

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT F. LAUFMAN, et al.,)	
)	
Plaintiffs)	Civil Action No. C 1 74-153
)	
v.)	<u>PLAINTIFFS' MEMORANDUM IN</u>
)	<u>RESPONSE TO DEFENDANTS'</u>
OAKLEY BUILDING AND LOAN)	<u>REPLY BRIEF</u>
COMPANY, et al.,)	
)	
Defendants)	
)	
)	
)	

The defendants in their brief in Reply to Plaintiffs' and Amicus Curiae's Memoranda Contra Defendants' Motion for Summary Judgment, devote much of their brief to the proposition that Title VIII is a penal statute and should be given a "strict construction." In support of their argument the defendants state: "[M]oreover, plaintiffs assert that their claim is based on 42 U.S.C. Sec. 3617 which clearly is a criminal statute". Defendants Brief at 13. Defendants also contend: "[I]f they [defendants] be found guilty of all that plaintiffs allege in their memorandum contra, these defendants could each be fined not more than \$10,000.00 or imprisoned not more than 10 years, or both". Defendants brief at 14.

These statements are inaccurate. Title VIII of the 1968 Civil Rights Act, 42 U.S.C. 3601-3619, is not a criminal statute. Curtis v. Loether, 415 U.S. 89, (1974); Jones v. Mayer, 392 U.S. 409 (1968). The sole sanctions available under Title VIII are civil sanctions: (a) conciliation by the Department of Housing and Urban Development pursuant to 42 U.S.C. 3610(a); (b) if conciliation is unsuccessful, civil action

pursuant to 42 U.S.C. 3610(d); (c) civil action pursuant to 42 U.S.C. 3612; and (d) civil action pursuant to 42 U.S.C. 3617.^{*/} Nowhere in Title VIII is there any mention of criminal penalties.

Title IX of the Civil Rights Act of 1968, 42 U.S.C. 3631(a) does provide for criminal sanctions against persons who, "by force or threat of force" (emphasis added), interfere with the exercise of equal housing opportunity. It is possible, that defendants, in contending that substantial criminal sanctions are involved in this case, are confusing the sanctions available under Title IX with those available under Title VIII. The two Titles, however, are quite separate. The basic element necessary under Title IX is "force or threat of force." But there is no suggestion of any such element either in the plaintiffs' complaint or in the briefs of amicus curiae.

Plaintiffs have not alleged violations of Title IX in their complaint or in their memoranda, nor have they alleged that the defendants' activities were "by force or threat of force" in their complaint or in their memoranda, nor have they asked the court, in their complaint or in their memoranda,^{**/} to impose criminal sanctions. Further, neither the amicus curiae brief of the Federal Home Loan Bank Board nor the proposed amicus curiae brief of the United States makes the slightest reference

^{*/} The Department of Justice is authorized under Title VIII to bring a civil action where there is a "pattern or practice" of resistance to the enjoyment of equal housing opportunity or where the Attorney General determines there has been a denial of equal housing opportunity to a group of persons, which raises an issue of general public importance. 42 U.S.C. 3613. The Department of Justice is not authorized under Title VIII to institute criminal proceedings for violations.

^{**/} Of course private individuals do not have standing to bring a criminal action.

to any violations of Title IX. On the contrary, the complaint unambiguously seeks only civil remedies: declaratory and injunctive relief and monetary damages. (Para 2 and relief section Laufman complaint).

In short, Title VIII is clearly not a criminal statute, and the only sanctions available under that law are civil sanctions. Defendants' contention that this case involves possible criminal penalties is simply erroneous.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jay Mulkeen, certify that copies of the foregoing Motion of the Plaintiffs for Leave to File Supplemental Memorandum in Response to Defendants' Reply Brief and Plaintiffs' Memorandum in Response to Defendants' Reply Brief were served by United States mail, postage prepaid, this 1st day of August, 1975, upon:

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