

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 22-1209

Caption [use short title]

Motion for: Leave to File Brief as Amici Curiae

Set forth below precise, complete statement of relief sought:

Leave to file brief as amici curiae on behalf of National Fair Housing Alliance; CNY Fair Housing, Inc.; Fair Housing Justice Center; Housing Opportunities Made Equal, Inc.; Long Island Housing Services, Inc.; and Westchester Residential Opportunities, Inc. in Support of Plaintiffs-Appellees

Gilead Community Services v Town of Cromwell

MOVING PARTY: National Fair Housing Alliance et al., as Amici Curiae

OPPOSING PARTY: Town of Cromwell

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Joseph J. Wardenski [name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Thomas R. Gerarde

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Court- Judge/ Agency appealed from: Hon. Victor A. Bolden, U.S. District Judge, District of Connecticut

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

/s/ Joseph J. Wardenski Date: 12/20/2022 Service by: CM/ECF Other [Attach proof of service]

22-1209

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

GILEAD COMMUNITY SERVICES, INC., and
CONNECTICUT FAIR HOUSING CENTER, INC.,

Plaintiffs-Appellees,

v.

TOWN OF CROMWELL,

Defendant-Appellant.

ENZO FAIENZA, ANTHONY SALVATORE, and JILLIAN MASSEY,

Defendants.

On Appeal from the United States District Court
for the District of Connecticut

**MOTION BY NATIONAL FAIR HOUSING ALLIANCE; CNY FAIR HOUSING,
INC.; FAIR HOUSING JUSTICE CENTER; HOUSING OPPORTUNITIES MADE
EQUAL, INC.; LONG ISLAND HOUSING SERVICES, INC.; AND
WESTCHESTER RESIDENTIAL OPPORTUNITIES, INC. FOR LEAVE TO FILE
BRIEF AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES**

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Counsel for Amici Curiae

Movants National Fair Housing Alliance; CNY Fair Housing, Inc.; Fair Housing Justice Center; Housing Opportunities Made Equal, Inc.; Long Island Housing Services, Inc; and Westchester Residential Opportunities, Inc. (“Proposed *Amici*”) respectfully move the Court for leave to file a brief as *Amici Curiae* in support of Plaintiff-Appellee and affirmance. *See* Fed. R. App. P. 29(a)(3); L.R. 29.1.

Counsel for Proposed *Amici* have consulted with counsel for the parties concerning this motion. Counsel for Plaintiff-Appellee consents to the motion. Counsel for Defendant-Appellant opposes the motion.

This case presents the questions of (1) whether punitive damages, which are explicitly available against any defendant under the Fair Housing Act (“FHA”), 42 U.S.C. § 3613(c)(1), should be available against municipalities; and (2) whether the governing standard for causation under the FHA, 42 U.S.C. § 3601, is the motivating factor test adopted by previous panels of this court in *Mhany Management, Inc. v. County of Nassau*, 819 F.3d 581 (2d Cir. 2016) and *Cabrera v. Jakobovitz*, 24 F.3d 372 (2d Cir. 1994).

Proposed *Amicus Curiae* National Fair Housing Alliance (“NFHA”) is a national organization dedicated to ending discrimination

and ensuring equal opportunity in housing for all people. Founded in 1988, NFHA is a consortium of 167 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals. NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all people through leadership, homeownership, credit access, tech equity, education, member services, public policy, community development, and enforcement initiatives. Relying on the Fair Housing Act and other civil rights laws, NFHA undertakes important enforcement initiatives in cities and states across the country and participates as amicus in other cases to further its goal of achieving equal housing opportunities for all.

Proposed *Amici Curiae* CNY Fair Housing, Inc. (“CNY Fair Housing”); Fair Housing Justice Center (the “FHJC”); Housing Opportunities Made Equal, Inc. (“HOME”); Long Island Housing Services, Inc.; and Westchester Residential Opportunities, Inc. (“WRO”) are nonprofit, public interest fair housing organizations within the Second Circuit and members of NFHA.

CNY Fair Housing is a nonprofit organization dedicated to eliminating housing discrimination, promoting open communities, and

ensuring equal access to housing opportunity for all people in Central and Northern New York. With a service area spanning 17 counties, CNY Fair Housing advances its mission through education, state and local policy advocacy, client counseling, and enforcement. CNY Fair Housing's mission, and in particular its efforts to combat zoning practices that limit housing opportunities for individuals with disabilities, would be impaired by the restrictions on liability and available relief under the FHA sought by the Town of Cromwell in its appeal.

The FHJC is a nonprofit civil rights organization dedicated to eliminating housing discrimination, promoting policies that foster open, accessible, and inclusive communities, and strengthening enforcement of fair housing laws. The FHJC serves all five boroughs of New York City and the seven surrounding New York counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. The FHJC uses testing and other tools to investigate allegations of housing discrimination. When the FHJC uncovers evidence of discrimination, it files lawsuits and other enforcement actions alleging violations of the FHA, including requests for punitive damages and claims relying on the

motivating factor test, and its interests will be adversely affected if these FHA protections are weakened.

HOME is a civil rights organization whose mission is to promote the value of diversity and to ensure all people an equal opportunity to live in the housing and communities of their choice—through education, advocacy, the enforcement of fair housing laws and the creation of housing opportunities. HOME, based in Buffalo, New York, is the only agency in Western New York providing comprehensive services for victims of housing discrimination. Founded in 1963, HOME has nearly 500 members from a wide range of personal and professional backgrounds who pay dues to support HOME's mission and desire to live in a community free of housing discrimination and residential segregation. Punitive damages and the motivating factor standard have served as an important means for HOME to further its mission of ensuring equal access to housing for all.

Long Island Housing Services, Inc. is an over 50-year-old civil rights organization focused on fair housing. It provides fair housing education, advocacy, counseling, investigation and enforcement in Suffolk and Nassau counties in New York. Long Island Housing

Services' mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. Its enforcement activities are bolstered by the ability to seek money judgments in federal courts against those violating fair housing laws, including punitive damages, and through the use of the motivating factor standard.

WRO is a New York nonprofit corporation with its principal place of business in White Plains, New York. It is the mission of WRO to promote equal, affordable and accessible housing opportunities for all residents in the region in which it operates, all of which is within the Second Circuit. To achieve its mission, WRO's fair housing department provides education about fair housing rights and responsibilities, conducts investigations of allegations of housing discrimination, conducts systemic testing for fair housing violations, and enforces the fair housing laws. The organization has and continues to seek punitive damages and use the motivating factor test standard as part of its multi-faceted approach furthering fair housing.

All of the proposed *Amici Curiae* are dedicated to vigorous enforcement of the FHA. Proposed *Amici's* interests will be adversely

affected by a decision that unduly restricts causation or punitive damages under the FHA and limits the strength of the FHA as a tool for combatting residential segregation and housing discrimination.

Proposed *Amici* have a long history of opposing interpretations of the FHA that unduly restrict its broad scope and reach and limit the strength of the FHA as a tool for combatting residential segregation and housing discrimination.

Proposed *Amici* believes that their familiarity with history and purpose of the FHA may be of assistance to this Court in determining the proper causation standard under the FHA and whether punitive may be awarded against municipalities.

Participation by these fair housing organizations as *Amici Curiae* will not delay the briefing or argument in this case. Proposed *Amici* are filing their brief within the time allowed by Federal Rule of Appellate Procedure 29(e).

Accordingly, NFHA, CNY Fair Housing, FHJC, HOME, Long Island Housing Services, and WRO respectfully request that the Court grant this motion and that the Court accept for filing the proposed brief that is attached as an exhibit to this motion.

CERTIFICATE OF SERVICE AND FILING

I hereby certify under penalty of perjury that on December 20, 2022, I served a copy of the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the Court's CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 20, 2022

/s/ Joseph J. Wardenski
Joseph J. Wardenski