, *inter alia*, wheelchair users, a great many such dwellings continue to be built inaccessibly. This can be discouraging for individual wheelchair users, who want to be tenants, not plaintiffs. Accordingly, groups such as PVA must ensure that the FHA's promise of accessible development is made a reality.

For example, PVA (along with the National Fair Housing Alliance) sued a major developer, HHHunt Corp., for systematically failing to follow the FHA's architectural accessibility requirements across a number of developments. HHHunt's developments allegedly contained barriers to accessibility for PVA's members such as entry doors with high thresholds; overly steep sidewalk slopes; and kitchens and bathrooms with insufficient space for wheelchairs. PVA secured a settlement that included an architectural review (and, where necessary, retrofitting) of more than 1,000 units of housing. *See* PVA, *Real Estate Developer Agrees to Retrofit Apartment Complexes in Maryland, Virginia, North Carolina and South Carolina to Meet Accessibility Standards*, *available at* http://www.pva.org/site/apps/nlnet/content2.aspx?c=ajIRK9NJLcJ2E&b=6445883&ct=12492453.

For the FHA's 1988 amendments to fulfill their purpose of truly opening up housing to people with disabilities, it is critical that organizations like PVA can be plaintiffs. This litigation takes considerable resources to initiate, let alone complete. It requires, among other things, knowledge of architectural requirements, the ability to hire experts, and in some cases the capacity to send testers to properties and otherwise conduct comprehensive investigations to identify violations. Few individuals have the wherewithal or the will to do so. Organizations like PVA are far better placed to be plaintiffs in the suits that actually cause our nation's multi-family dwellings to be built with the architectural accessibility features that individuals with disabilities need. Yet it is unclear whether PVA – which is not a housing organization at

all – fits within petitioners' conception of the FHA's "zone of interests."

IV. The Act's History Confirms The Correctness of This Court's Holdings Rather Than Providing Reason To Reconsider Them

The cases described in this brief are representative of the actual history of meaningful Fair Housing Act litigation. In reality, most of the pivotal Fair Housing Act suits – from the earliest cases involving race to more recent ones involving disability – have always been brought by parties other than those who are "direct victims" of discrimination. Petitioners imagine such suits as the exceptional cases, but they are the rule. Petitioners baldly assert that "the FHA's private civil action is primarily about obtaining redress for individual injury, not vindicating public rights," BOA Br. at 17. The FHA's actual enforcement history says otherwise.

In this way, the Fair Housing Act functions much differently than does Title VII of the Civil Rights Act, which bars employment discrimination. Employment discrimination usually results in a concrete, adverse action directed against a particular person – failure to hire, failure to promote, termination, hostile environment – such that the person facing discrimination can challenge it. These archetypal employment discrimination cases have never raised serious standing questions. What finally pushed this Court to articulate a "zone of interests" limit at the outer fringes of Title VII standing was an unusual case involving retaliation against an employee's fiancée for reporting discrimination. *See Thompson v. N. Am.*

Stainless, LP, 131 S. Ct. 863 (2011). Even that odd case, this Court made clear, did not approach a "zone of interests" limitation, let alone Article III's limits. That was because the fiancée was "not an accidental victim" or "collateral damage"; rather, hurting him was the "intended means" by which the employer accomplished unlawful retaliation. *Id.* at 870.

Such analysis makes little sense in the context of housing discrimination, where an unlawful act frequently has no identifiable direct victims – or has many. It is meaningless to speak of "collateral damage" or "accidental victims" of housing discrimination, which inevitably affects communities as much as individuals. *See Trafficante*, 409 U.S. at 211.

Petitioners thus miss the mark in arguing that the zone-of-interests test that (this Court recently stated) limits the outer boundaries of Title VII standing also applies to the Fair Housing Act. Petitioners' arguments presume a world – like that of Title VII – where discrimination is squarely directed at readily identifiable victims, who immediately know of the discrimination, and then have the ability, incentives, and wherewithal to promptly challenge it. That is not true of many Fair Housing Act violations. The cases described above, which are representative of important cases brought under the Fair Housing Act, simply do not resemble paradigmatic Title VII cases, where the person facing discrimination is immediately, concretely, and identifiably harmed.

This difference in the two laws' practical realities explains why – although the two great civil rights laws have related, ambitious aims and are similarly worded in many respects – Congress provided different

mechanisms for their private enforcement. For example, prior to suing, Title VII plaintiffs must administratively exhaust claims, *see* 42 U.S.C. § 2000e-5(e)(1), whereas Fair Housing Act plaintiffs need not do so. *Gladstone Realtors*, 441 U.S. at 103-07. Accordingly, limitations on Title VII's private standing cannot necessarily be imported to the Fair Housing Act, either as a matter of sensible policy or as a matter of legislative intent.

A "zone of interests" test thus fits poorly with the Fair Housing Act. It also would needlessly introduce tremendous uncertainty into settled and easily administrable law. Until now, this Court has answered all questions of Fair Housing Act standing with a simple principle: no matter what the facts of the case, standing under the Act extends to Article III's limits. While purporting to honor this Court's holdings, petitioners jettison that reasoning and reimagine these cases as a series of fact-bound exceptions from what they imagine to be the general rule that direct victims are the Act's primary enforcers. *See* BOA Br. at 14 (FHA standing extends to "individuals who suffered discrimination or were forced to live in segregated communities, or organizations spending money fighting discrimination against others"). They offer no logic animating this restatement of the Court's jurisprudence other than the need to (grudgingly) acknowledge certain precedents. And they have nothing to say regarding those Fair Housing Act plaintiffs, such as housing developers, whose FHA standing has not been adjudicated by this Court.

Which of the myriad actual Fair Housing Act plaintiffs that are not "direct victims" do not meet

petitioners' new "zone of interest" test? Petitioners do not say. They present their "zone of interests" concept as an abstraction without distinguishing those real-world plaintiffs within it from those without. In practice, such line-drawing would only mire the lower courts in endless litigation about standing issues thought settled long ago, to the detriment of effective Fair Housing Act enforcement. This Court's charge is generally thought to be settling lower-court conflict, not creating it.

Petitioners' problem is that, in the four decades since *Trafficante*, the "absurd consequences" that petitioners claim must flow from permitting standing as broad as Article III have failed to materialize – at all. Wells Fargo Br. at 14, 18-19. No utility company or grocer has sued over a neighbor's wrongful foreclosure. BOA Br. at 3. No butchers have sued under the Fair Housing Act for lost sales. BOA Br. at 14. No coffee shops or dry cleaners or restaurants or landscapers have brought such suits. Wells Fargo Br. at 19.

The only actual suits petitioners can point to as improperly maintained are ones largely identical to those before this Court. And the only basis on which petitioners distinguish these suits from this Court's precedents for purposes of a "zone of interests" inquiry is that cities purportedly have the wrong motive, one unduly concerned with financial harm. *See* Wells Fargo Br. at 10 (arguing that unlike other FHA plaintiffs, City "does not seek to vindicate the interest in non-discrimination that the FHA protects"); *but see id*. at 34 (arguing that any alleged interest in promoting fair housing is too "abstract" to constitute harm for Article III purposes). Whether or not such a distinction based

on a plaintiff's motivation for suing can be drawn based on the facts here, it would be impossible to administer such a test coherently and fairly. Nor would any other "zone of interests" test fare any better across the remarkably diverse set of plaintiffs that have successfully enforced the Act's requirements.

Accordingly, for more than forty years, this Court and lower courts instead have found that Article III adequately polices the boundaries of Fair Housing Act standing. To be sure, liability under the Fair Housing Act – as under any other law – does not extend indefinitely. As a plaintiff's injury becomes more attenuated from discriminatory action, it becomes less likely that a plaintiff can establish but-for causation (let alone proximate causation) or otherwise satisfy Article III standing requirements. That principle (as well as the practical reality that Fair Housing Act cases are not so simple to litigate as petitioners suggest) explains why petitioners have trouble finding actual marchers for their parade of horribles.

Indeed, petitioners argue that the harm alleged here is too attenuated from the alleged discriminatory acts to meet Article III's causation requirements, as an alternative ground for ruling in their favor. *See* Wells Fargo Br. at 35-52. *Amici* have no view as to whether this argument is correct as to this particular complaint, but agree that, if true, it would be the proper ground for dismissal. There is, accordingly, no basis and no need for this Court to suddenly upend more than four decades of Fair Housing Act jurisprudence and graft a new limitation onto the Act itself. Petitioners ask this Court to unsettle law that has been a foundation of the

Act's successes in order to solve a problem that does not exist.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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