UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FULLER, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA HOUSING AUTHORITY, *et al.*

Defendants.

Case No. 18-CV-00872 (EGS)

MEMORANDUM IN SUPPORT OF THE DISTRICT OF COLUMBIA HOUSING AUTHORITY'S MOTION TO DISMISS

Michael W. Skojec (Bar No. 03735)
Theodore R. Flo (Bar No. 979374)
BALLARD SPAHR LLP
300 E. Lombard Street, 18th Floor
Baltimore, MD 21202-3268
Telephone (410) 528-5600
Facsimile (410) 528-5650
skojecm@ballardspahr.com

Attorneys for Defendants District of Columbia Housing Authority

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

Federal Statutes

State Statutes

Federal Rules

Federal Regulations

State Regulations

Constitutional Provisions

Other Authorities

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Defendant District of Columbia Housing Authority ("DCHA"), by and through its undersigned counsel, submits this memorandum in support of its motion to dismiss the Amended Complaint ("Complaint") filed by Plaintiffs Paulette Matthews, Tendani Mpulubusi El, Michelle Hamilton, Geraldine McClain, Sylvia Carroll, Rhonda Hamilton, Greta Fuller, Shanifinne Ball, Tamia Wells, Ariyon Wells, Current Area Residents East of the River ("C.A.R.E"), and Near Buzzard Point Resilient Action Committee ("NeRAC") (collectively, "Plaintiffs").

I. INTRODUCTION

Plaintiffs' Amended Complaint is an 85 page dissertation on the reasons why they disagree with the DC government's economic and redevelopment plans for the District. They take issue with the "Creative Class Agenda" and "New Communities Initiative" which the District has been implementing since 2005. They also take issue with zoning decisions and other District programs which have allegedly been part of those two initiatives. In support of their dissenting view, they cite the opinions of a sociologist and numerous statistics for which no source is provided.

What Plaintiffs fail to mention is that the policies at issue were carried out with public participation in the light of day by four democratically-elected District administrations. Plaintiffs even acknowledge that the decisions at issue were made by the Zoning Commission only after public hearings were held and consideration given to competing concerns and priorities, including those of the Plaintiffs who wanted to be heard. As regards to DCHA's alleged wrongdoing, Plaintiffs fail to draw this Court's attention to HUD regulations and handbooks *requiring* DCHA to solicit and consider feedback from DCHA residents before moving forward with any redevelopment plans. Indeed, the Amended Complaint acknowledges that some Plaintiffs even participated in those hearings. Having lost the debates in several legitimate public forums, they

now turn to this Court to undo the work of duly elected or appointed government officials and Boards.

Because Plaintiffs are trying to litigate what are obvious "political questions," their Amended Complaint is improper and must be dismissed. Even more of an issue is that nowhere in the 407 paragraphs of the Amended Complaint do Plaintiffs allege any specific facts that would satisfy the requisite elements for the sixteen causes of action they assert. While it is difficult to follow Plaintiffs' allegations or the legal theories they try to support, each cause of action seems to have something generally to do with alleged housing discrimination.

The closest Plaintiffs come to alleging any type of discriminatory conduct by DCHA, however, is when they say that D.C. policies tend to "favor" the "creative class" which tends to "skew whiter" over and above the rest of the D.C. populace which is predominantly black. The problem with this theory (aside from the fact that it is not true) is that Plaintiffs have not pointed to one concrete fact showing how DCHA "favored" the "creative class." Nor is there any non-conclusory allegation that DCHA favored the creative class because of its alleged whiteness.

Perhaps recognizing the fundamental weakness of their claims, Plaintiffs brought only three of the sixteen causes of action against DCHA: (1) Count Eleven alleging violations of the DC Human Rights Act (DC Code § 2-1402.21(b)), (2) Count Fifteen alleging procedural due process violations, and (3) Count Sixteen alleging violations of 42 U.S.C. § 1983. As indicated, the majority of Plaintiffs' allegations purporting to support these causes of action are vague non-factual assertions included with inconsistent and often conclusory statements of law.

For example, Plaintiffs title Count Fifteen as a "Substantive Due Process" claim, yet allege only the depravation of a hearing, a procedural due process right. Then, in alleging that they were denied a hearing, Plaintiffs point to the fact that they were "constructively evicted" because DCHA

did not adequately maintain the Barry Farm housing project. They mention many other zoning and other hearings that were held or they participated in but fail to explain how or why these do not provide due process.

The D.C. Landlord-Tenant Code is rife with protections for tenants whose landlords do not maintain the properties in adequate condition. To the extent Plaintiffs were unhappy, they could have brought a case in D.C. Landlord Tenant Court and obtained a hearing. While Plaintiffs are entitled to plead in the alternative, they have gone far beyond that in showing a state courts' primary jurisdiction for the requested relief and have pleaded themselves out of a claim.

Count Eleven, alleging DCHRA violations, is no better. It is unclear from the Amended Complaint what DCHA allegedly did to violate the DCHRA. The allegations include leaving the Barry Farm development in disrepair and failing to "build first" to avoid re-locating Barry Farm residents to other properties. As to the disrepair issue, nothing in the Amended Complaint states that DCHA failed to repair Barry Farm because it is a predominantly black community. Nor is there one fact from which such an intent could be inferred. Indeed, Plaintiffs acknowledge that the wooden structures at Barry Farm date back to the Civil War. The only reasonable inference as to why DCHA had a difficult time keeping up with repairs is because the structures were *beyond* repair. Hence the decision to demolish them and build a new development to which any current resident is given priority to return.

As to the alleged failure to "build first," Plaintiffs own allegations undermine their argument. If Plaintiffs mean that the new Barry Farm development should have been built while the residents occupied units on the property, Plaintiffs' own allegations show why that is impossible. The Amended Complaint repeatedly talks of the terrible deteriorating conditions which people should not be living in. Also, one Plaintiff specifically alleges that the construction

vehicles driving past her home created pollution and noise that she could not tolerate. These concerns are *precisely* why DCHA is finding temporary housing for the Barry Farm residents while construction is ongoing—so they would not have to deal with the inevitable disruption that construction causes and the new homes can be available to replace deteriorating ones sooner.

Of course, this discussion assumes that it is even appropriate for this Court to consider second-guessing policy decisions made by DCHA on the best way to re-develop the property. Stepping in to the re-development process and requiring DCHA to spend millions of dollars to substantially re-work or renovate existing units so Plaintiffs could live on-site only to tear them down during redevelopment would be a massive judicial overreach, especially where there is not even one single factual *allegation* indicating that DCHA made its plans with a discriminatory intent or that they have a discriminatory impact. Instead, the "displacement" allegations in Count Eleven are predicated on the idea that Plaintiffs have a right to force their neighbors to stay at Barry Farm, even if those neighbors want to move to newer, nicer units. Plaintiffs improperly fault the DCHA for respecting its residents' autonomy.

In sum, the Amended Complaint principally criticizes the creative economy policies and New Communities program of the District of Columbia government and the Zoning Commission's allegedly arbitrary decisions since 2014 that have somehow helped implement those policies. DCHA appears to be named in this case for the most part just in connection with the redevelopment of the Barry Farm property.[1] (As this Court will recall, the proposed redevelopment of Barry Farm was the basis of another prior housing discrimination action which this Court dismissed.)

Rather than the short plain statement of claims required under Fed. R. Civ. P. 8(a)(2), the Amended Complaint is a general lament about alleged "gentrification," "displacement," "tax

[1] That is the only DCHA owned property described in the allegations and requests for relief.

increases," "dislocation," and alleged plans to "break apart historically black neighborhoods." Am. Compl. ¶¶ 53, 54, 60, 72. In essence, Plaintiffs seem to be advocating for race-based housing segregation. None of the allegations in the Amended Complaint set forth a cognizable claim for relief against Defendant DCHA.

Even ignoring that their apparent aim is illegal, there are at least six independent reasons why the Amended Complaint should be dismissed as to Defendant DCHA:

- First, Plaintiffs' allegations are non-justiciable political questions for which the court system is not the appropriate forum. The Supreme Court has held that broad allegations of deficiencies in governmental policy are better addressed through the legislative process.

- Second, Plaintiffs lack standing. Their claims are "generalized grievances," not personal to the individual parties, and fail to assert any allegations of injury specific to them. Additionally, both organizational Plaintiffs lack the appropriate structure or mission to have organizational standing.

- Third, Plaintiffs have failed to state a claim under D.C. Code § 2-1402.21(b) of the DC Human Rights Act of 1977 ("DCHRA") because they have failed to adequately allege intentional discrimination. To the extent the Court interprets their allegations as an attempt to claim disparate impact discrimination, that claim should also be dismissed as Plaintiffs have failed to sufficiently allege the "robust causality" necessary to plead such a clam.

- Fourth, even if Plaintiffs had adequately stated a claim under the DCHRA, that claim would be barred by the DCHRA's statute of limitations.

- Fifth, Plaintiffs' claim for due process violations against DCHA also fails to state a claim because Plaintiffs have failed to allege that a particularized injury was caused by an alleged procedural deficiency.

- Sixth, the claim under 42 U.S.C. § 1983 fails because it cannot stand alone as the basis of a claim.

For all these reasons, Plaintiffs' Amended Complaint should be dismissed.

II. STATEMENT OF FACTS

Plaintiffs' Amended Complaint is very difficult to follow; other than a desire to see that the government enact policies that continue racially segregated housing often in poor, higher crime

areas, it is unclear what they want this Court to do. It appears that they criticize how the D.C. government has gone about bringing jobs and clean, safe, and affordable housing to the city. Plaintiffs' general criticisms seem to be focused on the Creative Economy Strategy, the New Communities Initiative and the Zoning Commission's work. Here, we summarize the programs and projects that appear to be at issue in Plaintiffs' diatribe against DC government and DCHA.

A. Creative Economy Strategy

In 2007, the District launched the Creative Economy Initiative aimed at leveraging the city's creative assets to "create new jobs and attract new residents and innovative companies to the District."[2] The Office of the Deputy Mayor for Planning and Economic Development explained that implementing this strategy could have "significant and positive implications for the city's neighborhoods, schools communities, residents, employers and visitors." *Id.* Specifically, the Creative Action Agenda was intended to lay out an action plan for "strengthening the District's creative economy, expanding employment and business development opportunities and enhancing neighborhoods." *Id.*

Recognizing that a growing city cannot survive by "sustaining old economic archetypes," in 2014, the District released the Creative Economy Strategy, which aimed to generate 100,000 additional jobs and substantially build its tax base. Creative Economy Strategy, at p. 1. The strategy recognized that the District is unsustainably reliant on the "budgeting of an increasingly divided Congress" and stated that "reducing dependence on the federal government will help protect the city's residents and workers from shifts in federal funding priorities." *Id.* at p. 10. In doing so, the

[2] *See* Press Release, District Launches Creative Economy Initiative DCs Focus on Idea People Can Transform Neighborhoods, *available at* https://dmped.dc.gov/release/district-launches-creative-economy-initiative-dcs-focus-idea-people-can-transform (last accessed Aug. 9, 2018); Am. Compl. ¶ 29, n. 8.

strategy noted that creative businesses "contribute $14.1 billion to the District Gross State Product (GSP) and an estimated $200 million to the District's tax base annually." *Id.* at 9.

B. The New Communities Initiative

The New Communities Initiative (NCI) is a D.C. government program designed to revitalize severely distressed housing in Washington, D.C. and redevelop communities plagued with concentrated poverty, high crime, and economic segregation. Am. Compl. ¶¶ 64, 65. The stated purpose of the NCI was to create "vibrant mixed-income neighborhoods that address both the physical architecture and human capital needs, where residents have quality affordable housing options, economic opportunities and access to appropriate human services." New Communities Initiative (NCI), found at https://dmped.dc.gov/page/new-communities-initiative-nci[3]. As part of this initiative, the District partners with service providers to provide "comprehensive case management services to New Communities residents" including, "health and wellness, employment, education, financial literacy and parenting." *Id.*

NCI provides "public financing to achieve physical redevelopment and access to human capital," therefore "leverag[ing] private investments to create healthy communities." New Communities Initiative, found at http://dcnewcommunities.org/[4]. As a result of the implementation of NCI, over 1000 new housing units have been constructed, over 150 jobs have been created, and over 500 heads of households have been connected to human services programs. *Id.*

The NCI is guided by four principles: (1) One for One Replacement, (2) The Opportunity for Residents to Return/Stay in the Community, (3) Mixed-Income Housing, and (4) a Build First approach to minimize displacement. *Id.* As part of the NCI, the D.C. Council approved a

[3] The court can consider DMPED's website describing NCI under 12(b)(6) because Plaintiffs repeatedly reference NCI throughout the Complaint. *See* Am. Compl. ¶¶ 61, 64, 67, 68, 88.
[4] *See* n. 3.

Redevelopment Plan for the Barry Farm Public Housing Community in 2006. *Id*. Throughout the redevelopment process, DCHA has maintained its commitment to these principles.

C. The PUD Process

The D.C. Zoning Municipal Regulations defines a Planned Unit Development ("PUD") as a plan for the development of residential, institutional, and commercial developments in one or more zones irrespective of the zoning restrictions imposed. 11 D.C.M.R., § B100.2. To apply for a PUD, an applicant must submit its development plan to the Zoning Commission at two different stages. 11 D.C.M.R. § Z300. At the first stage, the Zoning Commission analyzes more general information such as proposed objectives and traffic implications, while the second stage is much more detail oriented. 11 D.C.M.R. §§ Z300.11, Z300.12.

As the District of Columbia Court of Appeals recently explained, "[t]he PUD process allows the Commission to make exceptions to the zoning regulations in order to 'encourage high quality developments that provide public benefits.'" *D.C. Library Renaissance Project/West End Library Advisory Grp. v. D.C. Zoning Comm'n*, 73 A.3d 107, 117 (D.C. 2013) (internal citations omitted).

Indeed, the D.C. Court of Appeals specifically found that "[t]he provisions governing PUDs clearly coincide with the overall purposes of the zoning regulations." *Id.* That purpose being to "promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services." D.C. Code § 6-641.02.

D. The Barry Farm Redevelopment

On May 29, 2015, the Zoning Commission found that the plan to redevelop Barry Farm comported with the NCI's four guiding principles and provided useful context for the application

of those principles. Zoning Commission Order No. 14-02, Case No. 14-02 (May 29, 2015), Doc. 107 (the "Order").[5] First, the Commission specifically found that the plan supported replacing all 444 total existing public housing units at Barry Farm and Wade Road, thus satisfying the NCI's one for one replacement principle. Order at 49. In reaching this finding, it explained that the one-for-one replacement principle calls for "one for one replacement of subsided housing units either scattered throughout the development parcels and/or in proximate off-site locations." Order at 38.

Second, the Commission noted that the opportunity to return principle was satisfied as "all current Barry Farm residents who are lease compliant and remain compliant while residing in their temporary housing will be able to return to the redeveloped PUD Site." *Id*. at 53. Implementing the NCI's increase in density makes one for one replacement financially possible. Am. Compl. ¶ 157.

Third, the Commission found that the mixed income housing NCI principle was met because the "redevelopment of the PUD Site will transform the existing Barry Farm community into a vibrant area that incorporates new affordable housing facilities into a mixed-use environment with walkable streets and ground floor retail/service uses." *Id*. at 35. The planned mixed-income housing will incorporate public and affordable housing. *Id.*

Fourth, it found that the "build first" principle was met as it called for "constructing units off-site and in the community of the affected property to provide housing for residents in their base community during redevelopment." *Id.* at 15. In furtherance of this principle, 100 total replacement

[5] The court can consider the Order under 12(b)(6) because the Court can consider its contents as a matter of public record by an administrative agency. *Harding-Wright v. D.C. Water*, No. CV 04-00558, 2016 WL 4211773, at *6 (D.D.C. Apr. 14, 2016) ("As for what constitutes a matter 'outside the pleadings,' it is well established that courts 'are allowed to take judicial notice of matters in the general public record, including records and reports of administrative bodies and records of prior litigation' without triggering the conversion requirement.").

units were constructed at Matthews Memorial Terrace and Sheridan Station—both of which are in the Barry Farm base community.[6] *Id.*

Accordingly, on May 29, 2015, the Zoning Commission unanimously approved the first-stage PUD application filed by Defendants relating to the redevelopment of Barry Farm, finding the plan adequately adhered to NCI's four guiding principles. Once the Zoning Order took effect, DCHA began seeking the necessary approvals from the U.S. Department of Housing and Urban Development ("HUD") to begin redevelopment. As DCHA complied with the applicable federal regulations, HUD issued a Demolition and Disposition Approval Letter on January 20, 2017. A copy of the Demolition and Disposition Approval Letter (the "D&D Letter") is attached hereto as **Exhibit A**[7].

In order to obtain HUD approval, DCHA was *required* to consult with Barry Farm residents about the redevelopment. *See* 24 C.F.R. § 970.9(a) ("PHAs must consult with residents who will be affected by the proposed action with respect to all demolition or disposition applications. The PHA must provide with its application evidence that the application was developed in consultation with residents who will be affected by the proposed action, any resident organizations for the development, PHA-wide resident organizations that will be affected by the demolition or disposition, and the Resident Advisory Board (RAB).").

[6] Sixty-five public housing units were constructed at Matthews Memorial Terrace and thirty-five at Sheridan Station.

[7] The court can consider the D&D Letter under 12(b)(6) because the Court can consider its contents as a matter of public record by an administrative agency. *Harding-Wright v. D.C. Water*, No. CV 04-00558, 2016 WL 4211773, at *6 (D.D.C. Apr. 14, 2016) ("As for what constitutes a matter 'outside the pleadings,' it is well established that courts 'are allowed to take judicial notice of matters in the general public record, including records and reports of administrative bodies and records of prior litigation' without triggering the conversion requirement.").

In particular, DCHA contacted members of the Barry Farm community on multiple occasions to inform them about their procedural rights during the redevelopment process and to seek their views about the appropriate shape of the reconstruction project. D&D Letter at 4-5. As part of this effort, DCHA sent letters to Barry Farm residents and held several community meetings to provide residents with information about relocation eligibility and assistance, in an attempt to mitigate the potentially disruptive effects of the site development. *Id.* Applicable regulations required it to keep records of those meetings and submit them to HUD when seeking approval. *Id.* ("The PHA must also submit copies of any written comments submitted to the PHA and any evaluation that the PHA has made of the comments.").

E. Maintenance and Repairs at Barry Farm

HUD acknowledged in the D&D Letter that the deteriorating conditions, structural problems, and age of Barry Farm contribute to the urgent need to demolish and redevelop the property. In the section on Demolition and Disposition Justification, HUD wrote that Barry Farm is "aging and substantially deteriorating," with "roofs, window, doors, mechanical and electrical systems, plumbing and gas furnaces" that are all in "extremely poor condition and require immediate replacement." D&D Letter at 2. HUD further wrote that "[e]rosion and storm water issues plague the site, and cause unstable sidewalks and flood of basements." *Id.* at 2.

A physical needs assessment found that "several interior stairs and floors were found to be structurally unsound." *Id.* at 2. These issues contributed to Barry Farm generating the most work orders in 2013 out of all public housing sites, a total of 3,829 work orders for the 444-unit property. *Id.* at 2-3. For all of these reasons, HUD approved the demolition and redevelopment of Barry Farm instead of requiring rehabilitation, finding that no reasonable program of modifications is cost-effective to return the units to useful life. *Id.* at 2, 5.

F. The Zoning Commission's Review of the Barry Farm PUD Application and Subsequent Appeal

The Barry Farm Tenants & Allies Association ("BFTAA") nevertheless sued to block the Zoning Commission's decision. On April 26, 2018, the District of Columbia Court of Appeals issued a decision vacating the Zoning Commission's Order granting Defendants' PUD application. *Barry Farm Tenants & Allies Ass'n v. D.C. Zoning Comm'n*, No. 15-AA-1000, 2018 D.C. App. LEXIS 161 (Apr. 26, 2018). The Court of Appeals found that the Commission failed to adequately address all of the contested issues originally brought by BFTAA. *Id.* at 4. As a result, the Court remanded the case for further proceedings. *Id.* at 38 – 39.

On May 30, 2018, the District, DCHA, the Preservation of Affordable Housing, Inc., and A&R Development Corp. (the "Applicants") withdrew their PUD application in ZC 14-02 and 14-02A, pursuant to Subtitle Z, § 600.3 of the Zoning Regulations, as part of the Applicants' review and consideration of next steps for the redevelopment of Barry Farm. *See* Ex. 118 ("Applicant's Request to Withdraw Application") to DCOZ Case Report.[8] Given that the Zoning Commission's Order has been vacated and the Applicants have withdrawn their PUD application, any specific relief requested relating to the Barry Farm Redevelopment and DCHA's involvement is entirely premature for the Court's review.

III. STANDARD OF REVIEW

A. Rule 12(b)(6)

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint must be dismissed when it fails to state a claim upon which relief may be granted. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for

[8] *See* n 5.

relief that is plausible on its face. *Atherton v. D.C. Office of the Mayor*, 567 F.3d 672, 681 (D.C. Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Although this pleading standard does not require "detailed factual allegations," it "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Indeed, a plaintiff's claim requires more than conclusory allegations and a formulaic recitation of the elements of a cause of action. *Twombly*, 550 U.S. at 555.

Fed. R. Civ. P. 8(a) sets out a minimum standard for the sufficiency of complaints and requires a short and plain statement of the claim and is intended to give "fair notice of the claim being asserted so as to permit the adverse party the opportunity to file a responsive answer, prepare an adequate defense, and determine whether the doctrine of res judicata is applicable." *T.M. v. District of Columbia*, 961 F. Supp. 2d 169, 171 (D.D.C. 2013).

However, a complaint that is "excessively long, rambling, disjointed, incoherent, or full of irrelevant and confusing material does not meet the rule's liberal pleading requirement." *Id.* In addition, a complaint that contains an "untidy assortment of claims that are neither plainly nor concisely stated, nor meaningfully distinguished from bold conclusions, sharp harangues and personal comments patently fails the Rule 8 pleading standard." *Id.; see also Jiggetts v. District of Columbia*, 319 F.R.D. 408, 413 (D.D.C. 2017) (dismissing plaintiff's fourth amended complaint because it continued to contain "prolix, irrelevant, and scattershot assertions of fact that are not clearly or properly aligned with the myriad legal claims that randomly appear in the 78-page pleading.").

As we explain, Plaintiffs' claims merit dismissal under Rule 12(b)(6) for several independent reasons.

B. Rule 12(b)(1)

Further, Federal courts are courts of limited jurisdiction and the law presumes that "a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). When a party moves to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), the plaintiff bears the burden of establishing by a preponderance of the evidence that the court has subject matter jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

As opposed to a 12(b)(6) motion for failure to state a claim, a 12(b)(1) motion for lack of subject matter jurisdiction focuses on whether the court has power to hear the claim. *Williams v. Apker*, 774 F. Supp. 2d 124, 127 (D.D.C. 2011). For this reason, in considering a Rule 12(b)(1) motion, the court must scrutinize a plaintiff's claims more closely than it would when considering a motion brought under Rule 12(b)(6). *Macharia v. United States*, 334 F.3d 61, 64 (D.C. Cir. 2003). As a result, the court is not limited to considering only the allegations in the complaint. *Apker*, 774 F. Supp. 2d. at 127. Instead, the court may also consider supplemental facts that are outside the four corners of the pleading. *Id.* (citing *Herbert v. Nat'l Acad. of Scis*., 974 F.2d 192, 197 (D.C. Cir. 1992)).

Because Plaintiffs lack standing to bring this claim under Article III of the U.S. Constitution, this Court lacks subject matter jurisdiction and must dismiss the case.

IV. ARGUMENT

As indicated, there are at least six separate reasons why Plaintiffs' claims fail as a matter of law: (i) Plaintiffs' claims are non-justiciable political questions; (ii) Plaintiffs lack standing, (iii) Plaintiffs' claim for discrimination under the DC Human Rights Act ("DCHRA") is barred by the statute of limitations, (iv) Plaintiffs have failed to state a claim for violations of the DCHRA, (v)

Plaintiffs have failed to state a claim for violations of due process, and (vi) 42 U.S.C. § 1983 cannot stand alone as the basis of a claim.

A. Plaintiffs' Claims are Non-Justiciable Political Questions.

As discussed above, Plaintiffs complain of social and political concerns relating to matters of public policy better left to the legislative and executive arms of the D.C. government. Courts have consistently held that the judicial process is not the appropriate avenue to attack public policy decisions. They are to be decided in the actions of the executive and legislative officials or in the administrative process expressly established for the particular issues. Therefore, Plaintiffs lack standing as they inappropriately seek redress from this Court.

Specifically, Plaintiffs attack various District policies including the Creative Economy Strategy, the New Communities Initiative, the Creative Class Agenda, and the 2016 Consolidated Plan. Am. Compl. ¶¶ 35, 56, 58, 61, 64, 67. All of Plaintiffs' claims against DCHA stem from the attack on these policies. Plaintiffs additionally allege that the Zoning Commission made certain decisions in furtherance of these policies, which in turn had the alleged effect of displacing historically black communities. Am. Compl. ¶¶ 70, 73.

Generally, "a plaintiff who wishes to advance the public good by altering government policy should direct his efforts to the political process in particular." *Baur v. Veneman*, 352 F.3d 625, 644 (2d Cir. 2002). The Supreme Court has held that disputes about future events where the possibility of harm to any given individual is remote and speculative are properly left to the policymaking branches and not Article III courts. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 914 (D.C. Cir. 2015) (quoting *Public Citizen, Inc. v. Nat'l Highway Traffic Safety Admin.*, 489 F.3d 1279, 1289 (D.C. Cir. 2007)).

As discussed in more detail below, Plaintiffs must show they suffered an injury in fact sufficient for Article III standing to bring a suit in a federal court of limited jurisdiction. *See id.*

("standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy."); *see also Vermont Agency of Natural Resources v. Stevens,* 529 U.S. 765, 772 (2000) ("An interest unrelated to injury in fact is insufficient to give a plaintiff standing."); *see also New England Anti-Vivisection Society v. U.S. Fish and Wildlife Service*, 208 F.Supp.3d 142, 154 (D.D.C. 2016) ("the role of the federal courts is to redress or prevent actual or imminently threatened injury… "[e]xcept when necessary in the execution of that function, courts have no charter to review and revise legislative and executive action.").

Instead of sufficiently alleging an injury in fact, Plaintiffs only allege broad deficiencies in governmental policy, which the legislature is better equipped to address. *See U.S. v. Richardson,* 418 U.S. 166, 166 (1974) (if there is no cognizable cause of action a court may decide the issue is better suited for a legislature.). Courts have adamantly and repeatedly cautioned against the use of the judicial process to address complaints based on public policy grounds. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) ("The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches."); *see also Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 875 (1990) (cautioning against the use of the judicial process when a litigant seeks "wholesale improvement of [a] program by court decree, rather than in the offices of the Department or the halls of Congress, where programmatic improvements are normally made."); *see also Valley Forge Christian Coll. v. Ams. United for Separation of Church & State,* 454 U.S. 464, 475 (1982)(Courts have "refrained from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches").

Even accepting Plaintiffs' erroneous allegations[9] as true, a showing that the government is engaging in a policy that is wrongheaded, or even callous, "is not a permissible substitute for the showing of injury itself." *Baur,* 352 F.3d at 644, *citing Valley Forge Christian Coll.* 454 U.S *at* 486.

B. Plaintiffs' Claims Predicated on Zoning Commission Decisions and Subsequent Appeals are Similarly Non-Justiciable.

Throughout the Complaint, Plaintiffs also challenge various Zoning Commission Orders for making allegedly arbitrary findings. While Plaintiffs mention numerous zoning decisions, they seem to focus on only four cases as the source of their alleged harm: Zoning Orders 14-02 (Barry Farm), 16-02 (Buzzard Point), 15-28 (Union Market), and 16-29 (Poplar Point). In fact, Plaintiffs dedicate the first four (4) counts of their Amended Complaint to exclusively challenge the Zoning Commission's decisions in those four cases.

Congress created DCZC "to protect the public health, secure the public safety, and to protect property in the District of Columbia." Zoning Act, Pub. L. 75-153, 41 Stat. 500 (1920). Congress also declared the Mayor to be "the central planning agency for the District" who is responsible for the "preparation and implementation of the District's elements of the comprehensive plan for the National Capital." D.C. Code § 1-204.23 ("Municipal Planning"). The Supreme Court has also noted that:

> It would be paradoxical to construe the FHA to impose onerous costs on actors who encourage revitalizing dilapidated housing in our Nation's cities merely because some other priority might seem preferable. Entrepreneurs must be given

[9] The Amended Complaint is full of erroneous and conclusory allegations regarding governmental policy, including: (1) "The New Communities Initiative was another way to carry out the non-race neutral goals of the AI…" (Am. Compl. ¶ 61); (2) "The Office of Planning and the Zoning Commission have enacted policies hostile to non-favored individuals continued existence in this city." (Am. Compl. ¶ 101); (3) "The District of Columbia has adopted and carried out its Creative Class Agenda to the detriment and exclusion of vulnerable, long-time residents…" (Am. Compl. ¶ 111).

> latitude to consider market factors. Zoning officials, moreover, must often make decisions based on a mix of factors, both objective (such as cost and traffic patterns) and, at least to some extent, subjective (such as preserving historic architecture). These factors contribute to a community's quality of life and are legitimate concerns for housing authorities.

Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2523 (2015) (emphasis added). The Supreme Court clearly recognized that discretionary housing decisions of governmental agencies, including housing authorities like DCHA and including zoning filings, must not be easily challenged on public policy grounds.

Plaintiffs had the opportunity to raise their challenges at multiple levels of the zoning proceedings prior to attempting to address them here.[10] *See JMM Corp. v. District of Columbia,* 378 F.3d 1117, 1121 (D. D.C. 2004) ("Where the proceedings begin at the administrative level, the defendant can appeal to and make its constitutional challenges in the D.C. Court of Appeals, and again seek further review in the Supreme Court."). In addition, Plaintiffs had the opportunity to adjudicate at least some of the issues in the Complaint before the Zoning Commission. *See Bannum, Inc. v. D.C. Bd. of Zoning Adjustment,* No. 05-858, 2005 U.S. Dist. LEXIS 8913, at *5 (D.D.C. May 6, 2005)("…constitutional and other challenges to zoning decisions can be fairly raised and advanced before the District of Columbia agencies and courts").

It is clear that any claims related to these zoning cases, and DCHA's application and efforts in a case, should be addressed through the appropriate administrative processes and state court appeals designated for such challenges. Alternatively, Plaintiffs could have their concerns

[10] The plaintiffs in all four zoning cases appealed their zoning orders to the District of Columbia Court of Appeals. Both the Barry Farm and Buzzard Point cases have already been decided and subsequently dismissed. While the zoning order for Barry Farm was remanded for further findings, as noted above, the applicable PUD application was withdrawn. *See Barry Farm Tenants and Allies Assoc. v. D.C. Zoning Commission,* Case No. 15-AA-1000; *see also* "Applicant's Request to Withdraw Application" to DCOZ Case Report.

addressed through the appropriate political process as contemplated by the legislature. The Plaintiffs should not request that the federal court exercise its limited jurisdiction as a method to attack legitimate D.C. governmental policies. For these reasons alone, Plaintiffs' Amended Complaint should be dismissed.

C. Plaintiffs Lack Standing.

In addition to raising improper claims, Plaintiffs also lack standing to prosecute the claims they have brought. In general, to establish Article III standing, Plaintiffs bear the burden[11] of showing: (1) that they have "suffered an injury in fact," (2) that the injury is "fairly traceable to the challenged action of the defendant,"[12] and (3) that it is "likely, as opposed to speculative, that the injury will be redressed by a favorable decision" by this Court. *Robbins v. United States Dep't of Hous. & Urban Dev.*, 72 F. Supp. 3d 1, 6 (D.D.C. 2014). There are also additional requirements, discussed later, which depend on the person or entity bringing the lawsuit.

Under this standard, none of the Plaintiffs have standing. The group Plaintiffs lack either organizational standing or associational standing because, at bottom, they purport to represent only vaguely defined groups of people with generalized concerns about the impact of development in

[11] The party invoking federal jurisdiction "bears the burden of establishing the standing elements. *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 557 (1992). They are not mere pleading requirements, but "rather an indispensable part of the plaintiff's case," and each element "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, with the manner and degree of evidence required at the successive stages of the litigation." *Id.*

[12] A "causal connection" between the injury and the conduct at issue means that the "injury is fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan,* 504 U.S. at 557. Causation examines "whether it is substantially probable that the challenged acts of the defendant, not of some absent third party, caused the particularized injury of the plaintiff." *Robbins,* 72 F. Supp. 3d at 6.

the District of Columbia. The individual Plaintiffs each lack standing because none have alleged particularized actual or imminent injury that can be redressed by the Court.

1. C.A.R.E. and NeRAC Lack Organizational and Associational Standing.

For groups like C.A.R.E. and NeRAC to establish standing, they must show more than the basic three elements. They must also show either that they have (i) "associational" standing or (ii) "organizational" standing. *Am. Sports Council v. United States Dep't of Educ.*, 850 F. Supp. 2d 288, 299 (D.D.C. 2012). As we explain, each group lacks both.

(a) C.A.R.E. and NeRAC do not have associational standing.

A group claiming associational standing must allege facts showing that its members "have standing to sue in their own right." *Abigail All. for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d 129, 133 (D.C. Cir. 2006).

First, NeRAC has failed to allege any facts that its members have standing[13]. While Plaintiffs allege that NeRAC "advocates for DC residents[14]" with a "particular focus on residents of Buzzard Point,"[15] the Amended Complaint is devoid of any facts as to the identity of NeRAC's members and whether they have suffered an injury in fact as a result of Defendants' alleged actions. Similarly, C.A.R.E. alleges that its members are all "African-Americans living East of the River," yet fails to allege why the individual members of the organization would have standing to sue in their own right. Am. Compl. ¶ 118. At most, Plaintiffs allege that the District's redevelopment efforts negatively affected the health and housing of NeRAC and C.A.R.E

[13] As discussed below, the NeRAC members who have been named as individual plaintiffs similarly do not have standing.
[14] Am. Compl. ¶ 5.
[15] Am. Compl. ¶ 112. NeRAC does not have any focus on the Barry Farm property as they explicitly state that they focus their advocacy on residents of Buzzard Point and, without more, NERAC has no claims against DCHA.

members. Am Compl. ¶¶ 115, 121. However, as explained below, such broad and vague allegations of harm are wholly insufficient to confer standing.

(b) C.A.R.E. and NeRAC do not have organizational standing.

To establish organizational standing, a group must show "a direct conflict between the defendant's conduct and the organization's mission." *Von Eschenbach*, 469 F.3d at 133. This includes showing an "actual or threatened injury" to an organization's mission. *Equal Rights Ctr. v. Post Props.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011).

This court has found that to hold an advocacy group "had standing to challenge government policy with no other injury other than injury to its advocacy would eviscerate standing doctrine's actual injury requirement." *Center for Law and Educ. v. Dep't of Educ*., 396 F.3d 1152, 1162 n. 4 (D.C.Cir.2005), *citing Sierra Club v. Morton,* 405 U.S. 727, 739-40 (1972). Therefore, it is insufficient for an advocacy group plaintiff to merely allege a frustration of its purpose. *See Food & Water Watch, Inc. v. Vilsack,* 808 F.3d 905, 919 (2015) ("An organization must allege more than a frustration of its purpose because frustration of an organization's objectives is the type of abstract concern that does not impart standing.").

C.A.R.E. claims that it advocates for "affordable housing" and the improvement of the "quality of life for area residents." Am Compl. ¶¶ 112, 117. Plaintiff C.A.R.E. alleges that its members meet "both formally and informally" and "advance its interests through grass root organizing, leadership development, community education, and testifying at various governmental meetings." Am. Compl. ¶ 119, 120. In an attempt to establish organizational standing, C.A.R.E. makes the bald statement that "its interests have been thwarted by Defendant's development decisions that have negatively affected the housing of C.A.R.E. members." Am. Compl. ¶121. However, C.A.R.E. makes no definitive claim of harm related to DCHA or the Barry Farm

redevelopment. That is, C.A.R.E.'s broad attacks on the Barry Farm redevelopment have no specific connection to C.A.R.E.'s generally alleged interest in residents living east of the river.

Both organizational Plaintiffs' merely claim an abstract injury amounting to no more than a frustration of their alleged purpose, which is insufficient to grant them standing. In addition, their purported missions are entirely too vague and generalized to have been allegedly interfered with. A mere "'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render [an] organization 'adversely affected' or 'aggrieved' for standing purposes." *Friends of Tilden Park, Inc. v. District of Columbia,* 806 A.2d 1201, 1207 (D.C. 2002), *citing Sierra Club,* 405 U.S. at 739.

While NeRAC and C.A.R.E. claim to focus on residents living at Buzzard Point and "East of the River," respectively, their alleged grievances regarding the overall well-being of certain residents are so general that they could apply to anyone living or working in the District of Columbia. Courts routinely strike down such claims. *See York Apartments Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 1084 (D.C. 2004) (in applying federal standing jurisprudence, the Court held that a tenant association's allegations were generalized grievances because they were not personal to the petitioner, but affected the Downtown area at large); *see also La. Envtl. Action Network v. Browner*, 87 F.3d 1379, 1380 (D.C. Cir. 1996) ("when the asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction."); *see also Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 592 (2007) ("Standing has been rejected where the alleged injury is not 'concrete and particularized,' but instead a grievance a taxpayer suffers in some indefinite way in common with people generally.").

Further, where, as here, the organizations claiming standing have not alleged specifics of how they are a "traditional membership organization," they must show more to establish organizational standing. *Fund Democracy LLC v. SEC*, 278 F.3d 21, 25 (D.C. Cir. 2002); s*ee also Wash. Legal Found. v. Leavitt*, 477 F. Supp. 2d 202 (D.C. Cir. 2007). They must allege specific facts to show that each one "(1) serves a specialized segment of the community; (2) represents individuals that have all the 'indicia of membership' including (i) electing the entity's leadership, (ii) serving in the entity, and (iii) financing the entity's activities; and (3) has fortunes that are tied closely to that of its constituency." *Fund Democracy*, 278 F.3d at 25 (D.C. Cir. 2002); s*ee also Wash. Legal Found. v. Leavitt*, 477 F. Supp. 2d 202 (D.C. Cir. 2007). NeRAC and C.A.R.E. have not attempted to plead or satisfy any of these elements.[16]

More importantly, an organization *cannot* exist solely "to create a predicate conflict for Article III standing." *Int'l Acad. of Oral Med. & Toxicology v. United States FDA*, 195 F. Supp. 3d 243 (D.D.C. 2016). "Individual persons cannot obtain judicial review of otherwise non-justiciable claims" by forming a group, "drafting a mission statement, and then suing on behalf of the newly formed and extremely interested organization." *Nat'l Treasury Employees Union v. U.S.*, 101 F.3d 1423, 1429 (1996)(emphasis added). Therefore, the organizational Plaintiffs' broad and conclusory allegations that they "expended resources"[17] in response to Defendants actions are

[16] In Plaintiffs' first complaint, C.A.R.E. was a party and documents were attached as exhibits to show what C.A.R.E. was. As discussed in DCHA's first motion, even with the details of those documents, it was patently clear that C.A.R.E. had no standing. Now, Plaintiffs' provide no specific details or documents for either entity and put forward conclusory statements to meet the elements for organizational standing. This does not meet the pleading standard for surviving a 12(b)(6) motion to dismiss as described above.

[17] Am. Compl. ¶¶ 116, 121.

additionally insufficient to confer standing. It is clear that these purported organizations exist simply to pursue this litigation, and related cases, and thus lack organizational standing.[18]

Finally, as explained below, the Plaintiffs' Amended Complaint is a collateral attack on the Zoning Commission's procedures, decisions, and evaluation process, which is insufficient for standing purposes. For example, Plaintiffs repeatedly allege that the Zoning Commission failed to afford "great weight" to the convening members of the Advisory Neighborhood Commission ("ANC"). Am. Compl. ¶¶ 77, 86. However, in *York Apartments Tenants Ass'n v. D.C. Zoning Comm'n,* a tenant's association similarly challenged the weight the Zoning Commission afforded to the ANC. In dismissing the association's petition for review, the Court found that plaintiff's challenges amounted to "nothing more than an allegation of the right to have the Zoning Commission act in accordance with its rules and regulations" and that "[s]uch claims are insufficient to establish standing because they are generalized grievances, not personal to the petitioner." 856 A.2d 1079, 1084 (D.C. 2004), *citing to Lujan,* 504 U.S. at 575-76. Here, Plaintiffs' attempt to allege a violation of a right to have the D.C. Zoning Commission and other governmental entities act in accordance with the applicable statutes and regulations is not judicially cognizable and the Complaint should be dismissed.

[18] The only evidence that C.A.R.E. is an organization with any members whatsoever is the joint retainer agreement prepared by Plaintiffs' counsel purporting to represent twelve (12) individuals for litigation. Exhibit A to Plaintiffs' Original Complaint, at 2-3 (D.E. 2). Defendant can cite to the retainer agreement because the Court may look to outside pleadings in ruling on a motion to dismiss under 12(b)(1). *See Randolph v. Ing Life Ins. & Annuity Co.*, 486 F. Supp. 2d 1, 5 (D.D.C. 2007), *citing Artis v. Greenspan*, 223 F. Supp. 2d 149, 152 n.1 (D.D.C. 2002) ("A court may consider material outside of the pleadings in ruling on a motion to dismiss for lack of venue, personal jurisdiction or subject matter jurisdiction.").

Therefore, for the multitude of foregoing reasons, Plaintiffs NeRAC and C.A.R.E. lack both associational and organizational standing to bring suit.

2. The Individual Barry Farm Plaintiffs Lack Standing.

The three individual Barry Farm Plaintiffs who bring claims against DCHA also lack standing. Again, to have standing, the individual Plaintiffs must allege an "injury in fact," which is an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not "conjectural" or "hypothetical." *Lujan*, 504 U.S. at 557 (1992). This requires more than an injury to a cognizable interest; it requires that the party seeking review be himself among the injured. *Goldstein v. United States Dep't of State*, 153 F. Supp. 3d 319, 333 (D.D.C. 2016), *citing Lujan,* 504 U.S. at 563. None of the individual Plaintiffs satisfy that standard.

Plaintiff Paulette Matthews (a C.A.R.E. member) vaguely alleges that the environmental effects of Defendants' decisions negatively affects her "health and quality of life" and undermined her "social network." Am. Compl. ¶¶ 125, 126. Specifically, she claims that all her friends have moved due to Defendants' redevelopment. Am. Compl. ¶ 126. Plaintiff Matthews fails to articulate *how* her health has been affected and has consequently failed to allege a particularized injury or adequate causation. *See Robbins*, 72 F. Supp. 3d at 6. (causation examines "whether it is *substantially probable* that the challenged acts of the defendant, not of some absent third party, caused the particularized injury of the plaintiff.") (emphasis added). In addition, the fact that some Barry Farm tenants' may have chosen to temporarily relocate does not imply that Plaintiff Matthew's interest in retaining her neighbors is a legally protected interest conferring Article III standing. Absent a particularized, concrete invasion of a legally protected interest caused by Defendants' actions, Plaintiff Matthews does not have standing to bring a claim.

Plaintiff Tendani Mpulubusi El (a C.A.R.E. member) is a "*former* Barry Farm resident." Am. Compl. ¶ 31 (emphasis added). He has not alleged he has suffered any injury in fact relating

to the current status of the Barry Farm community. Similar to Plaintiff Matthews, Plaintiff Mpulubusi El's alleged interest in maintaining his neighbors, friends and artistic subjects is simply not a legally protected interest. In addition, his broad and vague allegation that environmental degradation negatively affects his health is similarly not particularized enough to confer standing, nor sufficient to allege causation.

Similar to Plaintiff Mpulubusi El, Plaintiff Michelle Hamilton (NeRAC member) is also a former Barry Farm resident, who allegedly moved out due to mold. Am. Compl. ¶ 133. Her vague and broad allegations that the environmental effects negatively affected her health and her alleged loss of her social network are similarly insufficient to confer standing for the same reasons the remaining Barry Farm Plaintiffs cannot establish an injury in fact or causation.

3. The Buzzard Point, Poplar Point, and Housing Insecure Plaintiffs Lack Standing.

To the extent the remaining individual Plaintiffs attempt to allege an injury in fact with some specifics for standing purposes, none allege any action by DCHA or a harm that could have been caused by DCHA.[19] They definitely have no standing to bring a claim against DCHA. To the extent they can somehow be understood to be making claims against DCHA, they (like the other Plaintiffs) only describe vague and generalized injuries like humiliation and stress from the zoning process or general environmental hazards or loss of social networks.

For example, Plaintiff Rhonda Hamilton attempts to allege that the planning process "will imminently" require her to move out of her neighborhood. However, this conjectural and conclusory allegation is not an injury-in-fact for standing purposes. *See also Lee v. District of*

[19] None of these Plaintiffs are named as the Plaintiffs bringing claims in the three Counts against DCHA, except as to Count Sixteen, which as discussed below, is just a few unsupported conclusory allegations.

Columbia Bd. of Appeals & Review, 423 A.2d 210, 217 (D.C. 1980) ("Petitioners must allege an injury or aggrievement which is real, perceptible, concrete, specific and immediate, rather than one that is conjectural, hypothetical or speculative.").

Since Plaintiffs have failed to allege an adequate injury in fact, instead providing only a hodge-podge of generalized, conjectural and vague statements, both the organizational and individual Plaintiffs do not have standing to bring this suit and the Complaint must be dismissed in its entirety.

D. Defendants Will Address Plaintiffs' Insufficient Class Allegations at a Later Date.

Plaintiffs have made a number of allegations related to possible class certification. However, because the Court has expressly ordered that the class issues will not be addressed until after the District's and DCHA's motions to dismiss are decided (Minute Order dated July 9, 2018), DCHA will not be addressing those allegations at this time in this motion despite that it is DCHA's position that those allegations are insufficient. Further, it is unclear that any of the class action claims are directed against DCHA as the allegations do not appear to include DCHA. *See* Am. Compl. ¶¶ 171-194.

E. Plaintiffs' Claim for Intentional Discrimination under DC Code §2-1402.21(b) is Barred by the Statute of Limitations.

Plaintiffs' discrimination claim under the DCHRA is barred by the statute of limitations provided for in the D.C. Code. D.C. Code § 2-1403.16 states that a private cause of action under title 14 of the DCHRA shall be filed "within one year of the unlawful discriminatory act, or the discovery thereof, except that the limitation shall be within 2 years of the unlawful discriminatory act, or the discovery thereof, for complaints of unlawful discrimination in real estate transactions brought pursuant to this chapter or the FHA." *See also Bourbeau v. Jonathan Woodner Co*., 549 F. Supp. 2d 78, 81 (D.D.C. 2008) (Fair housing advocacy organization's claims against landlord

for discriminating against prospective tenants on basis of source of income accrued, commencing under two-year limitations period of [DCHRA] when landlord allegedly discriminated against organization's testers posing as prospective tenants desiring to use federally funded rental assistance vouchers.).

Once a plaintiff's cause of action accrues, "the statute of limitations begins to run for all claims arising from the allegedly tortious conduct, including for injuries not yet suffered." *Burnett v. Sharma*, No. 03-2365, 2007 U.S. Dist. LEXIS 24182, at *19 (D.D.C. Mar. 30, 2007). While D.C. recognizes the "discovery rule" where a plaintiff is unaware of his or her injury at the time it occurs, the rule does not give the plaintiff "carte blanche to defer legal action indefinitely if she knows or should know that she may have suffered injury and that the defendant may have caused her harm." *Id., citing Hendel v. World Plan Exec. Council*, 705 A.2d 656, 661 (D.C. 1997).

Plaintiffs' filed their original complaint on April 13, 2018. Plaintiffs have failed to allege any allegedly discriminatory act of DCHA within either the one or two years preceding that date (April 13, 2016 or April 13, 2017). Plaintiffs' entire Complaint and relief requested is based on the allegedly discriminatory effects of two (2) governmental policies, the "New Communities Initiative" and the "Creative Economy Strategy." While Defendants adamantly dispute the fact the implementation of these policies was discriminatory in any way, Plaintiffs concede that NCI was initiated in 2006, over ten (10) years prior to filing this Complaint. Am. Compl. ¶ 64. Plaintiffs allege the "Creative Economy Strategy" was released in 2014, which is also outside the applicable statute of limitations. Am. Compl. ¶ 35.

Plaintiffs further claim that DCHA allegedly failed to comply with one for one housing provisions which lead to the displacement of "black residents since 2006" (Am. Compl. ¶ 335), yet waited over ten years to bring a claim. With respect to the redevelopment of Barry Farm, the

Zoning Commission's Order in the previous proceedings approving the PUD application was entered and published on May 29, 2015, over three (3) years prior to this suit. In addition, Plaintiffs allege that in 2012 DCHD allegedly "acknowledged" in its Fair Housing Analysis of Impediments that "areas that were once integrated had become, through gentrification, resegregated." Am. Compl. ¶ 54. DCHD's allegedly public acknowledgment is six (6) years outside the applicable statute of limitations. Plaintiffs' concession that they have been aware of any alleged injury since the implementation of NCI in 2006, coupled with the District's allegedly public acknowledgment of gentrification in 2012 bars Plaintiffs' discrimination claim under the DCHRA.

Therefore, Plaintiffs' claims against DCHA fail as they have neglected to bring a claim within the applicable statute of limitations.

F. Plaintiffs Have Failed to State a Claim for Intentional Discrimination Against DCHA under DC Code § 2-1402.21(b).

Plaintiffs Matthews and Hamilton bring a claim for subterfuge based on race under D.C. Code § 2-1402.21(b) of the D.C. Human Rights Act ("DCHRA") against both the District and DCHA. Plaintiffs specifically allege that DCHA (1) failed to comply with "one for one housing replacement provisions" leading to resident displacement, and (2) failed to "make repairs on Barry Farm residents' properties, wholly or partially for discriminatory purposes." Am. Compl. ¶¶ 334, 338, 345.[20] However, it appears that Plaintiffs conflate evidence of intentional discrimination with

[20] Plaintiffs note that this is a second case involving the redevelopment of Barry Farm and attempt to distinguish the issues by alleging that the instant case brings "different causes of action." Am. Compl. ¶ 193. However, Plaintiffs' allegations are not accurate as the claims are essentially the same. For example, DCHA moved to dismiss Count Four in *Barry Farm Tenants and Allies Association, Inc., et al. v. DCHA, et al.,* No. 17-1762, 2018 U.S. Dist. LEXIS 71559 (D.D.C. Apr. 30, 2018), which alleged intentional discrimination under DCHRA for failure to adequately respond to maintenance requests. Although the allegations were more specific in that case as they should have been here, DCHA moved to dismiss because it was simply not true that DCHA was not responding to residents. DCHA also addressed an alleged failure to comply with one-for-one

evidence of proceeding with redevelopment. The fact that redevelopment is proceeding in the form of planned relocations is not evidence of discrimination, but only evidence that redevelopment is proceeding according to plan. Plaintiffs do not – and cannot - demonstrate how relocation efforts are indicative of an intentional discriminatory animus.

DC Code § 2-1402.21(a) makes it unlawful to "refuse or restrict facilities, services, repairs, or improvements for a tenant or lessee wholly or partially for a discriminatory reason[21]…" *2922 Sherman Ave. Tenants' Ass'n v. District of Columbia*, 444 F. 3d 673, 676 (2006); DC Code § 2-1402.21. Plaintiffs cite to the "subterfuge" provision of the statute which further prohibits discrimination for real estate transactions that "would not have been asserted but for, wholly or partially, a discriminatory reason." DC Code § 2-1402.21(b). However, the subterfuge provision "presupposes a discriminatory act which is alleged to have been committed by a subterfuge" and a claim under this heading "necessarily fails upon the judgment against [plaintiffs'] claims for race discrimination." *Young v. Covington & Burling LLP*, 846 F. Supp. 2d 141, 170 (D.D.C. 2012) (analyzing § 2-1402.11, a similar subterfuge statute under DCHRA prohibiting discrimination in employment).

In enacting the DCHRA, the Council of the District of Columbia examined federal civil rights acts and court decisions interpreting those statutes as models for drafting the DCHRA. *Equal Rights Ctr. v. SCF Mgmt., LLC*, No. 2014 CA 4800 B, 2016 D.C. Super. LEXIS 19 at *5 (D.C. Aug. 3, 2016), *citing Nicola v. Washington Times Corp.*, 947 A.2d 1164, 1171 (D.C. 2008).

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housing replacement provisions in the previous case as exampled in both the pleadings and the corresponding oral discussion on January 9, 2018.

[21] The statutorily protected classes include: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business of any individual.

Therefore, in interpreting the DCHRA, courts generally "look to cases from federal courts involving claims brought under the Civil Rights Act of 1964 for guidance." *Id.* With respect to D.C. Code § 2-1402.21, Courts have been "guided by the framework of the federal Fair Housing Act." *Id.*; *see also Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.C.*, 950 F.Supp. 393, 405 (D.D.C. 1996) ("The D.C. courts have always looked to cases from the federal courts in interpreting the D.C. Human Rights Act, and have followed, wherever applicable, precedents from the federal courts' treatment of comparable civil rights statutes.").

To succeed on a claim brought under D.C. Code § 2-1402.21(b), Plaintiffs must establish that DCHA intentionally discriminated against Defendants Matthews and Hamilton. Specifically, Plaintiffs must allege intentional and purposeful conduct based on their membership in a protected class. *See Brandywine Apts., LLC v. McCaster*, 964 A.2d 162 (D.C. 2009) ("a judgment in favor of appellee, unsupported as it is by any evidence of intentional discrimination, would distort the meaning and purpose of the DCHRA"); s*ee* D.C. Code § 2-1402.21 (a) (2001) (making it illegal to refuse to engage in a real estate transaction, or to create additional terms in such a transaction "for a discriminatory reason"); *see McFarland v. George Washington University*, 935 A.2d 337, 346 (D.C. 2007) (to carry his burden, plaintiff must at least "raise an inference of purposeful discrimination") (emphasis added).

1. Plaintiffs Do Not Allege Intentional Discrimination in DCHA's Alleged Failure to Comply with One-for-One Housing Replacement Provisions.

Plaintiffs fail to plead any facts that DCHA intentionally chose to discriminate against Barry Farm residents based on race when it allegedly failed to comply with one-for-one housing replacement provisions. As stated above, the fact that some Barry Farm residents no longer reside at the property is not evidence of discrimination, but evidence that redevelopment is proceeding according to plan. However, even accepting Plaintiffs' allegations that DCHA did not comply with

one-for-one housing as contemplated by NCI (which DCHA disputes), Plaintiffs have failed to allege any purposeful conduct by DCHA against Barry Farm residents *based on their membership in a protected class*. That is, even if tenants' relocation was due to wrongful conduct, DCHA did so by treating all Barry Farm residents equally without regard to race. Plaintiffs' allegations are clearly insufficient to bring a claim for intentional discrimination. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 149 (2000) (question of whether defendant is guilty of discrimination "depends on whether the protected trait . . . actually motivated [the defendant's] decision") (internal citation omitted).

This deficiency is additionally evident in Plaintiffs' allegation that DCHA "knew or should have known" that Florida's theories would result in "resegregation patterns" at Barry Farm because the site was "inimical to Creative Class growth." Am. Compl. ¶ 340. Such an attenuated allegation of discrimination does not suffice for a claim of intentional discrimination.

Finally, neither Plaintiff Matthews nor Plaintiff Hamilton alleges they were displaced due to DCHA's failure to adhere to "one for one" housing replacement provisions.[22] In fact, Plaintiff Matthews *currently* resides at Barry Farm and clearly cannot allege she has been discriminated based on alleged displacement resulting from a failure to comply with housing replacement provisions. Am. Compl. ¶¶ 123, 334.

Therefore, Plaintiffs have failed to state a claim for intentional discrimination based on DCHA's alleged failure to comply with one-for-one housing replacement provisions.

[22] Plaintiff Hamilton alleges that she voluntarily relocated due to DCHA's failure to repair alleged mold. Am. Compl. ¶ 133.

2. Plaintiffs Fail to Allege Intentional Discrimination in DCHA's Alleged Refusal to Make Repairs.

Plaintiffs also fail to allege that DCHA's alleged refusal to make repairs was motivated by specific residents' membership in a protected class. In essence, Plaintiffs are merely alleging that DCHA treated all residents equally by allegedly failing to make repairs to the Barry Farm properties in general. For example, Plaintiffs do not allege that DCHA proceeded to repair white residents' properties while failing to address requests by its black residents. While Plaintiffs' conclusory assertions that DCHA "went to great lengths to cause resident hardship"[23] may attempt to allege intentional harm, Plaintiffs do not fix it to a discriminatory racial motive.

Plaintiffs' conclusory statement that DCHA refused to make repairs "for discriminatory purposes" is devoid of any factual specifics.[24] Plaintiffs allege "[u]pon information and belief" that DCHA chose not to avoid dislocation in order to favor individuals with a certain source of income and refused to make repairs. Am. Compl. ¶¶ 341-343. However, pleading intentional discrimination on "information and belief" simply does not meet federal pleading standards. *See Twombly*, 550 U.S. at 555-57 ("A complaint must contain more than conclusory allegations and it is insufficient if it only contains a "naked assertion" that is devoid of "further factual enhancement."); *see also Hedgeye Risk Mgmt., LLC v. Heldman*, 2017 WL 4250506 at *12 (D.D.C. Sept. 23, 2017) (quoting *Evangelou v. District of Columbia*, 901 F. Supp. 2d, 159, 170

[23] Am. Compl. ¶ 337.

[24] Count Thirteen (Disparate Treatment Based on Race) is brought by all Plaintiffs against the District Defendants. While Plaintiffs' omit DCHA as a Defendant in this Count, they appear to possibly make allegations about DCHA regardless. Specifically, Plaintiffs allege that Defendants failure to maintain conditions at Barry Farm "discriminates based on race in terms, conditions, and/or privileges." Am. Compl. ¶ 362. To the extent the Court recognizes these allegations as being against DCHA for disparate treatment discrimination, those claims similarly should be dismissed as Plaintiffs fail to allege that DCHA *intentionally* encouraged tenants to vacate. Moreover, the broad, vague and conclusory allegations in ¶¶ 362, 363 and 364 are also far from sufficient to allege a disparate treatment claim or intentional discrimination.

(D.D.C. 2012)) (pleading "upon information and belief" can only be done "where the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible.").

Plaintiffs do not allege that their lack of factual support is due to the necessary information being within the exclusive control of DCHA. To the contrary, as a public agency, Plaintiffs have access to DCHA's meetings, statements, and records. In addition, Plaintiffs' counsel has been extensively involved in the Barry Farm zoning case litigation, including appealing the Zoning Order to the DC Court of Appeals for several years before this case. He had substantial access to residents and information being provided by DCHA and could have requested or otherwise obtained detailed information from DCHA at any time regarding these allegations.

Nevertheless, Plaintiffs make the bare assertion that DCHA committed intentional discrimination upon "information and belief," absent any factual support. This type of conclusory allegation unsupported by facts is precisely the type of claim that the Supreme Court contemplated would fail as a matter of law pursuant to its standards in *Twombly* and *Iqbal* as not being plausible. Therefore, Plaintiffs' claim for intentional discrimination in violation of the DCHRA should be dismissed.

To the extent Plaintiffs attempt to allege that DCHA's practices somehow had a discriminatory impact on black Barry Farm residents, such claims should be dismissed against DCHA because: (1) D.C. Code § 2-1402.21(b), alone, requires *intentional* discrimination, and (2) Plaintiffs have failed to state a claim for disparate impact discrimination as more fully addressed below. *See* infra, III (G), below.

G. Plaintiffs Fail to Adequately Allege Disparate Impact Discrimination Against DCHA.

While Plaintiffs do not affirmatively allege disparate impact discrimination against DCHA, to the extent the Court interprets Count Twelve (subterfuge based on race) as a disparate impact claim against DCHA, Plaintiffs have failed to state such a claim.

A separate provision of the D.C. Code states that "any practice which has the effect or consequence of violating any of the provisions of D.C. Code tit. 2, ch. 14 shall be deemed to be an unlawful discriminatory practice." *2922 Sherman Ave*., 444 F. 3d at 676; D.C. Code § 2-1402.68. While Plaintiffs neither reference, cite nor acknowledge this provision, the District of Columbia Court of Appeals has held that this "effects clause" imports into the DCHRA the concept of disparate impact discrimination. *Id.* Therefore, if the Court determines Plaintiffs intended to bring a disparate impact claim against DCHA under §2-1302.68 and §2-1402.21(b), the claim should also be dismissed for failure to state a claim.

In 2015, the Supreme Court issued its landmark decision that recognized, but significantly limited the viability of a disparate impact claim under the Fair Housing Act ("FHA"). *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc*., 135 S. Ct. 2507 (2015). Unlike a disparate treatment claim, a disparate impact claim alleges that while a policy is neutral on its face, when applied, it results in a discriminatory effect. *Boykin v. Gray*, 986 F. Supp. 2d 14, 20 (D.D.C. 2013). To ensure that disparate impact theory is not used to create liability beyond the scope of the FHA, the Supreme Court created the "robust causality" standard that plaintiffs must meet to make a *prima facie* showing of discrimination.

A *prima facie* showing of disparate impact liability "requires a plaintiff to 'compar[e] those affected by the policy with those unaffected by the policy.'" *Borum v. Brentwood Vill., LLC*, 218 F. Supp. 3d 1, 22 (D.D.C. 2016). Courts will easily dismiss a disparate impact claim when "the

allegations do not meet the 'robust causality requirement' in showing that the defendants' actions resulted in a statistical disparity, thereby supporting a claim that the defendants disproportionately disadvantaged members of a protected class." *Burbank Apartments Tenant Ass'n v. Kargman*, 474 Mass. 107, 129 (2016).

The Supreme Court explained that disparate impact theory was necessary to combat unlawful practices that create "unconscious prejudices and disguised animus" resulting in "segregated housing patterns." *Tex. Dep't of Hous. & Cmty. Affairs*, 135 S. Ct. at 2521-22. The Court, however, carefully limited the reach of disparate impact theory by acknowledging that the "FHA is not an instrument to force housing authorities to reorder their priorities. Rather, the FHA aims to ensure that those priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation." *Id.* at 2522.

Here, Plaintiffs allege that DCHA's failure to comply with one-for-one housing replacement provisions lead "to the displacement of tens of thousands of black residents." Am. Compl. ¶ 334. However, such an allegation clearly does not meet the robust causality requirement required to make a *prima facie* case of disparate impact discrimination. *Borum v. Brentwood Vill, LLC*, 218 F. Supp. 3d, 1 (D.D.C. 2016). For example, Plaintiffs fail to allege a statistical disparity comparing the alleged displacement of black residents at Barry Farm as compared to white residents, nor have they provided statistics demonstrating that black residents at Barry Farm have been disproportionately affected by DCHA's response to repair requests. Plaintiffs' failure to so much as allege that DCHA's actions have a greater adverse effect on a protected class is fatal to the claim. *See Boykin v. Fenty*, 650 F. App'x 42, 44 (D.C. Cir. 2016) ("The complaint failed to allege facts suggesting that the closure affected a greater proportion of disabled individuals than non-disabled, as it did not, for instance, include an allegation that disabled homeless individuals

are more likely to rely on low-barrier shelters than non-disabled homeless individuals."). Similar to Plaintiffs' claim for disparate treatment, their claim for disparate impact fails because Plaintiffs have failed to allege that DCHA discriminated against their residents *based on race*.

While Plaintiffs allege that the DC government has implemented policies furthering the "Creative Class Agenda," the only allegations against DCHA refer to the Barry Farm redevelopment and there are simply insufficient allegations to contend DCHA's involvement was part of a pattern or practice of discrimination. DCHA neither generated nor promulgated the challenged policies as Plaintiffs apparently concede in their Amended Complaint by omitting DCHA as an agency alleged to have cooperated in carrying out the "Agenda." *See* Am. Compl. ¶ 29.

Plaintiffs additionally cite to the "Quadel Report" which Plaintiffs' allege "denotes numerous problems with DCHA's relocation programming [*sic*] highlighting instances of widespread displacement." Am. Compl. ¶ 336. This referenced report is the 2014 "Policy Advisor's Recommendations on the District of Columbia's New Communities Initiative" prepared by Quadel Consulting and Training LLC and contradicts Plaintiffs' allegations that residents have been "displaced."[25] The report notes that the Initiative "remains committed to the One for One Replacement principles." *Id.* at p. 12. With respect to Barry Farm, the report noted that "a significant number of households (84.5%) *prefer* to relocate from Barry Farm, at least temporarily, with a voucher and that almost 70% of households indicated a preference to return to the redeveloped site." *Id.* at 12-13 (emphasis added).

[25] Court can consider the Quadel Report because Plaintiffs reference it throughout the Amended Complaint.

Plaintiffs have failed to state a claim for disparate impact discrimination and any implied claim against DCHA as such should be dismissed.

H. Count Fifteen Alleging Fifth Amendment Due Process Violations Against DCHA Should be Dismissed.

Count Fifteen is brought by Plaintiffs Paulette Matthews, Michelle Hamilton and "Certified Class"[26] against DCHA. Plaintiffs are seemingly alleging procedural due process violations claiming that DCHA constructively evicted tenants by leaving the site in "disrepair" and, in doing so, effectively denied residents their right to a hearing and notice before eviction. Am. Compl. ¶¶ 393, 399. Plaintiffs allege this is part of the DC government's unspoken policy to break apart and displace black communities[27] and deprives Plaintiffs of their rights to access housing without discrimination. Am. Compl. ¶ 401.

The Due Process Clause of the Fifth Amendment, not the Fourteenth Amendment, applies to the District of Columbia. The District of Columbia is a political entity created by the federal government and thus is subject to the restrictions of the Fifth Amendment. *Elkins v. District of Columbia*, 527 F. Supp. 2d 36, 40 (D.D.C. 2007).

The Fifth Amendment protects against the deprivation of property without due process. In order to determine whether a litigant's due process rights were adequately protected, courts consider:

(1) the private interests affected by the official action;

[26] Again, DCHA will be challenging the class allegations at a later date. As noted above, the class allegations on their face do not appear to include DCHA but yet DCHA is being sued here by a "Certified Class." At a minimum, the Amended Complaint should be dismissed for the repeated inconsistencies in allegations and a failure to give Defendants notice of the claims against them.

[27] Or, as Plaintiffs should have more correctly stated, the DC governments' policy of furthering fair housing and stopping the perpetuation of historic segregation, which are goals and legal requirements the Plaintiffs apparently disagree with, are what is at issue in this case.

> (2) the risk of an erroneous deprivation of such an interest through the procedures used and the value, if any, of additional or substitute procedural safeguards; and
>
> (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. Procedural due process requires sufficient notice and opportunity to be heard at a meaningful time and in a meaningful manner.

Elkins v. District of Columbia, 527 F. Supp. 2d 36, 40 (D.D.C. 2007).

A plaintiff must demonstrate standing by "showing not only that the defendant's acts omitted some procedural requirement, but also that it is substantially probable that the procedural breach will cause the essential injury to the plaintiff's own interest." *Ctr. for Law & Educ. v. Dep't of Educ*., 396 F. 3d 1152, 1159 (2005). That is, a plaintiff "must show both (1) that their procedural right has been violated, and (2) that the violation of that right has resulted in an invasion of their concrete and particularized interest." Plaintiffs must demonstrate that the defendant *caused* the particularized injury, and not just the alleged procedural violation. *Id.* (emphasis added).

Plaintiffs' vague allegations and shotgun approach at attempting to state a claim for violations under the Fifth Amendment make their claims difficult to understand and complicated to respond to. For example, it appears that Plaintiffs are attempting to bring a procedural due process claim for failure to provide them with a hearing prior to eviction and failing to comply with Policy 2.3.1, yet title the claim "Substantive Due Process" and allege in a conclusory fashion that Plaintiffs were deprived of their rights to "access housing without discrimination." Am. Compl. ¶¶ 387-402.

However, Plaintiffs have failed to allege that the current procedural process in place fails to provide them sufficient notice and opportunity to be heard. Specifically, tenants' complaints about inadequate repairs and alleged constructive eviction should be appropriately addressed in Landlord/Tenant Court rather than a federal court with limited jurisdiction. Plaintiffs fail to allege

that they even attempted to have their claims addressed in Landlord/Tenant Court, nor do they allege that they were unable to have their issues addressed in a meaningful manner.

This Court has previously expressed concern regarding its limited authority and jurisdiction to address maintenance complaints of individual tenants. *See* Transcript of Oral Argument on DCHA's Motion to Dismiss, 33:17-20, *Barry Farm Tenants and Allies Association, Inc., v. DCHA*, No. 17-1762, 2018 U.S. Dist. LEXIS 71559 (D.D.C. Apr. 30, 2018) ("What authority does this Court have, with very limited authority and jurisdiction, to order any type of repair or maintenance?"). In fact, Plaintiffs' counsel in that case conceded that the Court would not be able to address Plaintiffs' concerns outside an injunction to "preserve the status quo." *Id.* at 33:21-22. While the Court ultimately determined in its discretion not to exercise supplemental jurisdiction over the state law claims regarding repairs, it noted at oral argument on DCHA's motion to dismiss that the "tenants are not without a remedy" as "the housing conditions calendar allows tenants to sue landlords for D.C. housing code violations on an expedited basis." *Id.* at 37:2-6.

Second, Plaintiffs allege that DCHA chose not to follow Policy 2.3.1's mandate to "build first" or "avoid dislocation." Am. Compl. ¶ 396. However, Plaintiffs do not have a property interest in having DCHA comply with its own policies and regulations. *See U.S. v. Caceres*, 440 U.S. 741 (1979) (agency's breach of its own regulations is not *ipso facto* a violation of due process); *see also Fitzgerald v. D.C. Hous. Fin. Agency*, 181 F. App'x 4, 5 (D.C. Cir. 2006), *citing Griffith v. Fed. Labor Relations Auth.*, 842 F.2d 487 (1988) ("legislative provision of procedural safeguards cannot in itself create a property interest for purposes of due process analysis").

Third, Plaintiffs' "interests" that have been allegedly affected by governmental action are insufficient for both standing purposes and to bring a claim for violations of the Fifth Amendment. As noted above, both individual Plaintiffs have failed to articulate an invasion of a concrete and

particularized interest. Specifically, Plaintiff Hamilton's alleged health injuries and decreased social network are insufficient for standing purposes, and Plaintiff Matthews still resides on the property and cannot allege that she was injured due to alleged procedural defects in eviction proceedings.[28]

Fourth, Plaintiffs have failed to allege that there is a risk of erroneous deprivation of their rights to public housing because their allegations that a substantial number of Barry Farm residents have been "displaced" is contradicted by the Quadel Report survey, which Plaintiffs allege was accurate, and NCI's guiding principles. *See* Quadel Report, at p. 12-13.

To the extent Plaintiffs are attempting to bring a substantive due process claim alleging that they have been deprived of their "rights to access housing without discrimination."[29] Such conclusory allegations are also insufficient as Plaintiffs have failed to state a claim for both intentional discrimination and disparate impact discrimination.[30]

Therefore, Plaintiffs have failed to state a claim for violations of due process against DCHA and Count Fifteen should be dismissed.

I. Count Sixteen Should be Dismissed as 42 U.S.C. § 1983 Does Not Confer Any Substantive Rights.

Plaintiffs allege a separate count for violations of 42 U.S.C. § 1983 based on previously alleged counts under the Fifth Amendment (Counts 1-6 and 15) and the Fair Housing Act (Counts 13 and 14). Section 1983 creates a *remedy* for the deprivation of "rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983; *see also Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002). "In order to seek redress through § 1983 . . . a plaintiff must assert the violation of a federal right, not merely a violation of federal law." *Blessing v.*

[28] *See* supra III (B).
[29] Am. Compl. ¶¶ 400, 401.
[30] *See* supra III (F) and (G).

Freestone, 520 U.S. 329, 340 (1997) (*citing Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1980)); *see also Gonzaga*, 536 U.S. at 283 ("[I]t is rights, not the broader or vaguer 'benefits' or 'interests,' that may be enforced under the authority of that section.").

Section 1983 permits private individuals to bring lawsuits to enforce not only constitutional rights, but also rights created by federal statutes. *See Maine v. Thiboutot*, 448 U.S. 1, 4-5, (1980). Section 1983, however, **does not** itself create any substantive rights, but, rather, it "merely provides a mechanism for enforcing individual rights 'secured' elsewhere, i.e., rights independently 'secured by the Constitution and laws' of the United States." *Gonzaga*, 536 U.S. at 285 (emphasis added); *see also Long v. D.C. Hous. Auth*., 166 F. Supp. 3d 16, 28 (D.D.C. 2016).

Thus, 42 U.S.C. § 1983 cannot stand alone as its own cause of action absent a violation of rights secured by the Constitution (which Plaintiff has failed to allege against DCHA). Any §1983 claim against DCHA for violations of the Fifth Amendment are duplicative of Count Fifteen and must be dismissed.

J. Defendant DCHA Adopts Other Defendant's Arguments.

Defendant DCHA adopts by reference all of the arguments made by Defendant District of Columbia in its motion to dismiss, especially as to Count Thirteen if that Count is intended as a claim against DCHA.

V. CONCLUSION

Plaintiffs' Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). They are trying to have this Court improperly decide political questions which the Court is not permitted to do. They have also failed to establish that they have Article III standing to bring suit against Defendants. Plaintiffs have failed to plead allegations sufficient to state a cause of action intentional discrimination, disparate impact discrimination, or due process violations.

Dated: August 27th, 2018

Respectfully submitted,

/s/ Michael W. Skojec
Michael W. Skojec (Bar No. 03735)
Theodore R. Flo (Bar No. 979374)
BALLARD SPAHR LLP
300 E. Lombard Street, 18th Floor
Baltimore, MD 21202-3268
Telephone (410) 528-5600
Facsimile (410) 528-5650
skojecm@ballardspahr.com

Attorneys for Defendant District of Columbia Housing Authority

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 27th day of August 2018, that the foregoing was filed using this Court's Electronic Case Filing system which delivered a copy to all counsel of record.

/s/ Michael W. Skojec
Michael W. Skojec