

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80385-CIV-ZLOCH

FAIR HOUSING CENTER OF THE  
GREATER PALM BEACHES, INC.,

Plaintiff,

vs.

TIEMKAIR K. [REDACTED]  
[REDACTED]

Defendants.  
\_\_\_\_\_ /

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S STANDING**

COMES NOW Plaintiff, FAIR HOUSING CENTER OF THE GREATER PALM BEACHES, INC. ("FHC"), and respectfully submits this Memorandum of Points and Authorities in Support of Plaintiff's Standing in response to the Order entered by the Court on May 23, 2008.

**INTRODUCTION**

The Court is concerned whether the FHC has standing to bring this action under the FHA for declaratory and injunctive relief and damages, because the only injuries alleged, the expenditure of time and resources addressing the allegations in the Complaint, are part of the FHC's stated mission. This case is about a patently discriminatory advertisement for rental housing that was posted by the Defendants on an online classifieds website craigslist.org. The offending language stated: "Sorry, no pets and no children." Such language discriminates on the basis of familial status against individuals who are seeking housing.

The discovery of the advertisement precipitated an investigation by the FHC of the facts and circumstances surrounding the advertisement, including who authored the advertisement and who owned the subject property. The investigation required the FHC to divert time and resources away from and put on hold other specific programs, thereby frustrating its mission. *See* Exhibit A, Vince Larkins Affidavit attached hereto. The investigation culminated in a finding of probable cause for discrimination by the United States Department of Housing and Urban Development ("HUD") and the Palm Beach County Office of Equal Opportunity ("OEO"). To reach that finding, representatives of the FHC spent many hours investigating the case. Investigatory tasks included visiting and

verifying the subject property in Lake Worth, and researching public records to determine the property owner and any existing court records involving same.

Once the facts had been gathered, the FHC conducted an enforcement meeting to present the case and ascertain whether an OEO complaint should be filed. Subsequently, the FHC prepared a complaint and filed it with the OEO. There were numerous telephone conferences regarding the complaint between the FHC and OEO investigators. For purposes of OEO conciliation, the FHC attended a meeting to determine claimed damages. The FHC prepared a February 28, 2008 enforcement memorandum describing the increased educational activities required to counteract the Defendants' discriminatory activities. *See* Exhibit B attached hereto.

As part of the process of perfecting the complaint, HUD and the OEO, as required, made a determination that the Plaintiff indeed had organizational standing to bring the complaint against the Defendants. *See* Exhibit C attached hereto. Upon obtaining a finding of probable cause for discrimination by HUD and the OEO, and being unable to reach a conciliation with Defendant Kim [REDACTED] the FHC chose to prosecute this matter in federal court, and accordingly expended time and resources in interviewing, hiring, and retaining legal counsel. As part of the case, the FHC has and continues to divert significant amounts of time and resources away from other uses and towards prosecuting this case. Further, the FHC has spent time discussing the case with representatives of the media. *See* Exhibit D attached hereto.

In the United States today the National Fair Housing Alliance, a consortium of more than two hundred private, non-profit fair housing organizations, state and local civil rights agencies and individuals is dedicated to the same mission as the FHC. The issue whether a fair housing organization has standing is well-settled. The following points and authorities indicate that the FHC indeed has organizational standing in this case because it has been required to expend resources as a proximate result of the Defendants' discriminatory conduct, and said resources would have been devoted to other activities consonant with its mission but for the offending conduct. Thus, the FHC has thereby been directly injured in fact by the discriminatory activities of Defendants.

## ARGUMENT

**FHC HAS ORGANIZATIONAL STANDING SINCE IT HAS BEEN REQUIRED TO EXPEND RESOURCES ON INVESTIGATORY, ENFORCEMENT, AND LEGAL EFFORTS AS A PROXIMATE RESULT OF DEFENDANTS' DISCRIMINATORY CONDUCT, AND SAID RESOURCES WOULD HAVE BEEN DEVOTED TO OTHER ACTIVITIES CONSONANT WITH ITS MISSION BUT FOR THE OFFENDING CONDUCT, AND THUS IT HAS THEREBY BEEN INJURED IN FACT BY THE ACTIVITIES OF DEFENDANTS.**

Under the Federal Fair Housing Act (“FFHA” or “Fair Housing Act”) an “aggrieved person” is entitled to bring suit where he, she, or it has been “injured by a discriminatory housing practice.” 42 U.S.C. § 3602(i)(1); 42 U.S.C. § 3610(a)(1)(A). In order to have standing under the FFHA, a plaintiff must allege the Article III minimum injury in fact.

With respect to organizational standing, the Supreme Court has made clear that restrictive “prudential limitations” on standing are inconsistent with the FHA’s broad remedial purpose, and that those limitations therefore do not apply to organizations, such as the FHC, that seek relief against discriminatory housing practices. *See Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 102 (1979). Thus, to demonstrate standing under the FHA, a plaintiff needs to show only “injury in fact” sufficient to satisfy Article III of the Constitution. *Id.* An organization has standing on its own behalf if it meets the same standing test that applies to individuals. The organization must show actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision. *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982).

The breadth of standing for such a fair housing organization was defined by *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), which stated as follows:

In determining whether HOME has standing under the Fair Housing Act, we conduct the same inquiry as in the case of an individual: Has the plaintiff “alleged such a personal stake in the outcome of the controversy” as to warrant his invocation of federal-court jurisdiction”? *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S., at 261 (emphasis omitted), quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962). In the instant case, HOME’s complaint contained the following claims of injury to the organization: “Plaintiff HOME has been frustrated by defendants’ racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant’s [*sic*] racially discriminatory steering practices.” App. 17, para. 16. If, as broadly alleged, petitioners’ steering practices have perceptibly impaired HOME’s ability to provide counseling and referral services for low- and moderate-income home-seekers, there can be no question that the

organization has suffered injury in fact. Such concrete and demonstrable injury to the organization's activities -- with the consequent drain on the organization's resources -- constitutes far more than simply a setback to the organization's abstract social interests, see *Sierra Club v. Morton*, 405 U.S., at 739. We therefore conclude, as did the Court of Appeals, that in view of HOME's allegations of injury it was improper for the District Court to dismiss for lack of standing the claims of the organization in its own right.

*Havens*, 455 U.S. at 379.

*Havens* sets forth that an organization establishes Article III injury if it alleges that purportedly illegal action increases the resources a fair housing organization must devote to programs independent of its suit challenging the action. See *Havens*, 455 U.S. at 379. The "drain[s] on the organization[s]' resources" alleged here appear no less palpable or specific than the injuries asserted by the organizational plaintiff in *Havens*. See *Id.* at 363. In *Havens*, the organization alleged that the defendant's steering practices had impaired its ability to provide counseling and referral services for low- and moderate-income home seekers.

A fair housing organization may establish standing to sue either on its own behalf in order to vindicate rights it enjoys and seek relief for injuries suffered (organizational standing), or on behalf of its members and constituents who have suffered an immediate or threatened injury and whose claims would be justiciable if brought by the members themselves (representational standing). See *Warth v. Seldin*, 422 U.S. at 511.

In *Central Alabama Fair Housing Center, Inc. v. Lowder Realty Co., Inc.*, 236 F.3d 629 (11<sup>th</sup> Cir. 2000): the Eleventh Circuit stated:

“When a fair housing organization expends resources as a proximate result of the defendant's discriminatory conduct, and those resources would have been devoted to other activities consonant with its mission were it not for the offending conduct, it suffers injury independent of that suffered by individuals in the affected housing market.”

*Id.* at 642. In *Lowder*, the Eleventh Circuit followed *Village of Bellwood* and *Havens*, and stated: “The *Havens* court regarded the identification and combating of discrimination as a ‘concrete and demonstrable’ injury, which could cause a drain on organization resources and thereby give rise to an organization's direct standing to sue.” *Lowder* at 642.

A recent District Court case in the Eleventh Circuit sets forth that “the only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency’s time and money from counseling to legal efforts directed against discrimination.” See *Housing Opportunities Project for Excellence, Inc. v. Key Colony*,

2007 WL 117939 (U.S. Dist. S.D. Fla. 2007). In *Jackson v. Okaloosa County*, 21 F.3d 1531 (11<sup>th</sup> Cir. 1994) the Eleventh Circuit stated: “There are three minimum constitutional requirements for standing: (1) the plaintiff must allege an actual or imminent injury; (2) the injury must be traceable to the alleged unlawful conduct; and (3) the relief requested must be likely to remedy the plaintiff’s injury.” See *Id.* at 1537, and *Havens*, 455 U.S. at 376.

In *Spann v. Colonial Village, Inc.*, 899 F.2d 24 (D.C. Cir. 1990), the court found that the alleged harm affecting the organization’s non-economic interests – for example, its interest in encouraging open housing – does not deprive the organization of standing. Where preferential advertising tended to steer black home buyers and renters away from advertised areas and required the organization to devote resources to check or neutralize the impact of the advertisement, and educate buyers and renters as well as the real estate industry that discrimination is illegal, standing can be established. Concrete drains on time and resources were established by the affidavits.

An organization has standing when it demonstrates that it has (1) devoted significant resources to identifying and counteracting the defendants’ discriminatory practices and (2) the practices have frustrated the organization’s efforts against discrimination. Specific efforts considered include the identification and counteraction of the defendant’s discriminatory practices (including investigating the complaint) and work that was not done because of involvement in the case. See *Williams v. Poretzky Management, Inc.*, 955 F. Supp. 490 (D.C. 1996).

Injury contributing to standing includes devotion of substantial time to indentifying the parties involved, attending a conciliation conference, and developing the lawsuit. *Ragin v. Harry Macklowe Real Estate*, 6 F.3d 898 (2d. Cir. 1993). Included in activities contributing to standing is counseling of the victim, investigating the complaint, time spent educating the community about harassment issues and the responsibilities of homeowners associations, using the case as an educational tool for outreach into the community and discussion of issues such as harassment and bias with experts, and taking scarce resources away from other activities. See *Reeves v. Carrollsburg Condominium Unit Owners Association*, 1997 WL1877201 (D.D.C. 1997).

In *Fair Housing Council of Suburban Philadelphia v. Main Line Times*, 141 F.3d 439 (3<sup>rd</sup> Cir. 1998), the Third Circuit found no organizational standing because the evidence showed that the investigation of discriminatory advertising was part of the group’s normal activities and *the record did not establish that the organization altered its operations because of the discriminatory advertisements, or that it diverted any of its resources to an investigation.* The dissent outlined several areas where evidence could establish standing: (1) diversion of resources required to educational programs required to counter discriminatory practices is sufficient; (2) time spent reviewing newspapers

for illegal advertisements is also an Article III injury because the organization would have diverted its resources to identifying discriminatory practices; and (3) enforcement activities beyond filing a lawsuit can serve as the basis for standing, including activities the group had to postpone in order to undertake enforcement arising from the advertisements.

However, in a later case with similar facts, *Fair Housing of Suburban Philadelphia v. Mercury Peerless Publications, Inc.*, 1999 WL 93576 (E.D. Pa. 1999), the District Court instead found organizational standing where there was specific evidence that the organization's operations were altered in response to the discriminatory advertising, and that there were efforts to counteract the alleged harm caused by publication of the advertisements. After the discriminatory advertising was found, the organization had to conduct an investigation (i.e., read more advertisements) that caused resources to be diverted to the investigation and away from other projects. In addition, resources had to be diverted to educational projects to counteract discriminatory advertisements.

Since *Havens*, and as demonstrated by the foregoing, the circuit courts have struggled with the injury in fact organizational standard under the Fair Housing Act. For sourcing for the survey *infra*, see *Moseke v. Miller and Smith Inc.*, 202 F.Supp.2d 492 (E.D. Va. 2002), HUD General Counsel Memorandum regarding organizational standing (see Exhibit E attached hereto) and Douglas, Dash T., *Standing on Shaky Ground: Standing under the Fair Housing Act*, 34 AKRON L.REV. 613 (2001).

On one hand the Second, Sixth, Seventh, Eighth, and Eleventh Circuits have all found that the diversion of an organization's resources to counteract discriminatory practices is a palpable injury, *even if such expenditures include litigation costs*. See *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir.1993) (holding that organization had standing where it devoted significant resources to identify and combat defendant's alleged discriminatory advertising practices, including preparation of lawsuit itself); *Hooker v. Weathers*, 990 F.2d 913, 915 (6th Cir.1993) (finding that organization had standing where it devoted resources to investigating the defendants' practices alleged in plaintiff's complaint); *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1525 (7th Cir.1990) ("the only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination."); *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1095 (7<sup>th</sup> Cir. 1992) (organization deflecting its time and money from counseling to legal efforts was enough to confer standing); *Ragin v. Macklowe Real Estate Co.*, 6 F.3d 898 (2d Cir. 1993); *Hooker v. Weathers*, 990 F.2d 913, 914 (6<sup>th</sup> Cir. 1993) (Fair Housing Contact Service (FHCS) devoted

resources “to investigating the defendants’ practices and alleges it has confirmed that defendants do not discriminate... Therefore the FHCS has standing.”); *Ark. ACORN Fair Hous. Inc. v. Greystone Dev., Ltd. Co.*, 160 F.3d 433, 434 (8<sup>th</sup> Cir. 1998) (deflection of an organization’s monetary and human resources from counseling or educational programs to legal efforts aimed at combating discrimination is sufficient to constitute an actual injury); *Cent. Ala. Fair Hous. Ctr. V. Lowder Realty Co.*, 236 F.3d 629, 641 (11<sup>th</sup> Cir. 2000) (rejected the argument that allowing a fair housing organization to recover damages based solely on discrimination toward its testers is tantamount to allowing an organization to manufacture its own lawsuit to recover the costs of bringing the suit).

Some District Courts in the Fourth Circuit have held that the diversion of resources approach is sufficient to show organizational standing under the Fair Housing Act. *See Williams v. Poretsky Mgmt. Inc.*, 955 F.Supp. 490, 493 (D.Md.1996) (considering organization's litigation expenditures along with other diversion of resources in identifying and counteracting defendant's practices sufficient to demonstrate standing); *Saunders v. General Services Corp.*, 659 F.Supp. 1042, 1052 (D.Md.1996). These courts have concluded that *Havens* recognizes standing where an organization alleges a considerable expenditure of resources, which can include expenditures on litigation to combat a defendant's discriminatory practices because such a diversion amounts to a "concrete and demonstrable injury to the organization's activities." *Saunders*, 659 F.Supp. at 1051.

Conversely, the District of Columbia, Third, Fifth and Ninth Circuits have held that for an organization to show the requisite injury, it must demonstrate an expenditure of resources independent of the lawsuit. *See Fair Employment Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C.Cir.1994) (finding that expense of testing was a "self-inflicted" harm resulting from organization's budgetary choices rather than defendant's actions); *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27 (D.C.Cir. 1990) (holding that standing requires organization to allege devotion of resources to activities other than litigation costs, and it cannot manufacture the injury necessary to maintain a suit from expenditure of its resources on that very suit); *Fair Hous. Council of Suburban Philadelphia v. Montgomery Newspapers*, 141 F.3d 71, 78 (3d Cir.1998) (agreeing with D.C. Circuit's conclusion that "litigation expenses alone do not constitute damage sufficient to support standing."); *Assoc. for Retarded Citizens v. Dallas Cty. Mental Health and Mental Retardation Ctr. Bd. of Trustees*, 19 F.3d 241, 244 (5th Cir.1994) (redirection of resources to litigation in response to actions or inactions of other party insufficient to impart standing on organization); *Ass'n of Cmty. Org. for Reform Now v. Fowler*, 178 F.3d 350 (5<sup>th</sup> Cir. 1999) (citing *Spann*, court rejected the argument that litigation costs alone would confer standing); *La. ACORN Fair Hous.*

*V. LeBlanc*, 211 F.3d 298, 305 (5<sup>th</sup> Cir. 2000) (mere redirection of some resources to litigation and legal counseling is not sufficient for organizational standing); *Walker v. Lakewood*, 272 F.3d 1114, 1124 n.3 (9<sup>th</sup> Cir. 2001) (“Because we agree that a plaintiff cannot establish standing simply by filing its own lawsuit, we will not consider the time and money the [Fair Housing Foundation] has expended in prosecuting this suit in deciding if it has standing to pursue the retaliation claim”). These courts have reasoned that basing standing solely on a self-inflicted injury such as testing would enable any organization to assert an Article III injury merely by expending resources on litigation.

The two approaches by appellate circuit courts in determining when diversion of resources equates to a finding of standing when litigation expenses are present are not necessarily diametrical opposites. For instance, although the Third Circuit in *Fair Housing Council* expressly declined to follow the Seventh Circuit's broader reading of *Havens* in *Bellwood*, the Third Circuit explained that the holding in *Bellwood* “was *not* that litigation alone constituted injury sufficient to convey standing.” *Fair Housing Council*, 141 F.3d at 80 n. 7 (emphasis in original). Rather, the *Fair Housing Council* court pointed out that the institutional plaintiff in *Bellwood* undertook a bona fide investigation of a number of agencies who engaged in racial steering. *See Id.* In other words, *Bellwood* and other circuit decisions finding standing under the FHA based on diversion of resources, including legal expenditures, can be reconciled with *Fair Housing Council* and other cases setting forth a “litigation plus” formulation of organizational standing.

Relying on case law drawn from both camps outlined above, in *Williams*, the court formulated a standing rule for organizations under the Fair Housing Act. *See Id.* at 955 F.Supp. 493-94 (citing *Spann*, 899 F.2d at 27; *Saunders*, 659 F.Supp. at 1052; *Ragin*, 6 F.3d at 905; and *Bellwood*, 895 F.2d at 1526). The *Williams* court held that an organization has standing under the Fair Housing Act when it has “(1) devoted significant resources to identifying and counteracting the defendant's discriminatory practice; and (2) such practices have frustrated the organization's efforts against discrimination.” *Williams*, 955 F.Supp. at 495 (citing *Saunders*, 659 F.Supp. at 1052). Importantly, *Williams* recognized that time and money spent investigating the defendants' practices did not negate standing simply because such resources were related to the development of the lawsuit. *See Id.* The investigation of the practices “can be regarded as an independent activity associated with the identification and counteraction of the defendants' discriminatory practices.” *Id.* (citing *Ragin*, 6 F.3d at 905; *Bellwood*, 895 F.2d at 1526).

The standard enunciated in *Williams* is a balanced approach consistent with *Havens'* central teaching –that organizational standing requires that the alleged discriminatory practices have "perceptibly impaired" the institution's efforts against discrimination. *See Havens*, 455 U.S. at 365. The *Williams* standard is also in line with the Supreme Court's definition of standing under the Fair Housing Act to reach the fullest limits of Article III. *See Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211. Similarly, it promotes Congress' intent to place enforcement of the values instilled in the Fair Housing Act in the hands of private attorney generals like the Plaintiff in this case. *See Spann*, 899 F.2d at 30; *Trafficante* ("complainants act not only on their own behalf but also ,as private attorney generals' in vindicating a policy that Congress considered to be of the highest priority.").

HUD has weighed in on the issue to clarify the split in the circuit courts. *See* Exhibit E attached hereto. In its Order, the Secretary directs HUD and the ALJs to apply the Seventh Circuit standard for organizational standing in cases throughout the country regardless of where the alleged discrimination occurred. The Seventh Circuit along with several other circuits have opined that for an organization to demonstrate injury in fact for standing, it must show a diversion or deflection of resources from its daily activities to the pursuit of legal efforts against the discrimination. Under this standard, litigation costs may be considered in demonstrating the necessary diversion of resources. The HUD Office of General Counsel interpreted the Secretary's Order as having two main points, including: (1) The costs of pursuing an administrative complaint including conducting an investigation are sufficient to confer organizational standing; and (2) The Secretary's Order expands the type of injury that are relevant for purposes of determining organizational standing, so administrative costs as well as litigation costs are relevant for purposes of determining whether an organization has standing.

In this case, the FHC investigated extensively once becoming aware of the patently discriminatory advertisement placed by Defendants. The FHC's purpose and goal of promoting equal housing opportunity has been frustrated by the placement of the discriminatory advertisement by Defendants. Further, the advertisement has nullified prior educational efforts undertaken by the FHC. The FHC has been required to produce educational programs to combat the Defendants' discriminatory actions, which it would have not so provided. The Defendants' practices have forced the FHC to divert scarce resources away from and put on hold specific programs in order to identify and counteract Defendants' unlawful housing practices. Upon discovery of Defendants' discriminatory activities, the FHC diverted scarce financial and staffing resources away from counseling, outreach, education, and advocacy programs in order to detect and investigate the scope and extent of Defendants' conduct. The

discriminatory advertisement unfortunately signals to other advertisers that it is permissible to illegally state “no children.” As a result of this illegal advertisement, the FHC has subsequently monitored the craigslist.org site to determine if Defendants and/or other property owners have been placing advertisements stating “no children.” The Defendants’ conduct has also frustrated the FHC’s mission of ensuring equal access to housing.

### CONCLUSION

The discriminatory activities of Defendants have required the FHC to investigate and prosecute them for their violations of the fair housing laws, and in doing so the Defendants have perceptibly impaired the FHC’s ability to provide educational, outreach, counseling and other services to the community in support of its mission. Thus, the FHC has indeed suffered injury in fact, since there has been a concrete and demonstrable injury as required by *Havens* to the FHC’s activities and consequent drain on the FHC’s resources. Moreover, the specific injuries suffered by the FHC are fairly traceable to the discriminatory activities of the Defendants. Therefore, the FHC has standing since it has been required to expend resources on investigatory, enforcement, and legal efforts as a proximate result of Defendants’ discriminatory conduct, and said resources would have been devoted to other activities consonant with its mission but for the offending conduct. Thus, the FHC has thereby been directly injured in fact by the discriminatory activities of Defendants. To conclude, in light of the foregoing, this Court should find that Plaintiff FHC has standing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing will be furnished by U.S. Mail to the attorney of record representing Defendants in this case upon his or her filing a notice of appearance.

/s/ James P. Curry

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