IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

EVONNE BRYANT, et al., Plaintiffs, v. CITY OF NORFOLK, et al., Defendants.	Case No. 2:20-CV-00026

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION[1]

As part of their plan to redevelop and gentrify the St. Paul's Quadrant of Norfolk, an area adjacent to the downtown area of the City, Defendants City of Norfolk ("the City") and the Norfolk Redevelopment and Housing Authority ("NRHA") (collectively, "Local Defendants") have pushed poor Black families out of a public housing community known as Tidewater Gardens. Without intervention by this Court, the Local Defendants' plan to redevelop Tidewater Gardens and other public housing communities in the St. Paul's Quadrant[2] (the "Redevelopment Plan" or "Plan") will continue to displace the Black residents from Tidewater Gardens, further entrench racial segregation in Norfolk, and reduce the availability of affordable housing in the city, all in violation of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* ("FHA").

The Redevelopment Plan employs three strategies to minimize the number of Tidewater Gardens residents that return to the redeveloped area. First, instead of building new units prior to demolishing existing ones ("Build First Approach"), which would allow residents to move directly from their homes to redeveloped housing, the Local Defendants structured demolition so far in advance of rebuilding that people would be displaced for years before being able to return. Second, the Redevelopment Plan provides the least number of on-site replacement units for residents that HUD would allow. And last, the Plan substitutes so-called Housing Choice Vouchers for building replacement units even though the Local Defendants know that they were not entitled to do so and that the places where those vouchers are accepted are almost always in segregated, low-opportunity areas of the City.

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[1] For the convenience of the Court, Plaintiffs are providing a glossary of key terms being submitted contemporaneously herewith as Exhibit A.

[2] The Redevelopment Plan also calls for the demolition of Calvert Square and Young Terrace, but there are no immediate plans to demolish those communities. Consequently, the request for preliminary injunction is focused on Tidewater Gardens.

To justify their unlawful actions, the Local Defendants falsely claim that building one-for-one replacement units using a Build First Approach is not feasible. Discovery has revealed that is not the case, and the real motivation was to clear out poor Black families, primarily to other segregated parts of the city, because Local Defendants knew that those residents were far less likely to return if they had to spend years somewhere else. Defendant U.S. Department of Housing and Urban Development ("HUD") enabled this cruel agenda by giving the Local Defendants a $30 million grant ("CNI Grant") without having adequately considered the Plan's discriminatory and segregative impacts in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A) and HUD's legal duty to further fair housing. 42 U.S.C. § 3608.[3] In fact, the Local Defendants Redevelopment Plan should never have been given the grant if HUD had just opened its eyes and seen the numerous obvious ways in which it was inconsistent with the goals of the CNI Grant.

According to HUD, the goals of CNI are to leverage "public and private dollars to support locally driven strategies that address struggling neighborhoods with distressed public . . . housing through a comprehensive approach to neighborhood transformation." Ex. B, HUD, CNI Grant Program Notice of Funding Availability, Fiscal Year 2018 (hereafter "NOFA") at NRHA00016770. The transformation, however, cannot come at the expense of the existing residents of those distressed neighborhoods, and must ensure that current residents benefit from the transformation by maintaining affordable housing in the redeveloped area or providing residents with a choice to move to areas of high opportunity. Ex. C, CNI Grant Agreement at

[3] That provision goes beyond the duty not to discriminate. It imposes both on HUD and municipalities funded by HUD the duty to affirmatively further fair housing. *See NAACP, Bos. Chapter v. Sec'y of Hous. & Urb. Dev.*, 817 F.2d 149, 154-55 (1st Cir. 1987) (holding that the duty to affirmatively further fair housing means that HUD must "use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases"); *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973); *Shannon v. U.S. Dep't of Hous. & Urb. Dev.*, 436 F.2d 809 (3rd Cir. 1970) *Thompson v U.S. Dep't of Hous. & Urb. Dev.*, 348 F. Supp. 2d 398, 418 (D. Md. 2005).

NRHA00002617. The Local Defendants have shirked this responsibility, and instead of benefitting the current residents of Tidewater Gardens, the Redevelopment Plan already has forced numerous residents to abandon their homes and move into low-income areas of the City. It has left over half of Tidewater Gardens' units vacant, with the remaining half rapidly deteriorating into uninhabitable conditions.[4] Local Defendants could have avoided this injustice (and complied with their statutory and regulatory obligations) by having constructed replacement housing *before* evicting tenants. Instead, they willfully forged ahead with their discriminatory Plan, thereby upending the lives of hundreds of Tidewater Garden residents—the overwhelming majority of whom are Black. The effects of the exile of Tidewater Gardens residents were predictable, despite the City claiming that it had program to avoid the perpetuation of segregation.

While Local Defendants initially agreed to postpone their unlawful plan, that agreement has expired and they have returned to implementing their discriminatory plan with large numbers of Tidewater Gardens residents recently ordered to vacate their homes and many more Notices to Vacate to come. Further implementation of the Redevelopment Plan and the displacement of current Tidewater Gardens residents will cause Plaintiffs to suffer irreparable harm and the discriminatory impact intended by Defendants will be irreversible. And it is particularly important to address these issues now as Plaintiffs only recently learned that the first redevelopment project,

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[4] Local Defendants are pushing residents out through a systematic campaign encouraging them to leave, disinvesting in and allowing Tidewater Gardens to deteriorate and become uninhabitable and by the issuance of notices requiring residents to vacate their homes ("Notices to Vacate"). The decision to disinvest in Tidewater Gardens was made long before the Local Defendants applied for CNI funding. Ex. D, CNI Transformation Plan at NRHA00056952. That decision has led to continuing deterioration of the property. By May 2018, HUD's inspection ("REAC") revealed serious deficiencies in the maintenance of Tidewater Gardens and it received a failing grade, *see generally* Ex. E, Inspection Summary Report. HUD's REAC report projected that 1,068 units failed to meet applicable standards with some of the units containing life threating deficiencies. *Id.* at 5. Indeed, during her deposition, Plaintiff Sylvia Givens testified about the squalid conditions in her unit at Tidewater Gardens and the difficulties in getting maintenance services to make even the most basic repairs, such as removing mold and addressing flooding issues. Ex. F, Givens Dep. Tr. 31:21-42:19.

which would have given at least some residents the opportunity to return, has been removed from the Plan altogether. Given the current posture of this case, a pause of the demolition of St. Paul's public housing units pending resolution of the claims raised in the Amended Complaint will cause Defendants minimal harm, but it will stop serious harm to Plaintiffs caused by further implementation of the Redevelopment Plan. Consequently, Plaintiffs ask this Court to enter an order (i) halting the demolition of Tidewater Gardens buildings unless a building is already entirely vacant; (ii) halting the issuance of any notices to vacate to residents and rescinding those that have already been issued if the resident has not already left; (iii) requiring the Local Defendants to fulfill their maintenance obligations at Tidewater Gardens; and (iv) prohibiting the disbursement of HUD grant funding for the Plan, all pending resolution of this litigation.

FACTS SUPPORTING PRELIMINARY INJUNCTION

A. Background: A Segregated City and the Proposed Goals of the Redevelopment Plan

Norfolk is highly segregated with significant, economic disparities between White and Black families. *See, e.g.*, Ex. G, Parnell Decl. ¶¶ 8-17. Norfolk's subsidized housing is predominantly Black; public housing households are 96.7% Black and households using Housing Choice Vouchers are 92.6% Black. *Id.* ¶¶ 18, 20-21.

The St. Paul's Quadrant public housing consists of three developments—Tidewater Gardens, Young Terrace, and Calvert Square (collectively "St. Paul's")—comprising 1,674 housing units and housing approximately 4,200 residents, including 2,000 children. *Id.* ¶ 18. The average resident in St. Paul's earns $12,000 a year. *Id.* ¶ 22. Almost all are classified as either very or extremely low-income. *See id.* ¶¶ 11-16. While St. Paul's is mostly Black and low-income, it is located adjacent to Norfolk's downtown, an area with high employment opportunity and access to cultural assets, transportation, and community services. ECF No. 128 ¶¶ 29-30, 81, 127; *see also* Ex. H, RPRG, Norfolk Affordable Housing Study (2017) at 8. This area is majority White. Ex. G,

Parnell Decl. ¶ 20. St. Paul's "stands in stark contrast to the adjacent Central Business District in Norfolk's Downtown" and "St. Paul's Boulevard [has] served as a segregation dividing line and separates these areas." Ex. I, CNI Grant Application at Bryant_HUDAR_00112. A redeveloped St. Paul's presents significant economic opportunities for the City, including increased tax revenue. Ex. J, Kash Dep. Tr. 313:21-317:2.[5]

In January 2018, the Norfolk City Council passed a resolution authorizing the NRHA to redevelop St. Paul's. That September, Local Defendants jointly applied for a CNI grant advertised in HUD's Notice of Funding Availability. *See generally* Ex. B, NOFA. At that time, Tidewater Gardens had 1,662 residents, including 927 children. Ex. I, CNI Grant Application at Bryant_HUDAR_00144. In May 2019, HUD announced that the NRHA had received a $30 million CNI grant to demolish and begin redeveloping the Tidewater Gardens area, the first of the three St. Paul's communities planned for demolition. On June 27, 2019, Local Defendants entered into a Grant Agreement with HUD. *See generally* Ex. C, CNI Grant Agreement.

B. The St. Paul's Redevelopment Plan: Despite the Promise of Integration, Local Defendants' Redevelopment Plan Was Flawed From the Start

Almost all of Norfolk's affordable housing[6] is in areas of high racial minority concentration.[7] Local Defendants know that the City is segregated. The City's Expert, Phillip Kash, acknowledged that "Norfolk is a highly segregated -- you know, if you look at it from over the region, Norfolk is an area of both concentrated poverty and racial segregation." Ex. J, Kash

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[5] The Local Defendants have considered redeveloping St. Paul's since 2000, even preparing a report in 2014 prepared with the assistance of a HUD planning grant. *See, e.g.*, Ex. K, City 30(b)(6) Dep. Tr. (Vol. III - Perry) 332:12-334:10

[6] Almost all of Norfolk's affordable housing consists of (1) public housing, (2) so-called project based units in communities either managed by the NRHA or private landlords who set aside a certain number of units to rent for 30% of an eligible residents income, or (3) privately owned units rented to people with Housing Choice Vouchers. Ex. L, HR&A Advisors, Inc., Norfolk Affordable Housing Study (2016) at CITY000797-809.

[7] Of the thirteen census tracts that have the highest concentration of Housing Choice Vouchers, all are majority-minority and nine are more than 75% non-white. *Id.* ¶ 44.

Dep. Tr. 409:21-410:6.

Local Defendants also know that there is a shortage of affordable housing within the City. During a January 2020 meeting of the St. Paul Advisory Board, John Kownack, then Executive Director of the NRHA, admitted, "[w]e know there is a shortage of affordable and acceptable housing in Norfolk and the region."[8] A report commissioned by the City on affordable housing also stated, "There is a shortage of housing affordable for both low and moderate income households in Norfolk." Ex. L, HR&A Advisors, Inc., Norfolk Affordable Housing Study (2016) at CITY000710.[9] The lack of affordable housing is compounded by many property owners' refusal to accept Housing Choice Vouchers, especially for apartments with multiple bedrooms. Ex. M, Mills Dep. Tr. 103:17-21; 110:7-20.[10]

For public housing properties that are redeveloped using CNI grant funds, in order to achieve the program's goal of revitalizing distressed neighborhoods without displacing long-time residents, the CNI NOFA requires a grantee to construct housing that provides one-for-one replacement of demolished units. These must be "hard" replacement units, meaning they are either (1) on-site in the target area or (2) up to 25 miles away from that area in places that are considered

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[8] Ex. O, Ryan Murphy, *Residents Want More Homes to Replace Demolished Norfolk Public Housing. Here's Why That's Unlikely*, Virginia-Pilot (Mar. 1, 2019, 10:32 AM).

[9] Other Local Defendant officials and consultants acknowledged an insufficient supply of affordable housing in Norfolk, including Donna Mills, Chief Housing Officer of NRHA and Jamie Bordenave, President and CEO of the Communities Group, a consultant for the NRHA. *See* Ex. M, Mills Dep. Tr. 75:3-75:6; Ex. P, Bordenave Dep. Tr. 151:15-152:2.

[10] A voucher holder's financial history, challenges with budgeting, rent payment history, and an individual landlord's eligibility criteria all could prevent voucher holders from using a voucher to secure housing, even after they have qualified for a voucher. Ex. M, Mills Dep. Tr. 110:7-115:2; Ex. K, City 30(b)(6) Depo. Tr. (Vol. III - Perry) 404:11-413:13. Plaintiff Evonne Bryant's deposition testimony illustrates the difficulty of using a voucher. After the NRHA pressured her to vacate her unit ahead of the redevelopment, Ms. Bryant looked at five or six apartment units before settling on the one she ultimately moved into,"[b]ecause that's the only one taking the vouchers." Ex. Q, Bryant Dep. Tr. 17:24-18:20. She went on to describe settling for her current unit because it was the only place she could find "that was decent enough to move into," as the other places were nicer, but refused to accept her voucher. *Id.* at 19:17-20:15.

high opportunity (*i.e.*, places that are not areas of minority concentration, that do not have poverty rates of over 40%, and that are similar in economic, transportation, education, and other opportunities to the area covered by the grant after redevelopment). Ex. B, NOFA at NRHA00016793-94. In addition, the NOFA provides for a "right of return" for tenants of the demolished units. *Id.* at NRHA00016792.

The Redevelopment Plan falls well short of these requirements. Local Defendants' original grant application provided 709 units to replace the 618 units at Tidewater Gardens, but only 309 units fit within the NOFA's definition of the required "hard" replacement units: 200 units that would have been affordable replacement units at the CNI site, and 109 units that would have been off-site Project-Based vouchers in areas of opportunity. Ex. I, CNI Grant Application at Bryant_HUDAR_00171. In other words, the original grant application planned to provide only half of the hard replacement units it is obligated to under the CNI NOFA (309 out of 618), and less than one-third of Tidewater Gardens residents would be able to return to a replacement unit on site (200 out of 618). The Local Defendants have since modestly increased the number of onsite replacements to 226 and decreased the number of off-site Project-Based Voucher replacement units to 83. *See* Ex. R, Letter from Ronald Jackson, Exec. Dir., NRHA, to Mindy Turbov, Dir. Choice Neighborhoods Program (Apr. 8, 2020) at NRHA00017231. The remaining units under the Plan —either so called LIHTC units or which will be leased at market rates—are unaffordable to residents of Tidewater Gardens.[11] Put simply, there will not be enough units for displaced Tidewater Gardens residents.

[11] The Application also provided 280 housing units based on Low-Income Housing Tax Credit rent levels, which the CNI Grant Application specifically states are not replacement units, and 229 market rate units. Ex. I, CNI Grant Application at Bryant_HUDAR_00172. Low-Income Housing Tax Credit units are typically affordable to households earning either 50% or 60% of the Area Median Income. 26 U.S.C. § 42(g)(1). Tidewater Gardens residents typically have incomes less than 30% of the Area Median Income. Tidewater Gardens residents did not receive any preference for such units.

There is a narrow exception to the hard unit replacement requirement. With HUD's approval, a grantee may make limited use of portable, tenant-based Housing Choice Vouchers. These vouchers can serve as replacement housing for up to half of the public housing units, but only if the city has a "soft" housing market (*i.e.*, high vacancy rates for rental housing) and if most existing vouchers in the region are used in areas of low poverty. *See* Ex. B, NOFA at NRHA00016794-95. The exception is intended to ensure that grantees only rely on Housing Choice Vouchers where there is a real chance for residents to find homes in high opportunity areas. *See id.* at NRHA00016793-94. As Local Defendants' witnesses have conceded, Ex. S, Kownack Dep. Tr. 324:16-19, that is not the case in Norfolk. *See* Ex. N, Joyner Report, ¶ 33 (absorption study commissioned by the Local Defendants found that the Norfolk multifamily rental market has a current vacancy rate of only 2.6%). Yet Local Defendants—with HUD's improper approval—nonetheless planned to use the maximum allotted 309 Housing Choice Vouchers in lieu of hard replacement units, to the detriment of Tidewater Gardens residents: the use of vouchers thus far has pushed an overwhelming number of displaced residents into segregated, impoverished neighborhoods—or out of the City altogether.

Further, the Redevelopment Plan's timeline, coupled with the paucity of hard replacement units guarantees that the displaced Tidewater Gardens residents will not realize the benefits of the redevelopment. They will be scattered among segregated areas of low opportunity, without a realistic opportunity to return. In its grant application, Local Defendants represented that by the end of 2021, only 44 replacement units were to be ready for occupancy, leaving hundreds of Tidewater Gardens residents displaced in the meantime. *See* Ex. I, CNI Grant Application at Bryant_HUDAR_00175. The phasing means that few Tidewater Gardens residents would be able to move into the limited number of replacement units, and fewer still (if any) would be able to move into replacement units directly from their Tidewater Gardens homes. If a Tidewater Gardens

resident moved back to the redeveloped area, it would likely be after years of displacement.

In addition, Norfolk knew—and HUD at least should have known—that utilizing the voucher exception to HUD's one-to-one hard replacement unit requirement would inevitably perpetuate segregation in Norfolk. Because the Plan does not replace existing public housing units as required, the demolition of the St. Paul's public housing will only decrease the number of affordable housing units within the City, which has waitlists for every kind of affordable housing, harming not only Tidewater Gardens residents but also thousands of other Black Norfolk residents in need of affordable housing. *See, e.g.*, Ex. N, Joyner Report ¶ 40.[12]

C. The St. Paul's Redevelopment Plan: The Redevelopment Plan Continues to Perpetuate and Increase Segregation in the City.

Since the execution of the Grant Agreement, Local Defendants have made an already discriminatory plan worse. The first three projects to be built under the original plan—the Red Carpet site, the former Police Station site, and Snyder Lot—which would have allowed some residents to go directly into new housing from Tidewater Gardens, all have been removed from the Plan. *See* Ex. J, Kash Dep. Tr. 159:16-161:3. Snyder Lot was "sidelined" just this last December. Ex. T, Dec. 10, 2020 Minutes of Commissioner Meeting at 8.

As a result, the current Plan requires virtually every Tidewater Gardens resident to leave, years before any replacement housing is constructed. Indeed, as of March 31, 2021, NRHA has reported that 310 of the 618 units at Tidewater Gardens are already vacant, *see* Ex. U, Mar. 31, 2021 Tidewater Gardens Relocation Dashboard, and the Local Defendants' current plan is to force every remaining resident of Tidewater Gardens to leave by August 2022. *See* Ex. J, Kash Dep. Tr. 437:15-22. Just last month, 169 households were given notices to vacate their units. Yet, the first

[12] As of February 28, 2021, there are 12,255 people on the HCV Wait List and thousands more on the various other wait lists for other public housing communities. *See* Ex. V, Mar. 16, 2021 BOC HCV Committee Meeting Notes at 4-5.

two buildings to be constructed, Blocks 19-20 on the so-called Transit Area site, will not be ready to begin leasing until the first quarter of 2022 and will contain only 59 replacement units. *See id.* at 437:19-439:1.

By forcing tenants to live outside of their communities for years at a time, the Redevelopment Plan is structured to limit the amount of Tidewater Gardens residents who return after redevelopment. Local Defendants' fact witnesses and experts have repeatedly admitted that the longer people are forced to live in other areas, the less likely they are to return. *Id.* at 114:10-16. Jaime Bordenave, the NRHA consultant who prepared the CNI Grant Application, admitted that a "Build First" Approach—where housing is constructed in the redeveloped area before demolition—is the preferable and desirable approach, because "the more people have to move, the -- the more of an impediment that is" for residents returning to the community. Ex. P, Bordenave Dep. Tr. 214:12-14, 18-19; *see also* Ex. J, Kash Dep. Tr. 153:21-154:19. Given these challenges, only about 30% of residents typically return to the redeveloped property from which they were displaced. Ex. P, Bordenave Dep. Tr. 213:8-214:8; Ex. J, Kash Dep. Tr. 287:14-288:12. Despite knowing that this is the inevitable outcome of their Plan, Local Defendants falsely represented to HUD that "demolition and relocation will be phased appropriately to minimize disruption to the lives of Tidewater Garden's residents." Ex. I, CNI Grant Application at Bryant_HUDAR_00170. The reality is that, in rejecting a Build First Approach, they ensured the opposite result.[13]

The City's Director of the Office of St. Paul's Transformation, admitted that the only place Local Defendants' Plan was intended to desegregate was Tidewater Gardens. *See* Ex. W, Perry Dep. Tr. (Oct. 30, 2020) 118:19-122:3. And it will do so at the expense of the Tidewater Gardens

[13] The City consulted with an economic and real estate development firm which recommended that construction for replacement housing begin prior to securing the CNI grant. Despite this recommendation, the Local Defendants decided to continue their plan to evict residents prior to replacement housing being built. Ex. W, Perry Dep. Tr. (Oct. 30, 2020) 202:6-9 (describing the firm); *id.* at 254:18-259:4; Ex. X, HR&A Mem. to Perry (Ex. 9 to Perry Dep. Tr.).

residents, and numerous other parts of the city where segregation will be intensified. Residents forced to leave Tidewater Gardens have had little opportunity to move to high-opportunity neighborhoods. Ann Joyner analyzed NRHA's relocation data set forth in its September 2020 dashboard, and the majority of displaced households that moved into public or other assisted housing have relocated to neighborhoods with an average minority concentration of 95.1%.[14] *See* Ex. N, Joyner Report ¶¶ 45-47.[15] Tidewater Gardens residents who moved with Housing Choice Vouchers relocated to neighborhoods which average 77.2% minority. *Id.* ¶ 46. These disparities are similarly stark among households with children: those moving into public and other subsidized housing moved into neighborhoods that were 98.1% minority, those using Housing Choice Vouchers moved into neighborhoods that were 76.2% minority. *Id.* ¶¶ 48-49.[16] Thus, the residents of Tidewater Gardens are relocating to areas that are extremely segregated by race compared to

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[14] That trend has continued since September 2020. Ms. Joyner analyzed more recent dashboard data from February 28, 2021, not yet provided in discovery but found on the NRHA website, and found that the relocation of Tidewater Gardens residents continues to perpetuate segregation. *See* Ex. Y, Joyner Decl.

[15] It is important to note that in the dashboards, which the City purports to keep track of data as to where displaced Tidewater Gardens residents relocate to on a monthly basis, the Defendants have adopted their own definition of "areas of opportunity," ignoring HUD's definition in the NOFA which consider not only minority concentration and poverty rates but requires that an area of opportunity "offer access to economic opportunities and public transportation and be accessible to social, recreational, educational, commercial, health facilities and services, and other municipal services and facilities that are comparable to those that will be provided in the target neighborhood." Ex. B, NOFA at NRHA00016793; *see also* Ex. N, Joyner Report ¶¶ 66-81. City and NRHA deponents repeatedly acknowledged that they did not take HUD's definitional language into account. Ex. M, Mills Dep. Tr. 153:22-167:2; Ex. Z, Morales Dep. Tr. 88:11-93:5. Further, despite the Court's decision requiring the Local Defendants to produce address information on relocated Tidewater Gardens residents, ECF No. 81 ¶ 6, the last time they produced such information was June 2020.

[16] Professor Finn has also found that 74% of Tidewater Gardens households using Housing Choice Vouchers were relocated into census tracts that were rated either "high" or "very high" social vulnerability according to the Social Vulnerability Index created by the Centers for Disease Control and Prevention. The percentage for children was higher (78%). In his analysis of September 2020 data, the percentages were 77.4% for all households and 74% for children. Ex. AA, Finn Report ¶ 19.

other areas of the city. *See generally id.* Worse still, the NRHA has lost track of many former Tidewater Gardens residents despite its obligation to track 100% of displaced residents for 5 years. *See id.* ¶¶ 59-65.

LEGAL ANALYSIS

A. A Preliminary Injunction Is Appropriate to Preserve the Status Quo and Avoid the Discriminatory Impacts of the Redevelopment Plan Pending Resolution of the Plaintiffs' Claims.

The purpose of a preliminary injunction is "merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tx. v. Camenisch*, 451 U.S. 390, 395 (1981). A preliminary injunction is necessary here to prevent Local Defendants from proceeding with evictions and demolition pursuant to the unlawful Redevelopment Plan. Without this injunction, Local Defendants will continue implementing the Plan, forcing Black residents out of their homes, worsening racial segregation in Norfolk, and irreparably limiting the equitable relief that ultimately must be ordered. It is also necessary to prevent Defendant HUD from further funding the Plan, thereby aiding the City's perpetuation of segregation, until this case can be resolved.

A preliminary injunction is appropriate when a plaintiff establishes that (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the plaintiff's favor, and (4) the requested injunction is in the public interest. *Roe v. Dep't of Def.*, 947 F.3d 207, 219 (4th Cir. 2020), as amended (Jan. 14, 2020). The evidence here establishes each factor in favor of a preliminary injunction.

B. Plaintiffs Are Likely to Succeed on the Merits.

The FHA makes it unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). "A dwelling can be made otherwise unavailable by, among other

things, action that limits the availability of affordable housing. The FHA can be violated by either intentional discrimination or if a practice has a disparate impact on a protected class." *Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 658 F.3d 375, 381 (3d Cir. 2011) (internal citations omitted). Continued implementation of the Redevelopment Plan clearly will have an unlawful disparate impact on Black residents of St. Paul's and Black residents of Norfolk.[17]

In *Reyes v. Waples Mobile Home Park Ltd. Partnership*, 903 F.3d 415 (4th Cir. 2018), the Fourth Circuit recently set forth the elements of an FHA disparate impact claim. Notably, *Reyes* follows the Supreme Court's 2015 decision in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), which clarified that the FHA permits disparate impact claims. "In general, 'a plaintiff bringing a disparate-impact claim' must show that the 'challenge[d] practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.'" *Reyes*, 903 F.3d at 424 (quoting *Inclusive Communities Project, Inc.*, 576 U.S. at 524). "[A]n FHA disparate-impact claim should be analyzed under a three-step, burden-shifting framework." *Id.* Under the first step, "the plaintiff must demonstrate a robust causal connection between the defendant's challenged policy and the disparate impact on the protected class." *Id.* If the plaintiff can establish the first step, the burden shifts to the defendant to "state and explain the valid interest served by their policies." *Id.* at 432 (quoting *Inclusive Communities*, 576 U.S. at 541). The burden then shifts back to "the plaintiff . . . to prove that the defendant's asserted interests 'could be served by another practice that has a less discriminatory effect.'" *Id.* at 424 (quoting *Inclusive Communities*, 576 U.S. at

[17] Although the Local Defendants have a long history of intentional discrimination against the Black residents of the city, "an FHA claim can proceed under either a disparate treatment or a disparate-impact theory of liability, and a plaintiff is not required to elect which theory the claim relies upon at pre-trial, trial or appellate stages." *Reyes*, 903 F.3d at 421, *cert. denied sub nom. Waples Mobile Home Park Ltd. P'ship v. de Reyes*, 139 S. Ct. 2026 (2019).

527).[18]

To establish a causal connection, "'[t]he plaintiff must begin by identifying the specific [ ] practice that is challenged' [and] 'demonstrate that the disparity they complain of is the result of one or more of the [ ] practices that they are attacking . . . , specifically showing that each challenged practice has a significantly disparate impact' on the protected class." *Id.* at 425 (internal citation omitted). Where plaintiffs employ statistical evidence to this end, it must be "'of a kind and degree sufficient to show that the practice in question has caused the exclusion [complained of] because of their membership in a protected group," and courts have 'consistently stressed that statistical disparities must be sufficiently substantial that they raise such an inference of causation.'" *Id.* (quoting *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 994-95 (1988)).

1. Local Defendants' Redevelopment Plan Causes a Disproportionate Adverse Impact on Black Residents in Norfolk.

The evidence in the case at hand demonstrates the requisite causal connection between Local Defendants' challenged practices and the disparate impact on Black residents in Norfolk. First, Plaintiffs have identified Local Defendants' challenged practices: (1) demolishing all 618 units of Tidewater Gardens and displacing all its residents without providing replacement housing, which has further reduced affordable housing in the City; (2) using Housing Choice Vouchers instead of reserving sufficient hard replacement units for displaced residents; and (3) forcing current residents of Tidewater Gardens into segregated, low-income parts of the city, or out of Norfolk entirely, in violation of Local Defendants' obligations under the HUD CNI Grant and the FHA itself.

These challenged practices will have a significant disparate impact on the low-income

[18] In applying the three-part burden shifting framework, the Supreme Court's opinion in *Inclusive Communities* controls. *See Reyes*, 903 F.3d at 424 n.4 ("Without deciding whether there are meaningful differences between the frameworks, we note that the standard announced in *Inclusive Communities* rather than the HUD regulation controls our inquiry.").

residents of Norfolk—the majority of whom are black—whether they currently live in St. Paul's public housing or elsewhere. At least 97% of the residents of St. Paul's public housing are Black, *see* Ex. G, Parnell Decl. ¶¶ 18-19, and Black residents make up a significantly disproportionate share of Norfolk residents in need of public housing, *see id.* ¶¶ 21, 23. "Where a plaintiff demonstrates that a protected group depends on low income housing to a greater extent than the non-protected population, . . . courts have found it reasonable to infer that the protected group will experience a disproportionate adverse effect from a policy or decision that reduces low-income housing." *Gallagher v. Magner*, 619 F.3d 823, 835 (8th Cir. 2010). *See, e.g.*, *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir.1982).

So it is here; given the disproportionate degree to which Black residents rely on subsidized housing, the Redevelopment Plan's drastic reduction of public and subsidized housing in Norfolk and its displacement of the residents of Tidewater Gardens will impact Black Residents more severely. The Redevelopment Plan will demolish 618 public housing units, which represents over 20% of all public housing units in Norfolk, providing only 226 replacement units in the area (and 83 off-site). *See* Ex. N, Joyner Report ¶¶ 26, 64 (noting that of Norfolk's 2,761 public housing units, 618 of them are from Tidewater Gardens and slated to be demolished). The Plan is pushing all residents of the Tidewater Gardens—97% of them Black—out of their homes, without providing them adequate new housing. If renters seek to stay in Norfolk, they will almost certainly end up in segregated and high poverty areas of the city. Indeed, this has already happened to the 310 households that have left Tidewater Gardens based on the most recent information available to Plaintiffs. *See* Ex. U, Mar. 31, 2021 Tidewater Gardens Relocation Dashboard. Not one resident will be able to return in the short-term, and, over the long haul, there will only be enough units for a small portion of displaced residents.

This Circuit and others have found sufficient evidence of disparate impact in cases where

the statistical disparities were less stark than those present here.[19] There can be no doubt that the challenged Redevelopment Plan will cause adverse disparate impacts for Black residents in Norfolk.

2. The Current Redevelopment Plan Perpetuates Segregation in the Norfolk Area.

Disparate impact jurisprudence also has long recognized liability for collective harms generated by policies and practices that perpetuate residential segregation. *See Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights (Arlington Heights II)*, 558 F.2d 1283 (7th Cir. 1977) (holding that if it were shown that a policy perpetuated segregation in the overwhelmingly white city, that policy would violate the FHA); *Huntington Branch, NAACP*, 844 F.2d at 926-42 (finding that the city's refusal to rezone violated the FHA by perpetuating segregation).

The Redevelopment Plan will undoubtedly perpetuate segregation throughout Norfolk. Indeed, the Plan has already done so. As explained in the Statement of Facts, the City's own "dashboards" show that Tidewater Gardens residents have relocated to areas that are highly segregated, often high poverty. *See* Ex. Y, Joyner Decl. That evidence is both compelling *and* unchallenged by Local Defendants or a single one of their nine expert witnesses.

The City and NRHA claim that Tidewater Gardens and the rest of the St. Paul's

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[19] *See, e.g.*, *Smith.*, 682 F.2d at 1060-61, 1064-66 (concluding that a policy or practice that "fell 2.65 times more harshly on black population than on the white" population "le[ft] no doubt" that the black population was adversely affected); *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 988 (4th Cir. 1984) (finding that the disparate impact of a policy was "self-evident" where Plaintiffs showed that over 60% percent of the tenants with children in the building were minorities and 54.3% percent of minorities were affected as opposed to 14.1% of whites); *Mt. Holly Gardens Citizens in Action, Inc.*, 658 F.3d at 382 (finding that a redevelopment plan had a disparate impact because 22.54% of Black households and 32.31% of Hispanic households would be affected by demolition of units as compared to 2.73% of white households); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2d Cir. 1988), *aff'd in part sub nom. Town of Huntington, N.Y. v. Huntington Branch, NAACP*, 488 U.S. 15 (1988) (finding "a strong prima facie showing of discriminatory effect" where a policy impacted 28% of minorities in the town but only 11% of whites).

communities must be demolished to deconcentrate poverty and create a racially integrated, mixed-income neighborhood. What their actions show, however, is that they are simply relocating and re-concentrating poverty and residential racial segregation in other, less centrally located parts of the city—or out of the city altogether—displacing Black residents to make way for the gentrification and eastward expansion of downtown and the influx of wealthier, non-Black residents that would bring. This plan, and the results already shown by the NRHA's own relocation data, have clearly violated the FHA by perpetuating segregation throughout the city of Norfolk.

3. Defendants Cannot Establish that the Redevelopment Project Serves a Valid Interest.

With a causal connection established between the Redevelopment Plan and the disparate, segregative impacts on Black residents in Norfolk, Local Defendants must "'state and explain the valid interest served by their policies.'" *Reyes*, 903 F.3d at 424 (quoting *Inclusive Communities*, 576 U.S. at 541). They cannot. Local Defendants' proffered interest—that the plan provides residents with "choice"—is insufficient. Indeed, Local Defendants' argument is wholly incompatible with their legal obligations under the FHA and CNI Grant Agreement to provide adequate hard replacement units. Defendants cannot simply circumvent their legal duties by claiming that disregarding these obligations provides residents with more "choice."

In securing the CNI grant, the City and the NRHA signed an agreement with HUD acknowledging their obligation to "ensure[] that current residents benefit from the transformation by preserving affordable housing in the neighborhood or providing the choice to move to affordable housing in another neighborhood of opportunity." Ex. C, CNI Grant Agreement at NRHA00002617. The Redevelopment Plan ignores that obligation and accomplishes the opposite. Its implementation has displaced 310 Tidewater Gardens households and left almost all tenants with no option but to move to racially segregated neighborhoods with limited opportunity.

Contrary to the standards of the FHA and the CNI Grant, the Plan will lead to the perpetuation of segregation in Norfolk and further reduce the already limited supply of affordable housing. Indeed, avoiding outcomes like this is the reason HUD requires one-to-one hard replacement units.

In addition to disregarding the law, Local Defendants' claim that giving residents "choice" trumps everything—including their liability for a policy that perpetuates segregation—lacks any factual basis. The supposed choice Local Defendants offer is illusory. Virtually all affordable housing in Norfolk is in segregated, often high poverty areas of the city. There is no meaningful choice in Norfolk, and the City's empty promises to do better do not actually help Tidewater Gardens residents.

4. Redevelopment Can Be Accomplished with Less Discriminatory Effect.

Even if Local Defendants were able to state and explain a valid interest in the Redevelopment Plan, its implementation would violate the FHA because the interest can be served by adopting alternative plans that would have no discriminatory effect. *See Reyes*, 903 F.3d at 424. The City and the NRHA have the ability to transform Tidewater Gardens into a vibrant mixed-income community that provides one-for-one hard replacement units and does not force current residents out of their homes. *See generally* Ex. BB, Warnke Decl.; Ex. CC, Warnke Reply Decl.

More specifically, Local Defendants could accommodate the development of an additional 551 units, for a total of 1,261 units, by changing their current plan to build somewhat higher buildings (6 and 8 stories rather than 3 or 4) and/or additional buildings on available sites in or adjacent to St. Paul's (the "Alternative Plan"). Ex. BB, Warnke Decl. at 12. The Alternative Plan would be comprised of 618 hard replacement units (49% of total), 322 LIHTC units (25.5% of total) and 321 market rate units (25.5% of total).[20] *Id*. Moreover, none of the current residents of

[20] While Defendants claim, without support, that the ideal income mix is one-third replacement housing, one-third LIHTC units, and one-third market rate units, the proposed income mix in the Alternative Plan would receive maximum points under the scoring criteria in the NOFA.

Tidewater Gardens would be forced to leave St. Paul's. Instead, by delaying demolition by one year, Tidewater Gardens residents would be able to move directly into the newly constructed buildings in St. Paul's. *Id.* at 21. Unlike the current Redevelopment Plan, every single current Tidewater Gardens resident could move back to the area in a hard replacement unit if they so desired. Any resident who did not want to return to the redeveloped area would maintain their right to a Housing Choice Voucher, see Ex. B, NOFA at NRHA00016792; Ex. DD, Warnke Dep. Tr. 128:19-20, thus providing the "choice" that Defendants' current plan is allegedly necessary to achieve. The Alternative Plan, which provides for one-for-one hard replacement units and Housing Choice Vouchers to those residents that do not want to return, follows the standard requirements under the NOFA, and is consistent with other redevelopments funded with CNI grants.[21] Thus, the Alternative Plan accomplishes the goals of the CNI by developing a mixed-income community, but unlike the Redevelopment Plan, it does not come at the expense of displacing Tidewater Gardens' longstanding Black residents.

Local Defendants contend that the Alternative Plan is not feasible because, according to them, there is not enough money in the budget, not enough land in the city, and not enough time under the CNI grant. These excuses are false. The Alternative Plan is not prohibitively expensive. Naturally, building additional units will increase the overall expense to the project, but at the same time, adding units also allows the project to receive additional equity funding from investors. Ex. BB, Warnke Decl. at 20. Still, Local Defendants claim that the Alternative Plan is not economically feasible because the cost per unit would significantly increase if they were to build taller buildings.[22] Again, not true. If anything, the cost per unit decreases in taller buildings due to the

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Ex. B, NOFA at NRHA00016835-36.

[21] Indeed, Brinshore, the developer working on the Redevelopment Plan, has developed other CNI projects that provided one-for-one hard replacement units while also providing Housing Choice Vouchers to those residents that wanted one. Ex. EE, Lieberman Dep. Tr. 49:18-52:12.

[22] Local Defendants also claim that the Alternative Plan is not economically feasible because

scales of economy achieved by constructing an increased number of units on the same foundational footprint. Ex. CC, Warnke Reply Decl. at 10-11; Ex. FF, Zhao Reply ¶ 26. Local Defendants also claim that there is insufficient funding available to support the Alternative Plan, but the NRHA's projection of available funding for the Alternative Plan is grossly deflated, and could not even be explained or supported by the NRHA's own expert on this topic. Ex. GG, Wood Dep. Tr. 262:13-263:12, 268:11-269:12, 293:8-298:19.

Local Defendants separately argue that the Alternative Plan is not feasible because there is not enough buildable land to construct additional buildings in the St. Paul's area. This argument is not credible. As an initial matter, the Alternative Plan can be accomplished by building taller buildings, which would reduce or even obviate the need to construct additional buildings. Regardless, the Alternative Plan proposes adding just four to five more buildings. *See* Ex. CC, Warnke Reply Decl. at 8. The City's advisers, HR&A, conducted an analysis to identify potential build sites for the Redevelopment Plan, and concluded that there were 52 sites, 42 owned (wholly or at least in part) by the City or NRHA, that could potentially be used as sites for multi-family development in the CNI area and surrounding neighborhoods. *See* Ex. II, HR&A Redevelopment Strategy Appendix (Appendix C to Warnke Decl.) at CITY0094634-38. The City's own expert, Phillip Kash admitted that there are additional buildable sites in Norfolk. Kash Dep. Tr. 149:5-150:6. In fact, there are several large, City-owned parcels of vacant land in prime locations immediately adjacent to downtown that Local Defendants admit can be developed, but they have refused to include as part of the Redevelopment Plan, inexplicably opting instead to reserve the

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there is not enough market demand to justify building additional market rate units in the St. Paul's area, but this is belied by the very absorption study that the City commissioned, which indicates that downtown Norfolk should anticipate market-rate unit absorption to grow approximately 150 units per year. Ex. BB, Warnke Decl. at 12; Ex. HH, 2018 HR&A Study at CITY010001. Thus, there is more than enough market demand to support the Alternative Plan, which only calls for an additional 79 market-rate units to be built over the next several years in comparison to the Redevelopment Plan. Ex. BB, Warnke Decl. at 12.

land for future use. *See* Ex. T, Dec. 10, 2020 Minutes of Commissioner Meeting at 8 (discussing Blocks 7A, 7B, and 8).

Lastly, Local Defendants argue that the Alternative Plan cannot be accomplished by the artificial September 2025 deadline. This is not the deadline for completing the redevelopment; this is only the deadline for spending the CNI grant money. *See* Ex. B, NOFA at NRHA00016783. By simply delaying demolition by one year, the current residents could have the option to move directly into the first completed buildings in the redeveloped CNI area. *See* Ex. BB, Warnke Decl. at 21-22. Local Defendants freely admit that a Build-First Approach that avoids temporary relocation is preferable, but continue to argue, based on an artificial deadline of September 2025, that the timeline does not allow for such an approach.

5. Plaintiffs Are Likely to Succeed on the Merits against Defendant HUD.

a. HUD's Approval of the NRHA's CNI Grant was Arbitrary, Capricious, and Contrary to HUD's Legal Obligation to Affirmatively Further Fair Housing.

Agency action should be set aside as unlawful if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). If an agency "entirely fail[s] to consider an important aspect of the problem, [or] offer[s] an explanation for its decision that runs counter to the evidence before the agency," its decision is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The CNI program and its NOFA include safeguards to ensure that HUD's resources are not used to perpetuate segregation or negatively impact fair housing, consistent with HUD's statutory duty to administer its programs and activities in a manner that "affirmatively further[s] fair housing." 42 U.S.C. § 3608(e)(5). HUD may approve a redevelopment plan only if it is "suitable from the standpoint of facilitating and furthering full compliance" with the FHA and other applicable HUD regulations. U.S. Dep't of Hous. & Urban Dev., PIH-2011-31, *Guidance on*

Non-discrimination and Equal Opportunity Requirements for PHAs (2011); 24 CFH § 941.202.

HUD's approval of the City and NRHA's CNI Grant Application was arbitrary and capricious. HUD failed to adequately consider the disparate impact of the Redevelopment Plan on Black residents or the risk that the Plan would perpetuate segregation. *See NAACP, Bos. Chapter,* 817 F.2d at 156 (HUD may be liable for discriminatory action for its "failure to consider [the] effect [of a HUD grant] on the racial and socio-economic composition of the surrounding area." (alteration in original)). Again, the Plan does not comply with the CNI program's requirement to provide adequate replacement housing for the displaced residents and is already leading to predictable harmful results: the mass displacement of Black residents, segregation of households relocating with vouchers to remote, predominantly Black neighborhoods, and a net reduction of affordable rental housing. *Supra* pp. 10-12.

HUD expressed concerns only after it approved the CNI Grant that the plan lacked a feasible relocation plan, replacement units, and mobility resources for displaced tenants. Ex. JJ, Letter from Mindy Turbov, Director of Choice Neighborhoods Program, to John Kownack and Doug Smith 3-6. (Oct. 2, 2019). Indeed, it is nearly impossible to tell whether HUD did any analysis of the Plan at all pre-approval. The Administrative Record, *available at* Ex. KK, is little more than a copy of the Local Defendants' grant application. HUD's later acknowledgement of the Plan's flaws highlights the arbitrariness of the initial approval, which lacked thorough consideration. HUD's approval of the CNI Grant Application flaunts the program's requirements, disproportionately harming Black Norfolk residents and perpetuating segregation to the detriment of the whole community. It thus was arbitrary and capricious.

b. HUD's Failure to Explain Its Decision to Approve the CNI Grant Renders the Decision Arbitrary and Capricious.

An agency must "articulat[e] a satisfactory explanation for its action" and may not "offer[]

an explanation for its decision that runs counter to the evidence before [it]." *State Farm*, 463 U.S. at 30, 43 *see also Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 6 (D.C. Cir. 2006). When an agency fails "to provide a reasoned explanation, or where the record belies the agency's conclusion, [the court] must undo its action." *Cnty. of Los Angeles v. Shalala*, 192 F.3d 1005, 1021 (D.C. Cir. 1999) (citation and internal quotation marks omitted). That is, the agency must explain why it decided to act as it did." *Butte Cnty. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010). HUD failed to offer an adequate explanation for its decision, which runs contrary to the evidence presented to the agency.

The lone document suggesting any review by HUD prior to approving the Plan—the Plan scoring sheet—offers *no* discussion or explanation for the scores attributed to the Plan. *See* Ex. LL, HUD Scoring Sheet (excerpted from Administrative Record) at Bryant_HUDAR_00547-48. In determining the Plan's scores, there is no evidence that HUD considered the Plan's over-reliance on vouchers or its proposal to engage in premature demolition that would force virtually every resident to leave the area for years. The failure to thoroughly examine the Redevelopment Plan, evaluate it for compliance with program requirements, and consider evidence that runs contrary to the decision to approve the grant without satisfactory explanation make that decision arbitrary and capricious.

HUD's post-approval concerns demonstrate that it ignored the Plan's severe flaws during approval. Specifically, HUD belatedly flagged that: Local Defendants did not have a communication and resident engagement plan, the Plan lacked guaranteed replacement housing for all displaced tenants, the grantees planned to satisfy half of their obligation using vouchers, skepticism regarding the provided explanation of flood plain concerns, and the seemingly unreasonable timeline for relocating residents early in the process. *See* Ex. JJ, Letter from Mindy Turbov, Director of Choice Neighborhoods Program, to John Kownack and Doug Smith 3-6. (Oct. 2, 2019). Here, HUD adopted a grant-first, inquire-later approach to allocating $30 million in

federal funding. That is arbitrary and capricious, especially since the Plan's adverse outcomes were so predictable.

c. Approval and Funding of the City and NRHA's Discriminatory Tidewater Gardens Redevelopment is Contrary to Law.

Approval of the Redevelopment Plan, which perpetuates segregation and limits housing opportunities for Black Norfolk residents, is contrary to HUD's statutory obligation to affirmatively further fair housing. To affirmatively further fair housing, HUD must consider the possible impacts of its grant decisions on segregation at the local and regional level. The broader intent of the FHA "reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases." *NAACP, Bos. Chapter*, 817 F.2d at 155. So, absent a showing that HUD actually engaged in this analysis prior to approving the CNI grant application, its decision is contrary to law. The Administrative Record reflects no consideration of the impact of this plan on Black Norfolk residents or on larger patterns of segregation in Norfolk. Again, of a 608 page Administrative Record, two pages of unexplained and unsupported scores is the extent of HUD's decision making. That is not reasoned decision making.

Despite its concerns, HUD has not required any changes to the Redevelopment Plan to ensure its compliance with the CNI program or HUD's duty to affirmatively further fair housing.

C. Plaintiffs Are Likely to Suffer Irreparable Harm in the Absence of Preliminary Relief.

Plaintiffs have suffered and will continue to suffer irreparable harm because of Defendants' unlawful conduct. Irreparable harm may be presumed when a plaintiff demonstrates discrimination and violations of fair housing statutes. *See Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) ("We agree with the district court that irreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes."); *Silver Sage Partners, Ltd.*

v. City of Desert Hot Springs, 251 F.3d 814, 826-27 (9th Cir. 2001); *Forest City Daly Hous., Inc. v. Town of N. Hempstead*, 175 F.3d 144, 153 (2d Cir. 1999). This is especially true in race-based cases because of the "strong national policy against race discrimination in housing." *Gresham*, 730 at 1423. The discriminatory impacts of the Redevelopment Plan and the Plan's violation of federal law, as discussed above, therefore establish the requisite irreparable harm.

In addition, Plaintiffs face irreparable harm each day the Redevelopment Plan moves forward. Three of the Plaintiffs—Evonne Bryant, Sylvia Givens, and Brandon Spratley—already have been displaced from their homes in St. Paul's because of the Plan. *See, e.g.*, Ex. Q, Bryant Dep. Tr. 17:25-18:4; Ex. MM, Spratley Dep. Tr. 55:7-56:25; Ex. F, Givens Dep. Tr. 82:22-85:9 As demonstrated above with the NRHA dashboards, hundreds of other Tidewater Gardens residents have also left to live in highly-segregated and high-poverty neighborhoods. *See Supra* pp. 10-12. Despite Local Defendants' promises, the current Plan, to demolish Tidewater Gardens prior to building a significant amount of replacement housing, will only ensure that the displaced Tidewater Gardens residents will not receive the benefits of the redevelopment or be able to live in high opportunity areas. Plaintiffs also are likely to suffer other concrete injuries from being displaced from St. Paul's public housing. For example, Ms. Bryant will continue to incur opportunity and transportation costs arising from the fact that her commute to work is now longer than it was when she lived at Tidewater Gardens. Ex. Q, Bryant Dep. Tr. 65:12-66:15. Mr. Spratley has also been faced with less access to transportation as well as extra bills since being displaced. Ex. MM, Spratley Dep. Tr. 55:7-56:25.

For those who wish to return to the area, the Redevelopment Plan's timeline for demolition of the current public housing and construction of hard replacement units makes it harder for them to return. Every day that the unlawful Redevelopment Plan moves forward, their exclusion from St. Paul's is prolonged. Defendants' mulish insistence on continuing to implement the current,

unlawful Plan only delays completion of an FHA-compliant plan, irreparably denying Plaintiffs the time they would otherwise have back in their home community with its promised improvements. This forced displacement to low-opportunity areas cannot be fully remedied by money damages because of the negative effects of displacement detailed above. *See Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp.*, 17 F.3d 691, 694 (4th Cir. 1994) (explaining that irreparable harm is harm that cannot be remedied with an award of money damages). Each day that Plaintiffs are denied the ability to return to their home community constitutes irreparable harm. *See Open Communities Alliance v. Carson*, 286 F. Supp. 3d 148, 174-75 (D.D.C. 2017) (finding irreparable harm where delay in HUD's implementation of a rule would delay voucher recipient's ability to move to the town where she wanted to live and where her children went to school); *Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n of Town of Fairfield*, 790 F. Supp. 1197, 1208-09 (D. Conn. 1992) (holding that, for non-profit home for HIV-infected persons, excluding them from premises they owned and where they intended to operate a shelter constituted irreparable harm "each passing day" that the plaintiff was unable to occupy the premises).

Plaintiff Residents of the St. Paul's Quadrant Tenant Group also faces irreparable harm as implementation of the unlawful Redevelopment Plan moves forward. Members of the Tenant Group and other members of the Tidewater Gardens community will face involuntary eviction and displacement as the Tidewater Gardens community continues to be demolished. *See* Ex. NN, Johnson Decl. ¶ 7; s*ee Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 328 (E.D.N.Y. 2012) (holding that threat of eviction satisfies requirement for irreparable harm); *Johnson v. Macy*, 145 F. Supp. 3d 907, 919 (C.D. Cal. 2015) (same); *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106, 1118 (D.D.C. 1987) ("It is axiomatic that wrongful eviction constitutes irreparable injury."). In addition, members of the Tenant Group and the Tidewater Gardens community continue to endure

substandard living conditions, their homes plagued by mold, leaks, broken windows and doors, and pest infestations, as Local Defendants continue to neglect their duties to maintain the habitability of Tidewater Gardens homes. *See* Ex. NN, Johnson Decl. ¶¶ 9-12. As redevelopment continues, the Local Defendants' neglect of their maintenance obligations, the uncertainty about whether and how long Tidewater Gardens residents will be able to remain in their homes, the constant threat that any day they will receive an eviction notice, and the prospect of having to engage in the process of an unwanted change of residency, all create significant mental and emotional stress for Tenant Group members which represents irreparable harm. *Id.* ¶ 14.[23] If demolition and evictions were paused pending the resolution of this litigation, it would be relieved. *Id.*

Plaintiff New Virginia Majority ("NVM") similarly will suffer irreparable harm if the current, unlawful Plan continues to be implemented and is not enjoined. NVM is a nonprofit organization who is working to ensure climate justice for people of color in Norfolk and to advocate for a fair, equitable redevelopment of the St. Paul's Quadrant that does not result in the mass displacement of Black public housing residents. *Id.* ¶¶ 2, 4. NVM advances its advocacy efforts by partnering with members of affected communities, including Tidewater Gardens, gathering and sharing information with them, and relying on them to amplify NVM's organizing efforts by mobilizing their friends and neighbors in support of their advocacy efforts. *Id.* ¶ 4. As residents of Tidewater Gardens are forced to move away because of the redevelopment, there are fewer residents to mobilize and help advance NVM's advocacy mission. *Id.* The ongoing

[23] *See Flack v. Wis. Dep't of Health Servs.*, 328 F. Supp. 3d 931, 942 (W.D. Wis. 2018) (holding that preliminary injunction was "necessary to protect [Plaintiffs'] well-being and health because they 'are at high risk of worsening mental health, exacerbated gender dysphoria, self-arm and stigma'"—"none of which has an adequate remedy at law"); Gillman *v. Hous. Auth. of Mingo Cty.*, No. CIV.A. 3:89-0803, 1989 WL 1718693, at *4 (S.D.W. Va. Dec. 21, 1989) (holding that public housing tenant at risk of eviction faced irreparable harm warranting preliminary injunction due to threats to physical and emotional well-being from eviction);

redevelopment of Tidewater Gardens disrupts NVM's ability to engage in such grassroots organizing and diminishes the effectiveness of its advocacy efforts. *Id*. In fact, NVM has had to divert most of its resources away from previously planned projects to support the tenants in Tidewater Gardens and to remedy the harm the Plan is causing. *See* Ex. OO, Liss Dep. Tr.32:25-33:3. This harm to New Virginia Majority's mission and diversion of its resources (financial and otherwise) is occurring every day and is irreparable. Damages would not remedy this injury and, in any event, are unavailable. *See Tex. Children's Hosp. v. Burwell* 76 F. Supp. 3d 224, 242 (D.D.C. 2014) ("[I]f a plaintiff has shown that financial losses are certain, imminent, and unrecoverable, then the imposition of a preliminary injunction is appropriate and necessary.") (citation omitted); *id.* at 243 (finding requisite irreparable harm where plaintiffs "are non-profits for whom lost funds would mean reducing hospital services to children").

Continued implementation of the Redevelopment Plan also jeopardizes the viability of the equitable relief that ultimately must be ordered: the development and implementation of a lawful plan. Progressing too far down the current road risks increasing—perhaps prohibitively—costs of a remedial plan. *See* Ex. P, Bordenave Dep. Tr. 271:9-272:11. And while completely speculative harm may not justify a preliminary injunction, harm need not be absolutely certain. *See Michigan v. U.S. Army Corps of Eng'rs*, 667 F.3d 765, 788 (7th Cir. 2011). The evidence here establishes sufficient likelihood that further implementation of the current, unlawful plan significantly jeopardizes the viability of the ultimate equitable relief that must be ordered.

D. The Balance of Equities Weighs in Plaintiffs' Favor.

Compared to the injustice and harm to Plaintiffs resulting from being forced from their community, Defendants will experience minimal harm from an order preserving the status quo until resolution of this case on its merits. Any speculative, increased economic costs are insufficient to tilt the balance of equities in favor of Defendants. *See Glendale Neighborhood Ass'n*

v. Greensboro Hous. Auth., 901 F. Supp. 996, 1002 (M.D.N.C. 1995). Indeed, the prospect of increased costs due to Defendants' continued implementation of the unlawful Redevelopment Plan only weighs in favor of a preliminary injunction to preserve the status quo. Defendants' continued implementation of the Redevelopment Plan through continued demolition and evictions will only entrench its discriminatory impacts, making the equitable remedies that ultimately must be prescribed more difficult to carry out and achieve. Residents forced to leave St. Paul's are less likely to return the longer their replacement housing remains unavailable. *See Gresham*, 730 F.2d at 1424 ("[A] person who is discriminated against in the search for housing cannot remain in limbo while a court resolves the matter. He or she must find housing elsewhere, and once that housing is found, even if in a segregated neighborhood, it becomes difficult to disrupt new friendships and other community ties by uprooting oneself again."); *see* Ex. P, Bordenave Dep. Tr. 213:8-214:8 (noting that only 30% of displaced residents are likely to return because "by the time somebody's moved and their kids are in a different school, now they have some new neighbors, a lot of the people, you know, just are not going to move again"). Absent an injunction, HUD will distribute grant funds in service of an unlawful project.

E. The Public Interest Would Best Be Served by a Preliminary Injunction Preventing Implementation of the Unlawful Redevelopment Plan Pending this Litigation.

The public interest weighs heavily in favor of a preliminary injunction to preserve the status quo until the merits of this case can be resolved fully. In light of the national policy of eradicating housing discrimination established in the FHA, the public interest factor generally favors the plaintiff in fair housing cases. *See, e.g.*, *United States v. Edward Rose & Sons*, 384 F.3d 258, 264 (6th Cir. 2004); *Gresham*, 730 F.2d at 1423. More so here, where Plaintiffs have demonstrated a likelihood of success on the merits establishing that the challenged Redevelopment Project would violate the FHA and contravene its purposes and those of the CNI Grant by reducing affordable

housing and entrenching segregation in Norfolk.

"Providing housing as soon as possible to waiting low-income families is certainly in the public interest. All parties recognize that decent, affordable housing is in great demand." *Glendale Neighborhood Ass'n*, 901 F. Supp. at 1009. Demolishing Tidewater Gardens without first constructing replacement housing exiles the residents from their homes for years, meaning it is in the public interest to keep the units at Tidewater Garden's operational until alternatives have been identified. Demolishing said units will only increase the waitlist for housing and increase segregation in already segregated areas. ECF No. 128 ¶¶ 3-4, 101-02.[24]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move the court to order a preliminary injunction as set forth in their proposed order.

[24] Additionally, "avoiding racial segregation is also a significant interest and is accompanied by a wide range of societal concerns." *Glendale Neighborhood Ass'n*, 901 F. Supp. at 1009. "The effects of racial segregation on a community are detrimental to present and future residents. The importance of careful avoidance of such segregation weighs heavily in favor of issuing a preliminary injunction . . . ." *Id.* In view of the important national interest of eradicating housing discrimination and racial segregation, the public interest clearly favors the requested preliminary injunction in this case.

Dated: April 22, 2021

Respectfully,

By: */s/ Stanley J. Brown*

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