HOUSING LAW — FAIR HOUSING ACT — SEVENTH CIRCUIT HOLDS LANDLORDS MAY BE LIABLE FOR TENANT-ON-TENANT DISCRIMINATORY HARASSMENT. — *Wetzel v. Glen St. Andrew Living Community, LLC*, 901 F.3d 856 (7th Cir. 2018).

As federal civil rights statutes, Title VII of the Civil Rights Act of 1964,[1] the Fair Housing Act of 1968[2] (FHA), and Title IX of the Education Amendments of 1972[3] have much in common, but they diverge in one crucial respect. While employers and schools can be held liable for employee-on-employee and student-on-student harassment under Title VII and Title IX, respectively,[4] it remains unsettled whether landlords can be held liable for tenant-on-tenant harassment under the FHA — and if so, by what standard.[5] In 2016, the U.S. Department of Housing and Urban Development (HUD) weighed in, prescribing that landlords should be liable under the FHA for "[f]ailing to take prompt action" to remedy cotenant harassment of which they "knew or should have known."[6] Recently, in *Wetzel v. Glen St. Andrew Living Community, LLC*,[7] the Seventh Circuit became the first circuit[8] to hold that the FHA provides such liability, but only when landlords had "actual knowledge" of, yet were "deliberately indifferent" to, severe cotenant harassment.[9] In adopting an actual notice standard instead of a constructive notice standard, the court sidestepped persuasive doctrinal arguments in favor of the latter. As a result, handed down on the FHA's fiftieth anniversary, *Wetzel* falls short of effectively addressing housing harassment.

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[1] 42 U.S.C. § 2000e (2012).

[2] *Id.* §§ 3601–3619.

[3] 20 U.S.C. §§ 1681–1688 (2012).

[4] *See* Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629, 633 (1999) (imposing school-district liability for peer harassment); CHRISTINE J. BACK & WILSON C. FREEMAN, CONG. RESEARCH SERV., R45155, SEXUAL HARASSMENT AND TITLE VII: SELECTED LEGAL ISSUES 13–15 (2018) (describing employer liability for coworker harassment).

[5] This seemingly narrow issue does not lack real-world impact, as FHA claims have long been and continue to be comprised significantly of housing-harassment claims. *See* FY 2017 FHEO ANN. REP. 16, https://www.hud.gov/sites/dfiles/FHEO/images/FHEO_Annual_Report_2017-508c.pdf [https://perma.cc/47ZS-4JQQ] (showing that harassment claims, identified as section 818 claims in the table, make up the fourth largest category of FHA claims out of the twenty categories of issues reported); Robert G. Schwemm, *Neighbor-on-Neighbor Harassment: Does the Fair Housing Act Make a Federal Case Out of It?*, 61 CASE W. RES. L. REV. 865, 865–66 & 866 n.9 (2011).

[6] Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, 81 Fed. Reg. 63,054, 63,074 (Sept. 14, 2016) (codified at 24 C.F.R. pt. 100) [hereinafter HUD Rule]; *see also* 24 C.F.R. § 100.7(a)(iii) (2018).

[7] 901 F.3d 856 (7th Cir. 2018).

[8] *See* Francis v. Kings Park Manor, Inc., No. 15-1823-cv, slip op. at 18 (2d Cir. withdrawn Apr. 5, 2019).

[9] 901 F.3d at 864.

In November 2014, Marsha Wetzel moved into an apartment at Glen St. Andrew Living Community (GSALC), a senior residential community in Niles, Illinois.[10] A lesbian in her late sixties, Wetzel was disabled and had just lost her partner of thirty years to cancer.[11] Her tenancy at GSALC was governed by a standard Tenant's Agreement (Agreement) under which GSALC was to provide a room, daily meals, and other community resources.[12] The Agreement also entitled GSALC to terminate the tenancy if Wetzel threatened other tenants' "health and safety" or "unreasonably interfere[d]" with their "peaceful use and enjoyment of the community."[13] Wetzel was allegedly subjected to a fifteen-month period of harassment by other tenants.[14] She was "repeatedly berated . . . for being a 'fucking dyke,' 'fucking faggot,' and 'homosexual bitch,'"[15] and was also harassed physically — on one occasion she was hit in the back of her head and pushed off her motorized scooter.[16] According to Wetzel, the GSALC management disregarded her routine complaints and instead contrived to evict her.[17]

Wetzel eventually sued GSALC.[18] She relied on both section 3604(b) of the FHA, which prohibits discrimination in the "terms, conditions, or privileges" of housing based on a protected characteristic,[19] and section 3617, which makes it unlawful to "coerce, intimidate, threaten, or interfere with" any person's enjoyment of section 3604 rights.[20] She alleged that GSALC violated these sections by failing to "take prompt action to correct and end the sex-based harassment" by other tenants.[21] GSALC filed a motion to dismiss, arguing that it could not be held liable under these sections absent a showing of discriminatory intent and that, in any event, landlords are not liable for cotenant harassment under the FHA.[22]

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[10] Complaint at 1, 4, Wetzel v. Glen St. Andrew Living Cmty., LLC, No. 16-cv-07598 (N.D. Ill. Jan. 18, 2017).

[11] *Id.* at 5–6.

[12] *Wetzel*, 901 F.3d at 859.

[13] *Id.*

[14] *Id.* at 860. Because this case was decided at the motion-to-dismiss stage, *id.* at 861, the court accepted as true all the alleged facts, *id.* at 860.

[15] *Id.* (also detailing other homophobic slurs Wetzel allegedly suffered).

[16] *Id.* (also describing other alleged incidents of physical harassment).

[17] *Id.* at 860, 867.

[18] *Id.* at 861. The specific defendants included the corporate entities that own GSALC and the individual members of the management staff. *Id.* This piece refers to them collectively as GSALC.

[19] 42 U.S.C. § 3604(b) (2012).

[20] *Id.* § 3617.

[21] Complaint, *supra* note 10, at 20. She also alleged that GSALC had itself engaged in direct, unlawful sex discrimination and retaliation violative of sections 3604(b) and 3617 of the FHA, and the Illinois Human Rights Act (IHRA). *Id.* at 20–22.

[22] Defendants' Motion to Dismiss at 4–8, Wetzel v. Glen St. Andrew Living Cmty., LLC, No. 16-cv-07598 (N.D. Ill. Jan. 18, 2017).

The district court granted GSALC's motion to dismiss.[23] Judge Der-Yeghiayan issued a memorandum opinion in which he analyzed separately Wetzel's section 3604(b) claims and section 3617 claims. With respect to the former, he noted that in situations like Wetzel's,[24] section 3604(b) may authorize constructive eviction claims, which require tenants to show their surrender of possession of the dwellings.[25] Since Wetzel failed to make the requisite showing, her section 3604(b) claims were dismissed.[26] Regarding her section 3617 claims, Judge Der-Yeghiayan read Seventh Circuit caselaw to require a plaintiff to show that the defendant had discriminatory intent.[27] Because Wetzel failed to plead that GSALC's inaction was sex- or sexual orientation–motivated, her section 3617 claims were also dismissed.[28] Wetzel appealed, this time reframing her FHA arguments as a hostile-housing-environment claim[29] and citing in particular the 2016 HUD rule.[30]

The Seventh Circuit reversed and remanded.[31] Writing for a unanimous panel, Chief Judge Wood agreed with Wetzel that the Seventh Circuit has recognized a hostile-housing-environment cause of action under sections 3604(b) and 3617 of the FHA and resolved the case accordingly. A plaintiff bringing such a claim must make a three-prong showing: "(1) she endured unwelcome harassment based on a protected characteristic; (2) the harassment was severe or pervasive enough to interfere with the terms, conditions, or privileges of her residency, or in the provision of services or facilities; and (3) . . . there is a basis for imputing liability to the defendant."[32] Wetzel easily met the first prong because the Seventh Circuit had already held that sexual orientation–based discrimination qualifies as sex-based discrimination under Title VII, which applies equally under the FHA.[33] With respect to the second prong, the court had no trouble finding that a jury would be entitled to view the harassment Wetzel suffered "as both severe and pervasive."[34]

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[23] *Wetzel*, No. 16-cv-07598, slip op. at 1. After dismissing Wetzel's FHA claims, the court declined to exercise supplemental jurisdiction over her remaining IHRA claims and dismissed them without prejudice. *Id.* at 7.

[24] The court was referring to postacquisition cases (cases where the alleged housing discrimination arose *after* the plaintiffs acquired the dwellings). *Id.* at 6.

[25] *Id.* (citing Bloch v. Frischolz, 587 F.3d 771, 778 (7th Cir. 2009)).

[26] *Id.* at 6–7. The court also found that Wetzel "ha[d] not pled a retaliation claim." *Id.* at 5.

[27] *Id.* at 3–4 (citations omitted).

[28] *Id.* at 5.

[29] Brief and Required Short Appendix of Plaintiff-Appellant Marsha Wetzel at 11–12, *Wetzel*, 901 F.3d 856 (No. 17-1322).

[30] *Id.* at 19–21.

[31] *Wetzel*, 901 F.3d at 868. The court also reinstated Wetzel's IHRA claims. *Id.*

[32] *Id.* at 861–62 (citations omitted).

[33] *Id.* at 862 (citing Hively v. Ivy Tech Cmty. Coll., 853 F.3d 339, 359 (7th Cir. 2017) (en banc)).

[34] *Id.*

The third prong, that is, whether there is a basis under the FHA for imputing cotenant harassment liability to GSALC, was an issue of first impression.[35] Chief Judge Wood first found that the "text [of sections 3604(b) and 3617] does not spell out a test for landlord liability" or condition liability on landlords' discriminatory intent.[36] She buttressed the latter claim with the Supreme Court's interpretation of the parallel provision in Title VII, which imposes liability on employers for coworker harassment of which they knew or should have known.[37] However, she noted that there might be some "important differences" between employer-employee relationships and landlord-tenant relationships — with an employee being the "agent" of an employer versus a tenant being "largely independent of" a landlord — and declined to adopt Title VII's constructive notice standard.[38]

Instead, Chief Judge Wood analogized *Wetzel* to a Supreme Court Title IX precedent *Davis v. Monroe County Board of Education*,[39] holding that landlords would be liable if they "had actual knowledge of the severe [cotenant harassment]" and "were deliberately indifferent to it."[40] She characterized this liability as a "direct liability for inaction" that attaches when landlords "[have] but fail[] to deploy . . . available remedial tools," but does not require "[c]ontrol [over harassers] in the absolute sense."[41] GSALC's argument that it could only "minimally" affect tenants' conduct was rejected because the Agreement entitled GSALC to evict, and thus deter, the harassing tenants and to take some other less serious remedial measures.[42] Notably, Chief Judge Wood found it unnecessary to rely on the 2016 HUD rule. She described it as a "broader" rule that "mirrors" the above Title VII standard, the adoption of which would require more analysis than HUD had offered to overcome the "salient differences between Title VII and the FHA."[43]

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[35] *Id.*

[36] *Id.* at 863.

[37] *Id.* (citing Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 758–59 (1998) ("An employer is negligent with respect to sexual harassment if it knew or should have known about the conduct and failed to stop it." *Id.* at 759.)).

[38] *Id.*

[39] 526 U.S. 629 (1999). *Davis* held that a school district would be liable for "known" student-on-student harassment if the school acted with "deliberate indifference" to it. *Id.* at 633.

[40] *Wetzel*, 901 F.3d at 864 (leaving open the question of whether this test would be appropriate "in a setting that more closely resemble[d] custodial care").

[41] *Id.* at 865.

[42] *Id.* The court also justified landlord liability on property law grounds. *Id.* at 865–66.

[43] *Id.* at 866. The court also found that Wetzel could plead a hostile-housing claim postacquisition, and it reinstated her retaliation claim without requiring proof of GSALC's discriminatory intent. *Id.* at 866–68.

Although the court plausibly interpreted the FHA to hold landlords liable for cotenant harassment,[44] it should have adopted Title VII's constructive notice standard in lieu of Title IX's actual notice standard. Its justifications for importing the latter were not particularly persuasive whereas the arguments favoring the former are. To start, the court did not compellingly explain why it had to rely on Title IX instead of following through with Title VII.[45] Moreover, *Davis* is simply not analogous to *Wetzel*, and compared with actual notice, the constructive notice standard is doctrinally superior, as it finds substantial support in the jurisprudence of both the Seventh Circuit and the Supreme Court, and has been followed by HUD. In adopting a higher notice standard, *Wetzel* falls short of effectively combating housing harassment. If the court was worried about overbroad landlord liability, it could have averted that without raising the notice standard.

Having decided that the FHA provides landlord liability for cotenant harassment, the *Wetzel* court had to fashion the appropriate liability test. Presented with Title VII's constructive notice standard and Title IX's actual notice standard, the court adopted the latter because landlords have less control over tenants than employers subject to Title VII have over employees.[46] This is not convincing. True, employers might wield more control over employees than landlords over tenants, but the degree of control schools have over students in the Title IX context is not any closer to the landlord-tenant relationship.[47] Title IX's liability rule for peer harassment also rests upon schools' "significant control" over the harassers,[48] a blurry principle that cannot yield clear application in the FHA context.[49] This probably explains why the *Wetzel* court eventually quoted a Title VII precedent and reasoned that landlord liability was justified precisely because landlords can exercise meaningful

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[44] As of this writing, the Second Circuit has joined the Seventh Circuit in finding such liability, though perhaps only temporarily. *See* Francis v. Kings Park Manor, Inc., No. 15-1823-cv, slip op. at 3 (2d Cir. withdrawn Apr. 5, 2019).

[45] Unlike both Title VII and the FHA, Title IX prohibits only discrimination by federal funding recipients; it does not prohibit educational discrimination outright. *See* 20 U.S.C. § 1681(a) (2012); Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 286 (1998). In the Seventh Circuit's own words, Title VII by comparison is the "functional equivalent" of the FHA, "so the provisions of these two statutes are given like construction and application." Kyles v. J.K. Guardian Sec. Servs., Inc., 222 F.3d 289, 295 (7th Cir. 2000).

[46] *Wetzel*, 901 F.3d at 863–64.

[47] *See* Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629, 646 (1999) (emphasizing schools' "custodial and tutelary" power over precollege students (quoting Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 655 (1995))).

[48] *Id.*

[49] *See id.* at 662 (Kennedy, J., dissenting) (faulting the majority for not specifying what degree of control would suffice for school liability).

control over tenants just as employers exercise control over employees.[50] Why, then, shouldn't Title VII also be the reference point for crafting the liability rule for cotenant harassment?

The court instead relied heavily on *Davis*. There, the doctrinal consideration against holding schools liable for peer harassment of which they should have known was that Title IX was enacted pursuant to the Spending Clause, which requires giving federal funding recipients adequate notice of liabilities for their own (in)actions — which meant that school recipients needed to have actual, not merely constructive, notice of the harassment.[51] The FHA, however, was enacted pursuant to the Commerce Clause,[52] which does not have a similar notice requirement. Also, the original rationale for adopting an actual notice standard for Title IX liability was simply to avoid unbeneficial uses of education funds;[53] this logic does not apply to the FHA, which was designed to prevent housing discrimination without regard to federal funding.[54]

Had the court instead imported Title VII's constructive notice standard into the FHA it would have stood on firmer ground. First, the Seventh Circuit's hostile housing jurisprudence is modeled after Title VII hostile workplace jurisprudence,[55] under which employers are held to a constructive notice standard for coworker harassment.[56] Since the purported differences between Title VII and the FHA did not prevent general doctrinal borrowing in this context, following Title VII to craft an FHA landlord liability rule is an obvious starting point.[57] Second, the constructive notice standard fits better doctrinally with the Supreme Court's and HUD's recognition that an FHA-based housing discrimination action is effectively a tort action.[58] Holding landlords liable for sitting on cotenant harassment of which they knew or should have known — that is, through

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50 *Wetzel*, 901 F.3d at 865 (arguing that "liability attaches because a party 'has [but fails to use] an arsenal of incentives and sanctions . . . that can be applied to affect conduct'" (omissions in original) (quoting Dunn v. Wash. Cty. Hosp., 429 F.3d 689, 691 (7th Cir. 2005))).

51 *See Davis*, 526 U.S. at 640–42.

52 *See, e.g.*, Robert G. Schwemm, *Discriminatory Effect and the Fair Housing Act*, 54 NOTRE DAME LAW. 199, 230–31 (1978) (noting also that the FHA could have been enacted pursuant to the Thirteenth and Fourteenth Amendments).

53 *See* Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 289 (1998).

54 *See* 42 U.S.C. § 3604(b) (2012).

55 DiCenso v. Cisneros, 96 F.3d 1004, 1008 (7th Cir. 1996) (recognizing a hostile housing cause of action). *Compare Wetzel*, 901 F.3d at 861–62, *with* Alamo v. Bliss, 864 F.3d 541, 549 (7th Cir. 2017).

56 *See* Vance v. Ball State Univ., 133 S. Ct. 2434, 2439 (2013); *id.* at 2456 (Ginsburg, J., dissenting).

57 The Seventh Circuit had also relied on the FHA to interpret Title VII even in the absence of comparable provisions on the issue at hand. *See* Kyles v. J.K. Guardian Sec. Servs., Inc., 222 F.3d 289, 297–98 (7th Cir. 2000). *Wetzel* thus presented a stronger case for reliance on Title VII because, as the court noted, section 2000e-2(a)(1) of Title VII is comparable to section 3604(b) of the FHA. *Wetzel*, 901 F.3d at 863; *see also* Fahnbulleh v. GFZ Realty, LLC, 795 F. Supp. 2d 360, 364 (D. Md. 2011).

58 Bank of Am. Corp. v. City of Miami, 137 S. Ct. 1296, 1305 (2017) (citing Meyer v. Holley, 537 U.S. 280, 285 (2003)); HUD Rule, *supra* note 6, at 63,073.

their negligence — comports with the default rule of tort liability.[59] Indeed, tort law has long guided the Court's construction of FHA liability where the Act is otherwise textually indeterminate.[60] Finally, since HUD has already adopted this standard, it should have carried at least some weight in the court's analysis under the *Chevron* doctrine.[61] Brushing aside the HUD rule without deciding how much deference is owed to it[62] simply invites more questions.

Still, one might argue that the formal distinction between actual and constructive notice matters little in reality because severe or pervasive cotenant harassment should create actual notice for landlords.[63] However, *Wetzel*'s raising of the notice standard unjustifiably undercut the FHA's efficacy against cotenant harassment because tenant underreporting has too often hampered anti–housing harassment actions[64] while a constructive notice standard would hardly overburden landlords.[65] And some courts might further raise the actual notice standard[66] by, for example, requiring that landlords' knowledge of harassment come only from the harassed tenants, and not from their friends or other tenants.[67]

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[59] *See* Mark A. Geistfeld, *The Principle of Misalignment: Duty, Damages, and the Nature of Tort Liability*, 121 YALE L.J. 142, 184 (2011); James A. Henderson, Jr., *Why Negligence Dominates Tort*, 50 UCLA L. REV. 377, 379 (2002).

[60] *See Meyer*, 537 U.S. at 285–86 (relying on tort principles to construct the parameters of vicarious liability under the FHA); *see also Bank of Am. Corp.*, 137 S. Ct. at 1305 (applying tort principles and holding that plaintiffs must plead discrimination as a proximate cause in their FHA damage claims).

[61] Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843–44 (1984). Even before *Chevron*, the Court had observed that HUD's interpretation of FHA is "entitled to great weight." Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 210 (1972).

[62] *See Wetzel*, 901 F.3d at 866. On March 4, 2019, seven months after *Wetzel* was decided, the Second Circuit handed down *Francis v. Kings Park Manor, Inc.*, No. 15-1823-cv (2d Cir. withdrawn Apr. 5, 2019), where a divided panel engaged in an extensive debate on the level of deference due this very rule. *Compare id.* slip op. at 19–27, *with id.* slip op. at 32–37 (Livingston, J., dissenting).

[63] *See* Brief for AARP and AARP Foundation as Amici Curiae Supporting Plaintiff-Appellant at 26, *Wetzel*, 901 F.3d 856 (No. 17-1322) (describing landlords' receiving harassed tenants' complaints as "entirely part of the normal course of residential management"); *cf.* Nicole M. v. Martinez Unified Sch. Dist., 964 F. Supp. 1369, 1378 (N.D. Cal. 1997) ("The 'knew or should have known' standard requires actual notice or a severity or pervasiveness of harassing conduct that would ordinarily create notice.").

[64] *See, e.g.*, *Attorney General Sessions Delivers Remarks at the Fair Housing Act 50th Anniversary*, U.S. DEP'T OF JUSTICE (Apr. 12, 2018), https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-fair-housing-act-50th-anniversary [https://perma.cc/Y97S-AWEN] (stating that "sexual harassment in housing is vastly underreported").

[65] *See* HUD Rule, *supra* note 6, at 63,069; *cf.* Vance v. Ball State Univ., 133 S. Ct. 2434, 2463–64 (2013) (Ginsburg, J., dissenting) (arguing that even a constructive notice standard in the coworker-harassment context is employer friendly).

[66] *Cf.* Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 GEO. L.J. 921, 923–24 (2016) (noting that lower courts often narrow precedent by reading it not to apply even though it is best read to apply).

[67] *But cf.* HUD Rule, *supra* note 6, at 63,066–67 (noting that constructive notice can come from other tenants or friends of the harassed tenants and that this standard does not require the harassed tenants to contact landlords); Brief of the United States as Amicus Curiae in Support of Neither

This could result in a disparate impact on many low-income tenants in public housing, who "may not report harassment due to fear of eviction or retribution,"[68] yet are no less deserving of protection than Wetzel.

Now, implicit in the court's wariness of a lower notice standard may have been a worry about overbroad landlord liability,[69] but there existed a more justifiable way to limit liability than a heightened notice requirement. The court could have set realistic compliance standards for addressing alleged cotenant harassment situations, under which landlords would, say, need to follow only certain procedures to investigate harassment complaints,[70] or to threaten eviction only with certain frequency against harassers.[71] Despite the fact-sensitive nature of crafting such standards, housing management practice plus Title VII caselaw regarding appropriate employer responses to workplace harassment would have been highly instructive.[72] Compared with *Wetzel*'s mere recitation of GSALC's possible remedial tools,[73] these standards would allow landlords to know better when their inaction would become unlawful. In the end, an appropriate test under the FHA would not hold landlords liable for failure to discipline tenants' incivility, but neither would it let them escape liability with head-in-the-sand nonchalance.

Of course, *Wetzel* is still a victory for Ms. Wetzel and the many victims of cotenant harassment across the country. But had the court adopted the more sensible, robust constructive notice standard, it would not have fallen short of the FHA's yet-unfulfilled promise to eradicate the twin evils of housing discrimination and segregation.[74] And since *Wetzel* could have done more without imposing unchecked landlord liability, its unsatisfactory reasoning on the FHA's fiftieth anniversary is all the more regrettable.

Party at 9, *Francis*, No. 15-1823-cv (pointing out that a constructive notice standard can impose liability on landlords "even if the harassed tenant has not reported the harassment").

[68] SHANTI ABEDIN ET AL., NAT'L FAIR HOUS. ALL., 2018 FAIR HOUSING TRENDS REPORT 54 (2018) (Shanti Abedin, et al. eds., 2018), https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf [https://perma.cc/2NTU-5MEK].

[69] Overbroad liability could incentivize landlords to transfer their FHA compliance costs (for example, liability insurance costs) to tenants ex ante, making tenants' overall situation worse. *See* HUD Rule, *supra* note 6, at 63,069; Brief of Defendants-Appellees at 9, *Wetzel*, 901 F.3d 856 (No. 17-322).

[70] *See* HUD Rule, *supra* note 6, at 63,069 (noting a commenter's argument that landlords may lack capacity to "mediate disputes between neighbors").

[71] *See* Petition for a Writ of Certiorari at 17–18, Glen St. Andrew Living Cmty., LLC v. Wetzel, No. 18-626 (U.S. Nov. 14, 2018) (arguing that the availability of eviction threats renders limits on landlord liability "illusory," *id.* at 18).

[72] *See* HUD Rule, *supra* note 6, at 63,069–70; BACK & FREEMAN, *supra* note 4, at 15.

[73] *See Wetzel*, 901 F.3d at 865.

[74] *See* Michelle Adams, *The Unfulfilled Promise of the Fair Housing Act*, NEW YORKER (Apr. 11, 2018), https://www.newyorker.com/news/news-desk/the-unfulfilled-promise-of-the-fair-housing-act [https://perma.cc/XMD8-JAKX]; *see also* Schwemm, *supra* note 5, at 924 & n.298 (collecting cases where racial slurs were made against minority families moving into predominantly white neighborhoods).