



Sixth Circuit Considering Whether Placing a Water Lien on a Property Could Violate the Fair Housing Act

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Authors:

[Philip K. Hartmann](#)

[Jesse J. Shamp](#)

[Anthony R. Severyn](#)

In 1968, the Federal Fair Housing Act (FHA) was enacted to protect individuals from discrimination based on certain protected characteristics when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. However, a recent class action lawsuit—which is currently on appeal before the federal Sixth Circuit—seeks to stretch one provision of the FHA further than any other case before it, with significant consequences to municipalities.

Under 42 U.S.C. § 3604(a), which codified Section 804 of the FHA, it is unlawful to “make [housing] unavailable” to individuals based on those protected characteristics. Actions such as redlining, discriminatory pricing, racial steering, and discriminatory appraisals have all been held to violate § 3604(a).

But in 2019, a group of individuals filed a class action against the City of Cleveland, Ohio, under § 3604(a). See *Picket et al. v. City of Cleveland*, Case No. 19-cv-2911 (N.D. Ohio). Their claim? That Cleveland makes housing unavailable when it certifies a tax lien against a property when the owner or tenant has let their water bill become seriously delinquent. (State law allows cities to certify liens in that circumstance, and the plaintiffs do not challenge that authorization.)

In the plaintiffs’ view, even if Cleveland does not intend to discriminate against minority residents when it certifies a lien in these circumstances, that action nevertheless disparately affects minority residents. And because the holder of a property lien could collect that debt in a foreclosure action, they argue that certifying such a lien makes housing unavailable under § 3604(a).

Cleveland moved for summary judgment on multiple grounds, including that initiating this lien process does not make housing unavailable as a matter of law. But last fall, the trial court disagreed, citing *Michigan Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 344

(6th Cir. 1994), for the proposition that certain actions, though “removed from the central event of purchasing or leasing a dwelling,” can “nonetheless *have some effect* on a person’s ability to acquire housing,” and, thus, make it “unavailable.” Based on that language, the trial court concluded that Cleveland’s lien practice falls within the scope of § 3604(a) because “attaching liens to indebted properties ***could have an effect*** on a person’s ability to maintain their housing” if a creditor forces a foreclosure.

Cleveland filed an interlocutory appeal over this question (and a related class certification question). See *Picket et al. v. City of Cleveland*, Case No. 24-3395 (6th Cir.). And in early August, multiple utilities advocacy groups filed amicus curiae briefs supporting the position that a lien against a property does not make it unavailable.

Members of the firm’s [Government Service Practice Group](#) were retained by amicus curiae the Ohio Municipal League (OML) to file a brief arguing, in part, that the trial court’s opinion could be applied to more situations than just water delinquencies. These situations could include lawful liens stemming from the costs associated with garbage and waste services, nuisance abatements, sidewalk construction and improvements, and sewer access. The OML argued that if property liens really do make housing unavailable, then municipalities risk violating the FHA any time they certify a lien in any of these circumstances. That outcome would have significant negative effects on municipalities that are not warranted by the text of the FHA.

We will continue to watch this appeal and provide an update when the Sixth Circuit issues its ruling in the coming months. Please contact the authors or any attorney with the firm’s [Government Service Practice Group](#) if you have any questions.

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