

No. 07-1101

---

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

---

**CHICAGO LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER THE LAW, INC.**

Plaintiff-Appellant,

v.

**CRAIGSLIST, INC.,**

Defendant – Appellee.

---

Appeal from the United States District Court  
For the Northern District of Illinois, Eastern Division, No. 06 C 657  
The Honorable Amy J. St. Eve, District Judge, Presiding

---

**BRIEF OF AMICI CURIAE  
NATIONAL FAIR HOUSING ALLIANCE AND  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC.  
IN SUPPORT OF PLAINTIFF-APPELLANT IN SUPPORT OF REVERSAL**

---

John P. Relman\*  
D. Scott Chang  
RELMAN & DANE PLLC  
1225 Nineteenth Street, N.W., Suite 600  
Washington D.C. 20036  
(202) 728-1888  
(202) 728-0848 F  
[schang@relmanlaw.com](mailto:schang@relmanlaw.com)

Joseph P. Rich  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
1401 New York Avenue, N.W.  
Suite 400  
Washington D.C. 20005  
(202) 662-8600  
(202) 783-0857  
[jrich@lawyerscommittee.org](mailto:jrich@lawyerscommittee.org)

\* Lead Counsel; Application for admission pending

Counsel for the National Fair Housing Alliance and  
The Lawyers' Committee for Civil Rights Under Law

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 07-1101

Short Caption: Chicago Lawyers' Committee for Civil Rights Under the Law v. Craigslist, Inc.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

National Fair Housing Alliance  
Lawyers Committee for Civil Rights Under the Law

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Relman & Dane PLLC  
Lawyers Committee for Civil Rights Under the Law

- (3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: \_\_\_\_\_ Date: October 16, 2007

Attorney's Printed Name: John P. Relman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes \_\_\_\_\_ No \_\_\_\_\_

Address: 1225 Nineteenth St., N.W., Suite 600  
Washington DC 20036

Phone Number: (202) 728-1888 Fax Number: (202) 728-0848

E-Mail Address: jrelman@relmanlaw.com

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
STATEMENT OF AMICI CURIAE.....	1
INTRODUCTION.....	2
SUMMARY OF ARGUMENT .....	5
ARGUMENT .....	6
I.    The Statutory Language .....	6
II.   An Expansive Reading of Section 3604(c) is Consistent with the Goals of The FHA .....	7
III.  Courts Have Consistently Applied Section 3604(c) to Impose Liability on Those Who Make, Print or Publish Discriminatory Notices, Statements or Advertisements .....	9
IV.  Immunizing Websites From Liability Would Have a Severe Impact on the Enforcement of the Fair Housing Act .....	12
V.   The Fair Housing Act Can and Must be Harmonized with the Communications Decency Act Because Congress Did Not Impliedly Repeal § 3604(c).....	13
CONCLUSION.....	16

**TABLE OF AUTHORITIES**

**CASES**

*Allahar v. Zahora*, 59 F.3d 693 (7th Cir. 1995)..... 4

*Branch v. Smith*, 538 U.S. 254 (2003)..... 14

*Carafano v. Metrosplash.com. Inc.*, 339 F.3d 1119 (9th Cir. 2003)..... 14

*City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995)..... 6

*Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003)..... 14

*Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976)..... 6

*Fair Hous. Cong. v. Weber*, 993 F. Supp. 1286 (1997) (C.D. Cal. 1997)..... 11

*Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999) ..... 4

*Jancik v. Dep’t of Hous. & Urban Dev.*, 44 F.3d 353 (7th Cir. 1995) ..... 9, 11

*Louisiana Acorn Fair Hous. v. Leblanc*, 211 F.3d 298 (5th Cir. 2000)..... 4

*Mayers v. Ridley*, 465 F.2d 630 (D.C, Cir. 1972) ..... 3, 11

*Posadas v. Nat’l City Bank*, 296 U.S. 497 (1936) ..... 14

*Ragin v. New York Times Co.*, 923 F.2d 995 (2d Cir. 1991) ..... 10, 11

*Spann v. Colonial Vill.*, 899 F.2d 24 (D.C. Cir. 1990)..... 9

*Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205 (1973) ..... 1, 5, 6

*United States v. Hunter*, 459 F.2d 205 (4th Cir. 1972) ..... 2, 9, 10, 11

*United States v. Plaza Mobile Estates*, 273 F. Supp. 2d 1084 (C.D. Cal. 2003) ..... 11

*United States v. Space Hunters, Inc.*, 429 F.3d 416 (2d Cir. 2005) ..... 11

*Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 447 F. Supp.  
838 (E.D. N.Y. 1978) ..... 11

## STATUTES

42 U.S.C. § 3601 .....	2
42 U.S.C. § 3603(b) .....	10
42 U.S.C. § 3604(c).....	2, 5, 7, 15
42 U.S.C. §§ 3604-3606 & 3617.....	6
47 U.S.C. § 230 .....	14
47 U.S.C. § 230(c).....	13, 14

## OTHER LEGISLATIVE MATERIAL

114 Cong. Rec. 2703 (Feb. 8, 1968) (statement of Sen. Javits).....	7
114 Cong. Rec. 2276 (Feb. 6, 1968) (statement of Sen. Mondale).....	7
114 Cong. Rec. 3421 (Feb. 20, 1968) (statement of Sen. Mondale) .....	7
114 Cong. Rec. 3422 (Feb. 20, 1968) (statement of Sen. Mondale).....	8
114 Cong. Rec. 9959 (Apr. 10, 1968) (statement of Congressman Cellar).....	8
<i>The Civil Rights Act of 1966, and Related Bills: Hearing on S.3296 Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary, 89th Cong. 68 (1966)</i> .....	8

## MISCELLANEOUS

Maria Aspan, <i>Great for Craigslist but Not for Newspapers</i> , N.Y. TIMES, Nov. 28, 2005, at C5.....	12
Paul C. Bishop et al., <i>2006 National Association of Realtors Profile of Home Buyers and Sellers 5 (2006)</i> .....	12
Jean E. Dubofsky, <i>Fair Housing: A Legislative History and A Perspective</i> , 8 WASHBURN L.J. 149, 158 (1969).....	8

Deborah Fallows, <i>Pew Internet Project Data Memo Re: Looking for Information About a Place to Live</i> (Dec. 12, 2006), available at <a href="http://www.pewinternet.org/pdfs/PIP_Place_to_Live_2006.pdf">http://www.pewinternet.org/pdfs/PIP_Place_to_Live_2006.pdf</a> .....	12
Brad Fuqua, <i>The Older Generation Is More Internet Savvy Than Ever</i> , UNITS, July 2004.....	12
<i>Report of the National Advisory Commission on Civil Disorders 1</i> (1968).....	8
Robert G. Schwemm, <i>Housing Discrimination: Law and Litigation</i> § 2:1(2007).....	3
M. Turner, <i>Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits</i> , 3 HOUSING POLICY DEBATE 185 (1991).....	3
Libby Sander, <i>Fair Housing Law and Technology: What to Do When Old Meets New</i> , Chicago Lawyer, August 2006.....	4, 12

## STATEMENT OF AMICI CURIAE<sup>1</sup>

The National Fair Housing Alliance (“NFHA”) is a nonprofit corporation that represents approximately 97 private, nonprofit fair housing organizations throughout the country. NFHA was founded in 1988 to lead the battle against housing discrimination and ensure equal housing opportunity for all people. Through education, outreach, policy initiatives, advocacy and enforcement, NFHA promotes equal housing, lending and insurance opportunities. Relying on the Fair Housing Act (“FHA”), NFHA and its members have undertaken important 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 Lawyers' Committee for Civil Rights Under Law (“LCCRUL”), a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the LCCRUL is to secure, through the rule of law, equal justice under law. The Committee’s major objective is to use the skills and resources of the bar to obtain equal opportunity for minorities by addressing factors that contribute to racial justice and economic opportunity. Given our nation's history of racial discrimination, de jure segregation, and the de facto inequities that persist, the LCCRUL’s primary focus is to represent the interests of African Americans in particular, other racial and ethnic minorities, and other victims of discrimination, where doing so can help to secure justice for all racial and ethnic minorities. Plaintiff Chicago Lawyers’ Committee for Civil Rights Under Law is an affiliate of the LCCRUL.

NFHA and the LCCRUL are dedicated to enforcing vigorously the FHA in order to effectuate its purpose. In enacting the FHA, Congress embraced the right to housing free of discrimination as a policy initiative “of the highest priority.” *Trafficante v. Metro. Life Ins. Co.*,

---

<sup>1</sup> The parties have consented to the filing of this brief.

409 U.S. 205, 211-12 (1973). Discriminatory advertisements perpetuate and enforce the segregation in housing that the FHA was meant to eradicate. *See, e.g., United States v. Hunter*, 459 F.2d 205, 214 (4th Cir. 1972). In recognition of the crucial need to combat the segregative impact of such ads, Congress prohibited making, printing, or publishing, or causing to be made, printed or published, discriminatory housing advertisements or statements. 42 U.S.C. § 3604(c).

The district court's decision – holding that the Communications Decency Act (“CDA”) provides blanket immunity to websites such as Craigslist from liability under § 804(c) of the FHA when allowing others to post discriminatory housing advertisements on the Internet – has grave implications for NFHA and LCCRUL's missions. There is no question that such advertisements, when printed in a newspaper or a flier, violate the FHA. With the shift away from newspaper classifieds and the rise of on-line advertisements in recent years, the imposition of liability under § 3604(c) upon websites such as Craigslist that cause and allow others to publish or print discriminatory housing advertisements has become an increasingly important component of effective FHA enforcement. Allowed to stand, the decision below will erode critical protections against overt forms of housing discrimination that have routinely been held illegal in the context of newspaper advertising.

## **INTRODUCTION**

Congress explicitly stated that its purpose in passing the FHA of 1968 was “to provide, within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601. It is clear from the FHA's stated purpose and legislative history that Congress enacted the FHA to encourage residential integration and to eliminate barriers to housing choice. Indeed, the FHA's “very broad reach” was recognized as an “attempt to alter the whole character of the

housing market.” *Mayers v. Ridley*, 465 F.2d 630, 652 (D.C. Cir. 1972) (en banc) (Wilkey, J. concurring).

Discrimination in housing, however, continues to persist. “Housing in the United States continues to be characterized by extremely high levels of racial segregation and unlawful discrimination,” Robert G. Schwemm, *Housing Discrimination: Law and Litigation* § 2:1 (2007), and racial, ethnic, and religious minorities, in addition to families with children, are still limited in their housing options because of the discriminatory attitudes of others. One study concluded that black and Hispanic homeseekers experience discrimination roughly half of the times that they visit a rental or sales agent to inquire about advertised housing opportunities:

There can be no doubt that the stubborn persistence of segregation is partly the result of discriminatory housing market practices – practices that create barriers to minority housing search and location choice, that discourage minority homeseekers from obtaining housing in predominately white neighborhoods, and that prevent some white homeseekers from considering housing opportunities in racially mixed or minority neighborhoods.

M. Turner, *Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits*, 3 *Housing Policy Debate* 185, 188 (1991).

The advertisements for housing found on Craigslist are stark examples of the blatant discrimination that persists almost four decades after the 1968 Fair Housing Act banned such behavior. They contain explicitly discriminatory statements such as: “No Minorities;” “African Americans and Arabians tend to clash with me so that won’t work out;” “Christian straight single female needed;” and “Sorry, no kids.” Such statements contained in the advertisements on Craigslist are not an aberration. Reported cases from across the country contain numerous examples of housing providers who have made similar discriminatory statements and racial

slurs.<sup>2</sup> Discriminatory advertisements are especially pernicious because they block prospective renters and buyers from even applying and having a chance to compete equally for housing.

Discriminatory advertisements or statements on the Internet severely exacerbate the problem. Discriminatory advertisements contained on the Internet are seen by a much broader audience than that which seeks housing information in the print media. Each month, roughly two million new classified housing advertisements are posted on Craigslist alone. *See* Libby Sander, *Fair Housing Law and Technology: What to Do When Old Meets New*, Chicago Lawyer, August 2006 at 56.

At no point has Congress ever suggested that it intended to diminish the full protection of the FHA by enacting the CDA. Rather, the CDA was enacted for the limited purpose of controlling offensive or obscene material on the Internet. The CDA shields an ISP from civil liability for discriminatory third-party content only if the ISP undertakes efforts to block or screen discriminatory third-party advertisements. Craigslist undertook no such efforts to block or screen and therefore should not be allowed to avail itself of CDA immunity.

With prospective buyers and renters relying increasingly on websites such as Craigslist to find available housing, the end result of the district court's decision will be to undermine the purposes of the FHA: expanding housing choice and integrating this nation's neighborhoods. Were a newspaper to print a discriminatory ad in the paper and posts the same ad on its online website, the district court's ruling would allow liability for the former but not for the latter. This inconsistency cannot be reconciled with the Congressional intent and purpose behind § 3604(c).

---

<sup>2</sup> See e.g. *Louisiana Acorn Fair Hous. v. Leblanc*, 211 F.3d 298, 299-300 (5th Cir. 2000) (landlord told African-American applicant that he did not rent to "you people" and "black, colored, Negro, whatever you call yourself, I don't rent to y'all"); *Harris v. Itzhaki*, 183 F.3d 1043, 1048 (9th Cir. 1999) (agent told staff in front of African-American tenant, "Owners don't want to rent to Blacks"); *Allahar v. Zahora*, 59 F.3d 693, 694 (7th Cir. 1995) (homeseller told Middle Eastern applicant, "[I've] talked to my neighbors and they don't want a nigger on the block.>").

For these reasons and those that follow, *Amici* submit this brief in support of appellant, urging that the district court’s judgment on the pleadings be reversed.

### SUMMARY OF ARGUMENT

Section 3604(c) of the FHA is extremely broad in scope, prohibiting the expression of discriminatory preferences in connection with the sale or rental of housing in all but the most limited circumstances. Although there is nothing in § 3604(c)’s text, legislative history or purpose to support its position, the district court held that Craigslist cannot be liable for the numerous advertisements violating § 3604(c) because of an immunity provision found in a wholly unrelated statute, § 230(c) of the CDA. The question for this Court is whether to extend CDA immunity to violations of the FHA made by ISPs who publish or print, or cause others to publish or print, discriminatory housing advertisements and make no attempt to block or screen the discriminatory material.

In this brief, NFHA and LCCRUL show that § 3604(c) explicitly holds publishers and printers liable for § 3604(c) violations. The text, legislative history, and purposes of § 3604(c) consistently point to liability. Section 3604(c) imposes a legal obligation to avoid making, printing or publishing, or causing to be made, printed or published, “any notice, statement or advertisement with respect to the sale or rental of a dwelling” that indicates any “preference, limitation or discrimination.” *See* 42 U.S.C. §3604(c).

A generous construction of § 3604(c) is consistent with the purposes of the FHA. *See Trafficante.*, 409 U.S. at 209 ( “The language of the Act is broad and inclusive.”). Congress enacted § 3604(c) to reduce barriers that might deter persons in the protected classes from seeking homes in neighborhoods that must be open to them under the FHA and to ban practices that might create the impression that segregation in housing is legal.

Moreover, holding those who publish or print discriminatory advertisements, or allow others to do so, such as newspapers and ISPs such as Craigslist liable for violations of § 3604(c) is wholly consistent with the jurisprudence of the FHA. Given the immense volume of housing advertisements found on the Internet, the broad ends of the FHA cannot be achieved if discriminatory advertising on websites such as Craigslist is considered immune from its coverage.

## ARGUMENT

### I. The Statutory Language

The FHA prohibits discrimination in specified activities in all aspects of a transaction related to the sale, rental, or financing of dwellings. *See* 42 U.S.C. §§ 3604-3606 & 3617. The principles embodied in the FHA reflect a “policy that Congress considered to be of the highest priority.” *Trafficante*, 409 U.S. at 211-12. The Supreme Court has previously recognized that “the language of the [Fair Housing] Act is broad and inclusive,” *Trafficante*, 409 U.S. at 209, and has repeatedly stated that the FHA should be given a “generous construction.” *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995) (quoting *Trafficante*, 409 U.S. at 212).

While the purpose of a statute is critical to proper interpretation and application of a law, the text of a statute is “[t]he starting point in every case involving the construction of a statute.”

*Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197 (1976) (internal quotation marks omitted).

Section 3604(c) makes it unlawful:

[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 U.S.C. § 3604(c).

The operative sections of § 3604(c) are unambiguous and state that it is unlawful to “make, print or publish,” or “cause to be made, printed, or published,” any discriminatory “notice, statement or advertisement.” Section 3604(c) clearly mandates that the discriminatory speaker as well as any publishers or printers be held liable for publishing or printing discriminatory advertisements or statements.

## **II. An Expansive Reading of Section 3604(c) is Consistent with the Goals of The FHA.**

The imposition of liability on those who make, print or publish discriminatory notices, statements or advertisements is necessary to achieve the legislative purposes of the FHA. Congress intended to achieve fair housing throughout the United States by deterring discrimination, supporting desegregation and compensating victims.

Supporters of the FHA in both the House and Senate repeatedly argued that the new law should both expand housing choices for minorities and foster racial integration. For example, Senator Mondale, the principal sponsor of the FHA, stated that “the basic purpose of [fair housing] legislation is to permit people who have the ability to do so to buy any house offered to the public if they can afford to buy it.” 114 Cong. Rec. 3421 (Feb. 20, 1968). Senator Javits explained that housing discrimination is a “vital issue” and it was a “fundamental element of dignity that a man may enjoy [a good home in a good neighborhood] without hindrance.” 114 Cong. Rec. 2703 (Feb. 8, 1968).

Integration was equally important as nondiscrimination to the Congress that passed the FHA in 1968. Senator Mondale repeatedly expressed the concern that “we are going to live separately in white ghettos and Negro ghettos.” 114 Cong. Rec. 2276 (Feb. 6, 1968). Senator Mondale explained that the purpose of the FHA was to replace ghettos with “truly integrated and balanced living patterns.” *Id.* at 3422 (Feb. 20, 1968). Congressman Cellar, Chairman of the

House Judiciary Committee, expressed the need to eliminate “the blight of segregated housing patterns.” *Id.* at 9959 (Apr. 10, 1968). Senator Kennedy also stressed the need for

Congressional action to address segregation:

As long as the Negro American remains isolated from other Americans and denied equal access to good housing, he will continue to live in segregation, forced to pay a higher price for the limited inferior housing to which he does have access. His children will continue to go to segregated schools of inferior quality, and his family will continue to experience segregation in most other aspects of their daily lives, cut off from the society that surrounds them.

*The Civil Rights Act of 1966, and Related Bills: Hearing on S.3296 Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary*, 89th Cong. 68 (1966).

Two critical historical events catalyzed Congress into enacting the Fair Housing Act. First, on March 1, 1968, the Kerner Commission released its highly publicized report, which warned that “America is dividing into two societies, black and white, separate and unequal.” *Report of the National Advisory Commission on Civil Disorders* 1, 13 (1968). The Report recommended that the government enact a comprehensive and enforceable open housing law covering the sale and rental of all property, including single family homes. *See* Jean E. Dubofsky, *Fair Housing: A Legislative History and A Perspective*, 8 Washburn L.J. 149, 158 (1969). Second, on April 4, 1968, Martin Luther King was assassinated. On April 10, “with National Guard troops called up to meet riot conditions in Washington, still in the basement of the Capitol, the House debated fair housing.” *Id.* at 160. President Johnson signed the Fair Housing Act into law on April 11, 1968. *Id.*

The ban on discriminatory notices, statements and advertisements contained in § 3604(c) is crucial to furthering the purposes of the FHA by reducing barriers that might deter persons in the protected classes from seeking homes in neighborhoods that must be open to them. Courts have repeatedly recognized that discriminatory advertisements deter prospective renters and

buyers before they can even get into the door to apply for a home. As the Fourth Circuit explained:

[The] widespread appearance of discriminatory advertisements in the public or private media may reasonably be thought to have a harmful effect on the general aims of the Act: seeing large numbers of ‘white only’ advertisements in one part of the city may deter nonwhites from venturing to seek homes there, even if other dwellings in the same area must be sold or rented on a non-discriminatory basis.

*United States v. Hunter*, 459 F.2d 205, 214 (4th Cir. 1972).

Section 3604(c) also advances the goals of the FHA by banning practices that might create “a public impression that segregation in housing is legal.” *Spann v. Colonial Vill.*, 899 F.2d 24, 30 (D.C. Cir. 1990). Discriminatory statements and advertisements are seen by both unsophisticated housing providers and home seekers as well as sophisticated ones. The continuing prevalence of discriminatory notices, statements and advertisements encourages housing providers and members of the protected classes to believe that discrimination in housing is the accepted norm, despite the FHA’s ban on such practices. *See id.* Publication of discriminatory advertisements on the Internet amplifies the harm many times over as it allows thousands of people to see each discriminatory advertisement or statement.

### **III. Courts Have Consistently Applied Section 3604(c) to Impose Liability on Those Who Make, Print or Publish Discriminatory Notices, Statements or Advertisements**

The importance of § 3604(c) to furthering the goals of the FHA is reflected in the broad interpretation that the courts have consistently given to §3604(c). Violations of § 3604(c) do not require discriminatory intent. *Jancik v Dep’t of Hous. and Urban Dev.*, 44 F.3d. 553, 556 (7th Cir. 1995). Instead, the general standard for claims under § 3604(c) is the ordinary reader or listener test. *Hunter*, 459 F.2d at 215 (holding that a violation of section 3604(c) is established whenever “[t]o the ordinary reader the natural interpretation” of the notice or statement is to “indicate a preference, limitation, or discrimination” based on a protected characteristic).

Furthermore, in enacting § 3603(b), Congress specifically refused to extend statutory exemptions for certain types of homeowners to § 3604(c). In § 3603(b), Congress allowed certain homeowners to be exempt from the FHA in the act of selling or leasing their home where they own a single family home (with certain exceptions) or an owner-occupied dwelling with four units or less. 42 U.S.C. § 3603(b). Nevertheless Congress still maintained the prohibition on discriminatory advertising or statements with respect to those dwellings. *Id.*

It is well-settled law that newspapers are liable for publishing discriminatory advertisements. *Ragin v. New York Times Co.*, 923 F.2d 995 (2d Cir.1991); *Hunter*, 459 F.2d at 210. Indeed, this proposition has not been seriously disputed since 1972. In *Hunter*, the Fourth Circuit Court of Appeals held that a newspaper violated § 3604(c) by printing an advertisement for an apartment in a “white home.” *Id.* at 209-11. The *Hunter* Court determined that the broad language of § 3604(c) extended liability beyond landlords to the newspapers and other media that carried the discriminatory advertisement. *Id.* at 211.

In *Ragin*, the Second Circuit extended liability for discriminatory advertising beyond the actual words of an advertisement to racial preferences based on role model advertising. Plaintiffs in *Ragin* alleged that the Sunday *New York Times* had printed housing advertisements that contained almost exclusively white human models, except when portraying persons looking for housing in minority neighborhoods or service employees. *See Ragin*, 923 F.2d at 998. The Second Circuit Court of Appeals concluded that the use of models in this way could constitute a racial preference in violation of § 3604(c) because it could discourage non-whites from seeking housing. *See id.* at 1000. As with *Hunter*, the Second Circuit in *Ragin* concluded that liability under § 3604(c) extended to newspapers publishing and printing the offending advertisements. *Id.* at 1002-05.

Discriminatory notices, statements and advertisements in a wide variety of mediums of expression have been held to violate § 3604(c). *See e.g., United States v. Space Hunters, Inc.*, 429 F.3d 416, 419-21 (2d Cir. 2005) (holding that discriminatory preferences communicated through a telecommunication device for the deaf, or TDD, violates the FHA); *Jancik*, 44 F.3d at 556-57 (holding that oral statements violate § 3604(c)); *Hunter*, 459 F.2d at 210 (holding that discriminatory advertisements contained in newspapers violate § 3604(c)); *United States v. Plaza Mobile Estates*, 273 F. Supp. 2d 1084, 1091 (C.D. Cal. 2003) (granting summary judgment for plaintiffs against owner of mobile home parks because preamble to park rules constituted illegal steering in violation of § 3604(c)); *Fair Hous. Cong. v. Weber*, 993 F. Supp. 1286, 1291-92 (1997) (C.D. Cal. 1997) (finding § 3604(c) violation in the pool rules of an apartment complex).

Similarly, a variety of different intermediaries have been held liable under § 3604(c) for publishing or printing, or causing to be made, printed or published, discriminatory advertisements, notices or statements. *See, e.g., Hunter*, 459 F.2d at 210 (holding that newspapers may be liable for violations of § 3604(c)); *Mayers*, 465 F.2d at 633 (finding that recorders of deeds may be liable for publishing racially restrictive covenants); *Wheatley Heights Neighborhood Coal. v. Jenna Resales Co.*, 447 F. Supp. 838, 842 n. 3 (E.D.N.Y. 1978) (holding that a notice on a multiple listing service “undoubtedly falls within the statute’s coverage”). As the D.C. Circuit has noted, “[t]he additional proscription against ‘publication’ should be read more broadly to bar all devices for making public racial preferences in the sale of real estate whether or not they involve the printing process.” *Mayers*, 465 F.2d at 633.

#### **IV. Immunizing Websites From Liability Would Have a Severe Impact on the Enforcement of the Fair Housing Act**

There is nothing remarkable about the imposition of liability under § 3604(c) upon newspapers or other media that make, publish or print, or cause to be made, printed or published, discriminatory statements. Internet sites such as Craigslist, similar to newspapers, “print” or “publish” discriminatory advertisements and make public discriminatory preferences of third parties in the sale or rental of real estate.

Discriminatory advertisements or statements contained on the Internet, however, now have a far greater impact. The National Association of Realtors recently reported that nearly three-quarters of homebuyers viewed the Internet as a useful tool in their home search.<sup>3</sup> In April 2004 alone, more than 843 million minutes were spent on housing-related web sites.<sup>4</sup>

Homebuyers and sellers rely heavily on Craigslist to search for housing. Each month, roughly 2 million new classified housing advertisements are posted on Craigslist.<sup>5</sup>

Online advertising is increasing rapidly. Thirty-nine percent of Internet users have looked online to search for housing, up from 34% in 2004 and 27% in 2000.<sup>6</sup> Users of online classified advertising services increased 80% in 2005.<sup>7</sup>

As housing advertisements posted on Internet sites replace advertising in newspapers, the courts must apply § 3604(c) in a way that effectuates the FHA’s purposes of expanding housing choice and eliminating residential segregation. To immunize Craigslist and other internet sites from § 3604(c) liability will undermine the FHA by reversing the progress that has been

---

<sup>3</sup> Paul C. Bishop et al., *2006 National Association of Realtors Profile of Home Buyers and Sellers 5* (2006).

<sup>4</sup> Brad Fuqua, *The Older Generation Is More Internet Savvy Than Ever*, UNITS, July 2004, at 36.

<sup>5</sup> See Sander, *supra*, at 56.

<sup>6</sup> Deborah Fallows, *Pew Internet Project Data Memo Re: Looking for Information About a Place to Live*, at 1 (Dec. 13, 2006), [http://www.pewinternet.org/pdfs/PIP\\_Place\\_to\\_Live\\_2006.pdf](http://www.pewinternet.org/pdfs/PIP_Place_to_Live_2006.pdf).

<sup>7</sup> Maria Aspan, *Great for Craigslist but Not for Newspapers*, N.Y. Times, Nov. 28, 2005, at C5.

achieved since 1968 in eradicating overt forms of discrimination. Equally important, immunizing websites from the express prohibitions in § 3604(c) would have the anomalous result of newspapers like the *Chicago Tribune* being held liable for FHA violations for the very same advertisements that their web-based counterparts like *chicagotribune.com* could print with impunity.

**V. The Fair Housing Act Can and Must be Harmonized with the Communications Decency Act Because Congress Did Not Impliedly Repeal § 3604(c).**

The CDA, and its statutory exemption contained in § 230(c), deal solely with obscene or otherwise offensive materials on the Internet, and there is nothing in the text or history that suggests that Congress intended to repeal any part of the FHA in enacting the CDA. Section 230(c) of the CDA provides in pertinent part:

(c) Protection for “Good Samaritan” blocking and screening of offensive material.

- (1) Treatment of publisher or speaker. No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
- (2) Civil liability. No provider or user of an interactive computer service shall be held liable on account of (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. § 230(c). The FHA is referenced nowhere in this statutory language.

As a result, immunization under § 230 for violations of the FHA is only plausible if the CDA impliedly repeals § 3604(c). Courts can find an implied repeal “where provisions in two statutes are in ‘irreconcilable conflict,’ or where the latter Act covers the whole subject of the earlier one and ‘is clearly intended as a substitute.’” *Branch v. Smith*, 538 U.S. 254, 273 (2003)

(citing *Posadas v. Nat'l City Bank*, 296 U.S. 497, 503 (1936)). However, the statutes at issue here -- the FHA and the CDA -- are neither irreconcilable nor substitutes for each other. Each act addresses different problems. The FHA was designed to address the particular problem of discrimination in housing. The CDA, on the other hand, was drafted “to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive and obscene material.” *Carafano v. Metroplash.com. Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003).

Nor are § 230(c) and § 3604(c) either irreconcilable or incapable of being harmonized. First, the CDA was designed to protect ISPs not from posting offensive material, but rather for taking steps to block and screen such postings.<sup>8</sup> Congress entitled § 230: “Protection for private blocking and screening of offensive material.” 47 U.S.C. § 230. Section 230(c)(1) bears the title “Protection for ‘Good Samaritan’ blocking and screening of offensive material.” 47 U.S.C. §230(c). The titles are a strong indication that these sections of the CDA reflect Congressional intent to protect those entities that make sufficient efforts to block or screen offensive material. Under the district court’s ruling, an ISP is immune from violations of § 3604(c) regardless of whether it acts as a “Good Samaritan” by initiating efforts to block and screen discriminatory advertisements. As this Court has recognized, the title of § 230(c) is “hardly an apt description if its principal effect is to induce ISPs to do nothing about the distribution of indecent and offensive materials via their services.” *Doe v. GTE*, 347 F.3d 655, 660 (7th Cir. 2003).

Second, Craigslist can still be held liable under § 3604(c) as a printer of discriminatory advertisements, even if, assuming *arguendo*, §230(c)(1) immunizes it for liability as a publisher. Section 3604(c) makes it unlawful to “make, print or publish” discriminatory notices, statements

---

<sup>8</sup> NFHA and LCCRUL join in appellant’s Argument set forth at pages 11-25 of the Principal Brief of Appellant.

or advertisements. 42 U.S.C. § 3604(c) (emphasis added). The definition of the verb “print” found in Merriam-Webster includes: “to display on a surface (as a computer screen) for viewing.” Because Craigslist “prints” discriminatory preferences in addition to publishing them, it is liable under § 3604(c), even if, as the district court held, the CDA provides immunity to Craigslist for publishing the advertisements.

Harmonizing the FHA and the CDA is consistent with the express language of § 3604(c) and FHA case law and best serves the purposes behind the FHA. Providing an Internet site such as Craigslist with immunity from liability under § 3604(c), particularly at a time when millions of housing opportunities are advertised through the Internet, would undermine this nation’s efforts to eradicate housing discrimination. Given § 3604(c)’s vital role in furthering the public policy goals of the FHA, it is particularly important that this Court not impliedly repeal an important provision of a civil rights statute based on a provision of the CDA that was not intended to provide blanket immunity to ISPs.

## CONCLUSION

For the reasons set forth above, Amici respectfully request that the Court reverse the district court's grant of judgment on the pleadings and remand for further proceedings.

Dated: October 16, 2007.

Respectfully submitted,

s/John P. Relman  
JOHN P. RELMAN  
D. SCOTT CHANG  
Relman & Dane PLLC  
1225 19<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036-1738

JOSEPH D. RICH  
Lawyers' Committee for  
Civil Rights under Law  
1401 New York Avenue, N.W.  
Suite 400  
Washington, D.C. 20005

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief contains 4866 words in compliance with the 7000-word limit imposed on amicus briefs by Rule 29(b) of the Federal Rules of Appellate Procedure.

I further certify that this brief complies with the typeface and type style requirements of Rule 32(a)(5)-(6) of the Federal Rules of Appellate Procedure and Seventh Circuit Rule 32(a)-(b). This brief has been prepared in proportionally spaced typeface using Microsoft Word 2003 in 12-point Times New Roman for the main text and 11-point Times New Roman for footnotes.

s/John P. Relman  
Counsel for Amici Curiae  
National Fair Housing Alliance and  
Lawyers' Committee for Civil Rights  
Under the Law

**CERTIFICATE OF SERVICE**

I hereby certify that two bound copies and one digital copy of the foregoing Brief of Amici Curiae National Fair Housing Alliance and Lawyers' Committee for Civil Rights Under Law in Support of Plaintiff-Appellant in Support of Reversal were served by FedEx on the following counsel:

Stephen D. Libowsky  
Wm. Bradford Reynolds  
Howrey LLP  
321 North Clark Street, Suite 3400  
Chicago IL 60610

Laurie Wardell  
Matthew Ginsburg  
Chicago Lawyers Committee for Civil Rights Under  
Law  
100 North La Salle Street, Suite 600  
Chicago IL 60602

Eric D. Brandfonbrener  
Perkins Coie  
131 S Dearborn St., Suite 1700  
Chicago IL 60603

s/John P. Relman  
John P. Relman