UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAWRENCE COUNTY RECOVERY, LLC, *et al.*,
Plaintiffs,

Case No. 1:24-cv-452
Litkovitz, M.J.

vs.

VILLAGE OF COAL GROVE, OH, *et al.*,
Defendants.

ORDER

This matter is before the Court on the motion to dismiss filed by the Village of Coal Grove, Ohio (the "Village"), and James Thomas Holt IV ("defendant Holt"). (Doc. 9). Plaintiff Lawrence County Recovery, LLC ("LCR") and individual plaintiffs Donna Reynolds, Jamie Reynolds, Kathy Ross, and Mike Ross filed a response in opposition. (Doc. 12). The United States of America (the "Government") filed a Statement of Interest regarding four discrete questions of law related to the Fair Housing Act raised by defendants' motion to dismiss. (Doc. 13). Defendants filed reply memoranda addressed to both responsive filings. (Docs. 16, 17).

I. Background[1]

Sisters and plaintiffs Donna Reynolds and Kathy Ross founded LCR in 2019. It is a fully licensed and accredited recovery service provider in southeastern Ohio, including Lawrence County. The Village is a municipality located in Lawrence County, Ohio. Defendant Holt is the Village's solicitor.

Kathy Ross was inspired to start LCR after battling substance abuse disorder and incarceration. The individual plaintiffs serve different functions at LCR. Donna Reynolds is the

[1] The following is derived from plaintiffs' complaint (Doc. 1).

owner and executive director; Jamie Reynolds is a safety officer; Kathy Ross is an intake coordinator, counselor, and case manager; and Mike Ross is an owner and safety officer. LCR employs 90 people and has supported over 1,500 individuals in recovery.

LCR operates two independent living homes in the Village: one on High Street, in operation since May 2022, and one on Pike Street, in operation since April 2023. Each home provides a stable residence for up to six residents in recovery from substance use disorder. To become a resident, an applicant must have 60 days of employment and a certain amount of savings. Residents of LCR facilities operate as a family unit—sharing chores and meals. LCR mandates random drug testing for all residents. Independent living homes are "akin to a 'three-quarters way house': an optional last stop for someone who has completed treatment but would like additional peer support before living on their own." (Doc. 1 at PAGEID 11, ¶ 54).

Throughout 2022 and 2023, residents of the Village had growing concerns about recovery housing. Defendant Holt was "a significant driver" of this concern based on his comments that "recovery providers [were] fraudulent and/or profit-driven businesses" and "recovery housing [was] driving down property values in [the Village]. . . ." (Doc. 1 at PAGEID 14, ¶ 80). Defendant Holt also administered a Facebook page called "Larry County" that posts "memes and comments that denigrate recovery providers. . . ." (*Id.* at PAGEID 15, ¶ 81). On June 13, 2023, the Village's Planning Commission held a workshop to discuss ordinances regulating recovery housing, and minutes from this workshop reflect that such ordinances were needed to "protect the safety of the public[.]" (*Id.* at PAGEID 16, ¶ 87).

Later that month, the Village Council enacted and the Village Mayor and Planning Commission signed and approved three ordinances[2]:

- **Ordinance 2023-10**: This ordinance defines "family" as "one or more persons occupying a dwelling. A family shall not contain more than three individuals unless all members of said family are related by blood, marriage, or adoption." (Doc. 9-1). Prior to this ordinance, the Village defined "family" as "[a]ny number of persons living together as a single housekeeping unit." (Doc. 1 at PAGEID 15, ¶ 84).
- **Ordinance 2023-11**: This ordinance requires all "Group Residential Homes or Facilities and Addiction/Substance Abuse Treatment Providers" to provide proof of accreditation/licensure, occupancy permits, fire permits, and to submit to regular inspection. Failure to comply may result in a misdemeanor punishable with an up to $1,000.00 fine. (Doc. 9-2).
- **Ordinance 2023-12**: This ordinance established a one-year moratorium on the establishment of additional and/or new "Group Residential Homes or Facilities and Addiction/Substance Abuse Treatment Providers" located within the Village, subject to extension.[3] It likewise requires all Group Residential Homes or Facilities and Addiction/Substance Abuse Treatment Providers to annually register certain information

[2] Defendants attached the ordinances at issue to their motion to dismiss (Doc. 9-1, Doc. 9-2, and Doc. 9-3), which the Court will consider in its decision. *See Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008) (citing *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir.2001)) ("When a court is presented with a Rule 12(b)(6) motion, it may consider the Complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the Complaint and are central to the claims contained therein.").

[3] The one-year moratorium was extended 90 days on June 13, 2024 and was therefore in place as of the filing of the Complaint on August 26, 2024. (Doc. 1 at PAGEID 2, ¶ 5).

with the Village including their physical address, number of residents, and number of staff. This ordinance defined the phrase "Group Residential Home(s) or Facility(ies)" to mean "any home, location, place, or site where persons are located for housing by an addiction and/or substance abuse provider or a residential services and/or residential disabilities provider." (Doc. 9-3 at PAGEID 94).

Prior to Ordinances 2023-11 and 2023-12, the Village did not specifically regulate recovery housing. (Doc. 1 at PAGEID 15, ¶ 84).

Upon learning of their passage on July 3, 2023, LCR immediately took actions to be in compliance with Ordinances 2023-11 and 2023-12. LCR attended a July 27, 2023 Village Council meeting. Village officials stated that recovery housing "should not be permitted in the Village" because they were "driving an increase in crime, vagrancy, and homelessness." (Doc. 1 at PAGEID 20-21, ¶ 117). Meeting attendees called recovery home residents "backpack bandits" and members of the "backpack army." (*Id.*).

During a September 14, 2023 Village Council meeting, Council members discussed their belief that the LCR's Pike Street facility violated the moratorium in Ordinance 2023-12 and occupancy limitations established in Ordinance 2023-10. Throughout the meeting, Village Council members and defendant Holt "made statements evincing their discriminatory beliefs about people in recovery, the same misconceptions that motivated the passage and enforcement" of the ordinances at issue. (*Id.* at PAGEID 22, ¶ 125).

In October 2023, defendant Holt instructed a Village enforcement officer to cite LCR for operating in violation of the moratorium, even though LCR provided various forms of proof that

the Pike Street facility was operating as of April 2023—prior to the moratorium. Consequently, plaintiffs Donna Reynolds and Mike Ross were charged with violating Ordinance 2023-12, which led to misdemeanor charges and criminal court prosecutions. The Village then cited LCR for violations of Ordinances 2023-10 (occupancy limits) and 2023-11 (operating Pike Street without accreditation), which resulted in $250 daily fines (or $91,000 annually).

In November 2023, the Village imposed civil fines on plaintiff Jamie Reynolds, title holder to the High Steet facility, for violating Ordinance 2023-10. Plaintiffs appealed this and other citations, arguing the ordinances at issue violated federal antidiscrimination law and seeking the reasonable accomodation of allowing five residents as opposed to only three for purposes of Ordinance 2023-10. The Board of Zoning Appeals never held a hearing but instead, on December 14, 2023, held an off-the-record executive session attended by plaintiffs Donna Reynolds, Jamie Reynolds, Kathy Ross, Mike Ross, and their attorney; and the Village Planning Commission, the Village Council, and defendant Holt. Plaintiffs agreed they would never open more LCR facilities in the Village and would limit occupancy in each of the two existing LCR facilities to five individuals; in exchange, the Village would not continue to fine and prosecute plaintiffs based on the ordinances at issue. The Village's mayor discussed this agreement in the local newspaper, including the charges and citations against LCR. Local prosecutors dropped the criminal charges against plaintiffs Donna Reynolds and Mike Ross several months later.

Based on the foregoing allegations, plaintiffs assert eight claims:

Count I: unlawful discrimination in violation of the Fair Housing Act; 42 U.S.C. § 3604
(all plaintiffs against all defendants)

Count II: unlawful discrimination in violation of the Americans with Disabilities Act; 42

U.S.C. § 12131, et seq. (all plaintiffs against all defendants)

Count III: unlawful discrimination in violation of Ohio Rev. Code § 4112.02(H) (all plaintiffs against all defendants)

Count IV: discriminatory statements in violation of the Fair Housing Act; 42 U.S.C. § 3604(c) (LCR against all defendants)

Count V: discriminatory statements in violation of Ohio Rev. Code § 4112.02(H)(7) (LCR against all defendants)

Count VI: unlawful interference, coercion or intimidation in violation of the Fair Housing Act; 42 U.S.C. § 3617 (all plaintiffs against all defendants)

Count VII: unlawful retaliation, interference, coercion or intimidation in violation of the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq. (all plaintiffs against all defendants)

Count VIII: unlawful interference, coercion or intimidation in violation of Ohio Rev. Code § 4112.02(H)(12) (all plaintiffs against all defendants)

II. Legal standard

Defendants filed their motion to dismiss plaintiffs' complaint for "failure to state a claim upon which relief can be granted" under Fed. R. Civ. P. 12(b)(6). To withstand a motion to dismiss, a complaint must comply with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Rule 8(a)). A complaint must include sufficient facts to state a claim that is plausible on its face and not speculative. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Mere "labels and conclusions [or] a formulaic recitation of the elements of a cause of action" will not suffice. *Twombly*, 550 U.S. at 555. In deciding a motion to

dismiss under Rule 12(b)(6), the Court must accept all factual allegations as true and make reasonable inferences in favor of the non-moving party. *Keys v. Humana, Inc.*, 684 F.3d 605, 608 (6th Cir. 2012) (citing *Harbin-Bey v. Rutter*, 420 F.3d 571, 575 (6th Cir. 2005)).

III. Analysis

Defendants move to dismiss all of plaintiffs' claims and assert various bases for dismissal. The Court addresses each in turn.

A. Fair Housing Act claims

"Congress passed the federal Fair Housing Act (FHA) as Title VIII of the Civil Rights Act of 1968 to prohibit housing discrimination on the basis of, *inter alia*, race, gender, and national origin." *Larkin v. State of Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 288 (6th Cir. 1996). *See also* 42 U.S.C. § 3601 et seq. In 1988, Congress passed the Fair Housing Amendments Act (FHAA) to expand coverage to individuals with disabilities.[4] 42 U.S.C. § 3604(f)(1) (making it unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap. . . ."). The "Declaration of policy" for the FHA states that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. *See also* *Epicenter of Steubenville, Inc. v. City of Steubenville*, 924 F. Supp. 845, 849 (S.D. Ohio 1996) ("[T]o fully effectuate Congress' remedial purpose, courts must give the FHAA a broad interpretation."). "It is well-settled that the FHAA applies to the regulation of group homes." *Larkin*, 89 F.3d at 289.

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[4] The Court's references to the FHA in this Order include amendments thereto.

Defendants first argue that the FHA applies only to those who provide housing and not, as alleged here, to discriminatory zoning practices. *See, e.g.*, *Clifton Terrace Assocs., Ltd. v. United Techs. Corp.*, 929 F.2d 714, 719 (D.C. Cir. 1991) (42 U.S.C. §§ 3604(a) and (b) are "clearly confined to discrimination by the providers of housing."). They argue that municipality liability under the FHA extends only so far as their customarily provided services, such as garbage collection, but not to "every activity having any conceivable effect on neighborhood residents." *See Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 193 (4th Cir. 1999).

Both the Government and plaintiffs counter that the Sixth Circuit has held otherwise. *See Larkin*, 89 F.3d at 289 ("Congress explicitly intended for the FHAA to apply to zoning ordinances and other laws which would restrict the placement of group homes. *See* H. Rep. No. 711, 100th Cong., 2d Sess. 24, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2185."); *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 13 F.3d 920, 924 (6th Cir. 1993) (The FHA "applies to discriminatory actions taken by municipalities pursuant to zoning ordinances.").

In reply, defendants concede that the FHA may apply to zoning ordinances. Defendants emphasize, however, that "the FHA does not pre-empt or abolish a municipality's power to regulate land use and pass zoning laws." *White Oak Prop. Dev., LLC v. Washington Twp., Ohio*, No. 1:07-cv-595, 2009 WL 961175, at *7 (S.D. Ohio Apr. 7, 2009) (quoting *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339, 1349 (S.D. Fla. 2007)), *aff'd*, 606 F.3d 842 (6th Cir. 2010).

Based on the controlling Sixth Circuit authority acknowledged by the parties, the Village and defendant Holt are proper defendants under the FHA. *See Larkin*, 89 F.3d at 288-89; *Smith*

& Lee Assocs., 13 F.3d at 924. Defendants' first argument regarding plaintiffs' FHA claims is without merit.

Defendants next argue that LCR residents do not have a "handicap"[5] as defined in the FHA. They note that the "handicap" definition expressly excepts from coverage the "current, illegal use of or addiction to a controlled substance. . . ." 42 U.S.C. § 3602(h). Defendants rely on *Lake-Geauga Recovery Centers, Inc. v. Munson Twp.*, No. 1:20-cv-2405, 2021 WL 1049661 (N.D. Ohio Mar. 19, 2021). The plaintiff in that case was a sober-living facility for women in recovery from drug and/or alcohol addiction. *Id.* at *1. The *Lake-Geauga Recovery Centers, Inc.* court determined that because the residents of the facility were "actively recovering from drug and/or alcohol addiction" they "likely f[e]ll within [the 42 U.S.C. § 3602(h)] exclusion from the [FHA]." *Id.* at *6. Defendants argue the Complaint's various references to LCR facilities as "recovery housing" support the same conclusion in this case. Defendants also point out that the Complaint does not state explicitly that residents must pass drug screenings for any particular period of time to qualify for or remain in LCR facilities.

In response, the Government emphasizes that the Supreme Court has recognized "the FHA's 'broad and inclusive' compass. . . ." *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995) (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972)). *See also Linkletter v. W. & S. Fin. Grp., Inc.*, 851 F.3d 632, 637 (6th Cir. 2017) (as a remedial statute, FHA provisions "should be broadly interpreted and applied with the Fair Housing Act's

[5] "Handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. . . ." 42 U.S.C. § 3602(h). The definition of "disability" under the Americans with Disabilities Act (ADA) is "drawn almost verbatim" from the FHAA's definition of "handicap." *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998). The Court uses "handicap" and "disability" interchangeably in this Order.

purpose in mind."). Plaintiffs and the Government highlight legislative history demonstrating that the exclusion of "current addicts" from the definition of "handicap" in the FHAA was not intended encompass recovering addicts:

> The Committee intends that the definition [of "handicap"] be interpreted consistent with regulations clarifying the meaning of the similar provision found in Section 504 of the Rehabilitation Act.
>
> The definition adopted by the Committee makes it clear that current illegal users of or addicts to controlled substances, as defined by the Controlled Substances Act, are not considered to be handicapped persons under the Fair Housing Act. This amendment is intended to exclude current abusers and current addicts of illegal drugs from protection under this Act. The definition of handicap is not intended to be used to condone or protect illegal activity.
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> * * * * * *
>
> Similarly, individuals who have a record of drug use or addiction but who do not currently use illegal drugs would continue to be protected if they fell under the definition of handicap. *The Committee does not intend to exclude individuals who* have recovered from an addition [sic] or *are participating in a treatment program* or a self-help group such as Narcotics Anonymous. Just like any other person with a disability, such as cancer or tuberculosis, former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status. *Depriving such individuals of housing*, or evicting them, *would constitute irrational discrimination that may seriously jeopardize their continued recovery*.
>
> Individuals who have been perceived as being a drug user or an addict are covered under the definition of handicap if they can demonstrate that they are being regarded as having an impairment and that they are not currently using an illegal drug.
>
> The exception for current illegal drug users does not affect their coverage in the Rehabilitation Act or other statutes. The World Health Organization and the American Psychiatric Association both classify substance abuse and drug dependence as a mental disorder, and most medical authorities agree that drug dependence is a disease. Indeed, Congress has defined the term "handicap" in the Rehabilitation Act to include drug addiction and to require that federal employers as well as recipients of federal financial assistance recognize drug addiction as a handicap.

United States v. S. Mgmt. Corp., 955 F.2d 914, 921 (4th Cir. 1992) (quoting H.R. Rep. No. 100-711, at 22 (1988)) (emphasis added) (footnote omitted). Plaintiffs and the Government point to various appellate decisions, including from the Sixth Circuit, finding that those actively attempting to achieve sobriety are covered by the FHA's "handicap" definition. *See, e.g.*, *Get Back Up, Inc. v. City of Detroit, Mich.*, 725 F. App'x 389, 392 (6th Cir. 2018) (the ADA, FHA, and Rehabilitation Act "each prohibits intentional discrimination against disabled persons, including recovering addicts"); *One Love Hous., LLC v. City of Anoka, Minnesota*, 93 F.4th 424, 430 (8th Cir. 2024) ("[R]esidents of a sober home who are recovering alcoholics or drug addicts may establish they have a qualifying disability" if they otherwise meet the criteria of the definition); *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1156 (9th Cir. 2013) ("It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA and therefore protected from housing discrimination."); *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46-48 (2d Cir. 2002) (residents of a halfway house for recovering alcoholics are protected by the FHA, ADA, and Rehabilitation Act); *S. Mgmt. Corp.*, 955 F.2d at 922-23 (holding that "participation in a drug rehabilitation program (coupled with non-use) [i]s an adequate basis for inclusion in the definition of 'handicap' in the Rehabilitation Act" and applying that interpretation to the FHA).

Plaintiffs and the Government also highlight various allegations from the Complaint consistent with the conclusion that LCR facility residents fall within the FHA's definition of "handicap." For example:

- "As defined by the Substance Abuse and Mental Health Services Administration

'SAMHSA'), '[r]ecovery houses are safe, healthy, family-like substance free living environments that support individuals in recovery from addiction. While recovery residences vary widely in structure, all are centered on peer support connection to services that promote long-term recovery.'" (Doc. 1 at PAGEID 8, ¶ 36 (footnote omitted)).

- "According to the Ohio Revised Code Section 340.01(A)(3), 'Recovery Housing' means housing for individuals recovering from drug addiction that provides an alcohol and drugfree living environment, peer support, assistance with obtaining drug addiction services and other drug addiction recovery assistance." (*Id.* at PAGEID 9, ¶ 39).

- "An independent living home is akin to a 'three-quarters way house': an optional last stop for someone who has completed treatment but would like additional peer support before living on their own." (*Id.* at PAGEID 11, ¶ 54).

- "LCR's independent living homes are 'Level 1' houses as defined by [the National Alliance of Recovery Residences (NARR)]. Level 1 recovery residences are democratically run; prohibit drugs and alcohol; and maintain a recovery-supportive culture and community using house rules and peer accountability." (*Id.*, ¶ 55).

- "LCR mandates random drug testing for all residents, which it administers from its outpatient office." (*Id.* at PAGEID 12, ¶ 64).

The Government and plaintiffs argue that *Lake Geauga Recovery Centers, Inc.* is unpersuasive because that court's statement regarding the residents of a similar facility was dicta, the court considered the issue in a different procedural posture (following briefing and an evidentiary hearing), and the court did not engage with the various authorities (discussed above) reaching the opposite conclusion. Finally, the Government emphasizes that, contrary to defendants' suggestion, plaintiffs are not required to provide individualized proof that *each* LCR facility resident is handicapped to state a claim under the FHA. *See MX Grp., Inc. v. City of Covington*, 293 F.3d 326 (6th Cir. 2002) (individualized inquiry unnecessary where the plaintiff did not bring the action on behalf of disabled individuals, and where the plaintiff was prevented

from opening a new location (as opposed to relocating an existing location)). Like in *MX Grp., Inc.*, plaintiffs here sue on their own behalf and allege injury related to their inability to open entirely new independent living homes.

In their reply memoranda, defendants argue that the Complaint is not sufficiently explicit about the fact that LCR facility residents may not use illegal drugs. Defendants also argue that the Complaint fails to specify how long potential LCR facility residents must be sober before gaining admission, and that coverage under the FHA requires both participation in a drug rehabilitation program as well as some discrete period of "non-use."

At this stage of the proceedings, plaintiffs have sufficiently alleged that LCR facility residents are handicapped under the FHA. On a motion to dismiss, the Court "must accept all factual allegations as true and make reasonable inferences in favor of the non-moving party." *Keys*, 684 F.3d at 608. Doing so here, the Court concludes that plaintiffs' Complaint sufficiently alleges that the LCR facility residents here are in recovery and not currently using illegal drugs. (*See, e.g.*, Doc. 1 at PAGEID 11-12, ¶¶ 54-55, 64). Defendants do not point to binding authority demonstrating that plaintiffs are required *to plead* that potential LCR facility residents have not used drugs or alcohol for a specific period of time. Defendants' second argument regarding plaintiffs' FHA claims is not well-taken.

B. <u>ADA claims</u>

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., proscribes "discrimination in employment (Title I); discrimination by public entities (Title II) and discrimination in public transportation (Title III). . . ." *MX Grp., Inc.*, 293 F.3d at 334. Under

Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Remedies under the ADA extend to "any person alleging discrimination on the basis of disability. . . ." 42 U.S.C. § 12133.

Defendants first argue that public employees and supervisors may not be sued in their individual capacities. As such, any ADA claims against defendant Holt must be dismissed. *Williams v. McLemore*, 247 F. App'x 1, 8 (6th Cir. 2007) ("We have held repeatedly that the ADA does not permit public employees or supervisors to be sued in their individual capacities."). Plaintiffs concede this point but argue they allege defendant Holt was acting in his official capacity. (*See* Doc. 1 at PAGEID 14, ¶ 78 ("Solicitor Holt, in his individual capacity *and his official capacity as an officer of the Village of Coal Grove*. . . .") (emphasis added)). Defendants' motion to dismiss will be granted as to Counts II and VII of plaintiffs' Complaint to the extent they seek to hold defendant Holt liable in his individual capacity.

Defendants next argue that to establish standing to sue on its own behalf due to alleged injury based on an association with individuals with disabilities, LCR must establish that the individuals have "disabilities" as that term is defined in 42 U.S.C. § 12102. Defendants argue that an individual's status as a recovering addict is not enough; a plaintiff must demonstrate that this status substantially limited one or more major life activities. *See Rhoads v. Bd. of Educ. of Mad River Loc. Sch. Dist.*, 103 F. App'x 888, 892 (6th Cir. 2004) ("Ascertaining whether a plaintiff is disabled requires an individualized inquiry into her particular condition *and* its

[e]ffect on her ability to perform a major life activity.") (emphasis added). Defendants argue that medical evidence is necessary to substantiate the LCR facilities' residents' disabilities. *See Rhoads*, 103 F. App'x at 893 (quoting *Cervella v. Lake Cnty. Bd. of Comm'rs*, No. 95-L-094, 1996 WL 648836, at *3 (Ohio Ct. App. June 14, 1996)) ("[M]edical evidence must be offered to substantiate the claimed [disability]."). Defendants argue the Complaint "is silent regarding whether each individual who has utilized LCR's services . . . ha[s] used drugs in the previous weeks and months[,]" which precludes coverage under the ADA. (Doc. 9 at PAGEID 74). *See* 42 U.S.C. § 12210(a) ("[T]he term 'individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.").

Plaintiffs argue that the pleading requirements suggested by defendants' arguments are inconsistent with Sixth Circuit authority. In *MX Group, Inc.*, the plaintiff operated a methadone clinic for recovering opium addicts. *Id.* at 328-29. The plaintiff alleged the defendant municipality discriminated against it by preventing it from establishing a new clinic in the municipality. *Id.* at 336. Reviewing an order granting summary judgment, the Sixth Circuit determined that the plaintiff did not need to show individualized proof that each potential client was disabled under the ADA. *Id.* at 334-37. Rather, the Sixth Circuit found that the plaintiff had presented sufficient, generalized evidence "that to become a member of its program, [potential methadone clinic clients] had to show they had been addicts for at least a year. They could go about this by presenting letters from employers, a parent, or a parole or probation officer or through blood tests." *Id.* at 337. Further, the Sixth Circuit found that the plaintiff demonstrated

"that drug addiction affects the major life activities of working, functioning socially and parenting" through the testimony of one of its former employees. *Id.* *See also Socal Recovery, LLC v. City of Costa Mesa*, 56 F.4th 802, 814-15 (9th Cir. 2023) ("[S]ober living home operators can satisfy the 'actual disability' prong *on a collective basis* by demonstrating that they serve or intend to serve individuals with actual disabilities. . . . Appellants can prove the 'actual disability' of . . . any residents they seek to serve in the future through admissions criteria and house rules, testimony by employees and current residents, and testimony by former residents."); *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 47-48 (2d Cir. 2002) (the plaintiff sufficiently demonstrated disability under the ADA via reference to state regulations governing admission criteria for halfway houses). Plaintiffs distinguish the Sixth Circuit's statement about a medical evidence requirement in *Rhoads*, noting *Rhoads* involved an individual plaintiff's disability discrimination case and not an associational claim.

Finally, plaintiffs dispute defendants' characterization of potential LCR clients as "currently engaging in the illegal use of drugs. . . ." 42 U.S.C. § 12210(a). Plaintiffs point to the rules of construction for that subsection, which explain that subsection (a) should not be construed to exclude:

> An individual who—
>
> **(1)** has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
>
> **(2)** is participating in a supervised rehabilitation program and is no longer engaging in such use; or

> **(3)** is erroneously regarded as engaging in such use, but is not engaging in such use. . . .

42 U.S.C. § 12210(b). Plaintiffs point to various allegations in their complaint demonstrating that LCR facility residents fall within subsections (b)(1) or (2). *See supra* pp. 11-12 (allegations regarding LCR clients and policies). Plaintiffs also note the Complaint also sufficiently alleges, alternatively, that subsection (b)(3) applies, pointing to the following allegations:

- Defendants expressly relied on baseless stereotypes about people in recovery when enacting the new zoning ordinances. The Moratorium itself cites a purported (and unproven) rise in homelessness and crime as a justification for its enactment. Before, during, and after enacting the Recovery Ordinances, Defendants painted people in recovery as dangerous outsiders and criminals who threaten peace and safety in Coal Grove. Village Council Members and Commissioners, as well as Solicitor Holt, directly invoked these stereotypes and ratified similar statements from other community members.

(*See* Doc. 1 at PAGEID 2-3, ¶ 6).

- Upon information and belief, Solicitor Holt is the administrator of the popular "Larry County" Facebook page and has posted memes and comments that denigrate recovery providers (or, as he called them, "rehabs") for "keep[ing] drug addicts in our community." . . . The June 2023 ordinances were based on discriminatory stereotypes about people in recovery. For example, the Minutes from Planning Commission's workshop expressly link the recovery-related ordinances to a need to protect the safety of the public," wrongly implying that people who wish to live in sober housing are dangerous criminals.

(*Id.* at PAGEID 15-16, ¶¶ 81, 87).

- The text of the Moratorium describes the cause of its enactment as an "increase in homelessness in the area and criminal complaints during the preceding 16 months within the Village of Coal Grove that have increased the demand for and use of public resources in the Village of Coal Grove." No evidence was presented at this meeting, nor at any other time, to corroborate the purported rise in crime and/or homelessness.

(*Id.* at PAGEID 19, ¶ 107).

- Council Members' statements indicated that people in recovery are undesirable and do not work for a living. For example, Mayor Andy Holmes stated that people in recovery living in Coal Grove were "changing the demographics of our Village." And while discussing apparent sightings of recovery residents walking around at night, Council Member Kim McKnight stated that "No normal person who works a 9-to-5 job does anything [like that]."

  In response to Solicitor Holt's comment that "These people all do meth and heroin, and fentanyl," Council Member McKnight replied, "Yeah, cocaine's too expensive for these people," and Solicitor Holt replied, "And heroin's too expensive for these people!"

  Minutes later in the meeting, Council Members complained that residents of recovery homes were overrepresented in jobs in local businesses. Solicitor Holt stated, "If you want to get drugs, just go to the kitchen at any of these restaurants."

  Council Members portrayed both people in recovery and recovery service providers as dangerous criminals. Council Member McKnight stated that recovery home residents were "up to no good." Speaking about recovery service providers, Solicitor Holt stated that "about half of them are ex-felons." This comment appeared to be directed at Mrs. Ross specifically.

  Council Members also made statements indicating that people in recovery are undesirable and are not part of the Coal Grove community. Solicitor Holt stated, "We're becoming a colony, we really are. Like, you know, Australia, they sent—England sent everybody down there they didn't want. That's what's happening in our side of Lawrence County."

(*Id.* at PAGEID 22-23, ¶¶ 127-31)).

In reply, defendants clarify that they believe that the Complaint is deficient not because it fails to include individualized factual allegations regarding any potential LCR facility resident's disability but instead because it does not allege how long potential LCR clients must have abstained from illegal substances to becomes residents of LCR facilities. Defendants argue that general allegations regarding LCR services and policies do not establish that LCR's potential clients are individuals with disabilities under the ADA. As it relates to 42 U.S.C. § 12210(b),

defendants argue that subsection (1) does not apply because potential LCR clients have not "successfully completed" a drug rehabilitation program and subsections (b)(2) and (b)(3) do not apply because the Complaint does not allege definitively that LCR facility residents no longer use drugs. Finally, defendants argue that the allegations in the Complaint regarding LCR clients being "erroneously regarded as engaging" in illegal drug use for purposes of subsection (b)(3) include isolated, general, vague, or ambiguous remarks that do not support an inference of discrimination and, in any event, many are not probative because they took place after the passage of the ordinances at issue.

The Court concludes that Counts II and VII of plaintiffs' Complaint state claims under the ADA against the Village and defendant Holt in his official capacity. The Court finds no support for the proposition that plaintiffs are required to plead, much less prove, a particular period of abstinence from illegal drugs by individuals with a disability to state plausible ADA claims. The Complaint plausibly alleges that LCR facility residents have a disability under the ADA and meet at least one of the 42 U.S.C. § 12210(b) criteria. *See supra* p. 11-12, 17-18. Plaintiffs will ultimately have to support their allegations with evidence, but not at the pleading stage. Defendants' argument that plaintiffs have not sufficiently alleged that potential LCR facility residents are disabled under the ADA is without merit.

C. Discrimination[6]

Plaintiffs assert discrimination claims under the FHA, ADA, and Ohio Revised Code § 4112. *See* 42 U.S.C. § 3604(f)(1)(C) ("[I]t shall be unlawful . . . (f)(1) To discriminate in the

[6] Legal standards for ADA and FHA claims apply equally to their counterparts in the Ohio Revised Code. *Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 872 (6th Cir. 2007) (ADA); *Overlook Mut. Homes, Inc. v. Spencer*, 415 F. App'x 617, 621 n.2 (6th Cir. 2011) (FHA). The Court therefore analyzes the federal and state law claims together.

sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . (C) any person associated with that buyer or renter."); 42 U.S.C. § 12132 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); Ohio Rev. Code § 4112.02 ("It shall be an unlawful discriminatory practice: . . . (H) . . . for any person to . . . (15) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of a disability . . . ; (16) Discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any person or in the provision of services or facilities to any person in connection with the housing accommodations because of a disability. . . .).

The FHA prohibits both intentional discrimination (disparate treatment) and "'practices that are not intended to discriminate but in fact have a disproportionately adverse effect' on a protected class" (disparate impact). *Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 537 (6th Cir. 2014) (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)). To establish disparate treatment, a plaintiff "must show that 'discriminatory purpose was a motivating factor'" behind allegedly discriminatory actions. *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781, 790 (6th Cir. 1996) (quoting *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 270 (1977)). *See also HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 612 (6th Cir. 2012) ("To prevail on a disparate treatment claim, a plaintiff must show proof of intentional discrimination."). Likewise, under the ADA, a plaintiff must show that the defendant

took action because of the plaintiff's disability"—though that need not be the sole cause. *Anderson v. City of Blue Ash*, 798 F.3d 338, 357 & n.1 (6th Cir. 2015).

A defendant's personal motivations do not end the inquiry:

> Plaintiffs can [show that discriminatory purpose was a motivating factor] by showing that the defendants were personally motivated by discriminatory animus or by showing that the defendants "were knowingly responsive" to others who were so motivated. *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 606 (2d Cir. 2016) (internal quotation marks and citation omitted) (evaluating an FHA claim); *see also Anderson*, 798 F.3d at 357 (quoting this standard from *Mhany* to evaluate a disparate treatment claim under the ADA); *Jetter v. City of Cincinnati*, 20-cv-581, 2021 WL 4504247, at *7 (S.D. Ohio Sept. 30, 2021) (quoting the same to evaluate a disparate treatment claim under the FHA); *United States v. City of Birmingham, Mich.*, 538 F. Supp. 819, 828 (E.D. Mich. 1982) (holding that plaintiffs can "demonstrate a city's discriminatory intent" by "show[ing] that the decision-making body acted for the sole purpose of effectuating the desires of private citizens, that [discriminatory] considerations were a motivating factor behind those desires, and that members of the decision-making body were aware of the motivations of the private citizen[s]"), *aff'd* 727 F.2d 560 (6th Cir. 1984); *Gilead Cmty. Servs., Inc. v. Town of Cromwell*, 432 F. Supp. 3d 46, 75 (D. Conn. 2019) ("if an official act is performed simply in order to appease the discriminatory viewpoints of private parties, that act itself becomes tainted with discriminatory intent even if the decisionmaker personally has no strong views on the matter"). *But see Get Back Up, Inc.*, 725 F. App'x at 393 (emphasizing that "none of the statutes at issue here make a city liable merely for being *exposed* to its citizens' allegedly discriminatory views—the City is only liable if its decision-makers actually discriminated" (emphasis added)).

Amber Reineck House v. City of Howell, Michigan, No. 20-cv-10203, 2022 WL 17650471, at *52 (E.D. Mich. Dec. 13, 2022).

Defendants argue that plaintiffs' discrimination claims under the FHA, ADA, and Ohio law (Counts I, II, and III) fail because the ordinances at issue are not discriminatory. Defendants argue that Ordinance 2023-10, which redefined "family" to include no more than three unrelated persons but does not mention disability or anything related to disability at all, is not facially

discriminatory. Defendants rely on *Lake-Geauga Recovery Centers, Inc.*, 2021 WL 1049661, for the proposition that "[f]ederal courts have found that zoning ordinances which do not specifically exclude protected classes of citizens are not discriminatory on their face." *Id.* at *8. With respect to Ordinance 2023-11, defendants argue that it does not single out recovery housing but instead applies to all group residential homes/facilities. *See Get Back Up, Inc. v. City of Detroit*, 606 F. App'x 792, 796 (6th Cir. 2015) (zoning ordinance challenge failed where it applied equally to the plaintiff substance abuse service facility as to many other types of similar uses). Defendants also argue that Ordinance 2023-11 was not burdensome, as the Complaint describes that plaintiffs easily and quickly complied. With respect to Ordinance 2023-12, just as with Ordinance 2023-11, defendants argue the moratorium and registration requirements do not apply uniquely to recovery housing; rather, other similarly situated groups are required to comply.

Plaintiffs and the Government argue in response that defendants' arguments are limited to facial discrimination, but facial discrimination does not end the inquiry. Plaintiffs and the Government argue that defendants ignore various allegations in the Complaint relating to defendants' discriminatory intent in enacting each of the ordinances at issue as well as the disparate impact of the ordinances at issue.[7] Plaintiffs allege in Counts I-III:

> The Recovery Ordinances were enacted in an intentional effort to limit housing

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[7] At the pleading stage, the Court finds it unnecessary to delineate exactly which theory of discrimination plaintiffs advance, and also declines to find that defendants have waived arguments related to certain theories:

> Sixth Circuit case law does not wholly support the presumption that each legal theory of liability can or should be viewed as a separate claim under Title II. Indeed, the Sixth Circuit has not defined whether, or to what extent, a plaintiff is required to further identify the legal theories under which he proceeds, once he has included sufficient allegations to state a claim of intentional discrimination under Title II.

Saqr v. Univ. of Cincinnati, No. 1:18-cv-542, 2019 WL 699347, at *3 (S.D. Ohio Feb. 20, 2019) (report and recommendation), *adopted*, 2019 WL 1200802 (S.D. Ohio Mar. 14, 2019).

> for individuals in recovery.
>
> Defendants' acts alleged herein had, and continue to have, a disparate impact on people with a qualified disability and the ability of such individuals to secure housing.
> Defendants' actions are not justified by any legitimate, non-discriminatory interest or rationale. Even if Defendants' actions could be justified, there exist less discriminatory alternatives.

(Doc. 1 at PAGEID 34, ¶¶ 205-07; PAGEID 35, ¶¶ 214-16; and PAGEID 36, ¶¶ 223-25).

Plaintiffs emphasize that "[a] discriminatory motive can result from a municipal decision-maker's own bias, or it can result from municipal decision-makers capitulating to the discriminatory prejudices of their constituents." (Doc. 12 at PAGEID 122). *See Anderson*, 798 F.3d at 357 (quoting *Turner v. City of Englewood*, 195 F. App'x 346, 353 (6th Cir. 2006)) ("[T]he '[p]laintiff must present evidence that animus against the protected group was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive.'"). To determine discriminatory intent, the court is to consider the totality of the circumstances. *See Turner*, 195 F. App'x at 354 ("Discriminatory intent may be inferred from the totality of circumstances and a number of sources, including the historical background of the decision; the specific sequence of events leading up to the challenged decision; departures from the normal procedural sequence; and the legislative history and contemporary statements by members of the decision-making body.") (citing *Arlington Heights,* 429 U.S. at 267-68). *See also Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781, 793 (6th Cir. 1996) (suggesting that "significant evidence" of "discriminatory or paternalistic statements regarding the handicapped" could demonstrate discriminatory intent).

Plaintiffs and the Government dispute defendants' position that Ordinances 2023-11 and 2023-12 apply with equal force to both recovery housing and housing such as nursing homes, multi-family dwellings, and rental housing. Plaintiffs note that Ordinance 2023-12's definition of "Group Residential Home(s) or Facility(ies)" covers "any home, location, place or site where persons are located for housing by an addiction and/or substance abuse provider or a residential services and/or residential disabilities provider." (Doc. 9-3 at PAGEID 94). Plaintiffs argue the first ("substance abuse provider") and third ("residential disabilities provider") components of this definition plainly single out individuals with disabilities. Plaintiffs point out that Ohio law elsewhere defines the second component, "residential services," as "services to individuals with developmental disabilities. . . ." *See* Ohio Rev. Code § 5126.01(R). Plaintiffs argue that such an understanding of "residential services" in Ordinance 2023-12 would be internally consistent with other parts of Ordinance 2023-12, which refer to "inpatient and/or outpatient" services (Doc. 9-3 at PAGEID 93), registering the number of *staff* (*id.* at PAGEID 94), and periodic mayoral inspections (*id.*)—none of which plausibly would apply to, for instance, an ordinary apartment building.

Defendants argue in their reply memoranda that plaintiffs must demonstrate that Ordinance 2023-10, a facially neutral policy, has the effect of discriminating against a protected class. Defendants cite *Reeves v. Rose*, 108 F. Supp. 2d 720 (E.D. Mich. 2000) for the proposition that the FHA does not limit municipalities from enacting reasonable occupancy restrictions. *Id.* at 724 (quoting 24 C.F.R. § 100.301(b)) ("Nothing in this part limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum

number of occupants permitted to occupy a dwelling."). Defendants argue that "residential services" as used in Ordinances 2023-11 and 2023-12 is not as narrowly defined as plaintiffs suggest; therefore, Ordinances 2023-11 and 2023-12 do not single out disabled individuals. Even if they did, defendants argue Ordinance 2023-11 targets "sufficient and recognized State, Federal, and industry accreditation and licensure requirements" and is therefore justified. (Doc. 9-2 at PAGEID 91).

Defendants also argue the allegations in the Complaint related to discriminatory intent and disparate impact are legally insufficient. In particular, defendants argue that plaintiffs rely on comments made by non-decision-maker residents, and therefore their comments cannot establish discrimination. *See Pagan-Aponte v. McHugh*, No. 3:09-cv-00800, 2012 WL 1155932, at *10 (M.D. Tenn. Apr. 6, 2012) (quoting *Bush v. Dictaphone Corp.*, 161 F.3d 363, 369 (6th Cir. 1998)) ("Statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself [cannot] suffice to satisfy the plaintiff's burden . . . of demonstrating animus."), *aff'd*, 510 F. App'x 438 (6th Cir. 2013). Relatedly, defendants argue "[a]mbiguous and isolated remarks, even referencing disability, are not sufficient to demonstrate discrimination." *Ayers v. Gabis*, No. 20-11735, 2021 WL 4316853, at *6 (E.D. Mich. Sept. 23, 2021). Defendants also argue comments made after the passage of the ordinances at issue cannot demonstrate discrimination because, as a function of timing, they were not connected to the passage of the ordinances. *See Kostic v. United Parcel Serv., Inc.*, 532 F. Supp. 3d 513, 539 (M.D. Tenn. 2021) (noting the "accepted principle that statements and facts unrelated to the decisional process itself are generally not probative of discrimination").

Plaintiffs have adequately alleged that the challenged ordinances are discriminatory. The Complaint describes a campaign in the Village designed to restrict the operation and expansion of recovery housing and independent living facilities. This campaign was driven by negative stereotypes about individuals in substance abuse recovery that were perpetuated, at least to some extent, by defendants and culminated in the passage of three, complimentary ordinances on the same day: June 22, 2023. The Court is satisfied that the Complaint meets the notice-pleading standard set forth in Rule 8(a) and plausibly alleges intentional discrimination (facial or otherwise) under the FHA, ADA, and Ohio Revised Code § 4112 based on plaintiffs' association with disabled persons.

D. Discriminatory statements

Under the FHA, it is unlawful "[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c). Ohio law contains a virtually identical provision. *See* Ohio Rev. Code § 4112.02(H)(7).[8]

Defendants argue that "the Complaint is replete with baseless assertions that lack factual enhancement and stop[] short of the line between possibility and plausibility." (Doc. 9 at PAGEID 82). In particular, they highlight the following:

- Defendant Holt "made public comments about recovery providers being fraudulent and/or profit-driven businesses. There was also discussion of recovery housing driving

[8] *Reach Counseling Servs. v. City of Bedford, Ohio*, No. 1:15-cv-2351, 2018 WL 5435484, at *5 (N.D. Ohio Oct. 29, 2018) (citing *Ohio Civil Rights Comm'n v. Harlett*, 724 N.E.2d 1242, 1244 (Ohio Ct. App. 1999)) ("Ohio courts interpret the state statute under analogous federal law.").

down property values in [the Village], indicating that these homes should be perceived negatively." (Doc. 1 at PAGEID 14, ¶ 80).

- "Solicitor Holt is the administrator of the popular 'Larry County' Facebook page and has posted memes and comments that denigrate recovery providers (or, as he called them, 'rehabs') for 'keep[ing] drug addicts in our community.'" (*Id.* at PAGEID 15, ¶ 81).
- At a Village Council meeting, defendant Holt commented: "These people all do meth and heroin, and fentanyl," and "about half of them are ex-felons." (*Id.* at PAGEID 22-23, ¶¶ 128, 130).

Defendants also rely on *Reach Counseling Servs. v. City of Bedford, Ohio*, No. 1:15-cv-2351, 2018 WL 5435484 (N.D. Ohio Oct. 29, 2018), for the proposition that defendants cannot be liable under § 3604(c) because they were not the owner, landlord, realtor, or property manager of property at issue. *See id.* at *5 (holding that § 3604(c) did not apply to a municipality, looking to legislative history stating the provision was intended to reach parties such as owners, landlords, realtors, lenders, and property managers related to the sale/rental of property). *See also Michigan Prot. & Advoc. Serv., Inc. v. Babin*, 799 F. Supp. 695, 717 (E.D. Mich. 1992) ("[B]ased on precedent and common sense, the Court interprets § 3604(c) to apply only to owners and their agents."), *aff'd on other grounds*, 18 F.3d 337 (6th Cir. 1994).

Plaintiffs argue that § 3604(c) is not limited to particular types of defendants for five reasons. First, they point to the statutory text, which refers to "*any* statement" (42 U.S.C. § 3604(c)) and other circuits and courts that have read this language as inconsistent with a limit on potential defendants. Second, plaintiffs argue that several out-of-district courts have specifically applied § 3604(c) against municipalities in the context of zoning ordinances. *See Diamond House of SE Idaho, LLC v. City of Ammon*, 381 F. Supp. 3d 1262, 1274 (D. Idaho 2019) ("City ordinances that are discriminatory on their face violate 42 U.S.C. § 3604(c)."); *Montana Fair*

Hous., Inc. v. City of Bozeman, 854 F. Supp. 2d 832, 838-39 (D. Mont. 2012) (same); *Gibson v. Cnty. of Riverside*, 181 F. Supp. 2d 1057, 1084 (C.D. Cal. 2002) ("[I]n enacting [age-related ordinances], the County published a statement with respect to the sale and rental of dwellings that indicated a preference based on familial status in violation of 42 U.S.C. § 3604(c)."); *Nevada Fair Hous. Ctr., Inc. v. Clark Cnty.*, No. 2:05-cv-00948, 2007 WL 610640, at *9 (D. Nev. Feb. 23, 2007) (facially discriminatory ordinance violated § 3604(c)). Third, plaintiffs note that, consistent with other circuits, the Sixth Circuit has already applied § 3604(c) to parties besides owners, landlords, realtors, or property managers—to newspapers and other media. *See Hous. Opportunities Made Equal, Inc. v. Cincinnati Enquirer, a Div. of Gannett Co.*, 943 F.2d 644, 646 (6th Cir. 1991) (*HOME*) ("[C]ourts have recognized that section 3604(c) applies to all publishing mediums, including newspapers. . . .") (citation omitted). Fourth, plaintiffs argue the Sixth Circuit has directed courts to construe § 3604(c) broadly and focus on the content of the speech as opposed to the speaker. *Campbell v. Robb*, 162 F. App'x 460, 466 (6th Cir. 2006) ("[W]e bear in mind the broad construction courts have given to § 3604(c) in order to further the remedial purpose of the FHA."). Fifth, plaintiffs distinguish the authority cited by defendants. In *Babin*, the Michigan district court held that § 3604(c) applies "only to owners and their agents"—distinguishing the Sixth Circuit's decision in *HOME* by explaining that the newspaper defendant there was operating as an agent of the owner. *Babin*, 799 F. Supp. at 717 n.46. Plaintiffs argue that the defendants in *Babin* were neighbors opposed to a purchaser's proposed use of a property but, unlike here, had no ability to seriously impact/influence the ultimate decision regarding its use. Plaintiffs argue that *Reach Counseling Servs. v. City of Bedford,*

Ohio, No. 1:15-cv-2351, 2018 WL 5435484, at *5 (N.D. Ohio Oct. 29, 2018), followed *Babin* but did not include any discussion of whether the defendant municipality in its case could impact/influence the ability to buy or sell property—the crux of the decision by the court in *Babin*. In particular, plaintiffs point to the moratorium contained in Ordinance 2023-12 as demonstrating the Village's "direct influence on the disposition of the property" in this case, as contrasted with the discriminatory comments by an "unrelated person" with "little effect on whether the house was sold or rented to a member of a protected class" at issue in *Babin*. *Babin*, 799 F. Supp. at 716. Plaintiffs also note the Second Circuit explicitly found *Babin* unpersuasive. *See United States v. Space Hunters, Inc.*, 429 F.3d 416, 424 n.5 (2d Cir. 2005).

In reply, defendants argue that legislative history, referred to in *Reach Counseling Servs.*, is consistent with their interpretation of the limited reach of § 3604(c). *See Reach Counseling Servs.*, 2018 WL 5435484, at *5. They also argue that plaintiffs misconstrue the import of cases extending § 3604(c) to newspapers and media. Defendants argue those cases rely on the theory that newspapers act *on behalf of* a limited group of owners, landlords, realtors, and property managers—persons who *are* contemplated by the statute.

Plaintiffs' claims based on discriminatory statements will proceed. The Court is persuaded by the several cases cited by plaintiffs in which courts have found that facially discriminatory municipal ordinances can violate § 3604(c). *See Diamond House of SE Idaho, LLC*, 381 F. Supp. 3d at 1274; *Montana Fair Hous., Inc.*, 854 F. Supp. 2d at 839; *Gibson*, 181 F. Supp. 2d at 1084; and *Nevada Fair Hous. Ctr., Inc.*, 2007 WL 610640, at *9. This conclusion is consistent with the overarching remedial purpose and the text of the statute ("*any* statement . . .

with respect to the *sale or rental* of a dwelling"). At a minimum, plaintiffs have alleged that Ordinances 2023-11 and 2023-12 are facially discriminatory; and plaintiffs allege that Ordinance 2023-12, in particular, establishes a moratorium on buying or renting property to be used by disabled individuals. Taking this allegation as true, which the Court must at this stage of the proceedings, Ordinance 2023-12 makes a statement indicating a preference for non-disabled individuals that is related to the sale/rental of dwellings in the Village.

The Court agrees with the *Babin* court that a limiting principle is appropriate. *See Babin*, 799 F. Supp. at 716 ("The purpose of § 3604(c) is to prevent expressions that result in the denial of housing, not to prevent all discriminatory expression."). The *Babin* court goes on to identify such a principle: "Congress cannot legislate against the discriminatory comments of *those powerless* over the housing transaction at issue." *Id.* (emphasis added). The *Babin* court's holding, however, overly narrows that principle. In this Court's view, other parties aside from owners, landlords, realtors, and property managers may exercise influence over housing transactions to deny fair housing rights. As such, the Court finds the *Babin* court's holding regarding the limitation of § 3604(c) unpersuasive. *Cf. Michigan Prot. & Advoc. Serv., Inc. v. Babin*, 18 F.3d 337, 344 (6th Cir. 1994) ("Congress's intent in enacting § 3604(f)(1) was to reach property owners and their agents who directly affect the availability of housing for a disabled individual. However, the scope of § 3604(f)(1) may extend further, to other actors who, though not owners or agents, are in a position directly to deny a member of a protected group housing rights.").

E. Retaliation

Plaintiffs bring claims of retaliation, interference, coercion, or intimidation in violation of the FHA, ADA, and Ohio law in Counts VI-VIII of their Complaint. Under the FHA, it is:

> unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section . . . 3604 . . . of this title.

42 U.S.C. § 3617. Ohio Revised Code § 4112.02(H)(12) mirrors this provision, and Ohio courts use federal law to interpret it. *See Linkletter v. W. & S. Fin. Grp., Inc.*, 851 F.3d 632, 641 (6th Cir. 2017). This claim requires showings by a plaintiff that "(1) that he exercised or enjoyed a right guaranteed by §§ 3603-3606; (2) that the defendant's intentional conduct constituted coercion, intimidation, threat, or interference; and (3) a causal connection between his exercise or enjoyment of a right and the defendant's conduct." *Hood v. Midwest Sav. Bank*, 95 F. App'x 768, 779 (6th Cir. 2004). "As part of a remedial statute, the language of § 3617 should be broadly interpreted and applied with the Fair Housing Act's purpose in mind. *Linkletter*, 851 F.3d at 637.

The ADA provides as follows:

> **(a) Retaliation**
>
> No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.
>
> **(b) Interference, coercion, or intimidation**
>
> It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

42 U.S.C. § 12203.

1. *FHA*

Defendants argue in the Sixth Circuit, "a plaintiff is required to demonstrate 'discriminatory animus' to prevail on an interference claim under the [FHA]." *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613 (6th Cir. 2012). Further, they argue that vague, conclusory allegations of discriminatory animus will not suffice to state a claim under § 3617. Finally, defendants argue plaintiffs have failed to show that defendants interfered with, coerced, or intimidated the individual plaintiffs. *Id.*

Plaintiffs argue that the Supreme Court's recent decision in *Murray v. UBS Sec., LLC*, 601 U.S. 23 (2024), calls the *City of Ann Arbor* holding into question. There, the Supreme Court concluded that a Sarbanes-Oxley Act retaliation claim did not require a showing of "retaliatory intent" (similar to animus). *Id.* at 34. Plaintiffs next argue that, in any event, their Complaint sufficiently alleges discriminatory animus—an argument also made by the Government in its response. Plaintiffs cite the dictionary definition of "animus" as "prejudicial disposition" and highlight the various allegations in their Complaint describing a coordinated campaign against plaintiffs based on harmful stereotypes regarding those in recovery. *See Class-based animus*, *Black's Law Dictionary* (12th ed. 2024).

Plaintiffs argue defendants retaliated against or interfered with each individual plaintiff. Defendants increased law enforcement activity, conducted unannounced inspections in violation of the ordinances at issue, influenced the filing of misdemeanor criminal charges, and assessed civil fines. Overall, this action prevented the individual plaintiffs from "engaging in the

protected activity of providing recovery housing. . . ." (Doc. 12 at PAGEID 134). The Government argues that the phrase "interfere with" in § 3617 "encompasses . . . exclusionary zoning" and emphasize that FHA provisions are to be broadly interpreted. *Michigan Prot. & Advoc. Serv., Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir. 1994).

In reply, defendants argue that the *Murray* decision does not change the standard applicable to plaintiffs' FHA § 3617 claim. Defendants argue that the derogatory comments cited in the Complaint were vague and isolated, sometimes made by non-decision-makers, and therefore cannot demonstrate discrimination.

The Court finds the Complaint adequately alleges a claim under § 3617, including discriminatory animus. The Complaint alleges a series of derogatory comments made during a meeting about LCR and its residents, specifically, and targeting of LCR residents and staff by Village law enforcement. (Doc. 1 at PAGEID 21-24). The Complaint alleges defendant Holt referred to plaintiff Mike Ross as an "ex-felon." (*Id.* at PAGEID 22, ¶ 130). The Complaint alleges defendants' targeting resulted in fewer client referrals for LCR and its staff. (*Id.* at PAGEID 24, ¶ 140). The Complaint alleges plaintiffs Donna Reynolds and Mike Ross were charged with misdemeanors for opening a new recovery home in violation of Ordinance 2023-12. (*Id.* at PAGEID 26, ¶ 150). The Complaint alleges plaintiff Jamie Reynolds was charged with civil fines as title holder to one of LCR's properties. (*Id.* at PAGEID 27, ¶ 157). This claim should proceed for further factual development.

2. *ADA*

Defendants argue that § 12203 does not apply to corporations. *Michigan Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 431 (6th Cir. 2017) ("[T]he term 'individual' [in § 12203] is unambiguous and does not include corporations."). Plaintiffs concede their § 12203 claim does not apply to LCR. Nevertheless, plaintiffs argue they have stated cognizable claims under § 12203 as to the individual plaintiffs for the reasons discussed above with respect to the § 3617 claim.

For the same reasons as given with respect to plaintiffs' § 3617 claim under the FHA, the individual plaintiffs' § 12203 claims under the ADA may proceed.[9]

IV. CONCLUSION

For the foregoing reasons, defendants' motion to dismiss (Doc. 9) is **GRANTED** as to:

1. plaintiffs' ADA discrimination claim (Count II) against defendant Holt in his individual capacity;
2. plaintiffs' ADA retaliation, interference, coercion, or intimidation claim (Count VII) against defendant Holt in his individual capacity; and
3. plaintiff LCR's ADA retaliation, interference, coercion, or intimidation claim (Count VII) against all defendants[10]

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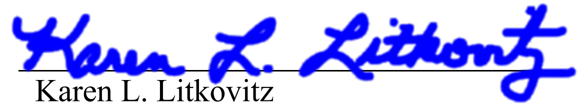
[9] Defendants separately argue the filing of misdemeanor charges cannot be imputed to defendants because only prosecutors have authority to initiate a criminal complaint. Plaintiffs argue there is a question of fact as to whether defendant Holt or other Village officials were involved in this decision. Plaintiffs point to Ohio law designating a village solicitor as "the prosecutor in any police or municipal court. . . ." Ohio Rev. Code § 705.11. Moreover, even accepting defendants' argument does not foreclose influence by other actors on a prosecutor's decision to initiate such action. The degree of such influence is a question of fact that is not appropriate for disposition at this juncture.

[10] Plaintiffs' ADA retaliation, interference, coercion, or intimidation claim (Count VII) therefore alleges claims by the individual plaintiffs against the Village and defendant Holt in his official capacity.

and **DENIED** in all other respects.

IT IS SO ORDERED.

Date: 4/16/2025



Karen L. Litkovitz
United States Magistrate Judge