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**PROTECTING VICTIMS OF DOMESTIC VIOLENCE FROM CHRONIC NUISANCE
ORDINANCES**

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Abstract

Across the country, chronic nuisance laws effectively punish victims of crime for peace disturbances. This Article discusses the enforcement of chronic nuisances against victims of domestic violence and looks specifically at a case from St. Louis, in which a victim of domestic violence was not only evicted from her home because of the violence inflicted upon her, but effectively banished from the municipality she resided in as well. This Article further discusses the history of zoning and nuisance ordinances as tools of discrimination and modern-day segregation and the way these laws have been used to deny housing to victims of domestic violence. This Article concludes by discussing and critiquing various state legislation designed to address the fair housing rights of victims of domestic violence.

I. Introduction

Housing security is extremely important for victims of domestic violence given the strong correlation between abuse and homelessness. Domestic violence is the third leading cause of homelessness in the nation and 92% of homeless women have experienced severe physical or sexual abuse in their lifetime.² In 2016, legal services providers nationwide responded to around 150 cases of victims of domestic violence who were evicted from their homes because of the abuse they suffered.³ Victims of domestic violence often lack adequate emergency shelter options – due either to overcrowding or lack of proximity – and as a result victims often return to their abusers in order to secure housing.⁴

Chronic nuisance ordinances, sometimes called crime-free ordinances, work to punish or evict residents for making repeated calls to police within a set period of time, regardless of whether the resident was the victim of the activity constituting the nuisance.⁵ These ordinances exist across the country, and many categorize repeated calls to police as peace disturbances. When a tenant is a victim of domestic violence, these laws unconscionably force her to choose between tolerating the abuse without seeking police protection, or alternatively inviting eviction.⁶ In 2016, the U.S. Department of Housing and Urban Development (“HUD”) issued a letter of guidance regarding chronic nuisance laws and their impact on victims of domestic violence,⁷ but cities have been slow to respond with changes to existing codes. While the ACLU has settled cases in multiple states regarding chronic nuisance ordinances, this hasn’t led to any clear-cut rules or substantive law regarding these ordinances and their discriminatory effect.⁸

This Article argues that victims of domestic violence should have a cause of action under the Fair Housing Act to challenge chronic nuisance ordinances. Nuisance ordinances that punish residents for calling the police unfairly target survivors of domestic violence, and because the majority of survivors are women, these ordinances discriminate against residents on the basis of sex. Chronic nuisance ordinances come from a long history of zoning laws that target “undesirable” residents to banish them from cities. Part II of this article discusses this history of zoning and ordinance law across the country. Part III discusses modern chronic nuisance ordinances and challenges to these brought under the Fair Housing Act and their connection to the history of overt racist zoning practices in this country. Part IV provides a case example of *Metropolitan St. Louis Equal Housing Commission v. City of Maplewood*, and the effect of a

² 34 U.S.C. § 12471 (2017).

³ § 12471(4).

⁴ § 12471(5), (7).

⁵ While what constitutes a nuisance varies from city to city, chronic nuisances are those that occur repeatedly. ACLU Women’s Rights Project, *Chronic Nuisance and Crime-Free Ordinances: Endangering the Right of Domestic Violence Survivors to Seek Police Assistance*, AM. C.L. UNION, https://www.aclu.org/sites/default/files/assets/nuisance_ordinance_issue_summary_-_final.pdf [hereinafter ACLU, *Chronic Nuisance*].

⁶ See Sandra Park, *Victory! Town Will No Longer Treat Domestic Violence Victims as Nuisances*, ACLU (Sept. 8, 2014 4:15 PM), <https://www.aclu.org/blog/victory-town-will-no-longer-treat-domestic-violence-victims-nuisances>.

⁷ U.S. Dep’t of Housing & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

⁸ *I Am Not A Nuisance: Local Ordinances Punish Victims of Crime*, ACLU, <https://www.aclu.org/other/i-am-not-nuisance-local-ordinances-punish-victims-crime?redirect=notanuisance> (last visited Jan. 5, 2020) [hereinafter ACLU, *I Am Not A Nuisance*].

chronic nuisance ordinance on a resident of Maplewood, Missouri who was a victim of domestic violence. Part V discusses the role of the legislature in moving forward and argues that while giving victims a cause of action under the Fair Housing Act is desirable, the best way to protect victim's housing rights is to enact blanket legislation that prohibits landlords and municipalities from evicting residents because of their status as victims of domestic violence. Part VI concludes this article.

II. History of Zoning Law

Zoning laws and regulations have been a tool used by the government to control private land-use since the early 20th century.⁹ During the industrial revolution, comprehensive zoning became a way for big urban cities to deal with overcrowding and make plans for the cities' growth.¹⁰ Starting as early as the end of the civil war where newly freed slaves left the South and moved to Northern and border cities, cities and neighborhoods have also used zoning laws and land use restrictions to create and further implement racial segregation.¹¹ As African American families moved away from the South in search of work and safety, white city officials rushed to implement zoning laws to keep white and black families segregated.¹² Ordinances that disallowed black families from moving into neighborhoods with a majority of white residents, and vice versa, were common.¹³

The power of zoning laws and communities' ability to enact and enforce them derives mostly from *Village of Euclid v. Ambler Realty* ("Euclid").¹⁴ In *Euclid*, the Village of Euclid, Ohio adopted a comprehensive zoning plan that organized the village into six districts and designated what could be built within these districts.¹⁵ Ambler Realty ("Ambler"), a real estate company, owned sixty-eight acres of land in Euclid that would have been divided into three different types of districts under the zoning ordinance.¹⁶ Ambler sued the Village of Euclid and asked the court for an injunction to prevent the Village from enforcing this ordinance on the grounds that it violated the Fourteenth Amendment by depriving Ambler of its rights to liberty and property without due process of law.¹⁷ The Northern District of Ohio agreed with Ambler that the ordinance violated the Fourteenth Amendment, and accordingly struck the ordinance down.¹⁸ The Northern District held that this was further an unconstitutional taking of private property by the government without "just compensation" and was not a "reasonable or legitimate

⁹ PATRICIA SALKIN, AMERICAN LAW OF ZONING § 1:18 (5th ed. 2018) ("Zoning regulations are drafted and enacted by legislative authority, and may be enforced by municipal action.")

¹⁰ *Id.* at §§ 1:17, 1:19.

¹¹ RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 39–43 (2017).

¹² *Id.* at 44.

¹³ *Id.*

¹⁴ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

¹⁵ *Id.* at 379–80. The districts were divided as follows: industrial, apartment buildings, two-family houses, single-family houses, and designated different height and lot area requirements. The ordinance further designated that districts construction like hospitals, water towers, public playgrounds, banks, offices, police stations, restaurants, theaters, gas stations, etc., could be built.

¹⁶ *Id.* at 382.

¹⁷ *Id.* at 384.

¹⁸ *Ambler Realty Co. v. Vill. of Euclid*, 297 F. 307, 317 (1924).

exercise of police power.”¹⁹ In its reasoning, the Court explained that while regulating public health and safety was a substantial interest of the state, the real purpose of this ordinance was to further racial segregation.²⁰ The Court accordingly granted the injunction against the Village of Euclid.²¹

On appeal to the Supreme Court, the Court reversed the injunction granted by the Northern District of Ohio, finding the zoning ordinance a valid and legitimate use of police power.²² The Court focused the bulk of its analysis on the constitutionality of residential zoning districts generally and analyzed its constitutionality based on whether it was justified “in some aspect of the police power, asserted for the public welfare.”²³ The Court noted that the majority trend among state courts was to grant broad authority to municipalities to enforce residential zoning ordinances.²⁴ In keeping with this trend, the Court found that residential zoning ordinances like the one at issue are a valid way for municipalities to create safe residential areas by reducing traffic and noise, thus creating a “more favorable environment in which to rear children.”²⁵ With this, the Court found that restricting construction of apartment buildings was a valid way to reach these goals of public safety and peaceful residential areas, since apartment buildings bring “necessary accompaniments” of more noise, traffic, and businesses.²⁶ These “accompaniments” would become so obnoxious, in fact, that ultimately “the residential character of the neighborhood and its desirability as a place of detached residents [would be] utterly destroyed.”²⁷ The Court described apartment buildings as “mere parasite[s], constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.”²⁸ Because the ordinance was a valid mechanism for achieving goals of public safety and welfare, the Court found that in “its general scope and dominant features” it was a valid exercise of the Village’s authority and therefore constitutional.²⁹

Euclid was the first zoning law case to reach the Supreme Court and has been incredibly influential in the power it gives cities and municipalities to enforce strict comprehensive zoning laws. In light of this deference afforded to municipalities and the Court’s language depicting apartment dwellers as “parasites,” many cities began using this to enforce legally discriminatory zoning laws to implement implicit racial segregation. In *Jones v. Alfred H. Mayer Co.*,³⁰ Justice Stewart poignantly noted that “when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.”³¹

¹⁹ *Id.* at 317.

²⁰ *Id.* at 313 (“The blighting of property values and the congesting of population, whenever the colored or certain foreign races invade a residential section, are so well known as to be within the judicial cognizance.”).

²¹ *Id.* at 317.

²² *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 384 (1926).

²³ *Id.* at 387.

²⁴ *Id.* at 390.

²⁵ *Id.* at 394.

²⁶ *Id.* (finding that these “accompaniments” would “detract[t] from . . . safety and depriv[e] children of the privilege of quiet and open spaces for play”).

²⁷ *Euclid*, 272 U.S. at 394.

²⁸ *Id.* at 394.

²⁹ *Id.* at 397.

³⁰ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

³¹ *Id.* at 442–43.

A. Overt Racist Zoning Laws

In *Buchanan v. Warley*,³² the Supreme Court addressed a Louisville, Kentucky zoning ordinance that prevented black people from renting or purchasing property in a neighborhood with a majority of white residents.³³ The language of the ordinance read:

An ordinance to prevent conflict and ill-feeling between the white and colored races in the city of Louisville, and to preserve the public peace and promote the general welfare, by making reasonable provisions requiring, as far as practicable, the use of separate blocks or residences, places of abode, and places of assembly by white and colored people respectively.³⁴

The defendant, an African American man, accepted an offer from the plaintiff, a white man, to buy a piece of the plaintiff's land.³⁵ However, because the property purchased was in a neighborhood with a majority of white residents, the defendant discovered that, pursuant to the zoning ordinance in Louisville at the time, he would not be able to reside on the land and therefore did not follow through with the contract.³⁶ The plaintiff then sued for specific performance, and also argued that the zoning ordinance conflicted with his Fourteenth Amendment rights to "acquire and enjoy property."³⁷

The city of Louisville defended the ordinance as necessary to "promote public peace and promote the general welfare," and explained that property values of white neighborhoods would depreciate if black residents moved in.³⁸ The Court recognized that in the past, it has upheld state actions that exercise state's use of police power to further these types of goals.³⁹ The Court, however, finding that the Fourteenth Amendment guarantees the right to "free use, enjoyment, and disposal of a person's acquisitions," agreed with the plaintiff that the Louisville ordinance conflicted with these rights.⁴⁰ The Court acknowledged that the purpose of the Fourteenth Amendment was to grant equal rights to newly freed slaves after the Civil War – but in reality the claims brought under the Fourteenth Amendment mainly did not focus on race.⁴¹ With this understanding, the Court's main question became whether or not the white plaintiff could be denied his rights under the Fourteenth Amendment because the person he wished to sell his land to was a person of color.⁴²

The Court answered this question in the affirmative, finding that the Louisville ordinance deprived the plaintiff of his Fourteenth Amendment rights and therefore was unconstitutional.⁴³

³² *Buchanan v. Warley*, 245 U.S. 60 (1917).

³³ *Id.* at 70.

³⁴ *Id.*

³⁵ *Id.* at 69.

³⁶ *Id.* at 70.

³⁷ *Id.* at 72.

³⁸ *Id.* at 69, 72; *see also* *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 365 (1926) (granting cities broad zoning power).

³⁹ *Buchanan*, 245 U.S. at 70 ("[T]he authority of the state to pass laws in the exercise of the police power, having for their object the promotion of the public health, safety and welfare is very broad as has been affirmed in numerous and recent decisions of this court.").

⁴⁰ *Id.* at 74 (emphasis added).

⁴¹ *Id.* at 76.

⁴² *Id.* at 78.

⁴³ *Id.* at 81.

The Court differentiated this holding from its prior holdings finding segregation in public spaces and schools constitutional by explaining that in those circumstances because it still provides for “equal accommodations.”⁴⁴ The Court further rejected arguments that this ordinance functioned in a similar way, and worked to maintain the “purity of the races” and prevent “race conflicts,” stating that the ordinance did not function in this way, and was instead in conflict with the “civil right of a white man to dispose of his property if he saw fit to do so to a person of color and of a colored person to make such disposition to a white person.”⁴⁵ While this case is often seen as a major landmark in the fight against segregation, it is important to note that the opinion is centered on the rights of the white landowner in trying to sell his property.⁴⁶

Despite this landmark ruling in *Buchanan*, cities ignored this holding and continued to implement overtly racist practices.⁴⁷ Cities commonly cited vague interests such as “public safety and welfare” as the justification for racist ordinances and zoning laws.⁴⁸ Landowners often entered into private covenants that allowed for overt discrimination as well.⁴⁹ After the passage of the Fair Housing Act in 1968 and the Supreme Court’s ruling in *Shelley v. Kraemer* – which held that overtly discriminatory private covenants violated the Fourteenth Amendment – cities and individuals moved toward more covert practices in the effort to prevent diversification of cities and neighborhoods.

B. Covert Racist Zoning Laws Post *Shelley v. Kraemer* and the Fair Housing Act

While the Fair Housing Act of 1968 was a major milestone in the fight for fair housing, discriminatory practices in housing continue to this day, and communities continue to be segregated.⁵⁰ St. Louis provides a good case study to illustrate how the growth of the suburbs, caused by “white flight,”⁵¹ which many cities experienced throughout the 60s, 70s, and 80s was a response to the invalidation of overtly racist zoning and housing practices. In St. Louis, almost 170,000 residents left the city for the county and outlying suburbs between 1970 and 1980.⁵² White residents fled the inner city and incorporated municipalities in the county – today there are eighty-eight municipalities in St. Louis county alone⁵³ – and implemented exclusionary zoning ordinances in the effort to prevent black residents from moving in.⁵⁴

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 75 (“[T]he question now presented makes it pertinent to inquire into the constitutional right of the white man to sell his property to a colored man, having in view the legal status of the purchaser and occupant.”).

⁴⁷ ROTHSTEIN, *supra* note 11, at 46; see JAMES A. KUSHNER, *APARTHEID IN AMERICA: AN HISTORICAL AND LEGAL ANALYSIS OF CONTEMPORARY RACIAL SEGREGATION IN THE UNITED STATES* (1980).

⁴⁸ ROTHSTEIN, *supra* note 11, at 46.

⁴⁹ See *Shelley v. Kraemer*, 334 U.S. 1 (1948); see also Rigel Oliveri, *Setting the Stage for Ferguson: Housing Discrimination and Segregation in St. Louis*, 80 MO. L. REV. 1053, 1055–57 (2015).

⁵⁰ See Olatunde C.A. Johnson, *Social Engineering: Notes on the Law and Political Economy of Integration*, 40 CARDOZO L. REV. 1149, 1152–53 (2019).

⁵¹ The phenomenon that when people of color move into a neighborhood, white residents tend to move out and seek neighborhoods that are predominantly white.

⁵² Oliveri, *supra* note 49, at 1062.

⁵³ Municipal Resources, ST. LOUIS COUNTY, MISSOURI, <https://www.stlouisco.com/Your-Government/Public-Works/Documents/Resources/Municipal>.

⁵⁴ Oliveri, *supra* note 49, at 1062.

The City of Black Jack is one of these municipalities, and in 1970 it was comprised of 99% white residents.⁵⁵ At this time, Black Jack was unincorporated and most of its developed land was made up of mostly single-family dwellings.⁵⁶ In 1969, the Inter Religious Center for Urban Affairs (“ICUA”) set out plans to develop a plot of land into two-story townhouses for people of low and moderate income.⁵⁷ After these plans became public knowledge, Black Jack residents pushed for incorporation, which was confirmed by the St. Louis City Council on August 6, 1970.⁵⁸ On October 20, 1970, the newly formed City of Black Jack enacted a zoning ordinance which prohibited the construction of multiple-family dwellings and grandfathered in any existing multi-family dwellings.⁵⁹ Soon after the ordinance was enacted, the United States Department of Housing and Urban Development (“HUD”) brought charges against the city of Black Jack for violating the Fair Housing Act, alleging that the ordinance “operated to” exclude low and moderate income residents from the municipality.⁶⁰

The Eastern District of Missouri ruled in favor of Black Jack, finding no intent by the municipality to discriminate on the basis of race.⁶¹ On appeal brought by HUD, the Eighth Circuit reversed and, under a disparate impact theory,⁶² found Black Jack had violated the Fair Housing Act.⁶³ While the Eighth Circuit agreed there was no evidence of discriminatory intent on the part of Black Jack, the court found that the discriminatory effect of the ordinance was sufficient for HUD to raise a prima facie case of discrimination.⁶⁴ Specifically, the Eighth Circuit found the District Court’s ruling to be in error, because it “failed to take into account either the ‘ultimate effect’ or the ‘historical context’” of Black Jack’s decision to pass the ordinance.⁶⁵ The Eighth Circuit found the “ultimate effect” of the ordinance to be discriminatory, especially “when assessed in light of the fact that segregated housing in the St. Louis metropolitan area was in large measure the result of deliberate racial discrimination in the housing market.”⁶⁶ Within this context, the court found the effects of Black Jack’s ordinance would be to “foreclose 85 percent of the blacks living in the metropolitan area from obtaining housing in Black Jack” which would further “confine blacks to low-income housing in the center city.”⁶⁷ Because the court found this evidence of discriminatory effect of the ordinance to be true, it concluded that HUD had raised a prima facie case of discrimination – which could be rebutted if Black Jack could prove a compelling governmental interest that was furthered by the ordinance.⁶⁸

Among the justifications for the ordinance, the City of Black Jack cited “road and traffic control,” “prevention of overcrowding of schools,” and “prevention of devaluation of adjacent

⁵⁵ *Id.*

⁵⁶ *United States v. City of Black Jack*, 508 F.2d 1179, 1182 (8th Cir. 1974).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* 1183.

⁶⁰ *Id.* at 1181.

⁶¹ *United States v. City of Black Jack*, 372 F. Supp. 319, 329 (E.D. Mo. 1974).

⁶² *City of Black Jack*, 508 F.2d at 1188.

⁶³ *Id.*

⁶⁴ *Id.* at 1186.

⁶⁵ *Id.* (quoting *Untied Farmworkers of Florida Hous. Project v. City of Delray Beach*, 493 F.2d 799, 810 (5th Cir. 1974)).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

single-family homes.”⁶⁹ The Eighth Circuit found no “factual basis” that Black Jack’s ordinance in any way furthered these interests.⁷⁰ Because of this, the Eighth Circuit held that the City of Black Jack’s ordinance violated the Fair Housing Act by denying “persons housing on the basis of race,” and interfering with the “exercise of the right to equal housing opportunity.”⁷¹

In many ways, *Black Jack* is the classic St. Louis story of white flight. White residents fled the city of St. Louis to surrounding municipalities and did exactly what the residents of Black Jack attempted to do with its zoning ordinance.⁷² Today, St. Louis remains split between the county and the city, and the racial divide of the population runs neatly along these lines. While *Black Jack* was an important case for housing rights at the time, cities and municipalities across the country continued to find ways to keep unwanted residents out of certain communities based on race, ethnicity, and income status. With the growth of gentrification today, the movement of residents has reversed, but the effects remain the same.

C. *Even More Covert: Gentrification and Urban Housing Crises*

Gentrification is classified as the economic transformation of working-class neighborhoods that is accompanied by an influx of white residents into neighborhoods historically occupied by a majority of residents of color.⁷³ Some scholars have referred to this phenomenon as reverse white flight.⁷⁴ While not exactly a housing practice implemented by a city or municipality, gentrification has some of the same effects as the exclusionary zoning practices discussed above in that it drives people of color and low-income families out of neighborhoods.⁷⁵ Gentrification is commonplace in most urban areas that attract young people, and has led to housing crises in major cities like New York and San Francisco, where affordable housing is essentially non-existent.⁷⁶ When affluent residents who can afford to pay higher property taxes and rent move in to communities with lower costs, they drive the housing costs of those communities up and force out those residents who cannot keep up with the rising costs.⁷⁷ This dynamic has a major racial component: those moving in are most often white residents and those forced out are most often minorities.⁷⁸

⁶⁹ *Id.*

⁷⁰ *Id.* at 1187.

⁷¹ *Id.* at 1188.

⁷² *See id.* at 1186 (quoting *Mahaley v. Cuyahoga Metro. Hous. Auth.*, 355 F. Supp. 1257, 1260 (N.D. Ohio 1973) (Black Jack’s ordinance “confirm[s] the inexorable process whereby the St. Louis metropolitan area becomes one that ‘has the racial shape of a donut, with the [black residents] in the hole and with mostly [w]hites occupying the ring.’”).

⁷³ David Troutt, *Cities, Fair Housing, and Gentrification: A Proposal in Progressive Federalism*, 40 CARDOZO L. REV. 1177, 1178 (2019).

⁷⁴ *See* Hannah Weinstein, *Fighting For a Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 UCLA L. REV. 794 (2015).

⁷⁵ Troutt, *supra* note 73, at 1178.

⁷⁶ *See* Kim Barker, *Behind New York’s Housing Crisis: Weakened Laws and Fragmented Regulations*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/affordable-housing-nyc.html>; Michelle Robertson, *A Citywide Crisis in Gentrification? New SF Residents Make Far More Money Than Those Leaving*, SF GATE (April 16, 2018), <https://www.sfgate.com/expensive-san-francisco/article/Who-s-moving-to-San-Francisco-The-rich-the-12805760.php>.

⁷⁷ Weinstein, *supra* note 74, at 796.

⁷⁸ *Id.*

Scholars have pointed to gentrification as a threat to fair housing in the way that it drives low income residents out of neighborhoods they may have occupied for generations.⁷⁹ While it may be the most covert in terms of discriminatory housing practices discussed above, its effects are the same on already marginalized communities. In theory, gentrification can look good for cities – it draws in business, drives the tax base up, and can bring much needed attention to areas of cities that have long been ignored. But in reality, the effects of gentrification essentially amount to modern day segregation.

Closely connected with gentrification are chronic nuisance ordinances because cities often adopt these types of ordinances in the name of public safety, and can use this as a draw for young, affluent residents to gentrify lower income neighborhoods.⁸⁰ Because chronic nuisance ordinances are typically selectively enforced against minority communities, they too work to create a similar modern-day segregation.

III. Modern Chronic Nuisance Ordinances

While states and cities may define what constitutes a nuisance differently, chronic nuisances are those nuisances that occur repeatedly but do not themselves constitute crimes.⁸¹ Chronic nuisances are often paired with other anti-crime ordinances, and are sometimes referred to as “crime-free” ordinances.⁸² In Missouri, for example, a nuisance is defined as the “unreasonable, unusual, or unnatural use of one’s property so that it substantially impairs the right of another to peacefully enjoy his property.”⁸³ Cities and municipalities typically define nuisances in municipal codes, and Maplewood, Missouri, for example, identifies twenty-nine different types of nuisances in the city’s municipal code.⁸⁴ In the St. Louis area, 69 of the 88 municipalities include repeated police calls in their nuisance ordinances.⁸⁵

Chronic nuisance ordinances allow cities to punish residents that need what the city considers “excessive police service.”⁸⁶ Proponents of chronic nuisance ordinances see these laws as essential to keeping their communities safe and to insure desirable living spaces for prospective residents and property owners.⁸⁷ Stories of victims of crime suffering the brunt end of these ordinances are abundant,⁸⁸ but cities have been slow to change these laws. The police chief of Oak Park, a neighborhood of Chicago, explained that the crime-free ordinance there has

⁷⁹ Troutt, *supra* note 73, at 1178. Professor Troutt makes the argument that gentrification is a fair housing problem, and as such should be afforded remedies under the Fair Housing Act.

⁸⁰ Anna Kastner, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 CAL. L. REV. 1047, 1066 (2015).

⁸¹ ACLU, *Chronic Nuisance*, *supra* note 5.

⁸² *Id.*

⁸³ Frank v. Env'tl. Sanitation Mgmt., 687 S.W.2d 876 (Mo. 1985) (en banc).

⁸⁴ MAPLEWOOD, MO., MUNICIPAL CODE § 34-240 (2012).

⁸⁵ Kalila Jackson, *Dismantling the Divide: Crime-free Nuisance Ordinances are a Public Menace*, ST. LOUIS AMERICAN (July 18, 2018), http://www.stlamerican.com/news/columnists/guest_columnists/dismantling-the-divide-crime-free-nuisance-ordinances-are-a-public/article_0e8eef4c-8a8f-11e8-92c8-2f9aa8002b90.html.

⁸⁶ Cari Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181, 1182 (2008).

⁸⁷ John H. Campbell, *Solving Chronic Nuisance Problems: A Guide for Neighborhood Leaders*, ENTERPRISE FOUND. INC. at 2 (2001), <https://www.enterprisecommunity.org/download?fid=6702&nid=3548>.

⁸⁸ *Id.* at 16.

helped to evict tenants for drug-related crimes.⁸⁹ In his book, *Evicted*, Matthew Desmond challenges a similar Milwaukee crime-free ordinance that was justified as an “effective weapon” in prosecuting drug crimes.⁹⁰ However, of the 1,666 nuisances that received citations in Milwaukee, only four percent involved drug-related crimes, while domestic violence was the third most common nuisance cited.⁹¹ Critics also argue that crime free ordinances like this are enforced disproportionately against African American residents and effectively criminalize poverty.⁹² In recent years, these ordinances have also been the center of fair housing litigation.

A. *Housing Discrimination Claims Under the Fair Housing Act*

The Fair Housing Act (“FHA”) prohibits landlords from refusing to sell or rent or to “otherwise make unavailable or deny” a dwelling to any person because of race, color, religion, sex, familial status, or national origin.⁹³ The statute also makes it unlawful to discriminate against any person based on these protected characteristics in the “terms, conditions, or privileges of sale or rental of a dwelling.”⁹⁴ The FHA offers three enforcement mechanisms to handle claims: (1) complaints can be brought to HUD, (2) private actions can be filed in court, or (3) suits may be brought by the Justice Department.⁹⁵

Most claims brought under the FHA may be brought under two main theories: disparate treatment and disparate impact.⁹⁶ Courts use a similar framework to analyze claims of discrimination in employment and those in housing discrimination.⁹⁷ For a disparate treatment claim, a plaintiff must prove that a discriminatory purpose was a motivating factor in the defendant’s decision.⁹⁸ In cases brought under the FHA, courts evaluate the claims using the *McDonnell Douglas*⁹⁹ burden-shifting framework, which was originally created for employment discrimination cases.¹⁰⁰

*McDonnell Douglas Corp. v. Green*¹⁰¹ was an intentional employment discrimination case brought under Title VII of the Civil Rights Act which reached the Supreme Court. In its opinion, the Court created the burden shifting framework for discrimination claims brought under a disparate treatment theory.¹⁰² Under this framework, a plaintiff must first plead a prima facie case of discrimination.¹⁰³ Once a plaintiff pleads this prima facie case, raising an inference

⁸⁹ Phil Kadner, *Victims of Crime Hurt by Crime-Free Laws*, CHI. TRIB.: DAILY SOUTHTOWN (Feb. 26, 2015), <https://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-kadner-tenants-st-0227-20150226-column.html>.

⁹⁰ MATTHEW DESMOND, *EVICTED* 373 n.6 (2016).

⁹¹ *Id.* at 191, 373 n. 6.

⁹² *Id.*

⁹³ 42 U.S.C. § 3604(a) (2012).

⁹⁴ § 3604(b).

⁹⁵ 42 U.S.C. §§ 3610, 3613, 3614 (2012).

⁹⁶ § 3604(f); *Anderson v. City of Blue Ash*, 798 F.3d 338, 360 (6th Cir. 2015).

⁹⁷ *Quigley v. Winter*, 598 F.3d 938, 946–47 (8th Cir. 2010); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Meister v. Kansas City*, No. 09-2544-EFM, 2011 WL 765887 (D. Kan. 2011).

⁹⁸ *See Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 502 (9th Cir. 2016); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

⁹⁹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

¹⁰⁰ *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003).

¹⁰¹ *McDonnell Douglas Corp.*, 411 U.S. at 792.

¹⁰² *Id.*

¹⁰³ *Id.* at 802. In the employment discrimination context, a plaintiff would show: (1) that she belongs to a protected class, (2) that she applied for and was qualified for the job, (3) that despite these qualifications, she was rejected or

of discrimination, the burden of persuasion shifts to the defendant to articulate a “legitimate, nondiscriminatory reason for the employees’ rejection” to rebut this inference.¹⁰⁴ Because this is only a burden of persuasion, the defendant only needs to articulate this reason.¹⁰⁵ The burden then shifts back to the plaintiff to argue that the defendant’s offered reason is pretext for a discriminatory action.¹⁰⁶

In the housing discrimination context, a plaintiff can establish a prima facie case of intentional discrimination by showing: (1) they are a member of a protected class, (2) they sought and were qualified to rent or purchase housing, (3) they were rejected, and (4) the housing opportunity remained available to other renters or purchasers.¹⁰⁷ Discriminatory intent is not required to establish a violation of the FHA.¹⁰⁸ Under a disparate impact theory, a plaintiff must establish that the practices the plaintiff challenges have a “disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.”¹⁰⁹ The purpose of disparate impact claims is to punish practices which have discriminatory consequences in addition to those that are intentionally discriminatory.¹¹⁰

Disparate impact claims brought under the FHA similarly get their foundation from those in the employment context and *Griggs v. Duke Power Co.*¹¹¹ In *Texas Dept. of Housing and Comm. Affairs v. Inclusive Communities Project*, (“*Inclusive Communities*”), the Supreme Court established that disparate impact claims are cognizable under the FHA.¹¹² Under a disparate impact theory, a plaintiff must establish that the practice or decision the plaintiff challenges has a “disproportionately adverse effect” on a protected class of people and are “otherwise unjustified by a legitimate rationale.”¹¹³ A plaintiff may prove this disproportionately adverse effect by showing a statistical disparity resulting from a facially neutral policy or action taken by the defendant.¹¹⁴ In *Inclusive Communities*, the Court held that a plaintiff must meet a “robust causality requirement” in showing the connection between the statistical disparity and the defendant’s policy.¹¹⁵ A defendant in a disparate impact case may defend its policy by proving that it is necessary to “achieve a valid interest.”¹¹⁶ The Court further noted the importance of allowing disparate impact claims under the FHA for specifically challenging zoning laws and

suffered other adverse employment action, and (4) after the adverse action, the position remained open and the employer continued to seek applications from applicants with complainant’s qualifications.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 804 (“[W]hile Title VII does not, without more, compel rehiring of respondent, neither does it permit petitioner to use respondent’s conduct as a pretext for the discrimination prohibited by [the statute].”).

¹⁰⁷ *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003); *Smith v. Anchor Bldg. Corp.*, 536 F.3d 231, 233 (8th Cir. 1976).

¹⁰⁸ *City of Fort Lauderdale v. Scott*, 888 F. Supp. 1279, 1297 (S.D. Fla. 2012).

¹⁰⁹ *Texas Dept. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2513 (2015) [hereinafter *Inclusive Communities*] (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)).

¹¹⁰ See *Inclusive Communities*, 135 S.Ct. at 2517; *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).

¹¹¹ *Griggs*, 401 U.S. at 424.

¹¹² *Inclusive Communities*, 135 S.Ct. at 2513.

¹¹³ *Id.* (quoting *Ricci*, 557 U.S. at 577).

¹¹⁴ *Id.* at 2517; see also *Griggs*, 401 U.S. at 424; *Gallagher v. Magner*, 619 F.3d 823, 836 (8th Cir. 2010).

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 2523.

other restrictions that “function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”¹¹⁷

Claims brought under the FHA challenging chronic nuisances have mostly been split between disparate treatment and disparate impact claims.

B. Housing Discrimination and Victims of Domestic Violence

Bouley v. Young-Sabourin was one of the early cases brought under the FHA by a survivor of domestic violence.¹¹⁸ The plaintiff in *Bouley* was evicted for disturbing the peace after her husband attacked her in her apartment and she called the police.¹¹⁹ After this incident, the plaintiff’s landlord (defendant) sent the plaintiff a notice of eviction for violating terms of the lease, specifically, a provision that stated, “tenant will not use or allow said premises or any part thereof to be used for unlawful purposes, in any noisy, boisterous or other manner offensive to any other occupant of the building.”¹²⁰ The landlord also stated that she and others residing in the apartment building were fearful of the “violent behaviors expressed.”¹²¹

The plaintiff claimed that the defendant unlawfully terminated the plaintiff’s lease on the basis of sex, and the United States District Court for the District of Vermont allowed the plaintiff to proceed with this claim.¹²² The Court agreed with plaintiff’s argument that her status as a victim of domestic violence fell within the protected category of sex.¹²³ The Court further found that the plaintiff plead a prima facie case of intentional discrimination because the defendant evicted the plaintiff just three days after the plaintiff was attacked by her abuser, and because the defendant had no other evidence of problems with the plaintiff as a tenant.¹²⁴ Accordingly, the Court dismissed the defendant’s motion for summary judgment.¹²⁵

Since *Bouley*, a number of courts have allowed plaintiffs to pursue claims under the FHA arising from discrimination based on the plaintiff’s status as a victim of domestic violence.¹²⁶ Scholars have also made the argument that because women are the majority of survivors of domestic violence, discrimination against survivors of domestic violence should therefore equate to sex discrimination.¹²⁷ In *Meister v. Kansas City*, the plaintiff brought claims under the FHA and the Violence Against Women Act (“VAWA”)¹²⁸ after she was evicted from her Section 8 apartment for property damage resulting from an attack by her abuser.¹²⁹ About two weeks after

¹¹⁷ *Id.* at 2521–22.

¹¹⁸ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677 (D. Vt. 2005).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 678.

¹²⁵ *Id.*

¹²⁶ See *Meister v. Kansas City*, No. 09-2544-EFM, 2011 WL 765887 (D. Kan. 2011); *Dickinson v. Zanesville Metro. Hous. Auth.*, 975 F. Supp. 2d 863 (S.D. Ohio 2013).

¹²⁷ See Filomena Gehart, *Domestic Violence Victims a Nuisance to Cities*, 43 PEPP. L. REV. 1101, 1129 (2016); Elizabeth M. Whitehorn, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII’s Sex Stereotyping Theories to the Fair Housing Act*, 101 NW. U. L. REV. 1419, 1447 (2007); Fais, *supra* note 86, at 1208.

¹²⁸ See Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified at 42 U.S.C. §§ 13925–14045d) [hereinafter VAWA] (provides a cause of action for domestic violence victims discriminated against while living in federally funded housing with the assistance of a voucher).

¹²⁹ *Meister*, No. 09-2544-EFM, at *1.

the plaintiff's former partner attacked her, breaking windows and ripping blinds, the plaintiff received a letter from her landlord that her lease would be terminated early because of this property damage, which violated her federal voucher agreement.¹³⁰ The court found that under *Bouley*, the plaintiff could state a claim of intentional sex discrimination against the landlord under the FHA because she was a victim of domestic violence and because the circumstantial evidence was sufficient to plead a prima facie case.¹³¹ The court denied summary judgment to the defendant and allowed the plaintiff to proceed with her claims.¹³²

The ACLU has settled cases across the country regarding nuisance ordinances that have functioned to evict victims of domestic violence for calling the police.¹³³ The ACLU has also strongly advocated for legislation to explicitly outlaw ordinances like these, and a few states have enacted statutes creating special protections for victims of domestic violence to deter housing discrimination. While *Bouley* was an important decision for victims of domestic violence facing housing discrimination, the protections in place under the FHA for victims of domestic violence remain somewhat murky, especially given the power cities and municipalities have when enacting nuisance ordinances. Without substantive or blanket laws on the issue, courts still mostly have the discretion to determine whether or not a FHA claim brought by a victim of domestic violence constitutes sex or race discrimination.

IV. Case Study: Rosetta Watson and *Metropolitan St. Louis Equal Housing Authority v. Maplewood*

Rosetta Watson was a resident of Maplewood, Missouri from September 2011 until she was banished from the city in February 2012.¹³⁴ Watson was repeatedly abused by her former boyfriend, Robert Hemmings, and called the police on Hemmings at least four times while living at her home in Maplewood.¹³⁵ In March, 2012, the City of Maplewood held a hearing against Watson, concluding that her numerous calls to police due to domestic violence constituted a public nuisance pursuant to Maplewood's municipal code.¹³⁶ The City revoked Watson's occupancy permit,¹³⁷ evicted her from her home, and effectively expelled her from Maplewood entirely.¹³⁸

In March 2012, Rosetta Watson received notice from Maplewood Assistant City Manager Anthony Traxler that a hearing was scheduled later that month to determine whether Watson's "situation," or repeated calls to police, constituted a nuisance.¹³⁹ The purpose of the hearing was to determine if the city of Maplewood should revoke Watson's occupancy permit, which allowed her to live in Maplewood.¹⁴⁰ While occupancy permits are typically required of landlords or

¹³⁰ *Id.*

¹³¹ *Id.* at *6.

¹³² *Id.* at *7.

¹³³ ACLU, *I Am Not A Nuisance*, *supra* note 8.

¹³⁴ *Rosetta Watson v. Maplewood*, ACLU (last updated Apr. 10, 2017), <https://www.aclu.org/cases/rosetta-watson-v-maplewood>.

¹³⁵ *Watson v. City of Maplewood*, No. 4:17CV1268 JCH, 2018 WL 2184347, at *2 (E.D. Mo. 2018).

¹³⁶ *Id.* at *4.

¹³⁷ *See supra* notes 73–75 and accompanying text.

¹³⁸ *Watson*, No. 4:17CV1268 JCH, at *4.

¹³⁹ *Id.* at *3.

¹⁴⁰ *Id.*

property managers, Maplewood, along with other St. Louis municipalities, is unique in that any person who wants to *reside* in Maplewood must obtain an occupancy permit issued by the director of public works.¹⁴¹ If an occupancy permit is revoked, a resident cannot live anywhere in Maplewood.¹⁴² The application for a permit is created at the discretion of the public works director, and noncompliance with the Maplewood municipal code is grounds for revocation of an occupancy permit.¹⁴³

At the hearing, Traxler presented evidence of continuing “peace disturbance and/or domestic violence resulting in numerous calls to police,” at Watson’s residence, and that these occurrences put Maplewood police officers “at risk.”¹⁴⁴ Traxler concluded that these incidents constituted a public nuisance and decided to revoke Watson’s occupancy permit for six months.¹⁴⁵ Specifically, Traxler found that Watson violated section 34-240(17)(f) of Maplewood’s municipal code, which categorizes as a nuisance “[m]ore than two instances within a 180-day period of incidents of peace disturbance *or domestic violence resulting in calls [sic] to the police.*”¹⁴⁶

The ACLU of Missouri filed a federal lawsuit against the City of Maplewood on Watson’s behalf, arguing that the City’s nuisance policy as defined in its municipal code was unconstitutional.¹⁴⁷ Watson and the ACLU settled with the City of Maplewood in September 2018, and as part of the settlement agreement Maplewood agreed to amend sections 34-240 and 34-242 of its municipal code.¹⁴⁸ The amendment deleted the section of the ordinance that defined more than two instances within a 180-day period of domestic violence resulting in calls to police as a nuisance.¹⁴⁹ The amendment also adds a section to the code that clearly states that the City of Maplewood cannot revoke an occupancy permit or otherwise punish a resident if that resident was the victim of the “incidents that formed the basis of the nuisance enforcement action,” or if that resident called the police.¹⁵⁰ This section of the amendment further states that with each enforcement action, the City of Maplewood must make a finding as to whether or not the resident was a victim of the nuisance.¹⁵¹

A few months prior to the ACLU’s suit against Maplewood, Metropolitan St. Louis Equal Housing and Opportunity Council (“EHO”), a non-profit fair housing enforcement agency in St. Louis, filed a similar suit against Maplewood for this nuisance ordinance, arguing

¹⁴¹ MAPLEWOOD, MO., MUNICIPAL CODE § 12-25 (2012).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Watson*, No. 4:17CV1268 JCH, at *3.

¹⁴⁵ *Id.* at *4.

¹⁴⁶ MAPLEWOOD, MO., MUNICIPAL CODE § 34-240(17)(f) (2012) (emphasis added).

¹⁴⁷ *Watson*, No. 4:17CV1268 JCH, at *5. Watson and the ACLU argued that the nuisance ordinance violated Watson’s rights of free speech and to petition the government under the First Amendment, the equal protection clause under the Fourteenth Amendment, the right to travel under the Fourteenth amendment, and the due process clause of the Fourteenth amendment.

¹⁴⁸ Release and Settlement Agreement ¶ 2, *Watson v. City of Maplewood*, ACLU, <https://www.aclu.org/legal-document/watson-v-maplewood-settlement>. While the City’s online municipal code has not changed, as of February 17, 2019, the most recent update to the online version was in March 2018, <http://mo-maplewood.civicplus.com/105/City-Ordinances>.

¹⁴⁹ Release and Settlement Agreement Exhibit A, *Watson v. City of Maplewood*, ACLU, <https://www.aclu.org/legal-document/watson-v-maplewood-settlement>.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

instead that it constituted housing discrimination.¹⁵² The same section of the municipal code that Maplewood used to evict Rosetta Watson was the subject of EHOc’s case against the City of Maplewood.¹⁵³ EHOc argued that Maplewood enforced this ordinance in a discriminatory fashion in violation of the federal FHA¹⁵⁴ and the Missouri Human Rights Act.¹⁵⁵ Specifically, EHOc presented evidence that Maplewood enforced the nuisance ordinance disproportionately against victims of domestic violence, African-American residents, and people with disabilities.¹⁵⁶

EHOc delved into the racialized history of zoning law in St. Louis to make its claim that Maplewood, which was almost entirely white until the 1970s, intentionally discriminated against African-American residents and victims of domestic violence by disproportionately enforcing the nuisance ordinance.¹⁵⁷ EHOc cited Maplewood’s records on enforcement of the nuisance ordinance and found an “alarmingly high” amount of enforcement against victims of domestic violence.¹⁵⁸ Of the sixteen enforcement hearings held for violation of the nuisance ordinance due to domestic disturbances, six of these were enforcement actions against residents who were victims of domestic violence – their nuisance being attacks by their abusers.¹⁵⁹ In all six of these enforcement actions, the residents were African-American women.¹⁶⁰ EHOc argued that Maplewood enforced this nuisance ordinance in a discriminatory manner to effect its purpose of driving African-American residents out in order to maintain the municipality as prominently white.¹⁶¹

EHOc further alleged that because of the unique requirement that residents obtain an occupancy permit to buy or rent housing in Maplewood, the disproportionate enforcement of the nuisance ordinance not only evicted victims of domestic violence from their homes in a discriminatory fashion, but it also effectively banned them from the city altogether.¹⁶²

EHOc brought its FHA claims under both disparate treatment and disparate impact theories.¹⁶³ For the disparate treatment claim, EHOc alleged that Maplewood intentionally targeted African-American persons and women by enforcing the chronic nuisance ordinance.¹⁶⁴ As circumstantial evidence of intentional discrimination, EHOc cited its statistical study which found that the nuisance ordinance was enforced against African-American women more frequently than white residents and that every victim of domestic violence who was evicted pursuant to the ordinance was an African-American woman.¹⁶⁵ EHOc also cited to the City of Maplewood’s website, which states that, “[o]ver the past decade, Maplewood’s central location

¹⁵² Complaint, Metro. St. Louis Equal Hous. & Opportunity Council v. City of Maplewood, No. 17-cv-886, 2017 WL 1020010, at ¶ 2 (E.D. Mo. 2017).

¹⁵³ *Id.* at ¶¶ 17–18.

¹⁵⁴ 42 U.S.C. § 3601 (2012).

¹⁵⁵ MO. REV. STAT. § 213.010 (2016).

¹⁵⁶ Complaint, Metro. St. Louis Equal Hous. & Opportunity Council, No. 17-cv-886, at ¶ 74.

¹⁵⁷ *Id.* at ¶ 2.

¹⁵⁸ *Id.* at ¶ 4.

¹⁵⁹ *Id.* at ¶ 29.

¹⁶⁰ *Id.* at ¶ 30. About 20% of the 8,100 residents of Maplewood are African American. UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/maplewoodcitymissouri,stlouiscountymissouri/PST045217>.

¹⁶¹ Complaint, Metro. St. Louis Equal Hous. & Opportunity Council, No. 17-cv-886, at ¶ 27.

¹⁶² *Id.* ¶ 31.

¹⁶³ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *3.

¹⁶⁴ Complaint, Metro. St. Louis Equal Hous. & Opportunity Council, No. 17-cv-886, at ¶ 28.

¹⁶⁵ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *5.

and housing values have brought many young professionals and their families to our community,” to argue that Maplewood was intentionally driving out African-American residents to “lure” more affluent white residents to the city.¹⁶⁶

For the disparate impact claim, EHOc argued that the definition of nuisance in Maplewood’s municipal code had a disparate impact on victims of domestic violence and African-Americans.¹⁶⁷ EHOc claimed that the nuisance ordinances served “no legitimate purpose,” and the proposed goals of the nuisance ordinance – safety, public health, etc. – could be achieved in a non-discriminatory fashion.¹⁶⁸

The U.S. District Court for the Eastern District of Missouri granted Maplewood’s Rule 12(b)(6) motions to dismiss EHOc’s claims for failure to state a claim upon which relief can be granted for both the disparate treatment and disparate impact claims.¹⁶⁹ The Court held that where EHOc could not provide evidence of intentional discrimination aside from “conclusory assertions and conjecture” of discrimination, it could not proceed with a disparate treatment theory under the FHA.¹⁷⁰ Specifically, the Court did not find that EHOc raised sufficient evidence of Maplewood’s discriminatory intent to even raise a disparate treatment claim.¹⁷¹ The Court rejected EHOc’s statistics as evidence of disproportionate enforcement of the nuisance ordinance.¹⁷² While the Court noted that at the pleading stage, a plaintiff is not required to prove discrimination, it concluded that EHOc failed to produce sufficient evidence to create even an inference that Maplewood enforced the nuisance ordinance in a way that resulted in unfavorable treatment to residents based on sex, race, or disability.¹⁷³ Accordingly, the Court determined that EHOc failed to state a claim that “nudge[d] its claims across the line from conceivable to plausible.”¹⁷⁴

The Court further held that where EHOc could not provide sufficient statistical evidence to prove a causal connection between the alleged discriminatory policy and the statistical data presented, it could not proceed with a disparate impact theory under the FHA.¹⁷⁵ Taking into account the protections given to defendants in disparate impact housing discrimination cases set out in *Inclusive Communities*, the Court found that EHOc failed to meet the “robust causality requirement” in this case.¹⁷⁶ The Court determined that EHOc failed to prove that the nuisance ordinance caused the statistical disparity resulting from enforcement of the ordinance.¹⁷⁷ The Court thus held that EHOc failed to set forth sufficient factual allegations to state a prima facie case of disparate impact discrimination and accordingly granted Maplewood’s 12(b)(6) motion to dismiss this claim.¹⁷⁸

¹⁶⁶ Complaint, Metro. St. Louis Equal Hous. & Opportunity Council, No. 17-cv-886, at ¶ 16.

¹⁶⁷ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *5.

¹⁶⁸ Complaint, Metro. St. Louis Equal Hous. & Opportunity Council, No. 17-cv-886, at ¶ 77.

¹⁶⁹ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *5.

¹⁷⁰ *Id.* at *4.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at *3 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (internal citations omitted).

¹⁷⁵ *Id.* at *5.

¹⁷⁶ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *4 (quoting *Inclusive Communities*, 135 S. Ct. at 2523).

¹⁷⁷ *Id.* at *5.

¹⁷⁸ *Id.* at *6.

Both Rosetta Watson’s claims and EHOC’s claims against the City of Maplewood targeted the exact same provision of the City’s municipal code. While Watson ultimately settled her claims with the City, the Eastern District of Missouri did not grant Maplewood’s 12(b)(6) motion in that case as it did in EHOC’s case. While this could be due to a number of factors – different judges, Watson’s claims involved an actual person – this difference demonstrates the need for more substantive law prohibiting chronic nuisance ordinances, like the one at issue in these cases.

V. Future Impact and the Role of Legislature

This Part argues that the Eastern District of Missouri should have allowed EHOC to proceed with its FHA claims against Maplewood. Chronic nuisance ordinances, like the one in Maplewood, violate the FHA because they unlawfully discriminate against victims of domestic violence. Because courts have differed in their interpretations of the FHA and how domestic violence victims fall within it, and because the numerous settlements with municipalities across the country have not created much substantive law on the issue, this Part concludes with policy suggestions for states to adopt and enforce greater protections for victims of domestic violence.

A. EHOC Should Have Been Able to Proceed With Its Claims Against Maplewood

EHOC specifically should have been allowed to proceed on its disparate treatment claim against Maplewood, and the Court’s decision to grant Maplewood’s 12(b)(6) motion on this claim was improper. EHOC presented statistical evidence showing that Maplewood disproportionately enforced the nuisance ordinance against women who were victims of domestic violence, as well as against African American residents.¹⁷⁹ Under the *McDonnell Douglas* burden shifting framework, this was sufficient circumstantial evidence to raise a prima facie case of intentional discrimination.¹⁸⁰ The court noted that EHOC’s statistical showing presented an “imbalance resulting from enforcement of the ordinance,” and this finding should have been enough to at least withstand a 12(b)(6) motion.¹⁸¹

The Court similarly erred in granting Maplewood’s 12(b)(6) motion for EHOC’s disparate impact claim. While EHOC was required to meet the “robust causality requirement” set out in *Inclusive Communities*, the Court failed to appreciate the complexity of the relationship between the zoning ordinance and the statistical disparities EHOC presented. In *Inclusive Communities*, the Supreme Court noted that disparate impact claims under the FHA allow plaintiffs to “counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment” and “prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.”¹⁸² While the Court further stated that disparate impact theory is meant to remove “artificial, arbitrary, and unnecessary barriers,” it is not intended to displace “valid governmental policies.”¹⁸³

¹⁷⁹ Complaint, Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at ¶¶ 26, 29.

¹⁸⁰ See *McDonnell Douglas Corp.*, 411 U.S. at 792.

¹⁸¹ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *5.

¹⁸² *Inclusive Communities*, 135 S. Ct. at 2522.

¹⁸³ *Id.*

The Court in *EHOC* essentially conducted no inquiry into the validity of the nuisance ordinance, other than stating it was adopted to “promote public health, safety, and welfare.”¹⁸⁴ This is the same standard, boiler plate, essentially meaningless language used to defend zoning policy seen in *Buchanan*. The Court cited no evidence, however, that the nuisance ordinance in fact promoted any of these goals. In *Inclusive Communities*, the Supreme Court explained that an important step in analyzing a disparate impact claim is to give the defendant the opportunity to “state and explain the valid interest served by their policies.”¹⁸⁵ In the one sentence that the Court dedicates to this analysis in its decision to dismiss the claims, it states vague policy interests and fails to explain how the ordinance at issue actually served those interests.¹⁸⁶ Because this inquiry deserved at least a more thorough analysis beyond the pleading stage, the Court should have denied Maplewood’s 12(b)(6) motion for the disparate impact claim.

Although amended pursuant to the settlement agreement with Rosetta Watson, Maplewood city officials still retain considerable discretion in decisions to revoke residents’ occupancy permits. While the amendments specifically state that a resident’s occupancy permit cannot be revoked if the resident was the victim of the activity that caused the nuisance, determination of whether the resident was a victim is left to the same hearing process that was used to revoke Rosetta Watson’s occupancy permit. The amendments also do not specify how this will be handled if the victim and perpetrator of the nuisance live together.

Rosetta Watson’s settlement was approved by the Maplewood City Council in September 2018.¹⁸⁷ While these changes are certainly a win in the fight for secure housing for victims of domestic violence, this is just one small battle in a much bigger war. St. Louis alone is home to 88 different municipalities, and a majority of them still have crime-free nuisance ordinances on their books.¹⁸⁸ Considering the strong correlation between domestic violence and homelessness discussed above,¹⁸⁹ victims of domestic violence deserve better protections and assistance in securing safe housing.

B. Role of Legislature Moving Forward

While some courts have allowed victims of domestic violence to proceed under FHA claims, such judicial action does not guarantee protection from housing discrimination for victims across the country. Further, proceeding under the FHA forces victims of domestic violence to shoehorn their claims as either sex or race discrimination – when the real issue is that these victims are being punished and effectively re-victimized *because of* their status as victims.¹⁹⁰ Various states and cities have implemented laws and ordinances specifically

¹⁸⁴ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *5.

¹⁸⁵ *Inclusive Communities*, 135 S. Ct. at 135 S.Ct. 2507, 2522 (2015).

¹⁸⁶ Metro. St. Louis Equal Hous. & Opportunity Council, No. 4:17CV886, at *5 (“Here, the policy complained of is a nuisance ordinance enacted to promote public health, safety, and welfare.”).

¹⁸⁷ Nassim Benchaabane, *Evicting Domestic Violence Victims is Out in Maplewood*, ST. LOUIS POST DISPATCH (Sept. 12, 2018), https://www.stltoday.com/news/local/crime-and-courts/evicting-domestic-violence-victims-is-out-in-maplewood/article_672c0f90-1161-51e0-b501-fc11061f9aa9.html.

¹⁸⁸ See *supra* notes 52–53 and accompanying text.

¹⁸⁹ See *supra* notes 2–4 and accompanying text.

¹⁹⁰ Forcing victims to categorize their claims as sex discrimination also presents other difficulties. Even though the majority of victims of domestic violence are women, men are still victims as well and as it stands now, under the FHA, a victim of domestic violence who is a man would likely have no grounds to pursue a discrimination claim. See 42 U.S.C. §§ 3601–3631.

protecting victims of domestic violence from housing discrimination, and these laws should serve as guidelines for other states moving forward. The best way to ensure protections for victims of domestic violence is to implement blanket prohibitions like these so that judges are not given sole discretion to decide whether victims may bring their claims.

In Colorado, for example, the legislature has carved out an exception for victims of domestic violence in its statute addressing termination of tenancy for substantial violations.¹⁹¹ The statute states that a landlord has no basis to evict a victim of domestic violence where “domestic violence or domestic abuse was the cause of or resulted in the alleged substantial violation.”¹⁹² The Colorado statute requires documentation of the abuse for the protection to apply.¹⁹³ The statute also makes it unlawful for a landlord to evict a tenant for a substantial violation caused by a guest or invitee for which the tenant immediately notified law enforcement officials.¹⁹⁴ A Minnesota statute similarly prohibits landlords from imposing any penalty against a resident for calling the police “in response to domestic abuse or any other conduct.”¹⁹⁵ The statute goes one step further by prohibiting a landlord from barring or limiting a tenant’s right to call for police assistance in an emergency situation.¹⁹⁶

The City of Philadelphia has also enhanced protections for victims of domestic violence in its Fair Housing Ordinance.¹⁹⁷ This ordinance makes it unlawful for a landlord to terminate a tenant’s lease in retaliation for an incident of domestic violence or sexual assault in which the tenant was the victim.¹⁹⁸ This ordinance also allows victims of domestic violence to terminate a lease regardless of whether the term of the lease has expired.¹⁹⁹ [This is crucial for victims who live with abusive partners and want to leave them without having to worry about paying double rent, as well as victims who just wish to change residences to prevent an abusive partner from knowing where they live.] At least nine other jurisdictions across the country have enacted some type of protection for victims of domestic violence, or victims of crime overall, from eviction.²⁰⁰

¹⁹¹ COLO. REV. STAT. § 13-40-107.5(5)(c)(I) (2005) (“The landlord shall not have a basis for possession under this section if the tenant or lessee is the victim of domestic violence . . . or of domestic abuse . . . which domestic violence or domestic abuse was the cause of or resulted in the alleged substantial violation and which domestic violence or domestic abuse has been documented pursuant to the provisions set forth”).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ COLO. REV. STAT. § 13-40-107.5(5)(b)(II) (2005).

¹⁹⁵ MINN. STAT. § 504B.205(a)(2) (2018) (“A landlord may not . . . impose a penalty on a residential tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct”).

¹⁹⁶ MINN. STAT. § 504B.205(a)(1) (2018) (“A landlord may not bar or limit a residential tenant’s right to call for police or emergency assistance in response to domestic abuse or any other conduct”).

¹⁹⁷ PHILADELPHIA, PA. MUNICIPAL CODE § 9-804(2)(d) (2011).

¹⁹⁸ *Id.*

¹⁹⁹ PHILADELPHIA, PA. MUNICIPAL CODE § 9-804(6) (2011).

²⁰⁰ See D.C. CODE § 42-3505.01(c)(1) (2019) (tenants have a defense to an eviction if the tenant is a victim of “intrafamily offense or actions relating to intrafamily offense” if that offense was the basis of the eviction notice); IOWA CODE § 562A.27A(3) (2014) (a tenant may defend against an eviction notice if someone other than the tenant caused danger or threat to others, and the tenant either seeks a protective or restraining order, contacts law enforcement, or notifies the person not to return); L.A. REV. STAT. § 40:506(D)(1)–(2) (2018) (prohibiting a landlord or housing authority from evicting a tenant because of “domestic abuse, dating violence, or family abuse” committed against the tenant or a member of the household); M.D. REAL PROP. § 8-5A-05 (2019) (prohibiting a landlord from evicting a victim of domestic violence or sexual assault because of the violence or assault where the victim has received a protective order against the abuser); N.M. STAT. ANN. § 47-8-33(J) (2019) (a tenant has a defense to an eviction action if the tenant was a victim of domestic violence and has filed for a protective order,

This type of legislation is crucial because it effectively precludes private landlords and municipalities from enforcing chronic nuisance ordinances against victims of domestic violence. These laws are important in helping victims secure safe housing, and states across the country should use existing laws as guidelines for drafting legislation. Missouri, and St. Louis in particular, is plagued by a century of racialized zoning and is now seeing the effects of increased gentrification. As such, the state should seek to adopt similar protections to ensure fair housing for all residents.

While this type of legislation is important, most statutes simply provide a victim of domestic violence with a defense against eviction, meaning that judges still have the discretion to decide if a victim can remain in her home.²⁰¹ Further, some of these statutes still fail to take into account the complexities of abusive relationships because they do not allow a defense if the tenant is a victim of domestic violence who has not already received a restraining or protective order, or if the victim allows the abuser back on the premises.²⁰² Oregon, for example, dedicates an entire section of its Residential and Landlord statute to protections for victims of domestic violence.²⁰³ The section prohibits a landlord from evicting or otherwise punishing a tenant because that tenant was a victim of domestic violence, sexual assault, or stalking.²⁰⁴ However, a landlord may evict the tenant if the landlord has given the tenant a written warning, and the tenant “permits or consents to the perpetrator’s presence on the premises.”²⁰⁵

This kind of exception fails to consider the difficulty victims experience in dealing with an abusive partner. Domestic violence is a crime of control – victims of domestic violence are often under a “coercive control” at the hands of their abusers.²⁰⁶ Abusers can intimidate victims and create feelings of fear and dependence on the abuser.²⁰⁷ Those unfamiliar with the complex psychological trauma that accompanies physical abuse might wonder why victims repeatedly forgive their abusers or let them back into their homes. However, there is a repetitive cycle of violence that is common in many abusive relationships and is defined by a period of tension building where the abuser might be irritable or verbally abusive, followed by an “acute explosion,” in which the abuser might physically and/or sexually abuse the victim or others close

without a protective order the court has discretion whether or not to evict the tenant); OR. REV. STAT. § 90.449 (2018) (prohibits landlord from evicting a tenant because the tenant was a victim of domestic violence, sexual assault, or stalking, even if the abuse violated a rental agreement or warranted police response); VA. CODE ANN. § 55-248.31 (2019) (prohibits landlords from evicting a tenant because the tenant was a victim of “family abuse,” unless the tenant fails to provide corroborating documentation that the tenant was a victim or the perpetrator returns to the residence and the victim fails to notify the landlord); WASH. REV. CODE § 59.18.580(2) (2019) (prohibiting a landlord from evicting a tenant because of domestic violence, sexual assault, or stalking committed against the tenant); WIS. STAT. § 106.50(1) (2019) (allowing a cause of action for housing discrimination for victims of domestic violence); see also Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U.L. REV. 1, 23 (2014).

²⁰¹ PHILADELPHIA, PA. MUNICIPAL CODE § 9-804(2)(d) (2011).

²⁰² *Id.*

²⁰³ OR. REV. STAT. § 90.449 (2018).

²⁰⁴ OR. REV. STAT. § 90.449(1)(a).

²⁰⁵ OR. REV. STAT. § 90.449(3)(a).

²⁰⁶ Evan Stark, *Current Controversies: Coercive Control*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 26 (3d ed., 2018).

²⁰⁷ *Id.* at 27.

to the victim, followed by a honeymoon period where the abuser might apologize and promise to never become violent again.²⁰⁸

States that have enacted legislation granting protections to victims of domestic violence from eviction are moving in the right direction. However, punishing victims for allowing their abusers back in their lives not only undermines these protections, but also contributes to the culture of victim-blaming that is so present in our culture today. At the heart of nuisance ordinances that function to punish victims of domestic violence is a victim-blaming culture that is deeply ingrained in our society. Victims of domestic violence are often blamed for their own abuse and questioned for not leaving their abusers. Victims of domestic violence are victims of crime, and they should not be punished for crimes committed against them. Legislators across the country must unlearn this deep-seated victim-blaming to better understand the complexities of abusive relationships and draft more effective legislation to ensure protections for victims of domestic violence.²⁰⁹

VI. Conclusion

One in four women have been victims of severe physical violence by an intimate partner in their lifetime, and on a typical day more than 20,000 phone calls are placed to domestic violence hotlines nationwide.²¹⁰ Leaving an abuser is the most dangerous time for a victim of domestic violence and is most often the event that precedes domestic homicide.²¹¹ Women are substantially more likely to be killed by an intimate partner than men, and in 2010, two out of every five murder victims were killed by an intimate partner.²¹² Chronic nuisance ordinances that punish tenants for calling the police effectively force victims to choose between being evicted from their homes or suffering domestic abuse, or worse, death at the hands of their abuser. Victims choose not to seek police assistance at times when they are most vulnerable to violent abuse or even homicide in an effort to keep their homes.²¹³ Deeply entrenched mentalities of victim blaming are at the heart of these chronic nuisance ordinances. Considering the strong correlation between domestic violence and homelessness, the effects of these ordinances do not align with the fair housing goals of this country and reflect the history of zoning and nuisance ordinances used for discriminatory purposes to keep “undesirables” out of communities. States and cities across the country should push for further legislative action to protect victims of domestic violence from these types of nuisance ordinances so that they can receive the emergency assistance they need and not be left out on the streets.

²⁰⁸ *Cycle of Violence*, WHITE RIBBON AUSTRALIA (last visited Jan. 5, 2020), <https://www.whiteribbon.org.au/understand-domestic-violence/what-is-domestic-violence/cycle-of-violence/>.

²⁰⁹ For further discussion on housing and shelter availability for abusers, see Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U.L. REV. 1, 23 (2014).

²¹⁰ National Statistics, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/statistics>.

²¹¹ *Why Do Victims Stay?*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/why-do-victims-stay>; see also Jana Kasperkevic, *Private Violence: Up To 75% of Abused Women Who Are Murdered Are Killed After They Leave Their Partners*, THE GUARDIAN (Oct. 20, 2014), <https://www.theguardian.com/money/us-money-blog/2014/oct/20/domestic-private-violence-women-men-abuse-hbo-ray-rice>.

²¹² *Homicide Trends in the United States*, U.S. DEPT. OF JUSTICE (Nov. 2011), <https://www.bjs.gov/content/pub/pdf/htus8008.pdf>.

²¹³ See Pam Fessler, *For Low-Income Victims, Nuisance Laws for Ultimatum: Silence or Eviction*, NPR: ALL THINGS CONSIDERED (Jun. 29, 2016), <https://www.npr.org/2016/06/29/482615176/for-low-income-victims-nuisance-laws-force-ultimatum-silence-or-eviction>.

Moving forward, Missouri and other jurisdictions should adopt legislature similar to the statutes described above in Colorado, Minnesota, and Oregon. Legislators should work closely with experts on domestic violence to avoid provisions, like those in Oregon’s statute, that allow punishment of victims for allowing their abusers back into their lives. Victims of domestic violence need support from their legislators and communities alike to maintain safe places to live. Fair housing laws that support victims will be an important step in destroying the victim-blaming mindset that leads cities and neighborhoods to classify victims of domestic violence as “undesirables.”