UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL FAIR HOUSING ALLIANCE, *et al.*, Plaintiffs, v. BEN CARSON, *et al.*, Defendants.	Civ. Action No. 1:18-cv-1076-BAH

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR A PRELIMINARY INJUNCTION AND FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Rules **Page(s)**

Other Authorities **Page(s)**

INTRODUCTION

The Department of Housing and Urban Development's (HUD) opposition makes little attempt to rebut Plaintiffs' claims and arguments. Instead, HUD attempts to reformulate them—and its own challenged action. Its efforts are unavailing.

HUD's merits arguments are based on the premise that it only withdrew an Assessment Tool rather than suspending the AFFH Rule. HUD fails to acknowledge that it also instructed participants to revert to the pre-Rule process rather than following the Rule's required procedures—thus suspending the Rule itself. Contrary to HUD's argument, 24 C.F.R. § 5.160(a)(1)(ii) does not authorize such a suspension without notice-and-comment procedures. Meanwhile, HUD offers only conclusory assertions, rather than reasoned analysis based on evidence, that anything that has transpired represents a "failure" of the AFH process; is attributable to the Tool's shortcomings; or could not be addressed through less drastic measures than suspending the Rule. What evidence HUD does offer—with respect to expenditures implementing the AFFH Rule so far—refutes, rather than supports, its claim that those expenditures would grow to unsustainable levels absent the Rule's suspension.

With respect to Plaintiffs' standing and related issues, HUD fails to acknowledge the harm that Plaintiffs suffer: the loss of AFFH Rule procedures and protections that make it far easier for Plaintiffs to carry out their missions. And it makes little effort to refute that the balance of the equities supports a preliminary injunction. This Court should grant Plaintiffs' motion for a preliminary injunction and for summary judgment.

ARGUMENT

I. Plaintiffs Are Likely to Prevail on the Merits.

A. HUD Failed to Follow Required Notice-and-Comment Procedures.

As Plaintiffs argued in their opening brief—and as HUD does not contest—the agency may not suspend the AFFH Rule without notice-and-comment procedures. *See* Pls.' Br. at 17-19. In its two May notices, HUD instructed participants not to follow the AFFH Rule's processes and, instead, to revert to the Analysis of Impediments (AI) process that the AFFH Rule replaced. As was true of its January notice, HUD's two May notices significantly alter the substantive requirements imposed by regulation, without undertaking notice-and-comment rulemaking.

HUD does not directly address the fact that it has instructed participants to revert to the system that predated the AFFH Rule rather than following the procedures set out in a promulgated Rule. Rather, it largely relies on rebutting arguments that Plaintiffs do not make about what procedures are required to withdraw a particular Assessment Tool *without* suspending the Rule itself or otherwise affecting any party's legal obligations. HUD Br. at 22-25. With respect to Plaintiffs' actual argument—that HUD has suspended the Rule, which it may do only after notice-and-comment procedures—HUD largely concedes Plaintiffs' points. It does not challenge the settled law that an agency action that has the effect of suspending a promulgated rule is treated like an explicit suspension. *See Envtl. Def. Fund, Inc. v. Gorsuch*, 713 F.2d 802, 814-15, 818 (D.C. Cir. 1983). Nor does it dispute that its actions suspended the AFFH Rule. HUD misses the point in asserting that "the Rule did not change the substantive obligation to affirmatively further fair housing, only a planning mechanism," HUD Br. at 25. That the statutory requirement to affirmatively further fair housing exists independent of the Rule does

not make it permissible for HUD to suspend a lawfully promulgated legislative rule implementing that requirement without notice-and-comment procedures.[1]

Because HUD failed to undertake notice-and-comment rulemaking before suspending the AFFH Rule, "HUD's action was lawful only if another source of authority empowered HUD to delay the Rule's implementation without notice or comment." *Open Communities Alliance v. Carson*, 286 F. Supp. 3d 148, 163 (D.D.C. 2017). HUD seeks refuge in 24 C.F.R. § 5.160(a)(1)(ii), which it characterizes as an "automatic-extension provision" that authorizes its effective suspension of the Rule through the withdrawal of an Assessment Tool. HUD Br. at 24-25. In so doing, HUD wrongly states that Plaintiffs have suggested that the "automatic-extension provision exports any APA requirements applicable to the AFFH Rule" to the Assessment Tool. HUD Br. at 24. Plaintiffs' point, however, is that suspension of the Rule—through any regulatory device—requires notice-and-comment rulemaking, and 24 C.F.R. § 5.160(a)(1)(ii) does not empower HUD to suspend the Rule without complying with that APA requirement.

HUD erroneously relies on § 5.160(a)(1)(ii) to authorize its suspension of the Rule. The clause on which HUD focuses is in a provision entitled "Submission deadline for program participants" that sets deadlines for first AFH submissions for various entities, *e.g.*, larger local governments, smaller local governments, public housing authorities, states, and groups of entities that will participate jointly/regionally. 24 C.F.R. § 5.160(a)(1). Section 5.160(1)(ii) provides:

> If the time frame specified in this paragraph (a)(1) would result in a first AFH submission date that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or lead entity, the participant(s)' submission deadline will be extended as specified in that Assessment Tool publication to a date that will not be less than 9 months from the date of publication of the Assessment Tool.

[1] Moreover, as described more fully below, *infra* at pp. 21-22, HUD's description of the Rule ignores the many concrete rights and obligations that the Rule creates.

Thus, if HUD publishes a specialized Tool for a category of program participants, any AFHs otherwise due from those participants in the next nine months are postponed to a new "specified" date. By its terms, this provision does not apply until HUD publishes a new Tool. At that time, HUD must specify, "in that Assessment Tool publication," a new deadline for AFH submission by affected participants. This specified period of delay permits those participants to familiarize themselves with a newly published Tool.

Nothing in 24 C.F.R. § 5.160(a)(1) authorizes HUD to do what it has done here: withdraw an existing Assessment Tool, *not* publish a replacement, *not* specify a new AFH submission deadline, instruct participants that they should return to the system in effect before the AFFH Rule, and thus indefinitely defer the AFH obligation that is central to the Rule. It is beside the point that the extension contemplated by 24 C.F.R. § 5.160(a)(1) is "a function of the Rule," HUD Br. at 24, because HUD has neither met the precondition that triggers that provision's applicability (publishing a new Tool) nor properly invoked it (by specifying a new deadline for affected participants in the Assessment Tool publication).

Although 24 C.F.R. § 5.160(a)(1) does not authorize the Rule's suspension, HUD argues that its existence implicitly authorizes withdrawal of an existing Tool and suspension of the Rule because "HUD anticipated that an approved tool might not be in place when AFH submission requirements begin to run." HUD Br. at 24. But the history of this provision shows otherwise with respect to the submission requirements at issue here, *i.e.*, those governing local governments participating in the Community Development Block Grant (CDBG) program.

HUD did not include 24 C.F.R. § 5.160(a)(1) in its Notice of Proposed Rulemaking in 2013, but added it after deciding to develop separate Assessment Tools tailored to the specific needs of states, insular areas, and public housing authorities rather than requiring them to use the

first Tool to be developed, which was geared towards the needs of local governments. Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272, 42,276 (July 16, 2015). In the final rule, HUD determined these entities should not have to submit AFHs without the benefit of their specialized Tools and should be given time to familiarize themselves with those Tools once published. *See, e.g., id.* ("For PHAs, the first AFH submission deadline will be based on when the PHA Assessment Tool has been approved by OMB—following HUD undertaking the notice and comment process required by the Paperwork Reduction Act—and announced by HUD as available for use."). HUD explained: "The Assessment Tool specifically applicable to a program participant will specify the first AFH submission deadline, and will ensure the same level of transition as provided for entitlement jurisdictions, which will be the first program participants to submit an AFH." 80 Fed. Reg. 42,277.

Thus, § 5.160(a)(1)(ii) was added to ensure adequate transition time for entities whose Assessment Tools were published *after* the one used by "entitlement jurisdictions," *i.e.*, the local jurisdictions in the CDBG program. HUD first published entitlement jurisdictions' Assessment Tool on December 31, 2015, *see* Affirmatively Furthering Fair Housing Assessment Tool: Announcement of Final Approved Document, 80 Fed. Reg. 81,840, and entitlement jurisdictions' access to an Assessment Tool has been continuous since. HUD published a revised version of entitlement jurisdictions' Assessment Tool on January 13, 2017, *see* Affirmatively Furthering Fair Housing: Announcement of Renewal of Approval of the Assessment Tool for Local Governments, 82 Fed. Reg. 4388, without first withdrawing the existing version.

Nothing in the rulemaking record suggests the Rule allows for a period of time when no Tool is in place for local governments that otherwise would have pending AFH submission deadlines. Nor does the record support the notion that HUD, having triggered an entity's initial

AFH submission deadline by publishing the relevant Assessment Tool, may revoke that deadline by withdrawing that Tool without replacing it. Agencies, like legislators, do not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001); *see, e.g.*, *Conservation Law Found., Inc. v. Pruitt*, 881 F.3d 24, 32 (1st Cir. 2018). The authority effectively to suspend a regulation wholesale surely must be explicit. *Cf. Open Communities Alliance v. Carson*, 286 F. Supp. 3d 148, 163-68 (rejecting argument that provision authorizing targeted suspension of regulatory requirement could be deployed so broadly).

Finally, HUD draws the wrong conclusions from the Rule's requirement that HUD seek renewed Office of Management and Budget (OMB) approval for the Tool every three years, thereby creating a regular opportunity "to assess whether the Assessment Tool is aiding fair housing planning as intended by this rule." HUD Br. at 26 (quoting 80 Fed. Reg. 42,276). This requirement does not suggest that HUD "contemplated that tools might turn out not to be successful or workable" and therefore that effectively suspending the Rule might be desirable. *Id.* Rather, the requirement derives from the Paperwork Reduction Act, which requires new OMB approval every three years for every information collection tool used by the federal government. 44 U.S.C. § 3507(g). That the Rule requires HUD to take steps to maintain the Assessment Tool's OMB approval in compliance with the PRA does not suggest that it contemplates HUD's withdrawal of an approved Tool to effectively suspend the Rule.

B. HUD's Withdrawal of the Assessment Tool and Reversion to the AI Process Was Arbitrary, Capricious, and Contrary to Law.

1. HUD's Professed Concerns do not Justify Its Decision to Withdraw the AFH Assessment Tool and thereby Suspend the AFFH Rule.

In their opening brief, Plaintiffs explained how HUD's May notices failed to substantiate its supposed concerns regarding the success of the AFH process so far; failed to substantiate its

supposed concerns about future costs; failed to connect any of this to problems with the Assessment Tool in particular; and failed to consider responses to its stated concerns short of the drastic step of effectively suspending the Rule. HUD's responses fail to rebut these points.

First, HUD argues that it acted in response to what it refers to as "the high failure rate of the initial batch of 49 AFH submissions." HUD Br. at 27-29. As Plaintiffs explained in their opening brief, however, "pass-backs" from HUD to participating jurisdictions for revisions are not "failures," but rather an expected part of the AFH submission and HUD review process. Tellingly, HUD does not claim that it was unanticipated that many of the first batch of AFH submissions would initially be non-accepted and passed back for revision and resubmission with the benefit of HUD guidance. *See* Second Hostetler Decl. ¶ 10 (pass-back rate for initial batch of 17 out of 49 is "not surprising and well within our estimates" when promulgating Rule).

HUD attempts to inflate that unremarkable pass-back rate by lumping in 14 other submissions that were *not* initially non-accepted and passed back, on the basis that it informally requested (and local governments provided) additional information during its review. HUD does not explain why it characterizes those submissions—which were never found deficient, either as initially submitted or with addenda—as "failures" simply because it gave helpful feedback to the submitting jurisdictions during the process.

HUD's argument that the process of submission, feedback, and resubmission is problematic appears to be based on the idea that, once the Assessment Tool was available, program participants' initial AFHs should be approvable with little HUD involvement. *See* HUD Br. at 29 ("An Assessment Tool should be clear enough to guide program participants through the process and help them respond to prompts correctly in the first instance."). Based on this premise, HUD concludes that the Tool "failed to ensure that program participants understood the

instructions and completed the process correctly the first time." HUD Br. at 28. But HUD does not establish that the process was expected to work that way, and it was not, particularly at the beginning. *See* Second Hostetler Decl. ¶ 10 ("This was a new process, and it was expected that, particularly at the beginning, a number of jurisdictions would need additional feedback").

The Rule contemplates substantial HUD involvement in the entire AFH process. 80 Fed. Reg. 42,310, 42,316. Although all local jurisdictions use the same Tool as a template, the AFH process must accommodate significant local variability and enable local discretion, while still requiring meaningful results. 80 Fed. Reg. 42,288; 80 Fed. Reg. 42,311; 80 Fed. Reg. 42,346 (all citing adaptability of the AFH process to local conditions and local context). As HUD stated in promulgating the Rule, realizing this regulatory balance precluded the agency from setting "very prescriptive standards" in advance of AFH submissions. 80 Fed. Reg. 42, 311. Instead, particularly in early submissions where program participants are adapting to new standards and a new process, the Rule contemplates individualized attention from HUD and tailored feedback and guidance, before and after formal AFH submission. 80 Fed. Reg. 42,289; 80 Fed. Reg. 42,300; 80 Fed. Reg. 42,311; 80 Fed. Reg. 42,348. That is exactly how the Rule has worked in practice, to the benefit of HUD's grantees. See Lenk Decl.; Urevick-Ackelsberg Decl.; Salgado Decl., N.Y. State Br. The pass-back letters upon which HUD relies tell jurisdictions that pass-backs do *not* constitute "failures," but are a routine part of the process. As the letters explain:

> Please note that HUD expects that reasons for non-acceptance can be addressed in a resubmission of the AFH, which is anticipated by the rule. HUD has built into the AFH process time to allow for resubmissions and amendments to AFHs in order to achieve flexibility, and to assist program participants in assessing fair housing goals, identifying contributing factors, and setting goals to overcome fair housing issues and related contributing factors.

HUD Ex. 8, "Pass-back" Letter of George Williams, Deputy Assistant Secretary, FHEO, to Jonesboro, AR. HUD thus charges the Tool with failure to accomplish a goal—all jurisdictions completing AFHs with minimal HUD involvement—that is not in the Rule or record.

HUD alludes to "additional expenditures of time and resources on the part of … local governments" responding to pass-backs, HUD Br. at 28, but it offers no evidence that jurisdictions submitting a complete, compliant AFH following a pass-back expended significantly greater effort or resources than those submitting an initially-accepted AFH. Nor does it respond to Plaintiffs' evidence that many participants have found the AFH process, including both HUD's actual reviews and, in other instances, the prospect of such reviews, to be vital to the Rule's success in driving AFHs that actually further local fair housing goals. *See* Urevick-Ackelsberg Decl. ¶ 13 (prospect of pass-backs increased the seriousness with which policymakers engaged); Salgado Decl. ¶¶ 12-14 (finding HUD's direct input beneficial).

Second, HUD argues that its expenditures on the AFFH Rule have been unexpectedly high and that it lacks the resources to make such expenditures for the larger number of jurisdictions yet to submit AFHs. HUD Br. at 29-33. As an initial matter, an agency's concern for its "own bottom line" is not a valid reason for suspending or delaying a promulgated rule without undertaking notice-and-comment procedures. *See Nat'l Venture Capital Ass'n v. Duke*, 291 F. Supp. 3d 5, 17 (D.D.C. 2017). In any event, the record here does not demonstrate that expenditures will rise sharply alongside AFH submissions. Most of HUD's expenditures so far have not been associated with individual AFH submissions. They are programmatic start-up costs that may not need to be repeated at all, much less increase as AFH submissions do.

HUD asserts that it has spent about $3.77 million to implement the AFFH Rule. Mills Decl. ¶¶ 22-27. Of that, just $329,542.58 was spent directly assisting jurisdictions in making the

49 AFH submissions so far. *Id.* ¶ 25. Even accepting HUD's questionable assumption that these direct-support expenditures will remain constant per-submission,[2] providing the same support for the 104 submissions scheduled in 2018 and the 682 in 2019 would cost HUD about $5.3 million—well under the $9 million HUD anticipated expending when promulgating the Rule.

The bulk of HUD's expenditures have been for one-time start-up costs or for trainings not primarily attended by representatives of the initial 49 submissions. Over half those expenditures (more than $1.9 million) have gone to Product Development, *i.e.*, the production of guidance materials. HUD Ex. 9 at 26-28. HUD does not explain why these expenditures can reasonably be expected to increase proportional to submissions, and logic suggests the opposite: Expenditures to *create* products such as the AFFH Rule Guidebook from scratch will far outstrip expenditures to *update* them. HUD does not explain why it will be *as* costly (let alone *more* costly) to make minor adjustments and updates to a 225-page manual as to produce it initially.

HUD also says that it spent $1.49 million on Training Curriculum Development and Training Delivery. Mills Decl. ¶ 24. Nearly half that total—$612.545.95—went to Training Curriculum Development and related tasks that informed the launch of HUD's training series. HUD Ex. 9 at 24-26. HUD does not explain why it must continue incurring this cost for already-prepared curriculum *at all*—let alone significantly ramp that cost up—to prepare larger cohorts of program participants for AFH submission in 2018 and 2019.

[2] That assumption is unreasonable for the reasons Plaintiffs already explained, such as that the process so far has produced outstanding AFHs to which future submitters may refer in preparing their own AFHs rather than requiring the same level of assistance. HUD's own evidence makes clear that the per-submission cost so far has been inflated by a handful of jurisdictions such as Philadelphia, where HUD expended extra funds to create models for jurisdictions to come rather than simply achieving minimal compliance. *See also* Salgado Decl. ¶ 12 (HUD told New Rochelle that its AFH would be a "flagship" for others to come). Simply guiding a typical initially-incomplete submission, such as that of Jonesboro, Arkansas, through the process has required expenditures on the order of $18,000—a per-submission figure that would lower the estimate in the text still further. Mills Decl. ¶ 20.

The remaining $881,113.01 was spent delivering 18 separate regional trainings. HUD's records of the jurisdictions invited to participate in these trainings indicate that most of them have *not* been part of the 49 submissions so far. Invitees to these trainings account for, in addition to the submissions already made, 116 submissions due this year, 23 due in 2019, and one due in 2020. HUD Ex. 9 at 4-21. Thus, far from suggesting that this expense would increase for AFHs due this year and in 2019, HUD's own records indicate that this expense *already* has been incurred to a great extent for those AFHs. Nor does HUD offer any other reason to think this expense would rise with the number of submissions. It does not suggest that it would have to hold *more* trainings, nor does it explain why inviting a larger number of governments to already-scheduled trainings would increase costs proportional to the number of invitees.

HUD also points to staffing shortfalls at its Fair Housing Enforcement Office (FHEO) as a reason to suspend the Rule. HUD Br. at 30. It failed to offer this reason in its May notices and so cannot offer it now. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1971). In any event, HUD's reliance on a decline in FHEO staffing since 2010, *i.e.*, before the Rule was promulgated, cannot justify changing course now. It states that it allocated 24 percent of FHEO field office time to AFFH Rule implementation but would prefer to allocate that time to other activities. This preference cannot excuse the failure to comply with mandatory duties pursuant to an already-promulgated regulation, and the cases on which HUD relies, which address agency discretion not to engage in rulemaking, are inapposite. *See* HUD Br. at 32 (citing *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007), and *WildEarth Guardians v. EPA*, 751 F.3d 649, 651 (D.C.

Cir. 2014)). Finally, although HUD states that implementation has required unexpectedly high amounts of staff time, it offers no evidence to support this assertion.[3]

Moreover, even as it complains that it lacks the resources to carry out its mandatory duties, HUD has not availed itself of the obvious remedy—a request for more funds and more staff from Congress or from elsewhere in HUD. An agency actively seeking to *reduce* its resources cannot complain about lack of resources as a reason not to carry out its duties.[4]

Third, HUD fails to document its claim that any pass-backs or other HUD involvement in AFHs were fairly attributable to deficiencies in the Assessment Tool. As with respect to the first point above, HUD relies primarily on the inaccurate premise that the Tool was meant to be an easy-to-follow instruction manual that would obviate the need for HUD involvement or guidance. Accordingly, it reasons, when program participants received pass-backs or other feedback, that must mean they were "unable to successfully use the tool" and the Tool "was not achieving its purpose." HUD Br. at 34. As described above, HUD's premise is mistaken.

Apart from erroneously reasoning that something *must* be fundamentally wrong with the Tool if jurisdictions require HUD assistance in completing AFHs, HUD makes little attempt to explain what, specifically, is wrong that cannot be corrected without effectively suspending the

[3] HUD refers to a "consultation report" that, it states, concludes that HUD needs 538 full-time employees to support AFH submissions in 2019. HUD Br. at 30. HUD did not include the "consultation report" in the administrative record, making it impossible to verify that the report reached such a conclusion, let alone whether it did so reasonably. HUD cannot rely on it here.

[4] In light of HUD's reliance on an incomplete description of the resources available to it, this Court can take judicial notice that Congress appropriated $89,000,000 in technical assistance funds to HUD's Office of Policy Development and Research for Fiscal Year 2018, in large part to carry out AFFH implementation. By contrast, the Administration requested only $25,000,000 in such funds for Fiscal Year 2019. H.R. 1625, 105th Congress (2018) at 678; Department of Housing and Urban Development, *Policy Development and Research: Research and Technology*, *2019 Summary Statement and Initiatives*, HUD.GOV (2019), https://www.hud.gov/sites/dfiles/CFO/documents/33%20-%20FY19CJ%20-%20PDR%20-%20Research%20and%20Technology.pdf. This request also projects that HUD would reduce the full-time employees in FHEO still further, to 481. *Id.* at 1.

Rule. HUD Br. at 34-35. In truth, as Plaintiffs detailed in their opening brief and accompanying affidavits, most pass-backs resulted from participants' failure to follow direct prompts in the Tool or clear regulatory requirements. Pls.' Br. at 26-27; *see also* Third Steil Decl. Accordingly, HUD's instructions in many pass-back letters restate or refer to the Tool, regulations, and Guidebook, driving home to participants the need to follow them; this generally yielded successful revision and acceptance. See HUD Ex. 8 (pass-back letters). HUD does not explain how the same Tool that HUD holds responsible for the initial non-acceptances was then sufficient to craft compliant AFHs once jurisdictions got the message that they would be required to take the process seriously. Nor does it explain why other jurisdictions, using the same Tool, were able to complete AFHs that were initially accepted. Logic suggests that if jurisdictions using the same Tool get differing results, it is not the Tool that drives the differences.

Straining to blame the Assessment Tool for any confusion it perceives in the AFH process, HUD erroneously treats the Tool as the single source of information it provides to jurisdictions. For example, it criticizes the Tool for referring participants to regulatory requirements for community participation, such as the requirement that communities receive 30 days to comment on draft AFHs, rather than restating those requirements. *See* HUD Br. at 34 n.1. But HUD fails to acknowledge that supplemental materials provided to participants (such as the AFFH Guidebook and the Contributing Factors appendix to the Tool) provide the additional information HUD contends is lacking. *See, e.g.*, Guidebook at 29 (summarizing community participation requirements, including the 30-day requirement).[5] With respect to other, more complex requirements, HUD criticizes the Tool for not providing greater detail about how to comply, without explaining how the Tool could do so in one-size-fits-all manner. *See* HUD Br.

[5] The AFFH Guidebook is available online at: https://www.hudexchange.info/resource/4866/affh-rule-guidebook/

at 35 n.2 (criticizing "bare references" to requirement that jurisdictions incorporate their "own local data and local knowledge"); *id.* at 35 n.3 (criticizing goals and metrics section for "provid[ing] broad guidance that offers little by way of concrete requirements"). To the extent such detail is feasible, it already is provided or could be provided in official HUD guidance. *See, e.g.*, Guidebook at 114-120 (providing examples of goals, metrics, and priority-setting).

Fourth, HUD does not dispute that it failed to consider less drastic responses to the problems it perceived than effectively suspending the Rule. HUD Br. at 36-37. It argues that it was not required to consider alternatives that were not "squarely presented" to it, and faults Plaintiffs for failing to identify "a significant, viable, and obvious alternative" that would solve HUD's professed concerns. *Id.* at 36. This argument is wrong on the law and on the facts.

Before effectively rescinding a published rule, an agency must consider less drastic alternatives that are obvious based on the record before it. *See Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 216 (D.C. Cir. 2013) (lighter duty to consider only alternatives actually presented to agency applies only where agency "has not rescinded a policy or reversed course without explaining why it did not take a more limited action"); *see, e.g.*, *Int'l Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795, 817 (D.C. Cir. 1983) (stating that an agency must explain "its drastic decision to rescind rather than modify" a rule); *Office of Commc'n of United Church of Christ v. F.C.C.*, 707 F.2d 1413, 1440 (D.C. Cir. 1983) (stating that the agency was required to consider revisions to a requirement before eliminating it altogether). And to the extent HUD lacked concrete alternatives to consider, that is because it failed to put the question out for comment. It cannot bootstrap its own procedural failures into a defense.

Rather than seriously consider alternatives,[6] HUD simply asserts "the issue with the tool was fundamental." HUD Br. at 37. Such "artificial narrowing of options," however, "is antithetical to reasoned decisionmaking." *Int'l Ladies' Garment Workers' Union*, 722 F.2d at 817. Indeed, HUD acknowledges its own "solution"—withdrawing the Tool without replacing it—is not a solution at all, but a placeholder until HUD decides on a solution. HUD Br. at 37. HUD's approach allows it unbounded authority to effectively suspend the Rule indefinitely.

HUD also argues that a shortage of resources prevents it from simultaneously "work[ing] on improvements" and reviewing AFHs. HUD Br. at 36. But it does not quantify the burden of "work[ing] on improvements," making this assertion impossible to review. HUD has not taken obvious steps that would be virtually costless, such as posting all AFHs publicly so jurisdictions can learn from a variety of successful examples. *See* Second Hostetler Decl. ¶ 14; *see also* Visnaukas Decl. ¶¶ 10-13 (helpfulness of lessons from prior AFHs); Salgado Decl. ¶ 12 (New Rochelle's AFH intended to be a "flagship" model from which others could learn). HUD also has not taken obvious, virtually costless steps to help jurisdictions learn from what HUD characterizes as others' "failures." As its own exhibits show, HUD has prepared written "technical guidance" accompanying individual pass-backs that address issues that HUD has stated it finds to be of larger concern; these documents could be more widely distributed at little cost, but HUD has not done so. HUD Ex. 8. And HUD does not claim to have begun working on

[6] For example, HUD does not adequately explain why it cannot, instead, provide additional or revised guidance targeted at clearing up the specific points of confusion that HUD claims jurisdictions are experiencing without withdrawing the Tool and suspending the Rule. HUD has ample experience doing just this. *See, e.g.*, Department of Housing and Urban Development, *Guidance on HUD's Review of Assessments of Fair Housing*, HUD.Gov (July 16, 2016), www.hudexchange.info/resources/documents/Guidance-on-HUDs-Review-of-Assessments-of-Fair-Housing-AFH.pdf. Yet here, it only points to guidance issued *prior* to experience with the AFH process as reason why it would be pointless to issue further guidance that *relies* on that experience and targets problems identified by that experience. HUD Br. at 36-37.

"improvements"—or, indeed, to have done anything else to address the concerns that purportedly motivated its suspension of the Rule—since it stopped reviewing AFHs in January.

2. HUD Ignored the Benefits of Ongoing Implementation of the AFFH Rule and Failed to Explain Why It No Longer Thought Them Relevant.

In their opening brief, Plaintiffs explained why HUD failed to either (1) explain how its action was consistent with its previous finding that the benefits of the AFH process in "equity, human dignity, and fairness," 80 Fed. Reg. 42,349, outweigh the costs of compliance or (2) explain its apparent change of course. Pls.' Br. at 30-32. HUD insists that it did *not* reverse itself, HUD Br. at 37, but its instruction to jurisdictions to revert back to the AI process in place before the AFFH Rule is plainly inconsistent with the determinations it made in finalizing the Rule. HUD's only argument otherwise is its claim that the Rule contemplates its own suspension, which is erroneous for the reasons stated above in Section I.A.

HUD briefly suggests that it suspended the AFH process in part because of concerns about whether the process could continue delivering benefits. HUD Br. at 38. This argument appears to rely entirely on the premise that continued AFH review would prove impossible, which is unreasonable, as described above. *See* pp. 9-12. On this point, HUD does not otherwise engage with any of the facts and arguments that Plaintiffs have provided, or offer any "reasoned explanation" for its policy change. *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). By its own admission, HUD has declined to even acknowledge—in the notices or in its brief—any "awareness that it *is* changing position," *Id.* (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)), let alone provide an adequate explanation for its doing so.

3. HUD's Action Is Contrary to the Fair Housing Act.

As Plaintiffs have explained, HUD violated its duty under the Fair Housing Act to ensure that funding recipients affirmatively further fair housing by instructing those recipients to revert

to the AI process that HUD has previously found does not ensure that jurisdictions do so. 80 Fed. Reg. 42,348. HUD ignores that history. Instead, it argues that the Fair Housing Act does not require HUD to implement the AFFH Rule, as opposed to some other regulatory scheme. HUD Br. at 39. That misses the point. HUD issued the AFFH Rule because its prior approach—in which its own oversight of jurisdictions was limited to requiring them to make a bare certification of compliance—failed to enforce the Act's requirements. Plaintiffs do not argue that the AFFH Rule is the *only* means for HUD to meet its own statutory obligations; they argue that reverting to the failed AI process is not among whatever permissible alternatives may exist.

As to Plaintiffs' argument, HUD has little to say. It makes no attempt to defend the AI process to which it instructed jurisdictions to revert to as adequate to satisfy its obligation to ensure that recipients of federal funds affirmatively further fair housing. Indeed, HUD omits any acknowledgement of the failures of the AI process, such that one reading only HUD's brief might well wonder why it promulgated the AFFH Rule in the first place. HUD Br. at 6. It reframes the question as whether the Act's text precludes the AI process, *Id.* at 38-39, without explaining why it is entitled to ignore decades of history and its own previous conclusions as to the process's efficacy. And it suggests that funding recipients' independent obligation to affirmatively further fair housing is sufficient, *id.* at 39, thus effectively washing its hands of any duty to effectively oversee recipients' compliance.

HUD does not reconcile this position with the Fair Housing Act, which obligates the HUD Secretary to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter." 42 U.S.C. § 3608(e)(5). The Secretary may have discretion as to *how* to carry out that duty, but that discretion cannot be read so broadly as to make the duty itself meaningless. *See Am. Airlines,*

Inc. v. Transp. Sec. Admin., 665 F.3d 170, 177 (D.C. Cir. 2011) (finding that TSA might have discretion to make exceptions to a statutorily-required prioritization list, but it "cannot make an exception to the prioritization list so vague or large as to make the rule meaningless") (internal quotation marks and citations omitted); *see also NAACP v. Sec'y of Hous. and Urban Dev.*, 817 F.2d 149, 158-59 (1st Cir. 1987) (HUD's discretion does not preclude finding of violation).

HUD insists that its action cannot violate the Fair Housing Act, because that means use of the AI process for states, insular areas, and public housing agencies, for which HUD has not published applicable Tools, would also violate the Act. HUD Br. at 39-40. That possibility cannot save HUD's action here. The AFFH Rule provides that those jurisdictions use the AI process on an interim basis until HUD develops specialized Tools for them. *See* 80 Fed. Reg. 42,277; 24 C.F.R. § 5.160(a). The challenged actions here do not affect whether HUD will publish those Tools with reasonable speed.[7] By contrast, with respect to entitlement jurisdictions, HUD had a published and approved Tool and had implemented an AFH process that caused entitlement jurisdictions to carry out their affirmatively furthering fair housing obligation far more effectively. For similar reasons, it is irrelevant that no court has previously required HUD to use the process prescribed by the AFFH Rule. *See* HUD Br. at 40. Courts held that the Fair Housing Act required HUD to do more, and HUD promulgated the AFFH Rule in part to carry out the obligation those courts identified. *See* 80 Fed. Reg. 42,274. Its reversion to a process that has proven ineffective abdicates its statutory responsibility, in violation of the Fair Housing Act.

II. Plaintiffs Will Suffer Irreparable Harm in the Absence of a Preliminary Injunction.

A. Plaintiffs Have Standing to Bring this Action.

[7] Whether HUD's delay in issuing Assessments of Fair Housing tools for states, public housing authorities, and insular areas may also constitute a violation of the APA and the Fair Housing Act was not addressed in Plaintiffs' complaint, and, as noted above, is not before this Court.

As Plaintiffs described in their opening brief, HUD's suspension of the AFFH Rule impairs their activities in concrete ways. For example, HUD's action deprives them of procedural protections, such as the requirements that jurisdictions solicit community participation, respond to public comments, and undergo HUD review (where Plaintiffs can participate). It also excuses municipalities from *publicly* making measurable commitments towards fair housing. In other words, HUD's action hinders Plaintiffs' ability to monitor and ensure jurisdictions' compliance with the requirement to affirmatively further fair housing. These injuries "perceptibly impair[]" Plaintiffs' ability to carry out their missions. *See* Pls.' Br. at 35-43; *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8-9 (D.C. Cir. 2016); *Open Communities Alliance*, 286 F. Supp. 3d at 178; *see also Fair Emp't Council of Greater Washington, Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994) (finding standing where defendant's actions "made the Council's overall task more difficult" by "reduc[ing] the effectiveness of any given level of outreach efforts").

HUD's response ignores Plaintiffs' arguments and the facts underlying their injuries. Plaintiffs described how HUD's action affects their *own* rights and makes their *own* activities more challenging, yet HUD recasts Plaintiffs' injuries as "their general dissatisfaction with HUD's regulation of third parties." HUD Br. at 17. It also contends that Plaintiffs lack organizational standing unless HUD's action altogether prevents them from advocating for fair housing or causes their operational costs across all programs to rise. *Id.* HUD's arguments are not supported by the case law, nor does HUD fairly characterize Plaintiffs' claims of harm.

It is well-established that an organization suffers cognizable harm from action that makes it more difficult for the organization to provide education, counseling, and advocacy regarding fair housing issues and forces the organization to divert resources to redressing that harm. In

Havens Realty Corporation v. Coleman, 455 U.S. 363 (1982), for example, the Supreme Court held that the organizational plaintiff had standing where the defendant's action made it more difficult for the organization effectively to counsel clients on housing options and forced the organization to divert resources from other planned enforcement, education, and counseling activities to counteract the effects of the defendant's conduct. *Id.* at 379.

HUD makes no effort to reconcile its arguments with *Havens*. In particular, HUD errs in arguing that Plaintiffs' diversion of resources to education, counseling, and advocacy in response to HUD's action cannot confer harm because those activities are consistent with Plaintiffs' "true purpose" of advocating for fair housing. HUD Br. at 17 (quoting *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995)). HUD's argument, if accepted, would set a bar that no fair housing organization could clear—including the plaintiff in *Havens*. *See also Nat'l Fair Hous. All. v. Travelers Indemnity Co.*, 261 F. Supp. 3d 20, 28 (D.D.C. 2017) (to have standing, plaintiffs need not divert their resources to activities inconsistent with their missions).

Plaintiffs here, just like the plaintiffs in *Havens*, complain of conduct that makes it harder for them to carry out planned activities, resulting in their having to expend resources in ways that otherwise would be unnecessary and, as a result, having fewer resources to expend on other, planned mission-related activities. For instance, because of HUD's action, both Texas Plaintiffs have fewer resources to devote to ensuring an equitable disaster recovery process. Second Henneberger Decl. ¶ 20; Second Sloan Decl. ¶ 32. Plaintiff Texas Appleseed has fewer resources with which to assist owners of "heir property" to obtain clear title for purposes of accessing rebuilding grants. Second Sloan Decl. ¶ 32. NFHA has had to scale back a variety of fair housing projects related to disaster relief, the language needs of non-English-speaking borrowers in mortgage originations and servicing, and more. Second Goldberg Decl. ¶ 14.

Moreover, HUD entirely ignores that, as Plaintiffs explained in their opening brief, HUD's suspension of the AFH process deprives Plaintiffs of a regulatory entitlement to participate in coordinated, effective fair housing processes. Plaintiffs have lost, among other things, the right to provide input on local governments' fair housing plans and to receive reasoned responses from local governments; the right to object to HUD regarding jurisdictions' failures to commit to fair housing objectives and meaningful goals with metrics; the right to public notice of fair housing planning and to participate in that process; and the right to have jurisdictions publicly commit to specific, measurable fair housing objectives that Plaintiffs can monitor. *See* Pls.' Br. at 36-40; *see, e.g.*, 24 C.F.R. § 5.158(a) (requiring jurisdictions to provide for "meaningful community participation," including public hearings that reach a broad audience); 24 C.F.R. §§ 91.100(a), (e)(1) (requiring jurisdictions to permit public to review and comment on initial AFH draft and consult with designated community organizations, including fair housing organizations). The loss of these procedural rights impedes Plaintiffs' ability to accomplish their organizational missions, forcing Plaintiffs to expend resources they otherwise would not have to expend to advance the same objectives less effectively. *See e.g.*, Pls.' Br. at 39-40, 42; Second Henneberger Decl. ¶ 12, 14-15; Second Goldberg Decl. ¶ 13.

The unlawful elimination of procedures that make it easier for an organization to accomplish its mission confers standing under settled precedent. For example, in *People for the Ethical Treatment of Animals v. U.S. Department of Agriculture*, an advocacy organization challenged an agency action that (1) eliminated the agency complaint process as a forum for redress, forcing the organization "to expend resources to seek relief through other, less efficient and effective means," and (2) ended production of inspection reports that the organization "could use to raise public awareness." 797 F.3d 1087, 1091-92 (D.C. Cir. 2015). These actions required

the organization to "redirect[] its resources in response to" the agency's "unlawful failure to provide the means by which PETA would otherwise advance its mission." *Id.* at 1097. Similarly here, the AFFH Rule is a "means by which [Plaintiffs] would otherwise advance" their missions, including through the Rule's information-sharing and public-participation requirements and the forum it creates for Plaintiffs to seek redress. *Id*. HUD's suspension of the Rule deprives Plaintiffs of these important tools for advancing their missions, harming them in the same way that the organization was harmed in *PETA*. HUD does not dispute any of this, but simply omits mention of these key aspects of the AFFH Rule.

HUD argues that the diversion of resources to activities like counseling and education is not itself cognizable harm unless it results in "costs beyond those normally expended." HUD Br. at 18 (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 920 (D.C. Cir. 2015)). But that narrow formulation does not apply where the defendant's action interferes with an organization's ability to accomplish its mission. *See PETA*, 797 F.3d at 1096-97 (organization had standing based on government action that impaired its ability to achieve mission *without* alleging unusual expenditure of resources); *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 28-29 (D.C. Cir. 1990) (same). By contrast, in *Vilsack*, the challenged agency action did *not* limit the organization's ability to seek legal redress, restrict flow of information to organization, or otherwise "perceptibly impair[] in any way" the organization's activities, 808 F.3d at 921, making that case inapplicable here. HUD similarly errs in suggesting that Plaintiffs' diversion of resources is voluntary and thus cannot confer standing. HUD Br. at 17-18. The D.C. Circuit has rejected this argument. *See Equal Rights Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1140 (D.C. Cir. 2011) (standing does not "depend on the voluntariness or involuntariness of the plaintiffs'

expenditures"). Finally, HUD's assertion that diversion of resources to counseling cannot confer standing, HUD Br. at 18, is irreconcilable with *Havens*.

HUD also argues that Plaintiffs' injuries are not traceable to HUD's action and would not be redressed by reinstatement of the Tool and the Rule's protections. It suggests that Plaintiffs' injuries are caused not by its suspension of the AFFH Rule's requirements, but by the independent decisions of local governments not to comply with the statutory obligation to affirmatively further fair housing. HUD Br. at 20. This argument relies on a misstatement of the injuries Plaintiffs claim, all of which directly flow from HUD's action and would be redressed by an injunction requiring the reinstatement of the AFFH Rule. Plaintiffs do not claim injury based on local governments' ultimate substantive decisions, but rather from the loss of the AFFH Rule's procedural protections and their concomitant diversion of resources.

HUD posits a seven-link causal chain that, it contends, Plaintiffs' claims assume, HUD Br. at 21-22. The only link on which Plaintiffs' claims depend is that, with the AFFH Rule effective, local governments would complete and submit AFHs for HUD review, but now they will not. That is not an "assumption," but the direct result of HUD's suspension of the AFFH Rule's requirements and direction to local governments not to submit AFHs. *See Affirmatively Furthering Fair Housing (AFFH): Responsibility to Conduct Analysis of Impediments*, 83 Fed. Reg. 23,927, 23,927 (May 23, 2018). The other links in HUD's chain are premised on the incorrect notion that Plaintiffs' claimed harm is based on local governments' failure to reach particular substantive outcomes. That is a misreading of Plaintiffs' complaint and motion papers.

B. Plaintiffs Have Suffered and Continue to Suffer Irreparable Harm.

HUD's arguments regarding irreparable harm suffer from a similar refusal to engage with Plaintiffs' actual allegations and evidence. For example, HUD states that Plaintiffs do not point to any "imminent deadline" or "impending harm." HUD Br. at 41. Yet Plaintiffs specifically

described multiple AFHs that were in the process of revision under specific, imminent deadlines when HUD suspended the Rule, directly depriving Plaintiffs of procedural rights, altering jurisdictions' conduct toward them, and requiring Plaintiffs immediately to incur additional and ongoing expenses just to preserve the status quo. *See* Pls.' Br. at 36-39, 43. Moreover, HUD ignores the evidence that the Rule's suspension is causing jurisdictions' submission deadlines to pass without compliance, risking the possibility that it will be five more years before those jurisdictions will be required to conform to the AFFH Rule's requirements. That ongoing and irreparable harm requires an immediate remedy. HUD also does not dispute that Plaintiffs are now diverting resources to respond to these harms and will continue to do so in the absence of a preliminary injunction—and that Plaintiffs have no means of recouping those resources later—though it (wrongly) argues that this diversion is not cognizable harm. HUD Br. at 41.

HUD's other arguments duplicate those regarding standing and redressability and are wrong for the same reasons. Where, as here, "new obstacles" imposed by a defendant's action "unquestionably make it more difficult for [organizational plaintiffs] to accomplish their primary mission[,] . . . they provide injury for purposes both of standing and irreparable harm." *League of Women Voters of U.S.*, 838 F.3d at 9.

III. The Balance of Equities and the Public Interest Support Plaintiffs' Request for Preliminary Relief.

HUD's position on the equities and the public interest is largely repetitive of its arguments on the merits of Plaintiffs' claims. *See* HUD Br. at 42-43. HUD's additional argument that an injunction would disrupt long-term planning and confuse local governments about their obligations, *id.* at 43-44, gets it backwards. It is *HUD's action* that has caused disruption and confusion; injunctive relief would restore the status quo before already unsettled obligations and expectations are further disrupted.

IV. Summary judgment is appropriate at this time.

HUD briefly argues that granting summary judgment would be premature. HUD Br. at 44-45. It suggests, first, that Plaintiffs may not seek summary judgment "on the basis of preliminary injunction papers." That the arguments for the two forms of relief overlap, however, *supports* Plaintiffs' request. Indeed, recognizing the efficiency of such an approach in appropriate cases, Federal Rule of Civil Procedure 65(a)(2) permits consolidation of a motion for a preliminary injunction and trial on the merits. And district courts in APA cases often entertain the two motions together, through a combined motion or two motions.[8] HUD also suggests, second, that summary judgment is premature until it certifies the administrative record. It has submitted a declaration and numerous exhibits, however, and does not suggest that the record before this Court lacks information pertinent to this Court's consideration of the merits.

CONCLUSION

This Court should grant Plaintiffs' motion for a preliminary injunction and for summary judgment.

Dated: June 26, 2018

Respectfully submitted,

/s/ Sasha Samberg-Champion
Sasha Samberg-Champion (DC Bar No. 981553)

[8] *See, e.g.*, *Children's Hosp. Ass'n of Texas v. Azar*, 300 F. Supp. 3d 190, 194 (D.D.C. 2018) (granting summary judgment and denying preliminary injunction as moot); *Nat'l Ass'n for Fixed Annuities v. Perez*, 217 F. Supp. 3d 1, 8 (D.D.C. 2016) (denying plaintiff's motion for preliminary injunction and summary judgment and granting defendant's motion for summary judgment); *Pharm. Research & Mfrs. of Am. v. Dep't of Health & Human Servs.*, 43 F. Supp. 3d 28, 31 (D.D.C. 2014) (granting summary judgment to plaintiff and denying motion for a preliminary injunction as moot); *Mylan Pharm., Inc. v. Shalala*, 81 F. Supp. 2d 30, 32 n.1, 48 (D.D.C. 2000) (granting summary judgment after consolidated hearing on preliminary injunction and summary judgment motions); *see also Policy & Research, LLC v. U.S. Dep't of Health & Human Servs.*, F. Supp. 3d , No. 18-CV-00346 (KBJ), 2018 WL 2184449, at *4-5 (D.D.C. May 11, 2018) (granting summary judgment after plaintiffs filed combined motion for preliminary injunction and summary judgment and parties agreed to expedited summary judgment proceedings).

Sara Pratt (DC bar admission pending, admitted *pro hac vice*)
Michael G. Allen (DC Bar No. 409068)
RELMAN, DANE & COLFAX PLLC
1225 19th Street, NW, Suite 600
Washington, DC 20036
(202) 728-1888
ssamberg-champion@relmanlaw.com
spratt@relmanlaw.com
mallen@relmanlaw.com

Jon Greenbaum (DC Bar No. 489887)
Joseph D. Rich (DC Bar No. 463885)
Thomas Silverstein (DC Bar No. 1552406)
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Ave., NW
Washington, DC 20005
(202) 662-8331
jrich@lawyerscommittee.org

Philip Tegeler (DC Bar No. 1002526)
Megan Haberle (DC bar admission pending)
POVERTY & RACE RESEARCH ACTION COUNCIL
740 15th Street NW, Suite 300
Washington, DC 20005
(202) 360-3906
ptegeler@prrac.org

Rachel Goodman
Sandra Park
AMERICAN CIVIL LIBERTIES UNION
125 Broad St., 18th Floor
New York, NY 10004
(212) 549-2500
rgoodman@aclu.org
spark@aclu.org

Arthur B. Spitzer (DC Bar No. 235960)
AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA
915 15th Street, NW - 2nd floor
Washington, DC 20005-2302
Tel. 202-457-0800
Fax 202-457-0805

aspitzer@acludc.org

Ajmel Quereshi (DC Bar No. 1012205)
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
1444 I Street NW
Washington, DC 20005
(202) 682-1300
aquereshi@naacpldf.org

Sherrilyn A. Ifill (NY Bar No. 2221422)
Samuel Spital (NY Bar No. 4334595)
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200

Allison M. Zieve (DC Bar No. 424786)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for all Plaintiffs

Morgan Williams (DC bar admission pending, admitted *pro hac vice*)
NATIONAL FAIR HOUSING ALLIANCE
1101 Vermont Ave. NW, Suite 710
Washington, DC 20005
(202) 898-1661
mwilliams@nationalfairhousing.org

Attorney for Plaintiff National Fair Housing Alliance

Madison Sloan (admitted *pro hac vice*)
TEXAS APPLESEED
1609 Shoal Creek Bld. # 201
Austin, TX 78701
(512) 473-2800
msloan@texasappleseed.net

Attorney for Plaintiff Texas Appleseed

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2018 I filed the foregoing Plaintiffs' Reply Memorandum of Law in Support of Plaintiffs' Renewed Motion for a Preliminary Injunction and for Summary Judgment on CM/ECF, which shall serve as notice of filing on all counsel of record.

/s/ Sasha Samberg-Champion
Sasha Samberg-Champion (DC Bar No. 981553)
Sara Pratt (DC bar admission pending, admitted *pro hac vice*)
Michael G. Allen (DC Bar No. 409068)
RELMAN, DANE & COLFAX PLLC
1225 19th Street, NW, Suite 600
Washington, DC 20036
Phone: (202) 728-1888
Fax: (202) 728-0848
ssamberg-champion@relmanlaw.com