No. 25-2352

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NATIONAL FAIR HOUSING ALLIANCE, *et al.*,

Plaintiffs-Appellants,

v.

BANK OF AMERICA NATIONAL ASSOCIATION, *et al.*,

Defendants-Appellees.

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

BRIEF OF *AMICI CURIAE* METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION, NAACP LEGAL DEFENSE FUND, NATIONAL HOUSING LAW PROJECT, AND POVERTY AND RACE RESEARCH ACTION COUNCIL IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), *amici curiae* state that they are non-profit organizations with no parent companies and no publicly traded stock.

INTEREST OF *AMICI CURIAE*

The **Metropolitan Washington Employment Lawyers Association (MWELA)**, founded in 1991, is a professional association and is the local chapter of the National Employment Lawyers Association, a national organization of attorneys who specialize in employment law. MWELA conducts continuing legal education programs for its more than 400 members, including an annual day-long conference which usually features one or more judges as speakers. MWELA also participates as *amicus curiae* in important cases in the District of Columbia, Maryland, and Virginia, the three jurisdictions in which its members primarily practice.

MWELA's members and their clients have an important interest in the proper interpretation of the burden-shifting framework with respect to disparate impact claims, as those claims are also brought in the employment context. Employment cases can feature both managerial action and managerial inaction, including subjective decision-making, and liability should not turn on which category applies to an adverse employment action.

The **NAACP Legal Defense & Educational Fund, Inc. (LDF)** is the nation's first and foremost civil rights legal organization. For more than eight decades, LDF has used litigation, advocacy, public education and outreach to strive to secure equal justice under the law for Black people and all people in the United States.

Throughout its history, LDF has challenged public and private policies and practices that deny Black people opportunities and choices in housing and entrench residential segregation. *See, e.g.*, *McGhee v. Sipes*, 334 U.S. 1 (1948) (companion case to *Shelley v. Kraemer*, 334 U.S. 1 (1948)) (racially restrictive covenants); *Pickett v. City of Cleveland*, 140 F.4th 300 (6th Cir. 2025) (discriminatory municipal liens); *Cent. Ala. Fair Hous. Ctr. v. Lowder Realty Co.*, 236 F.3d 629 (11th Cir. 2000) (racial steering); *Comer v. Cisneros*, 37 F.3d 775 (2d Cir. 1994) (racial discrimination in public housing and assistance programs); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287 (7th Cir. 1992) (redlining); *Kennedy Park Homes Ass'n, Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970) (exclusionary zoning); *see also* NAACP Legal Defense and Educ. Fund, Inc. et al., *The Future of Fair Housing: Report on the National Commission of Fair Housing and Equal Opportunity* (Dec. 2008).

LDF has also long played an instrumental role in advancing the correct interpretation of the doctrine of disparate impact discrimination, including by representing the plaintiffs in *Griggs v. Duke Power Company*, the seminal Title VII disparate impact case. 401 U.S. 424 (1971); *see also Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015) (*amicus*); *Mandala v. NTT Data, Inc.*, 88 F.4th 353 (2d Cir. 2023) (raising disparate impact claims under Title VII and state employment statutes); *Am. Ins. Ass'n v. U.S. Dep't of Hous. &*

Urb. Dev., No. 14-5321, 2015 WL 14038463 (D.C. Cir. Sept. 23, 2015) (*amicus*); Settlement Agreement, *The Fortune Soc'y, Inc. v. Macy's, Inc.* (Sept. 4, 2020) (resolving disparate impact claims under Title VII and state antidiscrimination statutes); Settlement Agreement, *The Fortune Soc'y Inc. v. Target, Corp.* (S.D.N.Y. Dec. 1, 2019) (resolving disparate impact claims under Title VII and state antidiscrimination statutes); *Lewis v. City of Chicago*, 560 U.S. 205 (2010).

The **National Housing Law Project (NHLP)** is a nonprofit organization committed to advancing housing justice for poor people and communities. For more than 40 years, NHLP has coordinated the Housing Justice Network, which includes more than 2,000 legal services attorneys, advocates, and organizers who work to strengthen and enforce tenants' rights and increase housing opportunities for underserved communities throughout the country. Housing Justice Network members routinely assist people who have experienced housing discrimination in vindicating their rights and ending discriminatory practices harmful to themselves and their communities.

The **Poverty and Race Research Action Council (PRRAC)** is a civil rights law and policy organization based in Washington, D.C. Its mission is to promote research-based advocacy strategies to address structural inequality and change the systems that disadvantage low-income people of color. PRRAC has worked extensively to preserve the vitality of the disparate impact framework under the Fair

Housing Act as a tool for rooting out discrimination that prevents communities of color from attaining equal housing opportunity.

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person beyond *amici curiae* or their counsel contributed money intended to fund preparing and submitting this brief. All parties have consented to the filing of this amicus brief.

STATEMENT OF THE ISSUE

This amicus brief focuses on whether the District Court applied the proper burden-shifting framework with respect to disparate impact claims brought under the Fair Housing Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

A coalition of 20 fair housing advocacy groups and three individual homeowners filed suit against Bank of America National Alliance and its servicer, Safeguard Properties Management, for violating the Fair Housing Act (FHA) in their discriminatory maintenance and marketing of Real Estate Owned ("REO") properties. The District Court for the District of Maryland granted Defendants-Appellees summary judgment on Plaintiffs-Appellants' FHA claims on several independent grounds.

Amici write to address one portion of the District Court's analysis dismissing Plaintiffs-Appellants' FHA claims brought under the disparate impact theory of liability. Specifically, the District Court announced, as a matter of law, that "'the lack of a policy' . . . is not actionable" under disparate impact theory. ECF380:31. That statement, however, incorrectly characterizes disparate impact blackletter law in this Circuit and is problematic as a matter of public policy. Without correction, this misstatement of law, if cited by other courts, indirectly permits harmful discrimination so long as it is not the result of an affirmative policy. Accordingly, *amici* ask the Court to reverse the District Court's decision below, and to expressly clarify that a failure to engage in a practice or enact a policy can be actionable as a matter of disparate impact law under the FHA, among other civil rights laws.

ARGUMENT

I. The District Court's Statement Is Wrong as a Matter of Law

In articulating the burden-shifting framework it applied to Plaintiffs-Appellants' disparate impact claims, the District Court erred in two respects.

First, courts find actionable under disparate impact a "lack" or "failure" to engage in certain measures. These failures can include a lack of supervision, training, intervention, or policy, although courts vary in how they semantically describe these specific policies or practices. *Compare Chalmers v. City of New York*,

No. 20 Civ. 3389, 2022 WL 4330119, at *13-14 (S.D.N.Y. Sept. 19, 2022) (analyzing the defendant's purported "decision not to monitor differences in the pay of similar employees" for racial disparities); *with Bomar v. Bd. of Educ. of Harford Cnty.*, No. 21-CV-00870, 2024 WL 4108530, at *21 (D. Md. Sept. 6, 2024) (concluding that plaintiffs "challenge[d a]specific practice[]" in identifying a "failure to limit" the review of candidates to specific factors); *Richardson v. City of New York*, No. 17-CV-9447, 2018 WL 4682224, at *10 (S.D.N.Y. Sept. 28, 2018) ("Failure to adopt mechanisms that would limit the potential influence of racial bias in employment decisions is precisely the sort of 'employment practice or policy,' . . . that courts have found sufficient to form the basis for a disparate-impact claim under federal antidiscrimination law[.]" (internal citations omitted)).[1]

[1] In holding that "disparate-impact claims are cognizable under the Fair Housing Act," the Supreme Court based its reasoning in part on its prior "interpretation of similar language in Title VII," as well as the statutes' comparable purposes and temporal proximity. *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 534-35, 539, 545-46 (2015); *see also id.* at 533 (recognizing that "[t]he cases interpreting Title VII . . . provide essential background and instruction" in evaluating the viability of disparate impact claims under the FHA). Consistent with that analysis, courts in the Fourth Circuit find Title VII jurisprudence instructive when interpreting FHA claims. *E.g.*, *Hall v. Greystar Mgmt. Servs., L.P.*, 637 F. App'x 93, 98 (4th Cir. 2016) ("Because Title VII and the FHA employ similar language and 'are part of a coordinated scheme of federal civil rights laws enacted to end discrimination,' . . . much of our FHA jurisprudence is drawn from cases interpreting Title VII." (internal citation omitted)); *Rhodes v. Parklane Apts., LLC*, No. 19-CV-01463, 2019 WL 7293398, at *3 (D. Md. Dec. 27, 2019) (noting that "courts often draw from" "the Title VII context" "when interpreting the FHA"); *Nat'l Fair Hous. All. v. Bank of Am., N.A.*, 401 F. Supp. 3d

Take, for example, this Court's decision in *Brown v. Nucor Corp.*, 785 F.3d 895 (4th Cir. 2015), which framed the specific policy and practice of inaction at issue in an affirmative light. This Title VII case recognized that the specific employment practice or policy that a plaintiff can challenge under disparate impact theory "can comprise affirmative acts or *inaction*." *Id.* at 916 (emphasis added). This Court went on to conclude that the plaintiffs adequately alleged a "policy of managerial inaction" contributing to a racially discriminatory effect on promotion decisions. *Id.* at 917. Specifically, the workers "presented sufficient evidence of a practice of *inaction* by the general manager who ignored the evidence of, and complaints regarding, discrimination in promotions at the plant." *Id.* (emphasis in original).

The Supreme Court and many lower courts have reached the same conclusion, albeit framing the relevant conduct in the negative. Also in the context of Title VII, the Supreme Court noted in *Watson v. Fort Worth Bank & Trust* that "unchecked discretion" or an "undisciplined system of subjective decisionmaking" can be analyzed under the disparate impact approach. 487 U.S. 977, 990-91 (1988); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 355 (2011) ("[A]n employer's

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619, 632 n.10 (D. Md. 2019) ("While Title VII cases may not be binding here, they are instructive."); *see also* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460-01, 11466 (Mar. 18, 2013) ("[T]he federal courts have drawn the analogy between Title VII and the Fair Housing Act in interpreting the Act to prohibit actions that have an unjustified discriminatory effect, regardless of intent.").

undisciplined system of subjective decisionmaking [can have] precisely the same effects as a system pervaded by impermissible intentional discrimination." (quoting *Watson*, 487 U.S. at 990-91); *Gschwind v. Heiden*, 692 F.3d 844, 848 (7th Cir. 2012) (same); *Ndugga v. Bloomberg L.P.*, No. 20-CV-7464, 2023 WL 4744184, at *8 (S.D.N.Y. July 25, 2023) (same); *Bird v. Garland*, No. CV 19-1581, 2022 WL 22910884, at *6 (D.D.C. Aug. 20, 2022) (same); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 508 (N.D. Cal. 2012) (same).[2]

As the District Court acknowledged, ECF380:31-32, it previously held that identification of "a policy of undue delegation" or a "failure to supervise" would both be cognizable. *Nat'l Fair Hous. All. v. Bank of Am., N.A.*, No. SAG-18-1919, 2023 WL 2633636, at *13 (D. Md. Mar. 24, 2023). Other courts have reached similar conclusions in parallel litigation alleging discrimination in the maintenance of REO properties. *See, e.g.*, *Nat'l Fair Hous. All. v. Deutsche Bank Nat'l Trust*, No. 18 CV

[2] For its proposition that the absence of a policy is not a specific housing practice that can be challenged under disparate impact theory, the District Court incorrectly applied two cases. ECF380:30. The first, *Inclusive Communities*, does not weigh in on the point for which it is cited. *Id.* (citing 576 U.S. at 533, 543 (discussing the limits of disparate impact claims but not requiring an affirmative policy)). The second, a California district court decision, is at odds with more recent Ninth Circuit authority. *Compare* ECF380:30 (citing *City of Los Angeles v. Wells Fargo & Co.*, No. 13-cv-09007, 2015 WL 4398858, at *8 (C.D. Cal. July 17, 2015)) (demanding an "actual policy" for a disparate impact claim), *with Owen v. City of Hemet*, No. 21-55240, 2022 WL 16945887, at *1 (9th Cir. Nov. 15, 2022) (rejecting disparate impact claim for not alleging causation "between the defendants' inaction" and the plaintiff's disability status, implying that inaction is actionable when there is robust causality between an inaction and a disparate impact on a protected class).

839, 2019 WL 5963633, at *16 (N.D. Ill. Nov. 13, 2019) (where defendants "relinquished and outsourced all responsibility for maintaining the REO properties to servicers," finding this "abdication" sufficiently constitutes a "policy" to form the basis of disparate impact liability); *Nat'l Fair Hous. All. v. Fannie Mae*, 294 F. Supp. 3d 940, 948 (N.D. Cal. 2018) (finding actionable a "delegation of discretion or failure to supervise"). These decisions are not the only ones to deem the failure to have a policy actionable under the FHA. *See, e.g.*, *Est. of Fisher v. City of Annapolis*, No. CV CCB-21-1074, 2024 WL 732004, at *3, *7 (D. Md. Feb. 22, 2024) (labeling the City's "practice" of "not enforc[ing] its licensing and inspection requirements . . . as the 'non-enforcement policy,'" and noting it "may constitute a continuing violation of the FHA"); *White v. City of Annapolis*, 439 F. Supp. 3d 522, 537 (D. Md. 2020) (determining that "the plaintiffs identify a specific policy: the City's policy of not enforcing the city code requiring inspections and licensing on [municipal housing authority's] properties, and [the municipal housing authority's] policy of not following the City's inspection and licensing requirements"); *Nat'l Fair Housing All., Inc. v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46, 50, 60-61 (D.D.C. 2002) (denying motion to dismiss FHA disparate impact claims where

plaintiffs challenged, *inter alia*, defendant "not hav[ing] a policy of selling homeowners insurance policies in the District of Columbia").[3]

Second, the District Court incorrectly suggested that only *policies* can satisfy step one of the disparate impact framework. Not so. While unlawful policies, or lack thereof, are commonly targeted by disparate impact claims, severe disparities often arise from discretionary or ad hoc practices, customs, and decision-making frameworks as well. Indeed, the FHA and Title VII target "*practice*[*s*]" with a discriminatory effect. *Inclusive Communities*, 576 U.S. at 539 ("The FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory *practices* within a sector of our Nation's economy. . . . Suits targeting [unlawful] *practices* reside at the heartland of disparate-impact liability." (emphases added)); 42 U.S.C. § 2000e-2(k)(1)(A)-(B) (outlining challenges to unlawful "employment *practice*[*s*]" under disparate impact liability (emphasis added)). Courts understand the first step of the disparate impact framework to cover both policies *and* practices. *See, e.g.*, *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415, 426 (4th Cir. 2018) (noting that plaintiff must "identify a specific *policy or practice* that caused the

[3] As a corollary to the District Court's conclusion that the lack of a policy is not viable at step one of the disparate impact framework, it also reasoned that a new policy could not be deemed a less discriminatory alternative under step three of the analysis. ECF380:49. But just as the absence of a policy or practice is cognizable at step one, it rationally follows that the addition of a policy or practice, as a less discriminatory alternative to that absence, *is* permissible at step three.

discrepancy" in statistics (emphasis added)); *Iguade v. First Home Mortg. Corp.*, No. 23-CV-01067, 2024 WL 1283327, at *4 (D. Md. Mar. 26, 2024) (to establish a prima facie case of disparate impact under the FHA, "the plaintiff must (1) identify a specific *policy or practice* employed by the defendant and (2) plausibly allege that it caused a significant disparate effect on a protected group" (emphasis added)); *Siguel v. King Farm Citizens Assembly, Inc.*, No. CV GLS 22-672, 2023 WL 6643348, at *19 (D. Md. Oct. 12, 2023) (same); *see also* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. at 11462 ("[A]ll federal courts of appeals to have addressed the question agree that liability under the Act may be established based on a showing that a neutral *policy or practice* has a discriminatory effect even if such a policy or practice was not adopted for a discriminatory purpose." (emphasis added)).[4]

Just as the absence of a policy can result in a discriminatory impact, so too can the absence of an intentional practice. *See, e.g.*, *Medeiros v. Wal-Mart, Inc.*, 434

[4] Other courts of appeals consistently consider facially-neutral policies *and* practices as bases for disparate impact challenges under the FHA. *See, e.g.*, *Oxford House, Inc. v. Twp. of N. Bergen*, 158 F.4th 486, 494 (3d Cir. 2025); *Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124, 148 (2d Cir. 2025), *cert. denied sub nom.*, No. 25-229, 2026 WL 79895 (U.S. Jan. 12, 2026); *Sw. Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.*, 17 F.4th 950, 961 (9th Cir. 2021); *Crain v. City of Selma*, 952 F.3d 634, 641 n.6 (5th Cir. 2020); *Boykin v. Fenty*, 650 F. App'x 42, 44 (D.C. Cir. 2016); *Frederick v. Wells Fargo Home Mortg.*, 649 F. App'x 29, 30 (2d Cir. 2016); *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613 (6th Cir. 2012); *Gallagher v. Magner*, 619 F.3d 823, 833-34 (8th Cir. 2010); *Keys Youth Servs., Inc. v. City of Olathe*, 248 F.3d 1267, 1272-73 (10th Cir. 2001).

F. Supp. 3d 395, 417 (W.D. Va. 2020) (accepting that plaintiffs' disparate impact claims could be based on "managers [] not [being] required to use job-related criteria . . . in setting, adjusting, or approving compensation for individual employees"). The District Court's focus on policies alone is concerning, as a "policy" carries the connotation of being formalized. It is easier to conceive of a failure to take certain steps as a "practice." Under Title VII and the FHA, disparate impact claims are not limited to just policies but also encompass practices—including a practice of omission or inaction.

II. The District Court's Proposition Risks Harmful Policy Implications

The consequences of leaving the District Court's misstatement uncorrected are plain: it could lead to unchecked discrimination occurring outside the bounds of a formalized, affirmative policy. This could permit discrimination via subjective performance evaluations; unguided, "culture fit" promotion decisions; leasing and sale of property through word of mouth with no guardrails; informal criminal-record screens applied case-by-case; or, as here, property management decisions that informally deprioritize maintenance in Black and Latino neighborhoods. Defendants could cite the District Court's language to foreclose scrutiny whenever they ignore issues that produce a discriminatory effect.

Such an incentive structure rewards indifference, chills enforcement, and undermines the remedial aims of the FHA and analogous civil rights laws, which all

memorialize disparate impact theory. *Inclusive Communities*, 576 U.S. at 536-38 (concluding that "Congress accepted and ratified the unanimous holdings of the Courts of Appeals finding disparate-impact liability" under the FHA in its 1988 amendments); Civil Rights Act of 1991, Pub. L. No. 102-166, § 105, 105 Stat. 1071 (codifying disparate impact theory at 42 U.S.C. § 2000e-2(k)); *see also* 24 C.F.R. § 100.500.[5] Thus, treating the absence of an affirmative policy or practice as a safe harbor from liability would discourage housing providers and employers from implementing systems and policies that might prevent discrimination or bias from creeping into decision-making.

Correcting the District Court's language is particularly important because, in the modern era, discrimination often arises from insidious decisions *not* to install guardrails against discrimination—for example, choices to not provide training or monitoring. *See, e.g.*, *Richardson v. City of New York*, No. 17-CV-9447, 2019 WL 1512646, at *5 (S.D.N.Y. April 8, 2019) (plaintiffs alleged plausible disparate impact claim based on defendant's "decision to allow '[a] small group of almost exclusively white managers' to make compensation decisions . . . coupled with

[5] Recently, the U.S. Department of Housing and Urban Development (HUD) has proposed a rescission of this regulation. HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 91 Fed. Reg. 1475 (proposed Jan. 14, 2026) (to be codified at 24 C.F.R. pt. 100). That proposal, however, heightens the importance of correct judicial interpretations of the FHA, as the agency states "[i]t is appropriate for *courts* . . . to make determinations related to the interpretation of disparate impact liability under the Fair Housing Act." *Id.* at 1476 (emphasis added).

[defendant's] failure to monitor these decisions for bias" (internal citations omitted)); *Chalmers*, 2022 WL 4330119, at *13-14 (finding to be an actionable practice under disparate impact theory the defendant's "failure to monitor the pay of similar employees in different agencies to ensure occupational segregation does not adversely impact members of a protected group"); Complaint ¶ 73, *United States v. The Mortgage Firm, Inc.*, No. 25-cv-60038 (S.D. Fla. Jan. 7, 2025), Dkt. No. 1 (challenging defendant's lack of "adequate internal fair lending policies and procedures . . . [that] failed to ensure that [defendant] provided equal access to credit to majority- and high-Black and Hispanic areas").

In other contexts, courts recognize these failures as affirmative, conscious civil rights violations under the doctrine of deliberate indifference. *See, e.g.*, *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) ("Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983."); *Simmons v. Corizon Health, Inc.*, 136 F. Supp. 3d 719, 723 (M.D.N.C. 2015) ("Deliberate indifference only exists where a . . . policy, or lack of a policy, 'make[s] the specific violation [alleged] almost bound to happen, sooner or later[.]'" (quoting *Carter v. Morris*, 164 F.3d 215, 218 (4th Cir. 1999)); *Hisp. Nat'l L. Enf't Ass'n NCR v. Prince George's Cnty.*, 535 F. Supp. 3d 393, 420 (D. Md. 2021) ("Deliberate indifference can consist of a

'policy of inaction' that is the 'functional equivalent' of a decision to violate the Constitution." (internal citation omitted)). And in the disparate impact context, courts, including this one, recognize that the failure to install guardrails can give rise to a cognizable policy or practice of inaction in discrimination cases. *See, e.g.*, *Brown*, 785 F.3d at 917; *Duling v. Gristede's Operating Corp.*, 267 F.R.D. 86, 97 (S.D.N.Y. 2010) (determining that plaintiffs established prima facie disparate impact case based on, among other evidence, "lack of hiring and promotion standards having the purpose or effect of protecting against intentional and unintentional sex discrimination").

Limiting actionable disparate impact claims to cases involving only affirmative policies and practices would permit housing providers and employers to allow discrimination to fester by avoiding policies, practices, or customs that could otherwise protect vulnerable populations from discrimination. *See, e.g.*, *Ellis*, 285 F.R.D. at 531 (disparate impact commonality analysis satisfied where defendant's promotion "system includes *inter alia*, a tap-on-the-shoulder appointment process (without an application or interview) . . . [and] reliance on unwritten and informal evaluation of candidates by senior management"); *cf. Hnot v. Willis Group Holdings Ltd.*, 228 F.R.D. 476, 482 (S.D.N.Y. 2005) (recognizing the certification of a class of women employees where plaintiffs alleged "a common policy of vesting regional and local officers with unfettered discretion in making promotion and compensation

decisions," which resulted "in discrimination against women in high level positions"). This Court should therefore clarify that a failure to take action or a lack of a policy, no less than affirmative acts and policies, can support a disparate impact claim.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court reverse the District Court's decision and clarify that the lack of a policy or practice can be actionable under disparate impact theory.

January 28, 2026

Respectfully submitted,

/s/ Brian Corman

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CERTIFICATE OF COMPLIANCE WITH RULE 32(g)

I hereby certify that the foregoing response complies with Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because it contains 3,886 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced font in Microsoft Word using 14-point Times New Roman.

Date: January 28, 2026

Respectfully submitted,

/s/ Brian Corman

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

I certify that all counsel in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: January 28, 2026

Respectfully submitted,

/s/ Brian Corman

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 25-2352 as

☐ Retained ☐ Court-appointed(CJA) ☐ CJA associate ☐ Court-assigned(non-CJA) ☐ Federal Defender

☑ Pro Bono ☐ Government

COUNSEL FOR: Metropolitan Washington Employment Lawyers Association, NAACP Legal Defense Fund, National Housing Law Project, Poverty and Race Research Action Council as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

Dan Busgang
(signature)

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CERTIFICATE OF SERVICE *(required for parties served outside CM/ECF)*: I certify that this document was served on _____ by ☐ personal delivery; ☐ mail; ☐ third-party commercial carrier; or ☐ email (with written consent) on the following persons at the addresses or email addresses shown:

_____ Signature

_____ Date