

No. 120763

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Leave to Appeal from the
	)	Appellate Court of Illinois, First
Plaintiff-Appellee,	)	Judicial District, No. 1-14-3592
)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of Cook County,
MATTHEW R. WILDERMUTH,	)	Illinois, County Department,
individually; GEORGE KLEANTHIS,	)	Chancery Division.
individually and as managing member of)	
LEGAL MODIFICATION NETWORK,	)	No. 11 CH 33666
LLC, a Limited Liability Company; and)	
LEGAL MODIFICATION NETWORK,)	
LLC, a Limited Liability Company,	)	The Honorable
	)	DIANE LARSEN,
Defendants-Appellants.	)	Judge Presiding.

**AMICUS BRIEF OF THE CHICAGO LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW, INC. AND OTHER AMICI LISTED HEREIN**

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TABLE OF CONTENTS

	Page
INTEREST OF AMICI	1
Nature of the Case	2
Issues Presented	2
Jurisdiction	2
Statutory Provisions Involved.....	2
Statement of Facts	2
ARGUMENT.....	3
I. Racial Discrimination in the Illinois Housing Market has a Long and Evolving History	6
A. Some Members of the Chicago Professional Class Systematized Racism Using Practices that Became a Model for Discrimination Across the Country	7
B. Largely Shut Out of the Primary Mortgage Market, African American Chicagoans Fell Prey to Exploitation in a Secondary Housing Market	10
C. Beyond Individual Victims, These Housing Schemes Harmed Entire African American Communities	15
II. The Twin Phenomena of Reverse Redlining and Foreclosure Rescue Schemes Fit the Pattern of Housing Discrimination in Illinois	17
A. Though Anti-Discrimination Legislation Made Mortgages Available to People of Color, They Have Tended to Have Access to Inferior Mortgage Products	17
B. The Collapse of the Housing Market Has Had a Disproportionately Strong Impact on Communities of Color	21
C. In the Midst of this Economic Devastation, Individuals Saw Another Opportunity to Exploit People of Color in the Housing Market	24
III. The Consequences of Racial Housing Discrimination Extend Beyond Individual Victims	26
A. Racial housing discrimination breeds economic harm of diminished property values	27
B. Racial housing discrimination breeds noneconomic costs of increased crime and violence	28

IV. The State Alleges Conduct that Parallels Historical and Modern- Day Racial Discrimination	31
CONCLUSION	34
<u>CERTIFICATE OF Service</u>	2
<u>Appendix - Descriptions of the Amici</u>	3

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aiello v. Grace</i> , 99 Ill. App. 2d 445, 241 N.E.2d 445 (1968).....	11
<i>Chicago Bar Ass’n v. Quinlan & Tyson, Inc.</i> , 34 Ill. 2d 116, 214 N.E.2d 771 (1966).....	11
<i>Hansberry v. Lee</i> , 311 U.S. 32 (1940).....	8
<i>People ex rel. Illinois State Bar Ass’n v. Schafer</i> , 404 Ill. 45, 87 N.E.2d 773 (1949).....	11
<i>Kelly v. Germania Savings & Loan Ass’n</i> , 28 Ill. 2d 591, 192 N.E.2d 815 (1963).....	10
<i>People ex rel. Madigan v. Wildermuth</i> , 402 Ill. Dec. 650 (2016).....	31
<i>People ex rel. Madigan v. Wildermuth et al.</i> , No. 120763 at 27-2.....	32
<i>Moore v. Pinkert</i> , 28 Ill. App. 2d 320, 171 N.E.2d 73 (Ill. App. Ct. 1960).....	13, 14, 15, 16
<i>People v. United Construction of Am.</i> , No. 09 CH 33398 (Ill. Cir. Ct., Jan. 22, 2016).....	24
<i>People v. Wildermuth</i> , No. 1-14-3592 (June 12, 2015).....	32
Statutes	
Chicago Area Fair Housing Alliance, HOPE Fair Housing Center, the John Marshall Law	1
Chicago Lawyers’ Committee along with the National Consumer Law Center, the National Fair Housing Alliance, the Sargent Shriver National Center on Poverty Law	1

Community Reinvestment Act, Pub. L. 95-128, 91 Stat. 1111 (Oct. 12, 1977)	18
Helping Families Save Their Homes Act of 2009. Pub. L. No. 111-22, 123 Stat. 1632 (2009)	25
775 Ill. Comp. Stat. 5/1-102 (2014)	6
Illinois Human Rights Act	3
Other Authorities	
Available at https://www.illinois.gov/dhr/Publications/Documents/Annual_Report_FY_1980-1981.pdf	3
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Charis E. Kubrin & Gregory D. Squires, <i>The Impact of Capital on Crime: Does Access to Home Mortgage Money Reduce Crime Rates?</i> , George Washington University, 1-39, 5 (2013)	30
Dan Immergluck and Geoff Smith, <i>The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values</i> , 17 Housing Pol’y Debate 1 (2006)	26, 28
Dan Immergluck and Geoff Smith, <i>The Impact of Single-family Mortgage Foreclosures on Neighborhood Crime</i> , 21 Housing Studies 6, (2006)	26, 28, 29
David S. Kirk and John H. Laub, <i>Neighborhood Change and Crime in the Modern Metropolis</i> , 39 Crime and J. 1-76, 46 (2010)	30
Dep’t of Hous. & Urban Dev. & U.S. Department of Treasury, <i>Curb Predatory Home Mortgage Lending: A Joint Report</i> (2000)	26
Douglas S. Massey & Nancy A. Denton, <i>American Apartheid: Segregation and the Making of the Underclass</i> 20 tbl.2.1. (1993)	6

Elizabeth Renuart, <i>An Overview of the Predatory Mortgage Lending Process</i> , 15 Hous. Pol’y Debate 467 (2004).....	20, 22, 23, 24
<i>Federal Program for Distressed Homeowners Is Extended</i> , N.Y. Times May 30, 2013.....	25, 26
Human Rights & Human Rights Comm’n, <i>State of Illinois First Annual Reports July 1, 1980 through June 30, 1981</i>	3
ILLINOIS DEPARTMENT OF HUMAN RIGHTS, <i>IDHR History – the First 25 Years</i> , https://www.illinois.gov/dhr/AboutUs/Pages/IDHR_HistoryXXX.aspx (last visited February 3, 2017)	18
James Alan McPherson, “ <i>In My Father’s House There Are Many Mansions – And I’m Going to Get Me Some of Them Too</i> ”: <i>The Story of the Contract Buyers League</i> , <i>The Atl. Monthly</i> , Apr. 1972 at 51.....	11
Kenneth T. Jackson, <i>Crabgrass Frontier</i> (1985)	8, 9
Kristopher S. Gerardi & Paul S. Willen, <i>Subprime Mortgages, Foreclosures, and Urban Neighborhoods</i> , 8 Fed. Reserve Bank of Boston 6 (2008)	26
Laurence D. Pearl & Benjamin B. Terner, <i>Survey: Fair Housing Laws – Design for Equal Opportunity</i> , 16 Stan. L. Rev. 849 (1964).....	17, 18
Leonard S. Rubinowitz & Ismail Alsheik, <i>A Missing Piece: Fair Housing and the 1964 Civil Rights Act</i> , 48 How. L.J. 841 (2005).....	17
Linda E. Fischer, <i>Target Marketing of Subprime Loans: Racialized Consumer Fraud & Reverse Redlining</i> , 18 J.L. & Pol. 121 (2009)	20
Nat’l Fair Hous. Alliance, <i>Have I Got a Deal for You!</i> (2011)	25
Natalie Y. Moore, <i>The South Side</i> (2016)	10
Patrick Bayer et al., <i>Race, Ethnicity, and High Cost Mortgage Lending</i> , Nat’l Bureau of Econ. Res. Working Paper No. 20762 (2014)	24
Pew Research Ctr., <i>Twenty-to-One: Wealth Gaps Rise to Record Highs Between Whites, African Americans and Hispanics</i> (2011)	22
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Thomas Kingsley et al., <i>The Impacts of Foreclosures on Families and Communities</i> , The Urban Inst. (2009)	27
Thomas Lee Philpott, <i>The Slum and the Ghetto</i> 163–64 (1978)	8
U.S. Dep’t of Hous. & Urban Dev., <i>Unequal Burden: Income & Racial Disparities in Subprime Lending in America</i> (1998).....	18, 19
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U.S. Gov. Accountability Office, <i>Financial Crimes: Foreclosure Rescue Schemes Have Become More Complex, and Efforts to Combat Them Continue</i> (2013).....	25
William Spelman, <i>Abandoned Buildings: Magnets for Crime?</i> , 21 J. of Crim. Just. (1993)	28, 29, 30

INTEREST OF AMICI

The Chicago Lawyers' Committee for Civil Rights ("Chicago Lawyers' Committee"), is an organization of civil rights lawyers and advocates working to secure racial equity and economic opportunity for all. It provides legal representation through partnerships with the private bar, and collaborates with grassroots organizations and other advocacy groups to implement community-based solutions that advance civil rights.

The mission of the Fair Housing Project of the Chicago Lawyers' Committee is to eliminate housing discrimination and segregation based on race, national origin, source of income, and other bases in the Chicago metropolitan area. To achieve that mission, staff and volunteers with the Fair Housing Project educate tenants, homeowners, landlords, and others about their rights and duties under fair housing and fair lending laws, advocate for progressive laws and public policies, conduct investigations of housing discrimination complaints and the housing market, and provide legal representation to individuals and groups in asserting and enforcing their fair housing rights and securing equal housing opportunities.

This brief is brought on behalf of the Chicago Lawyers' Committee along with the National Consumer Law Center, the National Fair Housing Alliance, the Sargent Shriver National Center on Poverty Law, the Chicago Area Fair Housing Alliance, HOPE Fair Housing Center, the John Marshall Law School's Fair

Housing Legal Support Center & Clinic, Open Communities, and the South Suburban Housing Center (collectively the "Amici").¹

NATURE OF THE CASE

The Amici incorporate by reference the "Nature of the Case" statement from the brief of the People of the State of Illinois (the "People") filed this same day.

ISSUES PRESENTED

The Amici incorporate by reference the "Issues Presented" statement from the brief of the People filed this same day.

JURISDICTION

The Amici incorporate by reference the "Jurisdiction" statement from the brief of the People filed this same day.

STATUTORY PROVISIONS INVOLVED

The Amici incorporate by reference the "Statutory Provisions Involved" statement from the brief of the People filed this same day.

STATEMENT OF FACTS

The Amici incorporate by reference the "Statement of Facts" from the brief of the People filed this same day.

¹ Descriptions of the other Amici are included in the Appendix to this brief.

ARGUMENT

Following decades of civil rights activism, the Illinois legislature passed the Illinois Human Rights Act in 1979, expanding existing statutes to forbid discrimination in housing. *See Dep't of Human Rights & Human Rights Comm'n, State of Illinois First Annual Reports July 1, 1980 through June 30, 1981, at iii-iv (1981).*² By the time of the Act's passage, numerous lawsuits and media stories had detailed the various ways in which actors in the real estate market had discriminated against African American consumers throughout the entire life of a home loan. The alleged scheme at the heart of this case, where an attorney and his business associates sought to exploit homeowners' economic hardship for material gain through elusive promises of foreclosure relief, fits squarely in the molds of discrimination struck in the decades before the Act's passage. Examining the history of this species of discrimination and the devastation that it has wrought on minority communities across the decades illumines the legislative intent behind the Act.

From the South Side of Chicago to East St. Louis, communities of color throughout Illinois remain chronically segregated from white communities. The same lines that divide African American families from white families mirror lines that divide poor families from middle-class families. This phenomenon reflects

² Available at https://www.illinois.gov/dhr/Publications/Documents/Annual_Report_FY_1980-1981.pdf.

generations of exploitation of minorities at various stages in the rental and purchase of housing. From the first negotiation to the final payment on a housing loan, bad actors have preyed on minority homeowners to extract as much of their wealth as possible, often leaving the homeowners with insufficient resources to maintain and pay off their homes.

The allegations in this case mirror a pattern of racial housing discrimination first established generations ago in the midst of the Great Migration. Although the structures of these schemes have changed over time from the land installment contract to the subprime loan, the profile of the predator has remained consistent. The individuals executing these schemes have often been professionals – real estate agents, lenders, and attorneys – brandishing their expert knowledge to win the trust of homebuyers navigating an often unfamiliar and confusing process. After gaining that trust, the predator uses this professional expertise to close a deal designed to benefit the predator at the expense of the client. The bad home loan is often just the beginning, with predators revisiting their victims to offer refinancing that is often even worse than the original loan.

While the tools that have been used to disadvantage people of color in the real estate market has shifted form from land installment contracts to subprime loans, those technical differences must not obscure the continuing discrimination people of color continued to suffer. Furthermore, while the Fair Housing Act and the Illinois Human Rights Act formally abolished the redlining practices that

largely excluded minority homebuyers from the primary mortgage market, continuing racial discrimination in lending continued to divert people of color to subprime mortgages. Minority homebuyers still saw their resources diverted into a less-favorable secondary market. Like the land installment contract market before it, the subprime market lacked key protections available to customers in the primary market, and minority homeowners saw their wealth attacked by predatory professionals.

Also like land installment contracts, subprime loans often contained hidden financial costs that imposed unforeseen burdens on minority families. Because minority families paid a greater proportion of their paychecks to finance their homes than similarly situated white families, this monthly burden deprived minority families of money needed to absorb unforeseen financial blows and maintain their homes. So when the housing bubble burst and the economy collapsed, minority communities felt the sting more strongly than white communities as they experienced waves of foreclosure.

The foreclosure crisis wreaked economic damage beyond individual minority families. African American and Hispanic homeowners saw the value of their houses depreciate with the presence of every additional foreclosed property in their neighborhoods. The presence of foreclosed and deteriorated properties depressed property values and stifled economic growth in minority communities. It also likely contributed to the presence of crime and juvenile delinquency in these neighborhoods. These generalized, sociological effects

complete the circle of harm by reinforcing racist stereotypes about minority homeowners in the housing market that perpetuates discrimination and residential segregation into the next generation.

The Illinois Human Rights Act, like the federal Fair Housing Act, was passed by a legislature with full knowledge of the financial exploitation of African American homebuyers and appreciation of the dire consequences of this exploitation on communities of color. To fulfill the Act's purpose to "secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race" in the real estate market, the Court must interpret it in light of the historical and contemporary complexity of housing discrimination before, during, and after the initial purchase. 775 Ill. Comp. Stat. 5/1-102 (2014).

I. Racial Discrimination in the Illinois Housing Market has a Long and Evolving History.

Before the twentieth century, African Americans moved in moderate numbers to northern cities. During this period, African American populations dispersed throughout communities, never forming a majority of a neighborhood's population. Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 20, 21 tbl.2.1. (1993). This changed in the early twentieth century during the Great Migration when African Americans moved en masse out of the South as Jim Crow laws stifled their liberties. Various cities throughout Illinois saw their African American

populations balloon, and white communities in Illinois cities moved quickly to limit the housing options available to new arrivals. In the first decades of the twentieth century, three race riots rocked Illinois. In Springfield in 1908, East St. Louis in 1917, and Chicago in 1919, white mobs destroyed houses owned by African Americans who transgressed the color line. Massey & Denton at 30.

In the development of African American urban ghettos, “Chicago led the way.” *Id.* at 31. The city’s exploding African American population was penned into the Black Belt, an area on the city’s South Side whose boundaries were enforced by private law and public violence. If an individual – even a child – transgressed that boundary, he could be beaten. If a family did so, their house and lives could be destroyed. Between 1917 and 1921, an African American home in Chicago was bombed every twenty days. *Id.* at 35. To deal with this unrest, some white Chicagoans developed a less violent but no less effective means of enforcing segregation.

A. Some Members of the Chicago Professional Class Systematized Racism Using Practices that Became a Model for Discrimination Across the Country.

The private push to exclude African American residents from white communities found willing accommodation from some housing professionals. Many real estate agents and professionals promulgated the “common wisdom” that race and ethnicity determined property value. Leading national guides to property appraisal from the early twentieth century cautioned appraisers to attend to “undesirable” and “least desirable” elements and warned them that

certain ethnicities would cause steep price declines.” Kenneth T. Jackson, *Crabgrass Frontier* 198 (1985).

The Chicago Real Estate Board, a professional association of white brokers, moved quickly to adopt policies to apply this thinking to the city’s real estate market. As early as 1917, the Chicago Real Estate Board resolved to keep African American families out of white areas of Chicago – a practice that the National Association of Real Estate Boards adopted seven years later. Beryl Satter, *Family Properties* 40 (2009); see also Thomas Lee Philpott, *The Slum and the Ghetto* 163–64 (1978). The Chicago Real Estate Board’s most important contrivance was the racially restrictive covenant as a means to segregate communities without running afoul of the Fourteenth Amendment. The organization drafted a model covenant and disseminated it in areas throughout the city, helping to organize citizens groups to implement them. *Id.*; cf. *Hansberry v. Lee*, 311 U.S. 32 (1940). In their efforts to protect white neighborhoods, real estate professionals found allies in some professors at the University of Chicago who “legitimized” racial bias in housing through a “model of neighborhood change.” According to these academics, once African Americans entered a neighborhood, real estate prices underwent a “drastic decline.” Satter, *supra*, at 40; Jackson, *supra*, at 198.

This “Chicago school” model of neighborhood change influenced the federal practice of redlining, which would define the African American experience in the housing market in the mid-twentieth century. Jackson, *supra*, at

199. When the New Deal's Home Owners Loan Corporation created a nationwide model for rating real estate, it relied on the local prejudices and academic rationalizations detailed above. *Id.* at 197-99. At the same time the Federal Housing Administration revolutionized the availability of homeownership through the thirty-year mortgage, it codified race as a credit risk, overwhelmingly shutting African Americans out of the mortgage market. *Id.* at 195-208. Even worse, the Federal Housing Administration demanded rigid segregation—even encouraging homeowners to draft racially restrictive covenants—in order for property to qualify for its mortgage insurance program for lenders. *Id.* at 208.

Because FHA policies favored the financing of housing in white, segregated areas, the flow of capital drained away from African American communities, integrated communities, and even adjacent white communities. *See id.* at 211-13. The economic disadvantage of minority neighborhoods vis-à-vis whiter locales fed the sea of racial tension threatening to drown urban communities. *Id.* at 213. But not everyone in the city suffered under federal housing policy. Predatory lenders saw an opportunity in the combination of white racial anxiety and the desire of African Americans to escape the confines of the ghetto and own a piece of the American dream of homeownership. *See Philpott, supra*, at 151.

B. Largely Shut Out of the Primary Mortgage Market, African American Chicagoans Fell Prey to Exploitation in a Secondary Housing Market.

Exploitative land installment contracts represented a primary tool by which sophisticated professionals used their knowledge at the expense of less-experienced homebuyers. With the arrival of African American residents, white families in “transitioning” neighborhoods panicked that their housing values would depreciate because of the presence of African American neighbors, and housing speculators recognized and inflamed this fear to buy property on the cheap. *See Philpott, supra*, at 149–50. After acquiring title, the speculators would sell the house through an installment contract to an African American buyer at a price higher than the speculator paid. Under Illinois law at the time, the foreclosure process did not protect buyers in these transactions from being summarily evicted from their homes. *See, Kelly v. Germania Savings & Loan Ass’n*, 28 Ill. 2d 591, 192 N.E.2d 815 (1963). Consequently, African American families who bought land through contract sales could be summarily thrown from their homes upon the slightest delinquency in payment, losing their down payment and any other monies they had invested in the property to the speculator. Satter, *supra*, at 64–65 (2009); Natalie Y. Moore, *The South Side* 49–50 (2016).

1. Licensed Attorneys Participated in and Benefited from the Exploitation of Nascent African American Wealth.

The success of this predatory system required the participation of licensed professionals. Like virtually all buyers in the real estate market then and now,

African American buyers in the postwar era trusted real estate agents and attorneys to guide them in every step of a long, complicated, and often stressful process. When they needed assistance determining what properties to view and neighborhoods to search in, African American buyers turned to real estate agents. *See Satter, supra*, at 68–69. When negotiating the terms of the sale to achieve a reasonable price, they again depended on agents to gauge the fair market value of the home. After they had hammered out a price, they used an attorney to draft the contract that structured the transaction. *See People ex rel. Illinois State Bar Ass’n v. Schafer*, 404 Ill. 45, 87 N.E.2d 773 (1949) (holding that licensed attorneys must draft contracts for real estate transactions); *Satter, supra*, at 64–78. *But see Chicago Bar Ass’n v. Quinlan & Tyson, Inc.*, 34 Ill. 2d 116, 214 N.E.2d 771 (1966) (permitting brokers to fill in blanks on form contracts).

Lawyers played more than just a support role in predatory practices. Although some attorneys involved in these transactions merely advanced the interests of dishonest clients unknowingly, *Cf. Aiello v. Grace*, 99 Ill. App. 2d 445, 241 N.E.2d 445 (1968) (finding attorney to be an innocent participant in an scheme involving an exploitative contract sale), too frequently attorneys actively exploited African American homebuyers since “[m]any speculators were also attorneys.” *Satter, supra*, at 77; *see also* James Alan McPherson, “*In My Father’s*

*House There Are Many Mansions – And I’m Going to Get Me Some of Them Too”: The Story of the Contract Buyers League, The Atl. Monthly, Apr. 1972 at 51, 59.*³

In one egregious example, an unscrupulous professional in Chicago in 1955 wore three hats in a single transaction – seller, broker, and lawyer. At the beginning of the process, the buyers believed that the individual was a broker for the property. Satter, *supra*, at 37–38. When the buyers asked to consult an attorney, they were informed that this was unnecessary because the broker was also an attorney. *Id.* at 38. Only after the buyers defaulted after the broker and housing inspectors escalated the buyers’ monthly housing costs did they learn that the broker was also the owner. *Id.* at 38–39, 77. When deposed, the individual hedged, claiming that he had represented himself as (1) an attorney, (2) representative of the owner, and (3) perhaps one-time owner of the property. *Id.* at 77.

The participation of attorneys in the exploitation of African American wealth extended beyond the initial sale. Much as the securitized trading of subprime mortgages became fuel to the housing bubble decades later, so too did the trading of land contract sales fuel the economic engine of Chicago in the postwar decades. Satter, *supra*, at 75. Lawyers alongside professional partners in finance and other industries traded among themselves interests in real estate

³Available at <https://cdn.theatlantic.com/assets/media/pdf/2014/05/mcpherson-contract-buyers.pdf>.

installment contracts. This practice created a greater appetite for selling houses on land contracts and provided the liquidity needed for speculators to accelerate their scheme. *Id.*

As these examples demonstrate, individuals who sought to exploit incipient African American wealth and white panic in midcentury America displayed a wide range of ingenuity, extracting money from African American homeowners at every step. As in the aftermath of the subprime housing crisis, individuals seeking to exploit minority wealth through housing market transactions did not limit themselves to the initial sale. Rather, they continued to find ways to extract wealth after African American homeowners found themselves in crises frequently caused either by the burdensome original loan or through additional burdens crafted after the sale.

Foreshadowing practices common throughout the subprime crisis, for some owners defaulting on the contract was virtually inevitable due to the terms of the sale. Some contract sellers sold homes to buyers at prices beyond the buyers' means and beyond the property's value on the false promise that the speculators would assist the buyers in obtaining a mortgage after a period of time. McPherson, *supra*, at 65; Satter, *supra*, at 65–66; e.g. *Moore v. Pinkert*, 28 Ill. App. 2d 320, 325, 171 N.E.2d 73, 75 (Ill. App. Ct. 1960). Knowing that no mortgage would be available that could approach the sale value of the house did not deter the sellers, who sought to maximize their profit and regain possession of the property upon default. Satter, *supra*, at 65–66. One lawyer sold his

property in Chicago on contract to a couple on the representation that they could eventually convert the contract sale into a traditional mortgage. McPherson, *supra*, at 65. In fact, the attorney simply assigned his own mortgage on the property to the buyers. *Id.* After the buyers asked the attorney to help secure a mortgage for repairs to the property, the attorney informed them that none would be available due to the existing mortgage and instead loaned the homeowners \$1,300 in exchange for \$6,000 in repayment. *Id.*

Even when families maintained their payment on the land contracts, they could still fall prey. Two examples from this period bear resemblance to the alleged scheme in the instant case. In the first matter in Chicago in 1958, a man, after selling a house to a woman well above its fair market value, convinced her that he could acquire another loan on the house if she paid him a fee – an unnecessary service and fee to obtain the loan. Satter, *supra*, at 67. In the second, one particularly venal speculator in Chicago in 1957 played on the buyers' fear of and trust in the federal government to convince the buyers to sign a quit claim deed when they had nearly completed their obligations by convincing them that they owed money in taxes. *Id.* at 65.

2. Attorneys Attempted to Leverage their Professional Status to Excuse their Exploitative Practices.

In addition to using their professional license as a sword to wield against their clients, lawyers also used it as a shield to protect them from punishment when their actions crossed a line. The professional courtesy that facilitates the

adversarial process disappeared when attorneys sued other attorneys for exploiting African American homebuyers. *Id.* at 75-77. Decades after the lawsuits, one lawyer recounted the icy receptions he and his partner received at the Chicago Bar Association and the fear of countersuits and personal reprisal. *Id.* at 76. During a deposition, one attorney-speculator accused his questioner of “slandering a couple of lawyers here.” *Id.* at 77. Even though some of these attorneys had represented themselves as lawyers to clients, they evaded or tried to evade their professional responsibilities by claiming that they had never established an attorney-client relationship with the buyers but instead stood on the seller’s side of the transaction. *Id.* at 77-78; *Cf. Moore*, 28 Ill. App. at 332-33.

C. Beyond Individual Victims, These Housing Schemes Harmed Entire African American Communities.

As these schemes siphoned wealth off to housing predators, African American neighborhoods fell into states of disrepair, expanding the boundaries of the ghetto. Massey & Denton, *supra*, at 39. As the African American middle and working classes found homes in transitioning neighborhoods, they often acquired aging housing stock in a state of deterioration that may have been hidden from them throughout the purchasing process. *See Satter, supra*, at 250. By the time they discovered these defects, they had likely assumed heavy financial burdens that made it difficult keep up repairs. Philpott, *supra*, at 160. If African American homeowners managed to keep their homes, they often had to cut back on the necessary repairs to keep their houses in an attractive state. Massey &

Denton, *supra*, at 39; Philpott, *supra*, at 160. If they could not make payment on their housing loans, they could be evicted and another family would take their place after the housing remained vacant for a period of time. The wear and tear caused by constant rotation and vacancy likely accelerated the rate of decline for this aging housing stock. Satter, *supra*, at 6-7.

This physical deterioration created a vicious cycle for African American communities. The presence of decaying buildings and blighted neighborhoods restricted further the already limited availability of financing for these neighborhoods. Massey & Denton, *supra*, at 55. Without adequate finance, the circle of devastation expanded beyond mere housing to cripple commercial enterprise in African American communities. *Id.* at 12. Physical decay also likely reinforced the sense that transitioning neighborhoods were going downhill and subject to violence and slack morals. *Id.* at 131. The persistence and expansion of the urban blight thus also further entrenched and hardened false, racist stereotypes about racial minorities and their neighborhoods. *Id.* at 92-95. The persistence of these stereotypes reverberates in the contemporary housing market and reinforces race-based discrimination.

II. The Twin Phenomena of Reverse Redlining and Foreclosure Rescue Schemes Fit the Pattern of Housing Discrimination in Illinois.

A. Though Anti-Discrimination Legislation Made Mortgages Available to People of Color, They Have Tended to Have Access to Inferior Mortgage Products.

Banning the race-based discrimination and exploitation of the secondary housing market detailed above was one of the hardest fought victories of the Civil Rights Movement. While considered one of the “most comprehensive civil rights statute in the nation’s history,” the 1964 Civil Rights Act did not address housing discrimination. Leonard S. Rubinowitz & Ismail Alsheik, *A Missing Piece: Fair Housing and the 1964 Civil Rights Act*, 48 How. L.J. 841 (2005). Only after the assassination of Dr. Martin Luther King, Jr., did Congress enact and President Lyndon B. Johnson sign the Federal Fair Housing Act as Title VIII of the Civil Rights Act of 1968. *Id.* at 905.

At the time of the passage of the federal Civil Rights Act, 18 states had passed their own fair housing laws, but several of these states – Illinois included – passed far weaker protections than the federal statute. Laurence D. Pearl & Benjamin B. Turner, *Survey: Fair Housing Laws – Design for Equal Opportunity*, 16 Stan. L. Rev. 849 (1964). Specifically, Illinois law only prohibited discrimination in public housing and barred some restrictive covenants in special urban renewal districts. *Id.* at 862. The state considered but failed to pass a

comprehensive housing law in 1963, *id.*, and would not pass comprehensive fair housing legislation until the Illinois Human Rights Act in 1979.⁴

Despite these new protections, equal housing never fully materialized. While the laws did suppress the most egregious schemes surrounding land installment contracts, new forms of discrimination emerged. The Community Reinvestment Act, Pub. L. 95-128, 91 Stat. 1111 (Oct. 12, 1977), banned redlining and further extended mortgage availability and protections to communities of color. But in this new environment, not all mortgages were created equal. In the 1980s, Congress enacted laws that allowed lenders to build variable interest rates and balloon payments into mortgages, and the economic climate in the following decade increased public appetite for these products. Souphala Chomsisengphet & Anthony Pennington-Cross, *The Evolution of the Subprime Mortgage Market*, Fed. Reserve Bank of St. Louis Review, 31, 38 (Jan./Feb. 2006).

Ever since subprime mortgages became widely available in the mid-1990s, communities of color have held a disproportionate percentage of these loans, which run outside of the standard federal regulatory structure and are thus more susceptible to predatory lending practices. U.S. Dep't of Hous. & Urban Dev., *Unequal Burden: Income & Racial Disparities in Subprime Lending in America* (1998). In many ways, the ensuing disparity between the quality of mortgage products

⁴Ill. Dep't of Human Rights, *IDHR History – the First 25 Years*, https://www.illinois.gov/dhr/AboutUs/Pages/IDHR_HistoryXXX.aspx (last visited February 3, 2017).

available to African American and Hispanic homebuyers mirrored the disparity between the traditional mortgage and the land installment contract. Once again, African American and Hispanic homebuyers found themselves subject to a secondary housing market with more exposure to predatory practices than white homebuyers.

A 1998 HUD report is instructive. The agency reported that the subprime mortgage market grew rapidly in the mid-1990s, from a market worth \$20 billion in 1993 to one worth \$150 billion by 1998. *Id.* The number of subprime mortgage refinances rose from 80,000 to more than 790,000 during the same period. *Id.* The report found that, unsurprisingly, subprime loans were much more prevalent in low-income neighborhoods, where they made up 26% of the total home loans in 1998, compared to comprising 11% of loans in middle-income neighborhoods and only 7% in higher-income neighborhoods. *Id.* It also found that in 1998 subprime loans were five times as prevalent in predominantly African American neighborhoods, where they made up 51% of loans, versus in white neighborhoods, where they made up only 9% of loans. *Id.* Perhaps most strikingly, HUD found that the prevalence of subprime mortgages in *high-income* African American neighborhoods (39%) was a more than double the rate of subprime mortgages in *low-income* white neighborhoods (18%). *Id.* In high-income white neighborhoods, only 6% of homeowners have subprime loans. *Id.*

The higher-rate of subprime mortgages among communities of color persisted into the years leading up to the mortgage crisis. According to reports in

the early 2000s, lower-income African Americans got more than twice as many subprime loans as lower-income whites, while higher-income African Americans got three times as many as their white counterparts. Elizabeth Renuart, *An Overview of the Predatory Mortgage Lending Process*, 15 Hous. Pol'y Debate 467, 477 (2004). At the same time, lower-income Hispanics got 1.4 times as many subprime loans as lower-income whites, while higher-income Hispanics got subprime loans 2.2 times as often as upper-income whites. *Id.*

The disproportional use of subprime loans by people of color versus whites is striking and cannot be explained by income inequality between whites, African Americans, and Hispanics. This gap, as well as first-hand accounts from mortgage marketers, has led advocates to conclude that much of the disparity is present because of discriminatory targeting and steering practices rather than because of differences in risk profile. *See id.* at 478; Linda E. Fischer, *Target Marketing of Subprime Loans: Racialized Consumer Fraud & Reverse Redlining*, 18 J.L. & Pol. 121, 137-141 (2009). While subprime loans do have a role to play and can be beneficial to people with poor credit ratings, predatory lending is far more prevalent in the subprime market than in the market for traditional mortgages. Fischer, *supra*, at 125. Like the land installment contract that predated the subprime mortgage, this often-predatory secondary market has resulted in higher exposure to fraud and higher rates of default in African American and Hispanic communities. This impact was particularly evident when the housing crisis hit in the mid 2000s.

B. The Collapse of the Housing Market Has Had a Disproportionately Strong Impact on Communities of Color.

The housing crisis – which was a disaster for many Americans across the economic spectrum – was felt particularly strongly across communities of color. Many factors contributed to this problem: People of color more frequently held subprime loans, which were more susceptible to default. African Americans and Hispanics have also concentrated their assets in real estate investments at a higher proportion than whites. Additionally, African American and Hispanic Americans suffered disproportionate income losses during the economic downturn.

1. Black and Latino Neighborhoods Experienced Higher Rates of Delinquency and Foreclosure Because of the Higher Proportion of Subprime Mortgages in These Areas.

In the early 2000s, well before the housing started its decline in 2006-2007, the default rate of subprime mortgages led to foreclosure at 20 times the rate of traditional loans in the Chicago area. Renuart, *supra*, at 478. During the heart of the crisis itself, more than 40% of subprime adjustable rate mortgages were delinquent, while less than 20% of prime adjustable rate mortgages were delinquent. U.S. Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report*, pp. 216-17, fig. 11.2 (2011). As African American and Hispanic communities had a higher proportion of subprime loans, they were more heavily impacted by the rampant foreclosures of the housing crisis.

2. Losses in Home Value Had a Greater Impact on African Americans and Hispanics, Whose Homes Represented a Larger Portion of their Wealth

For most American households, the home is the most important asset in the family's financial portfolio. While the value of non-housing investments also took a major dive during the financial crisis, home values had the most serious drop. Pew Research Ctr., *Twenty-to-One: Wealth Gaps Rise to Record Highs Between Whites, African Americans and Hispanics*, 15 (2011). Thus, when the housing market collapsed, most families' total wealth took a major hit. However, the impact was felt particularly strongly for African American and Hispanic households.

While whites are generally more likely to own their homes than African Americans or Hispanics, for African Americans and Hispanics the home is generally a more important asset. Compared to whites, African Americans and Hispanics tend to own fewer financial assets – like stocks or mutual funds. *Id.* at 24. This means that on average a greater proportion of household wealth comes from the value of the home rather than other sources for African Americans and Hispanics than for whites. *Id.* In 2005, the home accounted for 59% of African American families' total wealth, and accounted for 65% of Hispanic families' wealth. *Id.* At the same time, it only represented 44% of white families' wealth.

African American and Hispanic families' greater concentration of wealth in the home asset contributed substantially to the disproportional harm suffered by communities of color during the financial crisis. While on mean white

households' net worth decreased from 2005 to 2009 by about 5%, from \$284,913 to \$270,985, African American households' net worth decreased more than 22% from \$95,050 to \$73,826 during the same period. *Id.* at 25. Hispanic households fared even worse, with household net worth dropping more than 40%, from \$122,649 to \$73,026. *Id.* In large part because communities of color had wealth concentrated in housing assets, these communities suffered the most during the financial crisis.

While the Great Recession was difficult for all Americans, it hit communities of color the hardest. In addition to the impact of housing downturn on African Americans and Hispanics, communities of color also suffered the worst job losses during the financial crisis and saw their mean incomes fall more than white communities. *See id.* at 12. As a result of the widely disproportionate impact that the Great Recession had on communities of color, the wealth gap between whites and communities of color grew between 2005 and 2009. In 2009, the median white household had a net worth 20 times greater than the median African American household and 18 times greater than the median Hispanic household.⁵ *Id.* at 1. In 2005, the median white households' net worth was 11 times greater than the median African American household and seven times

⁵In 2009, the median net worth of white households was \$113,149 while the median net worth of African American households was \$5,677 and Hispanic households was \$6,325.

greater than the median Hispanic household.⁶ *Id.* This increase in the wealth gap means that the lingering effects of the Great Recession will likely continue to disproportionately impact communities of color.

C. In the Midst of this Economic Devastation, Individuals Saw Another Opportunity to Exploit People of Color in the Housing Market.

Much as the African American housing crisis in postwar America created an opportunity for bad actors to siphon off African American wealth, the subprime crisis of the last decade has provided another opportunity for financial predators to exploit homeowners of color. In addition to the widespread targeting of homebuyers of color for subprime loans, a variety of other schemes have arisen to exploit homeowners beyond the initial point of sale and financing. Bad actors have targeted homeowners of color to refinance their mortgages on unfavorable terms and to scam elderly African American homeowners into obtaining reverse mortgages. *People v. United Construction of Am.*, No. 09 CH 33398 (Ill. Cir. Ct., Jan. 22, 2016). Patrick Bayer et al., *Race, Ethnicity, and High Cost Mortgage Lending*, Nat'l Bureau of Econ. Res. Working Paper No. 20762, at 21 (2014).⁷ Most relevant here has been the proliferation of scams targeting

⁶In 2005, the median net worth of white households was \$134,992 while the median net worth of African American households was \$12,124 and Hispanic households was \$18,359.

⁷Available at <http://www.nber.org/papers/w20762>.

homeowners facing foreclosure by offering assistance in obtaining government relief.

After the housing crisis, Congress passed the Helping Families Save Their Homes Act of 2009. Pub. L. No. 111-22, 123 Stat. 1632 (2009). Under the Act, the U.S. Department of Housing and Urban Development and the Treasury Department implemented the Home Affordable Mortgage Program. HAMP incents lenders to modify mortgages to keep monthly payments below 31 percent of borrowers' monthly income. *Federal Program for Distressed Homeowners Is Extended*, N.Y. Times May 30, 2013.⁸ Unfortunately, in response to this relief, individuals across the country seized an opportunity to prey upon homeowners already in financial crisis. Federal, state, and private plaintiffs have all sought legal action against individuals across the country who have offered to help homeowners acquire mortgage modifications in exchange for exploitative fees. Nat'l Fair Hous. Alliance, *Have I Got a Deal for You!* (2011).⁹ Though many scams affected wide populations and did not intentionally target specific racial and ethnic groups, a large number of scams took aim directly at African American and Latino homeowners. U.S. Gov. Accountability Office, *Financial Crimes:*

⁸ Available at <http://www.nytimes.com/2013/05/31/business/obama-administration-extends-making-home-affordable-program.html>.

⁹ Available at <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=nsbAZOCCLbs%3D&tabid=3917&mid=9161>.

Foreclosure Rescue Schemes Have Become More Complex, and Efforts to Combat Them Continue 20 (2013).¹⁰

III. The Consequences of Racial Housing Discrimination Extend Beyond Individual Victims

Racial housing discrimination in the form of predatory lending creates a “crisis of epidemic proportions for communities of color.” Cecil J. Hunt II, *In the Racial Crosshairs: Reconsidering Racially Targeted Predatory Lending under a New Theory of Economic Hate Crime*, 35 U. Tol. L. Rev. 211-315, 213 (2003). While individuals are specific targets, the practice can have devastating effects that extend to their families and communities. *Id.* at 236. This effect is particularly felt in lower-income African American and Hispanic communities. Dep’t of Hous. & Urban Dev. & U.S. Department of Treasury, *Curb Predatory Home Mortgage Lending: A Joint Report*, 17 (2000).¹¹ Overall, predatory lending presents both economic and noneconomic costs. Kristopher S. Gerardi & Paul S. Willen, *Subprime Mortgages, Foreclosures, and Urban Neighborhoods*, 8 Fed. Reserve Bank of Boston 6, 1-37, 6 (2008). Economically, increased individual foreclosure rates from predatory lending lead to substantial decreases in community

¹⁰Available at <http://www.gao.gov/assets/660/658626.pdf>.

¹¹*See also* Dan Immergluck and Geoff Smith, *The Impact of Single-family Mortgage Foreclosures on Neighborhood Crime*, 21 *Housing Studies* 6, 851-866, 863 (2006); Dan Immergluck and Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 *Housing Pol’y Debate* 1, 57-79 (2006).

property values. Noneconomically, increased abandoned properties and social disruption emerging from increased foreclosure rates increases the prevalence of crime and violence.

A. Racial housing discrimination breeds economic harm of diminished property values.

Discriminatory lending imposes a number of financial burdens on families and communities of color. After foreclosure, credit ratings of homeowners plummet, creating significant hardship in finding a new home or receiving loans for other purchases. Thomas Kingsley et al., *The Impacts of Foreclosures on Families and Communities*, The Urban Inst., 1-50, 10 (2009). Because some employers run credit checks as part of the job application process, for some individuals foreclosure can make finding employment a struggle. *Id.* On a community level, local governments may lose tax revenue from foreclosed homes. On average, each foreclosure costs a city upwards of \$27,000 and an individual neighborhood \$10,000. Immergluck & Smith, *supra*, at 853.

One of the most far-reaching negative financial consequences of predatory lending is the harm to neighboring property values. In 2008, it was estimated that, nationally, 40.6 million homes in neighborhoods with subprime foreclosures would suffer value declines as a result of the foreclosure crisis. Kingsley et al., *supra*, at 17. On average, each home was projected to decrease in value by \$8,667, resulting in a \$352 billion total decline in property values. *Id.*; see Center for Responsible Lending, Updated Projections of Subprime Foreclosures in the

United States and their Impact on Home Values and Communities 1 (2008). Even a decade before the subprime crisis hit, researchers found that in Chicago foreclosure resulted in anywhere between a 0.9 and 1.8% decline in the value of a home within one-eighth of a mile. Immergluck & Smith, *Impact on Property Values*, 17 Housing Pol'y Debate 1, 57-79; see also Gerardi and Willen, *supra*, at 8. Cumulatively, the 3,750 foreclosures that occurred in 1997 and 1998 were estimated to have reduced nearby property values by between \$598 and \$1.39 billion, or on average \$159,000 per home. Immergluck & Smith, *Impact on Property Values*, at 58. Thus, the economic aftermath of racial housing discrimination can be "traumatic" for individual families and their communities. Kingsley et al., *supra*, at 17.

B. Racial housing discrimination breeds noneconomic costs of increased crime and violence

While former Chicago Mayor Richard M. Daley once remarked that "vacant buildings are ugly," the noneconomic harm they cause communities extends beyond aesthetics. Immergluck & Smith, *Impact on Neighborhood Crime*, at 851. Many vacant buildings attract criminal activity that has deleterious effects on surrounding communities. In addition to the burglary of abandoned properties, foreclosed properties also provide a "secure place to plan crimes, fight, do drugs, or engage in other activities that would attract too much attention if done in public view." William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. of Crim. Just., 481-495, 482 (1993). Because no one is tasked with

nor obligated to maintain the premises, no one is likely to enter them or interrupt the conduct inside. Police, moreover, are unlikely to enter the premises: whether officers are legally authorized to enter is often legally unclear, the dangers and uncertainty involved are high. *Id.* The isolation and seclusion reduces the social costs of engaging in this activity. In abandoned homes, “the lack of surveillance and social control exacerbates the lack of self-control among group members while simultaneously promoting group cohesion, an illusion of invulnerability, and rationalization of arguments against risk-taking.” *Id.*

In a study completed by William Spelman, out of 24 unsecured, foreclosed residential buildings, evidence of illegal activity was discovered in 83%. Drug paraphernalia, including foil pipes, used syringes, broken mirrors and glass, and burnt scraps were found. *Id.* at 488. Beyond illegal drug use, foreclosed properties can also harbor illegal sex activities as well as general delinquency. In the Spelman study, evidence of prostitution was found in 12 abandoned properties. *Id.* Seven of the unsecured properties observed in the study, meanwhile, had been used as youth hangouts for engaging in destructive behavior for minors, including drinking, smoking, tagging, and sex. *Id.*

Vacant foreclosed properties may also exacerbate violent crime. A 1% increase in the foreclosure rate is expected to increase the number of violent crimes in an area between 2.33% and 6.68%. Immergluck & Smith, *Impact on Neighborhood Crime, supra*, at 862. In Charlotte, North Carolina, for example, investigators noted that over a five-year period in high-foreclosure

neighborhoods, violent crime consistently rose and remained considerably lower than in low foreclosure neighborhoods. Bess, *supra*, at 3-4.

The violence emerges as a response to the social unrest that results from predatory lending. Because residential stability generally translates to lower crime rates, instability can cause a surge in crime. Charis E. Kubrin & Gregory D. Squires, *The Impact of Capital on Crime: Does Access to Home Mortgage Money Reduce Crime Rates?*, George Washington University, 1-39, 5 (2013). In more stable neighborhoods, neighbors know, interact with and look out for each other. *Id.* In communities with high turnover rates, less social cohesion feeds an increase in crime. *Id.* As the sense of community gives way to fragmentation, "a tidal wave of subsequent foreclosures [can] devastate neighborhood social networks." David S. Kirk and John H. Laub, *Neighborhood Change and Crime in the Modern Metropolis*, 39 *Crime and J.* 1-76, 46 (2010).

This devastation touches a wide range of victims. People who live or work near abandoned property and areas of social turbulence bear the brunt of criminal activity related to foreclosure. They represent convenient targets for burglary and robbery to criminals who frequent the abandoned buildings. William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 *J. of Crim. Just.*, 481-495, 482 (1993). Though these community members may have nothing to do with the foreclosure or lending issues in their community, they nonetheless endure its negative consequences. Ronald E. Wilson & Derek J. Paulsen,

Foreclosures and Crime: A Geographical Perspective, 1 *Geography and Pub. Safety* 3, 1-2 (2008).

Neither is the harm from increased crime in foreclosure-heavy communities short lived. Because it extends beyond immediate perpetrators and immediate victims, in the aggregate it could undo significant progress communities of color have made in the last fifty years. *See Wilson & Paulsen, Foreclosures and Crime, supra*, at 1. Racially discriminatory lending, therefore, has the potential to upend housing and land use patterns, local business, employment opportunities, public use transportation, and law enforcement. *Id.*; *see also* Center for the Study of Social Policy, *Financing Community Change Brief*, 1-17 (2011). If the Illinois Human Rights Act is going to fulfill its purpose of eradicating racial discrimination in the state's housing sector, this Court must properly interpret the statute to cover all financial transactions that imperil the housing security of minority families.

IV. The State Alleges Conduct that Parallels Historical and Modern-Day Racial Discrimination.

According to the Attorney General, the defendants ran a predatory scheme where they offered loan modification services in exchange for an upfront fee of between \$3,000 and \$5,000. *People ex rel. Madigan v. Wildermuth*, 402 Ill. Dec. 650, 653 (2016). The defendants allegedly targeted African American and Latino homeowners by selectively placing advertisements on radio stations that have overwhelmingly African American or Latino audiences. *Id.* The defendants' own

marketing surveys indicate that these racially targeted radio advertisements were the only marketing tools that drew in any customers. Brief of Plaintiff-Appellee at 12, *People v. Wildermuth*, No. 1-14-3592 (June 12, 2015).

The defendants' arguments rely largely on a pair of distinctions tied to Mr. Wildermuth's role as an attorney. See Brief of Defendants-Appellants, *People ex rel. Madigan v. Wildermuth et al.*, No. 120763 at 27-28. Because Mr. Wildermuth and his associates did not participate in a housing transaction as an owner, broker, or lender, the argument goes that he could not be considered a housing discriminator. See *id.* This reasoning requires a formalist disjunction between the point of sale or the point of financing and all other actions. It ignores the varied historical and contemporary permutations of housing discrimination. As the history of Chicago housing discrimination has shown and as HAMP scam victims throughout the country know too well, housing discrimination can occur throughout the life of a housing loan.

The defendants also argue that Mr. Wildermuth's license to practice law removes him from the ambit of the Act because finding licensed attorneys to be covered by the statute would impute an "absurd" intent to the legislature. *Id.* at 33. Leaving aside the constitutional avoidance argument, the history of housing discrimination in this state shows the sound reason of prohibiting housing discrimination by all individuals, including lawyers. As shown above, the systematic discrimination against African American homeowners in postwar Chicago included the participation of a wide variety of professionals, including

lawyers. Throughout this history, lawyers participated in discriminatory schemes in a variety of ways, acting as sellers, brokers, and as legal advisors. Even in the specific realm of HAMP schemes, the allegations against the defendants are not novel. *See, e.g.,* Decision of the Hearing Officer, Mass. Comm. Against Discrimination, MCAD v. Zak, No. 11 BPR 01091 (Apr. 28, 2015).

As the defendants' brief itself suggests, navigating different options for renegotiating a mortgage requires a significant level of expert knowledge. Brief of Defendant-Appellants, *supra*, at 7-8. Unfortunately, if the state's allegations prove true, the defendants used their professional knowledge as a tool to exploit African American and Latino homebuyers. The Court should not now permit them to use their professional statuses as shields to escape the domain of the Act.

CONCLUSION

Amici respectfully ask this Court to affirm the decision of the Illinois Appellate Court that the Illinois Human Rights Act prohibits racial discrimination in offering services related to obtaining a mortgage modification.

Respectfully submitted,

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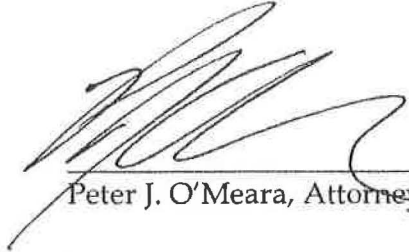
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CERTIFICATE OF COMPLIANCE

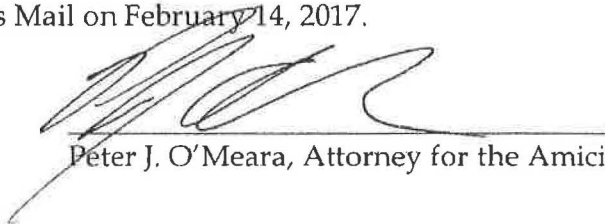
I certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief and appendix, but excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is thirty-nine pages.



Peter J. O'Meara, Attorney for the Amici

CERTIFICATE OF SERVICE

I certify that I caused the attached Amicus Brief of the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. and Other Amici Listed Herein to be served by placing three copies in envelopes with sufficient postage affixed and directed to the persons named below, at the addresses indicated, and deposited those envelopes in the United States Mail on February 14, 2017.



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APPENDIX - DESCRIPTIONS OF THE AMICI

The National Consumer Law (“NCLC”) is a national research and advocacy organization focusing on justice in consumer financial transactions, especially for low-income and elderly consumers. Since its founding as a nonprofit corporation in 1969, NCLC has been a resource center addressing numerous consumer finance issues affecting equal access to fair credit in the marketplace. NCLC publishes a 20-volume Consumer Credit and Sales Legal Practice Series, including Credit Discrimination, Sixth Ed. The organization has served on the Federal Reserve System Consumer-Industry Advisory Committee, committees of the National Conference of Commissioners on Uniform State Laws and acted as the Federal Trade Commission’s designated consumer representative in promulgating important consumer protection regulations. NCLC frequently appears as amicus curiae in consumer law cases before trial and appellate courts throughout the country. NCLC has an interest in seeking strong and effective enforcement of consumer protection laws.

The National Fair Housing Alliance, Inc. (“NFHA”) is a national organization dedicated to ending discrimination in housing. NFHA is a consortium of private, nonprofit, fair-housing organizations, state and local civil rights groups, and individuals. NFHA engages in efforts to ensure equal housing opportunities for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. NFHA and its members have undertaken important fair housing enforcement

initiatives in cities and states across the country; those efforts have contributed significantly to the nation's efforts to eliminate discriminatory housing practices.

The Sargent Shriver National Center on Poverty Law (“Shriver Center”) provides national leadership to promote justice and improve the lives and opportunities of people with low income. The Shriver Center advances laws and policies, through litigation, legislative and policy advocacy, and administrative reform, to achieve economic, racial, and social justice for its clients, the majority of whom are racial minorities. The Shriver Center Housing Justice unit regularly challenges those housing-related policies and practices that discriminate against racial minorities by intent or effect and perpetuate residential racial segregation.

The Chicago Area Fair Housing Alliance (“CAFHA”) is a non-profit consortium of fair housing and advocacy organizations, government agencies, and municipalities committed to the value of fair housing, diversity, and integration. CAFHA works throughout the Chicago region to combat housing discrimination and promote integrated communities of opportunity through education, advocacy, and collaborative action. CAFHA provides fair housing education, training, and technical assistance and convenes coalitions around fair housing policy and advocacy initiatives.

HOPE Fair Housing Center (“HOPE”), established in 1968, is based in Wheaton, Illinois and represents 30 Illinois counties. HOPE works to create greater housing opportunities for all and ensure everyone has the chance to live in the community, home, or apartment of their choice free from discrimination.

HOPE accomplishes this work through education, outreach, complaint intake, investigation, enforcement, training, and advocacy. One of HOPE's goals is the elimination of segregation in housing and the promotion of residential integration. HOPE has launched multiple educational campaigns to address housing discrimination designed to teach both consumers and housing professionals about equality of treatment of neighborhoods, the negative consequences that flow from racial steering, and the benefits of residential diversity.

John Marshall Law School's Fair Housing Legal Support Center & Clinic is dedicated to educating the public about fair housing law and providing legal assistance to private or public organizations that seek to eliminate discriminatory housing practices. The Center, established in 1992 to educate and assist advocates of fair housing, continues to explore issues that are on the cutting-edge of civil rights. The Clinic serves clients in the Chicago metropolitan area who have been illegally denied housing because of discrimination under federal, state, and local fair housing laws and ordinances. The combined education and training initiatives of the Center complement the enforcement initiatives of the Clinic. It is the philosophy of the Center & Clinic that this nation's housing problems can only be met by a concerted effort to combine education with strong enforcement.

Open Communities' mission is to educate, advocate and organize to promote just and inclusive communities in north suburban Chicago. It is a

leading voice for housing, economic and social justice in north suburban Chicago, working to promote inclusive communities that are welcoming to all. It works with current and prospective residents and local groups to promote economically and culturally diverse communities in north suburban Chicago. Open Communities provides fair and affordable housing counseling services, community education, advocacy, and organizing for welcoming communities. Open Communities was founded more than four decades ago on a powerful vision: to establish an inclusive society on the North Shore, free of discrimination, and with equal access to fair housing and other opportunities for all. The success Open Communities has attained as a leading voice on fair housing has largely been the result of the strong support it continues to receive from its members, donors, and volunteers. Its supporters share a desire to make a positive difference within communities in Chicago's northern suburbs.

The South Suburban Housing Center ("SSHC") is the nonprofit community organization located in Homewood, Illinois, dedicated to eliminating all forms of discrimination in the housing market through the operation of fair housing enforcement programs and comprehensive HUD-approved housing counseling services, including mortgage delinquency and foreclosure counseling, to foster stable, racially and economically, diverse communities. SSHC has primarily served the south metropolitan Chicago area and some underserved areas of central Illinois area since 1975. SSHC's mission is the elimination of

segregation in housing and the promotion of residential integration through expanding the housing and mortgage lending choices of all persons.