

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CASE NO. 16-3643

BARBARA MOODY
Plaintiff – Appellant

-vs-

HARRY GONGLOFF, ET AL.
Defendants

and

LORAIN METROPOLITAN HOUSING AUTHORITY
Defendant-Appellee

BRIEF OF *AMICI CURIAE* TOLEDO FAIR HOUSING CENTER, THE
ABILITY CENTER OF GREATER TOLEDO, and THE OHIO DISABILITY
RIGHTS LAW AND POLICY CENTER, INC. IN SUPPORT OF APPELLANT
IN FAVOR OF REVERSAL

On Appeal from the United States District Court, Northern District of Ohio
Case No. 1:14-cv-2063 (Hon. Donald C. Nugent)

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CORPORATE DISCLOSURE STATEMENT

Amici the Toledo Fair Housing Center, the Ability Center of Greater Toledo, and the Ohio Disability Rights Law and Policy Center, Inc. (“*Amici*”) are tax exempt nonprofit corporations. None of the *Amici* have a corporate parent or are publicly held.

Dated: November 15, 2016

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STATEMENT OF INTEREST

Amici Toledo Fair Housing Center, the Ability Center of Greater Toledo, and the Ohio Disability Rights Law and Policy Center, Inc. are Ohio non-profit agencies that are dedicated to protecting the Fair Housing rights of people with disabilities.

A. *Amicus* Toledo Fair Housing Center

Amicus Toledo Fair Housing Center (“TFHC”) has a strong and direct interest in and long experience with several of the legal issues before this Court. The agency submits this brief both to highlight the significant role that the Fair Housing Act’s (“FHA”) right to reasonable accommodation plays in securing equal opportunity and to respond to arguments that the LMHA violated its duty to other members by honoring this right and granting a request for a reasonable accommodation in a timely manner.

Like many other civil rights agencies, ensuring equal opportunity is at the core of TFHC’s mission. The TFHC is a non-profit civil rights agency dedicated to the elimination of housing discrimination, the promotion of housing choice, and the creation of inclusive communities of opportunity. To achieve its mission, TFHC engages in education and outreach, housing counseling, advocacy for anti-discriminatory housing policies, research and investigation, and enforcement

actions. As an organization with such a mission, TFHC has taken great interest in the case and issues before this Court.

TFHC has decided to formally express its interest in the case at this level of proceedings due to its desire to prevent a decision at the appellate court level that would impede fair housing rights and require efforts in later legal proceedings to reverse a decision that could affect its mission of ensuring equal opportunity in housing. TFHC has an interest in making sure that the FHA is applied correctly and that Ms. Moody's lawsuit does not negatively impact not only Ms. Moody's fair housing rights, but the rights of other similarly situated parties should this case advance beyond the appellate court level.

Due to TFHC's mission and purpose and its deep concern regarding the issues that have arisen in the case before this Court, TFHC has great interest in this case.

B. *Amicus* the Ability Center of Greater Toledo

Amicus the Ability Center of Greater Toledo, Inc., (Ability Center) was founded in 1920 as a hospital/rehabilitation facility for children with polio, the Society for Crippled Children. Over time, it evolved into a non-profit Center for Independent Living serving seven counties in northwest Ohio. The Ability Center's mission is to assist people with disabilities to live, work, and socialize within a fully accessible community, and it furthers that mission by providing

programs that promote inclusive communities including its Assistance Dogs for Achieving Independence; Community Connections; Nursing Home Transition; Home Accessibility Program; Information & Referral Program; and Advocacy Program. In addition to serving people with disabilities, the majority of the Board of Directors and employees of the Ability Center are individuals with disabilities.

The Ability Center is mandated to provide advocacy on behalf of people with disabilities under the Rehabilitation Act of 1973, Section 701 *et seq.*, Title 29, U.S. Code. In an effort to protect the rights of people with disabilities under the FHA and Americans with Disabilities Act, it has both filed lawsuits and acted as *amicus* on disability issues including in *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901 (6th Cir. 2004); *Belevender v. Magi Enters.*, 2007 U.S. Dist. LEXIS 13582 (N.D. Ohio Feb. 28, 2007); *Ability Ctr. of Greater Toledo v. Lumpkin*, 808 F. Supp. 2d 1003(N.D. Ohio 2011); *Horen v. Bd. of Edu. of Toledo Pub. Schs.*, 2010-Ohio-3631 (6th Dist. August 6, 2010); and *State v. Speer*, 124 Ohio St. 3d 564 (2010).

C. *Amicus* Ohio Disability Rights Law and Policy Center, Inc.

Amicus Ohio Disability Law and Policy Center, Inc. (“Disability Rights Ohio”) is a non-profit organization with a mission to advocate for the human, civil and legal rights of people with disabilities in Ohio. Disability Rights Ohio provides legal advocacy and rights protection to a wide range of people with

disabilities. This includes assisting individuals, including children, with problems such as abuse, neglect, discrimination, access to assistive technology, special education, housing, employment, community integration, voting, and rights protection issues.

Disability Rights Ohio has considerable experience and expertise in disability rights and fair housing law. It recognizes that this case has important implications for persons with disabilities who require accommodations in order to enjoy and access their living spaces in the same way people without disabilities enjoy and use their homes every day. The District Court's jury instructions, if affirmed, could incentivize housing providers' inaction when responding to accommodation requests, and curtail the ability of individuals with disabilities to obtain needed accommodations in housing.

D. Statement under FRAP 29(c)(5)

This brief was authored entirely by attorneys for the *Amici* Toledo Fair Housing Center, the Ability Center of Greater Toledo, and Disability Rights Ohio. No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person – other than the *amici curiae*, its members, or its counsel – contributed money that was intended to fund preparing or submitting the final brief.

STATEMENT OF THE CASE

Plaintiff Barbara Moody is a person with diagnoses of advanced osteoarthritis in her hips. Appellant's Trial Brief, R.67, Page ID # 825. She has been a Section 8 Voucher recipient from Defendant Lorain Metropolitan Housing Authority ("LMHA") since March, 2010. *Id.* On or about March 5, 2012, Ms. Moody entered into a lease agreement to rent a single- family house at 2363 Kelly Place, Lorain, Ohio 44052. *Id.* The house was two stories and the entrance of the home was not accessible, requiring four steps to gain entry into the house. *Id.*

On or about September 6, 2012, Ms. Moody called her housing specialist at LMHA, Kristy Puckett, to tell her that she could no longer live in a home where she need to go up and down stairs, and Ms. Puckett told Ms. Moody to submit a letter from her physician explaining why she needed a "special accommodation" in the form of a one-floor unit. *Id.* On or about September 18, 2012, Ms. Moody's doctor sent LMHA a letter outlining her diagnosis of osteoarthritis in her hips and confirming that it is a permanent disability. Appellant's Trial Brief, R.67, Page ID # 825. However, LMHA has a, "Mover Policy", that a person cannot move within the first year of the lease. Stipulations of Fact, R.71, Page ID # 891-993. LMHA informed Ms. Moody that she could not move unless her landlord released the lease. *Id.*

During the course of these events, Ms. Moody was hospitalized for pneumonia, and when released in even weaker condition, stayed with a family member. Stipulations of Fact, R.71, Page ID # 891-993. Because of this, LMHA terminated Ms. Moody's voucher benefits November 15, 2012. *Id.* From September 18, 2012 to December 5, 2012, LMHA took no action to process Ms. Moody's reasonable accommodation request. Appellant's Trial Brief, R.67, Page ID # 825. In December, Fair Housing Advocates Association (FHAA) contacted LMHA and notified it that its failure to grant Ms. Moody's reasonable accommodation request violated state and federal fair housing laws. *Id.* After FHAA's intervention, LMHA granted Ms. Moody's request on December 14, 2013, more than three months after her request. *Id.*

At trial, Ms. Moody argued that LMHA's undue delay in granting her reasonable accommodation constituted discrimination under the federal and Ohio Fair Housing Act and caused her injury. Appellant's Trial Brief, R.67, Page ID # 826. In her trial brief, Ms. Moody proposed the following jury instruction:

Fifth Element – Failure to timely grant request

A provider has an obligation to provide a prompt response to reasonable accommodation requests. When the person requesting an accommodation provides enough reliable information such that the only reasonable conclusion is that the accommodation request should be granted, the housing provider's failure to promptly grant or undue delay in making a decision violates the FHAA and may be deemed a denial. An indeterminate delay has the same effect as an outright denial.

Appellant's Trial Brief, R.67, Page ID # 823-845. At trial, the District Court submitted a proposed Charge of the Court to the parties that did not include Ms. Moody's instruction on unreasonable delay, and she objected to the refusal to provide those instructions. R.85,Tr., Page ID # 1359. The only instruction given the jury regarding the elements of a reasonable accommodation claim was the following:

In order to succeed on her claim, the plaintiff must prove each of the following elements by a preponderance of the evidence: One, she is handicapped or disabled within the meaning of the Fair Housing Act. Two, she requested an accommodation to the Defendant's rules, policies, practices or services. Three, the requested accommodation was necessary to afford the handicapped person an opportunity to use and enjoy a dwelling. Four, her requested accommodation was reasonable. Five, the defendant refused to make the accommodation. And six, the defendant knew or should have known of the disability at the time of the alleged refusal.

R. 85, Moody Tr., Page ID # 1401-1402. On May 12, 2016, the District Court entered judgment in favor of LMHA. R. 76, Judgment, Page ID # 1753.

SUMMARY OF ARGUMENT

The Fair Housing Act was enacted to make a, "clear pronouncement of national commitment to end the unnecessary exclusion of people with disabilities from the mainstream." H.R. Rep. No. 100-711, at 18(1988). The requirement that housing providers make reasonable accommodations in policies where necessary for a person with a disability to access housing of their choice is important to this goal of inclusion. 42 U.S.C. § 3604(f)(3)(B) (2016). As part of that requirement,

federal law has clearly established that an unreasonable delay in granting a reasonable accommodation constitutes a denial of that request. *Overlook Mut. Homes v. Spencer*, 415 F. App'x 617, 621-24 (6th Cir. 2011).

In this case, the District Court failed to give Ms. Moody's proposed instruction that an unreasonable delay in granting a reasonable accommodation request constitutes a denial. R.68, Page ID # 823-845 of Plaintiff at 26. The instruction was a correct representation of the law. *Overlook*, 415 F. App'x 617 at 621-24. Because the instructions given by the district court only informed the jury that the defendant must have refused the accommodation, the instructions given did not substantially cover the legal principle at issue. R. 85, Moody Tr., Page ID # 1401-1402. Finally, the proposed instruction was on Ms. Moody's theory of the case, so the court's failure to give the instruction substantially impaired her case and made the instructions, as a whole, confusing, misleading, and prejudicial.

Ms. Moody argued at trial that, while LMHA eventually granted her request, its unreasonable delay in granting that request constituted discrimination and caused her injury. LMHA did not outright deny her request, but delayed granting it in a manner that caused her injury. R.68, Page ID # 823-845. In failing to adopt Ms. Moody's proposed instruction, the district court failed to give the jury any basis on which to find in her favor. In fact, as

the district court instructed the jury that the defendant must have, “refused to make the accommodation,” and the defendant did eventually make the accommodation, the jury instructions left the jury no choice but to find against Ms. Moody. *Id.*

Thus, the District Court committed prejudicial plain error in failing to instruct the jury that an unreasonable delay can constitute a denial of a reasonable accommodation request, and the failure substantially impaired Moody’s theory of the case. The failure to vacate the District Court’s judgment and remand this case for a new trial would amount to a failure to enforce the Fair Housing Act and would have wide implications for people with disabilities.

Indeed, a paramount issue in the *Moody* trial was the reasonableness of a housing authority’s delay in responding to a housing accommodation under the Fair Housing Act. When an accommodation request is timely denied, tenants with disabilities have clear next steps to assert their right to reasonable accommodations. However, as was the case here, when the housing association fails to address the tenant’s request in a timely manner, the tenant is stuck in limbo without a clear remedy.

While the Fair Housing Act statute itself does not directly speak to delay in the elements of proving a claim, the U.S. Departments of Justice and Housing and

Urban Development, as well as several courts and this Court have all opined that such a delay in responding to an accommodation request can constitute a denial under the Fair Housing Act. Without this critical instruction to help guide the jury in what may constitute a denial, no tenant can have a fair trial. Failure to include unreasonable delay as tantamount to denial would also have a profoundly negative effect on tenants with disabilities' ability to timely obtain the accommodations necessary in order for them to fully enjoy their dwelling.

Accordingly, *Amici* Toledo Fair Housing Center, Ability Center of Greater Toledo, and Disability Rights Ohio ask that this Court vacate the District Court's judgment and remand this case for a new trial.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FAILING TO INSTRUCT THE JURY THAT AN UNREASONABLE DELAY IN GRANTING A REASONABLE ACCOMMODATION REQUEST CAN CONSTITUTE A DENIAL OF THAT REQUEST.

In this case, the LMHA failed to grant Ms. Moody's request for a reasonable accommodation of its "Mover Rule" for over three months, and Ms. Moody argues that the "undue delay" constituted a denial of her reasonable accommodation request. R.68, Page ID # 823-845. While Ms. Moody proposed a jury instruction regarding "undue delay" to the court, the court gave no "undue delay" instruction. See Trial Transcript p. 47 (23-25); p. 48(1-12).

Instead, the court instructed the jury that LMHA must have, “refused to make the accommodation,” in order to have violated the law. *Id.* By failing to give an instruction on “undue delay,” the court failed to educate the jury on the law underlying the very crux of Ms. Moody’s case.

A. Standard of Review

A court of appeals will review jury instructions *de novo*, but the court will reverse a jury verdict on the account of an instructional error, “only when the instructions, viewed as a whole, [are] confusing, misleading, and prejudicial.” *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, 585 F.3d 267, 274 (6th Cir. 2009) (internal quotation marks and citation omitted). Where there was no objection to an instruction, it is reviewed for plain error. *Bath & Body Works, Inc. v. Luzier Personalized Cosmetics, Inc.*, 76 F. 3d 743, 750 (6th Cir. 1996).

A court’s refusal to give a particular instruction is reviewed for an abuse of discretion. *Richards v. Attorneys’ Title Guar. Fund, Inc.*, 866 F.2d 1570, 1573 (10th Cir. 1989), *cert. denied*, 491 U.S. 906(1989). Reversal is warranted where a district court refuses to give an instruction that is: “1) a correct statement of the law; 2) not substantially covered by the charge actually delivered to the jury; and 3) concerns a point so important in the trial that the failure to give it substantially impairs the parties’ case.” *United States v. Lombardo*, 582 F. App’x. 601, 617-18 (6th Cir. 2014).

B. The Court erred in failing to instruct the jury that an undue delay in granting a reasonable accommodation request constitutes a denial of that request.

The district court refused to give an instruction that was a correct statement of the law; was not substantially covered by the charge actually delivered to the jury; and concerns a point so important in the trial that the failure to give it substantially impaired Ms. Moody's case.

i. Under the Fair Housing Act, an undue delay in granting a reasonable accommodation request can constitute a denial of the reasonable accommodation request.

The Sixth Circuit has acknowledged that an unreasonable delay in granting a reasonable accommodation request can constitute a denial of that request. In *Overlook Mut. Homes v. Spencer*, the tenant of a non-profit housing corporation accused the corporation of refusing a reasonable accommodation request by creating unreasonable delays in the process. 415 F. App'x 617, 621-24 (6th Cir. 2011). While the Sixth Circuit granted judgment as a matter of law to the housing corporation, it found that an unreasonable delay in granting a reasonable accommodation can constitute a denial of the request. *Id.* In *Overlook*, the Court cited the DOJ/ HUD Joint Statement on reasonable accommodations:

a housing provider 'has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation* * * a 'failure to reach an

agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation.’

Id. at 621. The Court also stated, “We acknowledge that injury may result when a housing provider unreasonably delays responding to a request for an accommodation and that such a delay may amount to a denial.” *Id.* at 622.

Finally, the Sixth Circuit stated, “Were it not for additional factors that are present here, the Spencers would have presented a jury issue as to whether Overlook ‘denied’ their request.” *Id.* at 622.

Here, Ms. Moody’s proposed instruction almost precisely imitates the language found in the HUD/ DOJ statement on reasonable accommodations. It states:

A provider has an obligation to provide a prompt response to reasonable accommodation requests. When the person requesting an accommodation provides enough reliable information such that the only reasonable conclusion is that the accommodation request should be granted, the housing provider’s failure to promptly grant or undue delay in making a decision violates the FHAA and may be deemed a denial. An indeterminate delay has the same effect as an outright denial.

R.68, Page ID # 823-845. This language was modeled off HUD/ DOJ guidance and cited by the Sixth Circuit as the law regarding an unreasonable delay in granting a reasonable accommodation.

Other Sixth Circuit decisions have since applied the “unreasonable delay” doctrine as law: *Edmunds v. Bd. Of Control of E. Mich. Univ.*, No. 09-11648, 2009

U.S. Dist. LEXIS 119973, at *5 (E.D. Mich. Dec. 23, 2009). (quoting *Hurston v. Butler Cty, Dep't of Jobs & Family Servs.*, No. 1:01-CV-313, 2005 U.S. Dist. LEXIS 22111, at *8 (S.D. Ohio Sept. 30, 2005); *Turner v. Am. Bldg. Condo. Corp.*, 2014 U.S. Dist. LEXIS 134617 (S.D. Ohio Sept. 24, 2014) (analyzes whether the delay in granting the plaintiff's request for a designated parking spot constituted a "constructive denial" of his request); *Velzen v. Grand Valley State Univ.*, 902 F. Supp. 2d 1038, 1046 (W.D. Mich. 2012) (A delay in granting a reasonable accommodation may support a disability discrimination claim).

ii. The district court's jury instructions did not substantially cover the legal principle that a housing provider's unreasonable delay in granting a reasonable accommodation can constitute a denial of that request.

The district court gave an instruction with the elements of a reasonable accommodation request. Trial Transcript p. 47 (23-25); p. 48(1-12). However, it gave no instructions on a delay in granting the request at all. *Id.* The jury instructions only stated that, to be successful, the plaintiff must prove by a preponderance of evidence that the defendant, "refused to make the accommodation." *Id.* There were no further instructions about what could constitute a refusal. Thus, the instructions given did not substantially cover the principle that a housing provider's unreasonable delay in granting a reasonable accommodation request can constitute a denial of that request.

iii. The failure to instruct the jury that an unreasonable delay can constitute a denial of a reasonable accommodation substantially impaired the plaintiff's case.

As noted earlier, the Sixth Circuit has held that an unreasonable delay constitutes a denial of a reasonable accommodation request. Here, the district court decided that the question of whether LMHA granted Ms. Moody's reasonable accommodation request should go in front of the jury, but it failed to instruct the jury that an unreasonable delay in granting a reasonable accommodation request can constitute a denial of that request. R. 85, Moody Tr., Page ID # 1401-1402. Instead, the court instructed the jury that Ms. Moody had to prove by a preponderance of evidence that LMHA refused to make the accommodation. *Id.* Without additional instruction, the jury could not understand the very crux of the plaintiff's argument. Without additional instruction, the jury could not understand the plaintiff's case.

iv. The instructions, viewed as a whole, were confusing, misleading, and prejudicial

Because, in this case, LMHA eventually granted Ms. Moody's request, and her case rested on the fact that an unreasonable delay can constitute a denial of a request, the district court's failure to give that instruction was confusing misleading, and prejudicial. In reviewing jury instructions, the court must look at them, "as whole to determine whether they adequately inform the jury of relevant

considerations and provide a basis in law for the jury to reach its decision.”

Glogower v. Pulitzer Broad. Co., 1996 U.S. App. LEXIS 22564, *12 (6th Cir. 1996).

In this case, the housing provider eventually granted a reasonable accommodation request, but refused to consider and delayed granting the request for prior to doing so. The court instructed the jury only that the defendant must have refused the request. Without further instruction, the jury had no legal basis on which to decide in favor of Ms. Moody, so the instructions as a whole were confusing, misleading, and prejudicial; the District Court’s judgment should be reversed; and the case should be remanded for a new trial.

II. AS A MATTER OF LAW, AN UNREASONABLE DELAY IN RESPONDING TO A REQUEST FOR AN ACCOMMODATION IS A DENIAL OF THE ACCOMMODATION.

It is clear that, as a matter of law, an unreasonable delay in responding to a request for an accommodation is a denial of the accommodation, and the failure to enforce that provision of the FHAA would have a negative impact on the civil rights of people with disabilities.

A. Other federal circuits have applied the legal principle at issue.

There is a bevy of case law establishing that a delay in responding to a reasonable accommodation request constitutes a “constructive denial” of that request. This illustrates both the clear law surrounding the issue and the reality

that many housing providers fail to outright deny requests but, instead, delay or fail to respond. *United States v. Hialeah Hous. Auth.*, 418 F. App'x 872, 877 (11th Cir. 2011)(A housing provider must request documentation or open a dialogue if it doubts necessity of a reasonable accommodation); *Astralis Condo. Assoc. v. Sec'y, United States Dep't of Hous. & Urban Dev.*, 620 F.3d 62 (1st Cir. 2010)(failure to engage in interactive process by delaying response to request constituted denial of accommodation); *Jankowski Lee & Assoc. v. Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996)(stating that, “[i]f a landlord is skeptical of a tenant’s alleged disability or the landlord’s ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.”); *Logan v. Matveevskii*, 2016 U.S. Dist. LEXIS 42546 (S.D. N.Y. March 30, 2016)(courts have found a delay of over two and a half years to constitute a constructive denial of a reasonable accommodation request); *Bhogaita v. Altamonte Heights Condo Ass'n*, 765 F.3d 1277, 1286 (11th Cir. 2014)(the failure to respond within six months of a request indicated an indeterminate delay that could have the same effect as an outright denial); *Scoggins v. Lee’s Crossing Homeowners’ Ass’n*, 718 F.3d 262, 272 (4th Cir. 2013)(where the board of an HOA twice “tabled” the request to seek additional information but did not request additional information until 15 months later, it constituted a constructive denial); *Groome Res. Ltd. v. Par. of Jefferson*, 234 F.3d 192, 199 (5th Cir. 2000)(a reasonable accommodation was denied by the

unjustifiable delay of Parish officials); *Brooks v. Seattle Hous. Auth.*, 2015 U.S. Dist. LEXIS 67923, 12 (D.C. Wash. May 26, 2015); *United States v. District of Columbia*, 538 F. Supp. 2d 211 (D.D.C. 2008)(the FHA is violated when a reasonable accommodation is first denied, which can be both actual or constructive, as an indeterminate delay has the same effect as an outright denial).

B. The Fair Housing Act is violated at the time that the accommodation is constructively denied

The Act is violated when a reasonable accommodation is first denied, regardless of remedial steps that may be taken later. *District of Columbia*, 538 F. Supp. 2d 211 at 219; *Bryant Woods Inn v. Howard Cty.*, 124 F.3d 597, 602 (4th Cir. 1997). An FHA violation is not cured by subsequent conduct. *Id.* Thus, even an unreasonable delay that eventually resulted in an accommodation could result in compensable injury. Here, the district court already decided that there was a question of fact for the jury to evaluate. However, in order for the jury to properly evaluate the case, they must be properly informed of the law.

C. The failure to enforce this legal principle would have negative consequences on the civil rights of people with disabilities.

A failure to find that the lower court erred in its jury instructions would be a failure to enforce the FHAA as it relates to people with disabilities and would have a chilling effect on civil rights. Without the reasonable accommodation requirement of the FHAA, housing could effectively be off-limits to people with

disabilities. Housing is the number one issue raised by people who call into the Ability Center, and as of 2013, 53% of complaints received by the Department of Housing and Urban Development (HUD) were based on disability.¹ People with disabilities suffer from a lack of accessible housing options, in part, due to an inability to follow landlord policies or physically access housing due to disability.

The Fair Housing Act was enacted with the specific goals of protecting the rights people with disabilities to live in a residence of their choice in the community, and to end the unnecessary exclusion of people with disabilities from the mainstream. *Giebeler v M&B Assocs.*, 343 F.3d 1143 (9th Cir. 2003). For people with disabilities, these rights include the right to request reasonable accommodations where necessary to access a dwelling of their choice. 42 U.S.C. § 3604(f)(3)(B) (2016). The initial House Judiciary Committee Report explains that a discriminatory rule is not defensible simply because it has become a tradition and that reasonable accommodations require changes to traditional rules and practices if necessary to permit a person with a disability an equal opportunity to use and enjoy a dwelling.² The Supreme Court has held that the FHAA should have a,

¹ Department of Housing and Urban Development, Annual Report on Fair Housing FY2012-2013, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=2012-13annreport.pdf> (accessed 10/25/2016).

² H.R. Rep. No. 711, 100th Cong., 2d Sess., reprinted in 1988 U.S.C.C.A.N. 2173, 2179.

“broad and inclusive” compass requiring “generous construction.” *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995). As demonstrated by the federal court cases cited above, it is not unusual for a housing provider to fail to accommodate a person with a disability by failing to respond or causing unreasonable delays in granting accommodation requests.

In this case, Ms. Moody was in a hospital and a nursing home for most of October 2012 and was due to be discharged on November 9, 2012. She spoke with LMHA on a regular basis, but they kept telling Ms. Moody she could not get a new voucher because her landlord would not agree to release her. From November 9, 2012 to December 14, 2012, Ms. Moody stayed with family. At some point, all of her belongings were removed from the house and nothing was recovered. Because Ms. Moody vacated her unit, LMHA sent a letter on November 14, 2012 stating that her section 8 voucher would be terminated effective December 1, 2012. Ms. Moody lived with uncertainty, anxiety, and was essentially homeless from November 9, 2012 to December 14, 2012, when LMHA issued a new voucher and allowed her to seek new housing.

Based on these facts, the district court already decided that the Fair Housing Act could apply but that there was a question of fact as to whether it was violated. In order for the jury to make a proper decision on that question, it needed to be fully educated on the law relating to Ms. Moody’s situation. The failure to find

that the district court erred in this case would equate to a failure to enforce the unreasonable delay principle and would prevent other people with disabilities from asserting their rights under the FHAA.

Under federal law, a delay in responding to an accommodation request can constitute a denial of a reasonable accommodation. If the trial court's jury instructions stand, Ms. Moody's injuries due to that delay will not have been properly evaluated by a jury; future tenants with disabilities' rights under the Fair Housing Act will not be evaluated in accordance with the purpose of that act; and housing providers will not have an incentive to act in response to a request within a timely manner.

CONCLUSION

We respectfully support Appellant Moody in this case. The trial court erred in failing to instruct the jury that a delay in response to a reasonable accommodation request constitutes a denial, and the failure severely prejudiced Ms. Moody's case. More broadly, if jurors are not instructed that a delay in responding to a reasonable accommodation request constitutes a denial, it will have a chilling effect on the rights of people with disabilities under the Fair Housing Act. Thus, this Court should vacate the District Court's judgment and remand this case for a new trial.

Dated: November 15, 2016

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,046 words, excluding the parts of this brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionately spaced typeface, Times New Roman 14-point font type, using Microsoft Word 2007.

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I hereby certify that on November 15, 2016, the foregoing Brief of *Amici Curiae* the Toledo Fair Housing Center, the Ability Center of Greater Toledo, and Ohio Disability Rights Law and Policy Center, Inc. in Support of Appellant and Urging Reversal was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system.

Dated: November 15, 2016

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