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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MARCUS L. KAWATACHI, in his official capacity as
Executive Director of the Hawai'i Civil Rights Commission,
ex relatione, ROBERT A. FAHN and BRENDA A. FAHN,
Respondent/Plaintiff-Appellant,

vs.

THE PARRISH COLLECTION, LLC; THE PARRISH COLLECTION KAUAI;
JONATHAN D. PARRISH and SIMONE McCAFFREY,
Petitioners/Defendants-Appellees,

and

LINDA EVANS, as Trustee of the LAURA P. EVANS
REVOCABLE TRUST DATED May 8, 2022,
Respondent/Defendant-Appellee.

SCWC-23-0000701

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-23-0000701; CASE NO. 5CCV-23-0000077)

OCTOBER 28, 2026

DEVENS, C.J., McKENNA, EDDINS, AND GINOZA, JJ., AND
CIRCUIT JUDGE DREWYER, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY McKENNA, J.

I. Introduction

During the COVID-19 pandemic, a tenant with a disability requested that a landlord provide an accommodation waiving a weekly cleanings provision in a rental agreement. The tenant explained that, because of his disability, he faced an increased risk of hospitalization or death if he contracted the virus. He therefore did not want non-family members entering the property. The landlord denied the request, saying that the accommodation was neither reasonable nor necessary.

The Circuit Court of the Fifth Circuit ("circuit court") granted summary judgment in favor of the landlord. The Intermediate Court of Appeals ("ICA") vacated this judgment and ordered a remand. On certiorari, the landlord alleges the ICA erred.

The ICA did not err by vacating summary judgment. But in this opinion, we provide guidance on how disability accommodation requests are to be evaluated under Hawai'i's fair housing law. We also address an issue not addressed by the ICA. Although parties are encouraged to engage in an interactive process, under current law, there is no standalone liability if there is a breakdown in engagement.

We therefore affirm the ICA's December 17, 2025, judgment on appeal and remand the case to the circuit court for further proceedings consistent with this opinion.

II. Background

A. Legal Background

1. Formation of the HCRC

The Hawai'i Civil Rights Commission ("HCRC") was formed through Act 219, Session Laws of Hawai'i 1988, which was codified as HRS Chapter 368. 1998 Haw. Sess. Laws Act 219, § 1 at 1-3; see HRS § 368-1 (2015). HCRC is authorized to provide "a uniform procedure" for enforcing Hawai'i's anti-discrimination laws in the areas of employment (HRS Chapter 378), housing (HRS Chapter 515), and public accommodations (HRS Chapter 489). HRS § 368-1 (2015); see HRS § 515-9.

In enacting Chapter 368, the Hawai'i State Legislature (the "Legislature") found and declared, among other things, that discrimination in housing is contrary to public policy. Chapter 368 also vests the HCRC with powers to "receive, investigate, and conciliate complaints;" "hold hearings and make inquiries;" "commence civil actions in circuit court to seek appropriate relief;" "issue the right to sue to a complainant;" "order appropriate legal and equitable relief or affirmative action;" and "adopt rules." HRS § 368-3(1)-(5), (9) (2015).

2. Hawai'i's Fair Housing Law

Hawai'i's fair housing law is codified in the Hawai'i Discrimination in Real Property Transactions Act, Hawai'i Revised Statutes ("HRS") §§ 515 et seq., and Hawai'i Administrative Rules ("HAR") §§ 12-46-301 et seq. Hawai'i's fair housing law protects against discrimination on the basis of race, sex (including gender identity or expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection ("HIV"). HRS § 515-3(a) (Supp. 2023). Chapter 515 applies to sales, leases, rentals, and other housing practices, see HRS §§ 515-3(a)(1)-(11) and 515-5 (2018), and provides complainants with substantive rights as well as potential legal and equitable remedies. See HRS §§ 515-9 (2018) and 515-13 (2018).

When Chapter 515 was initially promulgated in 1967, the Legislature directed that it "shall be construed according to the fair import of its terms and shall be liberally construed." HRS § 515-1 (2018).

Then, in 1992, the Legislature passed Act 171, Session Laws of Hawai'i 1992. The purpose section of Act 171 stated:

SECTION 1. The purpose of this Act is to conform the Real Estate Transactions Law, which prohibits discrimination in matters related to housing and real estate, with the federal Fair Housing Amendments Act of 1988. The Department of Housing and Urban Development (HUD) has published notice that Hawai'i's law is no longer substantially equivalent to federal law. HUD intends to decertify Hawai'i unless these amendments are enacted. Certification is necessary in order

for Hawai'i to receive federal funds for the investigation of housing discrimination cases.

1992 Haw. Sess. Laws Act 171 § 1 at 1 ("Act 171").

The HCRC administers Hawai'i's fair housing law. To maintain HCRC's federal certification, HUD requires that "the fair housing law that the agency administers provide[] rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act." 24 C.F.R. § 115.201(a) & (b); see HRS Chapter 368. Act 171 was passed because Hawai'i's fair housing law was apparently not as protective as the 1988 federal Fair Housing Amendments Act of 1988 ("FHAA"), especially with respect to disability discrimination.

3. HCRC's Enforcement of Hawai'i's Fair Housing Law

As required by Act 171 of 1992, the HCRC promulgated HAR §§ 12-46-301 et seq. to implement and conform Hawai'i's fair housing law to Title VIII of the Civil Rights Act of 1968, as amended by the FHAA. HAR § 12-46-301; 42 U.S.C. §§ 3601-3619; 1992 Haw. Sess. Laws Act 171, § 1 at 1.

HAR § 12-46-301 states in relevant part:

The purpose of this subchapter is to implement laws prohibiting discrimination in real property transactions toward the goal of eliminating such discrimination and to implement changes made by Act 171, Session Laws of Hawai'i 1992, to conform state law to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Chapter 515, HRS, prohibits discriminatory practices by an owner, any person engaging in a real property or real estate transaction, or a real

estate broker or salesperson against another person because of a protected basis.

4. Conformance with Federal Law

Thus, both Act 171 and HAR § 12-46-301 require this court to construe our fair housing law in conformance with federal law for HCRC to remain qualified as a certified agency to receive federal funds for investigation and enforcement work. Hence, federal caselaw interpreting the FHAA guides this court's interpretation of Hawai'i's fair housing law.

B. Factual and Procedural Background

1. Factual Background

As the founder of the Parrish Collection Kauai, Jonathan Parrish (collectively, "Parrish") oversees the management and operation of high-end vacation rental properties on Kaua'i.

In 2006, Robert A. Fahn ("Robert") was diagnosed with heart disease. In August 2020, Robert and Brenda A. Fahn ("Brenda") (together, the "Fahns") moved from Colorado to Kaua'i with their family because Kaua'i had relatively few COVID-19 cases.

In August 2020, the Fahns and Parrish executed a rental agreement for a rental property in Koloa. The rental agreement contained a provision governing weekly cleanings of the property:

4. Cleaning to be scheduled every week and completed by the Parrish Collection Housekeeping staff and paid for by the tenant. This will be done hourly at \$40.00 per hour and the number of hours dependent on property condition.

("Weekly Cleanings Provision")

Shortly after moving in, Brenda emailed a Parrish employee that she did not want housekeeping staff entering the property based on a negative COVID-19 test result. At the time, while not expressly requesting an accommodation based on Robert's heart disease, Brenda explained that Robert "has a 5-6 [percent] mortality rate and almost 20 [percent] hospital rate (because of his age and conditions)." Brenda ended with, "I hope you understand wanting to delay housekeeping."

But on November 16, Parrish informed the Fahns that they failed to comply with the Weekly Cleanings Provision and that they "cannot be selective" in granting Parrish access for repairs but not for cleaning.

Then, on November 23, the Fahns' doctor sent Parrish a letter expressly requesting an accommodation through suspension of the Weekly Cleanings Provision because of Robert's heart disease. On November 24, Robert also sent Parrish a letter formally requesting a waiver of the Weekly Cleanings Provision based on his disability.

On November 25, the Fahns' mainland attorney emailed Parrish a cease-and-desist letter, asserting that the Weekly Cleanings Provision was unenforceable and a violation of the

Fair Housing Act of 1968. The attorney alleged that Parrish breached the rental agreement and committed fraud, and demanded that Parrish: (1) stop enforcing the Weekly Cleaning Provision; (2) reduce rent by fifty percent for September, October, and November; (3) pay \$5,000.00 in reasonable attorney's fees; and (4) pay \$10,000.00 in general damages.

That same day, Parrish rejected the demands and countered that the request to simply not enforce the Weekly Cleanings Provision was not reasonable. It suggested as an alternative that the Fahns not be present in the property during the weekly cleanings. Parrish indicated that it followed strict industry protocols for its cleaning crew. It noted that all of employees are screened daily, wear full personal equipment (including masks and gloves), and use CDC-approved cleaning products. It stated, "this is not a negotiation. Your clients have a binding Lease. They will comply with the terms of that Lease or it will be terminated."

On November 27, Parrish terminated the Fahns' tenancy, effective as of November 30 and filed a complaint for summary possession on November 30.

On December 31, the Fahns vacated the rental property. Parrish retained \$5,471.44 of the \$6,000.00 security deposit to clean, replace, and repair the property.

2. HCRC Proceedings

In December 2020, the Fahns filed a complaint with the HCRC, alleging that Parrish “unlawfully discriminated against [them] on the basis of disability by failing to engage in the interactive process and by failing to provide a reasonable accommodation for [Robert]’s disabilities.”

Following an investigation, the HCRC “found that there was reasonable cause to believe that unlawful discriminatory practices had occurred.” When conciliation efforts proved unsuccessful, the parties received notices of the right to sue in March 2023. The Fahns exercised their right to sue in April 2023.

3. Circuit Court Proceedings

In July 2023, the HCRC filed the instant action, asserting that Parrish unlawfully discriminated against Robert based on his disability by failing to engage in an interactive process and by failing to provide a reasonable accommodation for Robert’s disability, in violation of HRS § 515-3(a)(9) and HAR § 12-46-306(a)(3). The HCRC sought actual, compensatory, and punitive damages.

In September 2023, Parrish filed a motion to dismiss or, in the alternative, for summary judgment. Following a hearing, the circuit court granted Parrish’s motion to dismiss the suit with prejudice after finding that the Commission failed to adequately

allege that the requested accommodation was reasonable and necessary. It also determined that Hawai'i's fair housing law did not create independent liability for a landlord's failure to engage in an interactive process and, even if it did, Parrish had undertaken efforts to resolve the matter.

The HCRC appealed the circuit court's order granting Parrish's motion to dismiss.

4. ICA Proceedings

In November 2025, the ICA vacated the circuit court's order and final judgment. Kawatachi v. Parrish Collection, LLC, No. CAAP-23-0000701, 2025 WL 3216810, at *2 (Haw. App. Nov. 18, 2025) (SDO). The ICA treated Parrish's motion as a motion for summary judgment because the circuit court considered declarations and exhibits filed by the parties. Kawatachi, 2025 WL 321681, at *2 n.2.

The ICA then determined that Parrish failed to produce enough evidence negating the "disability," "necessary," and "reasonable" factors. Kawatachi, 2025 WL 321681, at *4. The ICA did not reach the issue of whether there is standalone liability under HRS § 515-3(a)(9) for a landlord's failure to engage in an interactive process.

5. Certiorari Proceedings

On certiorari, Parrish challenges the ICA's holding that it failed to produce evidence negating the "necessary" and

"reasonable" factors and urges this court to address whether independent liability exists under HRS § 515-3(a)(9).

III. Standard of Review

A. Motion for Summary Judgment

An appellate court reviews an "award of summary judgment de novo under the same standard applied by the circuit court."

Fujimoto v. Au, 95 Hawai'i 116, 136, 19 P.3d 699, 719 (2001)

(emphasis removed) (citation omitted).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Id. (cleaned up). We must review the evidence in the light most favorable to the party opposing the motion for summary judgment.

Fujimoto, 95 Hawai'i at 137, 19 P.3d at 720 (cleaned up).

With respect to burdens:

The burden is on the party moving for summary judgment (moving party) to show the absence of any genuine issue as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. This burden has two components.

First, the moving party has the burden of producing support for its claim that: (1) no genuine issue of material fact exists with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions; and (2) based on the undisputed facts, it is entitled to summary judgment as a matter of law. Only when the moving party satisfies its initial burden of production does the burden shift to the non-moving party to respond to the motion for summary judgment and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial.

Second, the moving party bears the ultimate burden of persuasion. This burden always remains with the moving party and requires the moving party to convince the court that no genuine issue of material fact exists and that the

moving party is entitled to summary judgment as a matter of law.

French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 470, 99 P.3d 1046, 1054 (2004) (cleaned up).

[Also,] a summary judgment movant may satisfy [their] initial burden of production by either (1) producing admissible evidence to show there was no genuine issue of material fact, or (2) showing that the non-moving party cannot carry [their] burden of proof at trial. . . . [T]he movant generally cannot support its initial burden of production by pointing solely to the non-moving party's lack of evidence if discovery has not concluded.

Ralston v. Yim, 129 Hawai'i 46, 48, 292 P.3d 1276, 1278 (2013) (cleaned up).

B. Statutory Interpretation

Our standard of review for statutory interpretation is well-established. "The interpretation of a statute is a question of law which [the appellate] court reviews de novo."

Sierra Club v. Dep't of Transp., 120 Hawai'i 181, 197, 202 P.3d 1226, 1242 (2009) (cleaned up). Our construction of statutes is guided by the following principles:

First, the fundamental starting point for statutory-interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

When there is ambiguity in a statute, "the meaning of the ambiguous words may be sought by examining the context with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." Moreover, the courts may resort to extrinsic aids in

determining legislative intent, such as legislative history, or the reason and spirit of the law.

State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177

(2009) (cleaned up).

IV. Discussion

A. Hawai'i's Fair Housing Law and the FHAA

The ICA appropriately set aside the grant of summary judgment in favor of Parrish. But as this court has not previously addressed a legal challenge based on Hawai'i's fair housing law, we provide further guidance on how this challenge should be evaluated by the circuit court on remand.

The cardinal rule of statutory construction begins with the statute's plain language. Along with other protected classes, HRS § 515-3 bars housing discrimination based on a person's disability. HRS § 515-3(a) provides:

- (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction . . . because of . . . disability . . . :
 -
 - (9) To refuse to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation; . . . provided further that if the disability is not readily apparent, an owner or other person engaging in a real estate transaction may request information that verifies that the person has a disability, defined as a physical or mental impairment that substantially limits a major life activity. An owner or other person engaging in a real estate transaction shall not request medical records or access to health care providers, and shall not inquire as to the diagnosis, nature, or severity of the person's disability.

Here, it is undisputed that Parrish is a "person" engaged in a "real estate transaction" within the meaning of HRS Chapter 515.¹

HRS § 515-2 (2018) defines "disability" as:

having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The term does not include current or illegal use of or addiction to a controlled substance or alcohol or drug abuse that threatens the property or safety of others.

And HRS Chapter 515 is to be "construed according to the fair import of its terms and shall be liberally construed." HRS § 515-1.

The HCRC similarly defines "disability" in HAR § 12-46-302 as:

having a physical or mental impairment which substantially limits one or more major life activities, having a record of such impairment, or being regarded as having such an impairment, including persons who have HIV or AIDS. The term does not include current illegal use of or addiction to a controlled substance, or alcohol or drug abuse that threatens the property or safety of others.

¹ HRS § 515-2 provides, in relevant part:

"Person" refers to the definition of [HRS] section 1-19 and includes a legal representative, partnership, receiver, trust, trustee, trustee in bankruptcy, the State, or any governmental entity or agency.

. . . .
"Real estate transaction" includes the sale, exchange, rental, or lease of real property.

HRS § 1-19 defines "person" to include "corporations, firms, [and] associations."

Within HCRC-promulgated housing discrimination regulations is HAR § 12-46-306, which provides:

- (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction . . . :
 -
 - (3) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation, including public and common use areas[.]

HAR § 12-46-306(a)(3); see HAR § 12-46-305(2). Like HRS Chapter 515, the HCRC directs that HAR §§ 12-46-301 et seq. "shall be liberally construed according to the fair import of their terms toward the goal of eliminating discrimination in real estate transactions." HAR § 12-46-303.

As noted above, pursuant to Act 171, the HCRC adopted HAR §§ 12-46-301 et seq. to implement and conform HRS Chapter 515 to the FHAA. See 1992 Haw. Sess. Laws Act 171, § 1 at 1; see also 24 C.F.R. § 115.201. The FHAA renders it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a [disability.]"² 42 U.S.C. § 3604(f)(1). Discriminatory

² The statute actually uses the word "handicap." Federal courts use the terms "disability" and "handicap" interchangeably. See Giebeler v. M & B Assocs., 343 F.3d at 1146 n.2 (citing Helen L. v. DiDario, 46 F.3d 325, 330 n.8 (3d Cir. 1995) ("The change in nomenclature from 'handicap' [in the Rehabilitation Act] to 'disability' [in the Americans with Disabilities Act] reflects Congress' awareness that individuals with disabilities find the term 'handicapped' objectionable.")). Accordingly, we exclusively use the word "disability" or its variations. We bracket "disability" or its variations when it is not the original term. We also use person-first language (person with a disability) where possible.

housing practices include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person who is disabled] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B); see 24 C.F.R § 966.7(a) (applying the same principle to lease and grievance procedures).

The FHAA defines "[disability]" as "(1) a physical or mental impairment which substantially limits one or more of [a] person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. § 3602(h). The definition mirrors the definition of "disability" in the Americans with Disabilities Act ("ADA").³ 42 U.S.C. § 12102(1) (defining "disability").

This court turned to federal caselaw construing federal discrimination law in the fair employment context, based on the similarities in language between Hawai'i and federal law. See French, 105 Hawai'i at 467, 99 P.3d at 1051 (turning to federal caselaw interpreting the ADA as guidance for interpreting Hawai'i's fair employment law). But, as noted, Act 171 and HAR § 12-46-301 actually require Hawai'i's fair housing law to

³ Also, federal courts rely on Rehabilitation Act and ADA regulations and cases when interpreting the FHAA's reasonable accommodation provisions. See, e.g., Giebeler, 343 F.3d at 1149; Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775, 782-83 (7th Cir. 2002); Summers v. City of Fitchburg, 940 F.3d 133, 139 (1st Cir. 2019); Bryant Woods Inn, Inc. v. Howard Cnty., Md., 124 F.3d 597, 603 (4th Cir. 1997); Schaw v. Habitat for Human. of Citrus Cnty., Inc., 938 F.3d 1259, 1265 n.2 (11th Cir. 2019).

conform with federal law. We therefore turn to federal case law to set out an appropriate framework as well as definitions of applicable terms.

B. Under HRS § 515-3(a)(9), plaintiffs bear the initial burden to prove an accommodation is both reasonable and necessary, after which the burden shifts to defendants to show that it is unreasonable.

Howard v. HMK Holdings, LLC, 988 F.3d 1185 (9th Cir. 2021)

(“Howard”) sets out the legal framework we adopt. To establish a prima facie case of discrimination based on a failure to accommodate, a plaintiff must demonstrate:

(1) that the plaintiff . . . is [disabled] within the meaning of [the FHAA]; (2) that the defendant knew or should reasonably be expected to [have] know[n] of the [disability]; (3) that accommodation [in rules, policies, practices, or services] of the [disability] may be necessary to afford the [person with the disability] an equal opportunity [to a person without a disability] to use and enjoy the dwelling; (4) that the accommodation [in rules, policies, practices, or services] is reasonable; and (5) that defendant refused to make the requested accommodation.

Howard, 988 F.3d at 1189-90 (citing Dubois v. Ass’n of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 (9th Cir. 2006)).

“The reasonable accommodation inquiry is highly fact-specific, requiring case-by-case determination.” Dubois, 453 F.3d at 1179 (quoting United States v. California Mobile Home Park Mgmt. Co., 107 F.3d 1374, 1380 (9th Cir. 1997) (“Mobile Home II”)); see HAR § 12-46-301 (requiring the HCRC to “review each case on an individual basis”).

Although HRS § 515-2, HAR § 12-46-302, and 42 U.S.C. § 3602 do not define "necessary," "equal opportunity," or "reasonable," various federal courts have addressed these terms under the FHA. We adopt the following definitions and standards for these terms.

Starting with "necessary," some courts have observed that "it means '[i]ndispensable, requisite, essential, [and] needful" and conveys "a high standard," Vorchheimer v. Philadelphian Owners Ass'n, 903 F.3d 100, 105 (3d Cir. 2018), while others have noted, "if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be 'necessary.'" Bryant Woods Inn, Inc. v. Howard Cnty., Md., 124 F.3d 597, 604 (4th Cir. 1997) (citation omitted). See Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City, 685 F.3d 917, 923 (10th Cir. 2012) (Gorsuch, J.) (noting "necessary" means "something that 'cannot be done without'").

But an accommodation need not be "actually necessary" for a disabled tenant to enjoy his apartment, as such a restrictive standard would flout the "broad remedial purpose" of the FHAA, HRS § 515-1, and HAR § 12-46-301; rather, it is sufficient that the accommodation "may be necessary" (emphasis in original). Hollandale Apartments & Health Club, LLC v. Bonesteel, 100 N.Y.S.3d 711, 720 (N.Y. App. Div. 2019) (citations omitted).

The text of 42 U.S.C. § 3604(f)(3)(B) tethers necessity to the goal of affording tenants with disabilities "equal opportunity to use and enjoy [their] dwelling." See Vorchheimer, 903 F.3d at 107-08 ("Once we identify the particular tenant's need, we can gauge what is necessary to afford that tenant equal housing opportunity."). "[T]he phrase 'equal opportunity,' at least as used in the FHAA, is concerned with achieving equal results, not just formal equality." Smith & Lee Assocs., Inc. v. City of Taylor, Mich., 102 F.3d 781, 795 (6th Cir. 1996) (citations omitted). In other words, "accommodations that go beyond affording a [tenant with a disability] 'an equal opportunity to use and enjoy a dwelling' are not required by the [FHAA]." Hubbard v. Samson Mgmt. Corp., 994 F. Supp. 187, 190 (S.D.N.Y. 1998) (citing Bryant Woods, 124 F.3d at 605); United States v. California Mobile Home Park Mgmt. Co., 29 F.3d 1413, 1418 (9th Cir. 1994)).

Lastly, "[a]n accommodation is reasonable if it is both efficacious and proportional to the costs to implement it." Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775, 784 (7th Cir. 2002) (citation omitted). "Assessing reasonableness 'require[s] a balancing of the parties' needs.'" Schaw v. Habitat for Human. of Citrus Cnty., Inc., 938 F.3d 1259, 1265 (11th Cir. 2019). Conversely, "[a]n accommodation is unreasonable if it imposes undue financial or administrative

burdens or requires a fundamental alteration in the nature of the program.” Oconomowoc, 300 F.3d at 784 (citation omitted). “In assessing costs, the court may look at both financial and administrative costs and burdens.” Oconomowoc, 300 F.3d at 784 (citing Bryant Woods, 124 F.3d at 604).

We next address which party bears the burden of proving necessity and reasonableness. To prove that an accommodation is necessary, nearly all federal circuit courts agree that plaintiffs carry the initial burden to “‘show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice.’” Giebeler, 343 F.3d at 1155 (citing Smith & Lee, 102 F.3d at 795).⁴ “Put another way, ‘[w]ithout a causal link between defendants’ policy and the plaintiff’s injury, there can be no obligation on the part of defendants to make a reasonable accommodation.’” Giebeler, 343 F.3d at 1155 (citing Mobile Home II, 107 F.3d at 1380).

⁴ See, e.g., Summers v. City of Fitchburg, 940 F.3d 133, 139 (1st Cir. 2019); Quad Enters. Co., LLC v. Town of Southold, 369 F. App’x 202, 207 (2d Cir. 2010) (unpublished); Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains, 284 F.3d 442, 457 (3d Cir. 2002); Bryant Woods, 124 F.3d at 603-04; Howard v. City of Beavercreek, 276 F.3d 802, 807 (6th Cir. 2002); Oconomowoc, 300 F.3d at 784; One Love Hous., LLC v. City of Anoka, Minnesota, 93 F.4th 424, 433 (8th Cir. 2024); Courage to Change Ranches Holding Co. v. El Paso Cnty., Colorado, 73 F.4th 1175, 1204 (10th Cir. 2023); Schaw, 938 F.3d at 1269.

That said, a significant federal circuit split exists regarding which party bears the initial burden of proving reasonableness.⁵ The circuits are divided into four camps.

In the first camp, the United States Courts of Appeals for the Third Circuit is the only court that does not require plaintiffs to initially prove reasonableness; rather, once plaintiffs establish the "necessary" factor, the burden shifts to defendants to show the requested accommodation is unreasonable. Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains, 284 F.3d 442, 457 (3d Cir. 2002).

The second camp includes the United States Courts of Appeals for the Seventh, Eighth, and Eleventh Circuits, which require plaintiffs to initially show that the requested accommodation is "reasonable on its face," after which the burden shifts to defendants to demonstrate that it is unreasonable. See Oconomowoc, 300 F.3d at 783; One Love Hous., LLC v. City of Anoka, Minnesota, 93 F.4th 424, 432-33 (8th Cir. 2024); Schaw, 938 F.3d at 1265. These courts adopted their burden-shifting regime from US Airways, Inc. v. Barnett, 535 U.S. 391, 391 (2002).

In Barnett, the airline defendant declined to accommodate the plaintiff-employee's disability by making an exception to

⁵ The Second and D.C. Circuits have not ruled on this particular question. See Quad, 369 F. App'x at 208 n.1.

its seniority system that would have allowed the plaintiff to work in the mailroom instead of two more senior employees who had bid for the position. 535 U.S. at 394. As a result, the plaintiff lost his job and sued the airline defendant under the ADA, arguing, in part, that "the mailroom job amounted to a 'reasonable accommodation' of his disability, and that [the airline defendant], in refusing to assign him the job, unlawfully discriminated against him." Barnett, 535 U.S. at 394-95. The district court awarded summary judgment in favor of the airline defendant after finding there were undisputed facts about seniority, but the United States Courts of Appeals for the Ninth Circuit reversed, holding "that the presence of a seniority system is merely 'a factor in the undue hardship analysis.'" Barnett, 535 U.S. at 395 (citation omitted).

The United States Supreme Court vacated the Ninth Circuit's decision. Barnett, 535 U.S. at 406. The Court rejected the airline-defendant's contention that a seniority system always trumps an accommodation, noting, "the fact that the difference in treatment violates an employer's disability-neutral rule cannot by itself place the accommodation beyond the [ADA]'s potential reach." Barnett, 535 U.S. at 397. Rather, it held the ADA sometimes "requires preferences in the form of 'reasonable accommodations' . . . [to ensure that people] with

disabilities [have] the same workplace opportunities [as] those without disabilities[.]” Id. (emphasis omitted).

The Court then established a burden-shifting framework, under which a plaintiff-employee “need only show that an ‘accommodation’ seems reasonable on its face, i.e., ordinarily or in the run of cases” (emphasis omitted). Barnett, 535 U.S. at 401 (citations omitted). Failing that, the plaintiff “remains free to show that special circumstances warrant a finding that . . . the requested ‘accommodation’ is ‘reasonable’ on the particular facts.” Barnett, 535 U.S. at 405. “Once the plaintiff has made this showing, the [defendant-employer] then must show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances,” the Court stated. Barnett, 535 U.S. at 402 (citation omitted).

Applying this test, the Court held that the plaintiff-employee could not show the requested accommodation was “reasonable on its face” because, ordinarily, a seniority system would prevail. Barnett, 535 U.S. at 403. However, the Court vacated the lower court’s judgment and remanded to allow the plaintiff-employee to “show that special circumstances warrant a finding that, despite the presence of a seniority system (which the ADA may not trump in the run of cases), the requested ‘accommodation’ is ‘reasonable’ on the particular facts.” Barnett, 535 U.S. at 405.

In adopting Barnett, the Seventh, Eighth, and Eleventh Circuits require plaintiffs to show only that an accommodation is "reasonable on its face," without clearly addressing whether plaintiffs who fail to make that showing may instead demonstrate that the accommodation is "reasonable on the particular facts." See Oconomowoc, 300 F.3d at 783-87; One Love, 93 F.4th at 432-33; Schaw, 938 F.3d at 1265-66.

The Ninth Circuit falls into the third camp. Unlike the courts in the preceding camp, it fully embraced Barnett's burden-shifting framework in Giebeler, but with a twist. In Giebeler, the plaintiff was unemployed because of his disability. 343 F.3d at 1144. Accordingly, he was unable to "meet the minimum financial qualifications of the apartment complex where he sought an apartment." Id. His mother, however, did meet those standards, and although she offered to rent the apartment so that he could live in it, the owners of the apartment complex denied the application, citing their policy prohibiting cosigners. Id. In considering whether the FHAA required the apartment owners to reasonably accommodate Giebeler's disability by waiving the no-cosigner policy, the court relied on Barnett and Vinson v. Thomas, 288 F.3d 1145, 1153 (9th Cir. 2002), a Rehabilitation Act case that articulates a slightly distinct burden allocation: plaintiffs must initially show the requested accommodation is "possible," whereupon the

burden shifts to defendants to show that it is unreasonable.

Giebeler, 343 F.3d at 1156.

Thus, the Ninth Circuit did not choose between Barnett or Vinson, but instead applied both, concluding that the plaintiff in Giebeler satisfied his initial burden under either approach. Giebeler, 343 F.3d at 1157 ("There is no need in this case . . . to decide whether Vinson or Barnett state essentially the same allocation of burdens or differ in a way likely to be outcome determinative in some instances. Either description of the burden allocation leads to the same result in this case: [plaintiff]'s requested accommodation was reasonable.")

Finally, the United States Courts of Appeals for the First, Fourth, Fifth, Sixth, and Tenth Circuits comprise the fourth camp. They require plaintiffs to prove reasonableness without clearly distinguishing between whether the requested accommodation must be "reasonable on its face" or "on the particular facts," or even requiring defendants, in turn, to prove unreasonableness. Barnett, 535 U.S. at 401, 405; see Summers v. City of Fitchburg, 940 F.3d 133, 139 (1st Cir. 2019); Bryant Woods, 124 F.3d at 603-04; Elderhaven, Inc. v. City of Lubbock, Tex., 98 F.3d 175, 178 (5th Cir. 1996); Davis v. Echo Valley Condo. Ass'n, 945 F.3d 483, 490 (6th Cir. 2019); Courage to Change Ranches Holding Co. v. El Paso Cnty., Colorado, 73 F.4th 1175, 1204 (10th Cir. 2023).

State courts are only bound by United States Supreme Court interpretations of federal law. We therefore adopt Barnett's burden-shifting framework in full, without further requiring plaintiffs to show that an accommodation is possible. In other words, a plaintiff-employee need only show that an accommodation seems reasonable on its face, i.e., ordinarily or in the run of cases. Barnett, 535 U.S. at 401. Failing that, the plaintiff remains free to show that special circumstances warrant a finding that the requested accommodation is reasonable on the particular facts. Barnett, 535 U.S. at 405. Once the plaintiff has made this showing, the defendant then must show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances. Barnett, 535 U.S. at 402. This defines what plaintiffs must initially show to prove the reasonableness factor.

C. Defendants may offer alternative accommodations to satisfy their burden of proving unreasonableness.

On certiorari, Parrish also asserts that Robert's requested accommodation was unnecessary because the HCRC failed to dispute its proposed alternative to conduct weekly house cleanings in Robert's absence. The HCRC contends that a genuine dispute remains as to whether the proposed alternative would have adequately assuaged Robert's concerns about increased contact with non-family members inside the property.

While both parties raise fair points, their arguments lead us to a different, more fundamental question: at what stage in the burden-shifting framework should courts consider alternative accommodations? Few courts have answered this question directly, and those that have are not in agreement. The HCRC directs our attention to Vorchheimer, 903 F.3d at 108, in which the Third Circuit considered alternative accommodations as part of the "necessary" factor.⁶ There, the court discussed two cases to illustrate that 42 U.S.C. § 3604(f)(3)(B) requires courts to consider alternative accommodations:

Two district-court decisions illustrate this consideration. In one, a disabled tenant was unable to drive her [disability]-accessible van over speed bumps. So it was necessary that her building's parking lot have one entrance without a speed bump, but not that both of its entrances lack speed bumps. See Resnick v. 392 Cent. Park W. Condo., No. 07-cv-1988, 2007 WL 2375750, at *2 (S.D.N.Y. Aug. 14, 2007). In the other case, a disabled couple needed on-site parking. So it was necessary that this couple have one parking spot, but not two. See Temple v. Hudson View Owners Corp., 222 F.Supp.3d 318, 324 (S.D.N.Y. 2016). "While having only one parking space may be less convenient for Plaintiffs [than having two], the law does not require defendants to provide the best possible accommodation" or plaintiffs' preferred accommodation. Id. When defendants have already provided an adequate alternative, "[they] need not adopt plaintiff's preferred means of accommodation." Resnick, 2007 WL 2375750, at *2.

Vorchheimer, 903 F.3d at 108-09. The court also recognized that "proffered alternatives must still satisfy" the "equal opportunity to use and enjoy" element, stating: "[C]ourts must weigh whether the tenant's requested accommodation and the

⁶ Vorchheimer involved the dismissal of a complaint for failure to state a claim, not summary judgment. 903 F.3d at 104-05.

landlord's proposed alternative afford equal housing opportunity." Vorchheimer, 903 F.3d at 109 ("[A]ll the proffered alternatives that afford equal opportunity to use and to enjoy housing bear on whether a specific accommodation is necessary.")

The Eleventh Circuit disagrees with Vorchheimer. In Bhogaita v. Altamonte Heights Condo. Ass'n, Inc., the court indicated that alternative accommodations may be "relevant to the reasonableness determination, which asks whether the requested accommodation 'is both efficacious and proportional to the costs to implement it,'" but not to necessity, "which asks whether the requested accommodation ameliorates the disability's effects." 765 F.3d 1277, 1289 (11th Cir. 2014) (citations omitted).

But in Schaw, the Eleventh Circuit shifted course five years later and held that courts "must consider first whether the plaintiff's own requested accommodation 'seems reasonable on its face' before turning to consider a defendant's objections and counterproposals." 938 F.3d at 1269 (emphasis added). Schaw seems to assign the consideration of alternative accommodations as part of the unreasonableness factor, which is the defendant's burden, thus conflicting with Bhogaita. We hold that defendants are allowed to offer alternative accommodations as part of their burden to prove the unreasonable

factor. We therefore adopt the following burden-shifting framework based on Giebeler, 343 F.3d at 1155: To prove that an accommodation is necessary, "[p]laintiffs [carry the initial burden to] show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice." Smith & Lee, 102 F.3d at 795. Put another way, "[w]ithout a causal link between defendants' policy and the plaintiff's injury, there can be no obligation on the part of defendants to make a reasonable accommodation." Mobile Home II, 107 F.3d at 1380.

To prove that an accommodation is reasonable, plaintiffs also bear the initial burden to show that an accommodation is "reasonable on its face, i.e., ordinarily or in the run of cases" Barnett, 535 U.S. at 401 (emphasis omitted). Failing that, plaintiffs are permitted to show that an accommodation is "'reasonable' on the particular facts." Barnett, 535 U.S. at 405.

Upon plaintiffs making that showing, the burden then shifts to defendants to demonstrate that the requested accommodation is unreasonable. Barnett, 535 U.S. at 402. Courts may consider a defendant's alternative accommodation when determining whether a plaintiff's requested accommodation is unreasonable.

Because the ICA and the circuit court applied different standards and because neither party addressed the framework set

forth above, we remand to the circuit court to allow the parties to apply this framework.

D. There is no standalone liability for failure to engage in an "interactive process" under HRS § 515-3(a) (9).

Finally, although the ICA did not reach the issue, Parrish and the HCRC urge us to address whether HRS § 515-3(a) (9) requires housing providers to engage in an "interactive process" and whether failure to do so gives rise to standalone liability. We hold that neither HRS § 515-3(a) (9) nor HAR § 12-46-306(a) (1) and (3) require housing providers to engage in an interactive process. Therefore, there can be no standalone liability on that basis.

We begin our analysis with the text of the statute. Neither HRS § 515-3(a) (9) nor 42 U.S.C. § 3604(f) (3) (B) mentions "interactive process," nor is it referenced elsewhere in those statutes. A plain reading of HRS § 515-3(a) (9) suggests it encourages housing providers to engage with tenants by requesting verifying information when a "disability" or "disability-related need for an assistance animal is not readily apparent," while at the same time limiting certain inquiries. HRS § 515-3(a) (9) (stating that if a "disability" or "disability-related need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request" verifying information (emphasis

added)). For example, housing providers "shall not request medical records or access to health care providers" to confirm that a person has a disability and "shall not inquire as to the diagnosis, nature, or severity of [a] person's disability." HRS § 515-3(a)(9).

Analogously, while HAR § 12-46-306 does not expressly mention "interactive process," subsection 306(a)(1) encourages housing providers to engage with tenants when a "disability" or "disability-related need for an assistance animal is not readily apparent" by requesting verifying information, while also discouraging inquiries similar to those barred under HRS § 515-3(a)(9). HAR § 12-46-306(a)(1) (stating that if a "disability" or "disability related need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request" verifying information but "may not request medical records or access to health care providers and may not inquire as to the diagnosis, nature, or severity of the person's disability" (emphasis added)).

The HCRC contends that requiring "housing providers to engage in an interactive process only when a tenant's requested accommodation involves an 'assistance animal' would go directly against the legislature's intent that HRS Chapter 515 be liberally construed." But this argument is unpersuasive.

HRS § 515-3(a)(9) expressly provides two scenarios where engagement between housing providers and tenants is encouraged. But in both, engagement is not required. First, when a “disability is not readily apparent,” and second, when the “disability-related need for an assistance animal is not readily apparent,” the statute uses permissive language (“may”) to allow housing providers to request verifying information. But it also employs mandatory language (“shall”) to bar certain inquiries.

Thus, the text of HRS § 515-3(a)(9) does not affirmatively compel housing providers to interact with tenants. Where there is no ambiguity in a statute, it is our duty to give effect to its plain and obvious meaning.

In addition, the principle of *expressio unius est exclusio alterius* further supports our conclusion.⁷ In contrast with HAR § 12-46-306, the HCRC promulgated HAR § 12-46-187, part of the implementing regulations of Hawai‘i’s fair employment law (HRS Chapter 378),⁸ which requires employers “to initiate an interactive process” to determine appropriate accommodations for disabled employees. HAR § 12-46-187 states:

⁷ Expressio unius est exclusio alterius is “[a] canon of construction holding that to express or include one thing implies the exclusion of the other[.]” *Expressio unius est exclusio alterius*, Black’s Law Dictionary (12th ed. 2024).

⁸ Like HRS Chapter 515, HRS Chapter 378 does not expressly mention “interactive process” anywhere in the statute. We are also not aware of any statute, and the Commission has cited none, where the legislature mandates an “interactive process.”

§ 12-46-187. Failure to make reasonable accommodation, Interactive process.

. . . .

(b) To determine the appropriate reasonable accommodation, it shall be necessary for an employer or other covered entity to initiate an interactive process, after a request for an accommodation, with the person with a disability in need of the accommodation. A request for a reasonable accommodation may be made by a third-party, such as a healthcare professional, acting on behalf of the individual in need of an accommodation. This process shall identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

HAR § 12-46-187(b) (emphasis added); see Gima v. City & Cnty. of Honolulu, 156 Hawai'i 78, 97, 569 P.3d 1262, 1281 (2025)

(affirming that HAR § 12-46-187 required the employer to "engage in a good faith interactive process when [the plaintiff-employee] requested a reasonable accommodation").

The HCRC could have and did not include identical language in HAR § 12-46-306 requiring housing providers to initiate an "interactive process" with tenants. "Because 'courts will not presume an oversight on the part of the [agency] where such presumption is avoidable,' this omission must be seen as intentional." Tamashiro v. Dep't of Hum. Servs., 112 Hawai'i 388, 416, 146 P.3d 103, 131 (2006) (Pollack, J., dissenting);⁹ see Yonek v. Shinseki, 722 F.3d 1355, 1359 (Fed. Cir. 2013) ("Where [an agency] includes particular language in one section of a [regulation] but omits it in another . . ., it is generally

⁹ Justice Pollack was specifically referring to the legislature, but this reasoning is also applicable to agencies.

presumed that [the agency] acts intentionally and purposely in the disparate inclusion or exclusion.").

We further note that the Third, Sixth, and Ninth Circuits have declined to read an "interactive process" requirement into the FHAA. See Howard, 988 F.3d 1185, 1192 (9th Cir. 2021) (concluding "there is no 'standalone' liability under the FHAA for a landlord's failure to engage in an 'interactive process'"); Groner v. Golden Gate Gardens Apartments, 250 F.3d 1039, 1047 (6th Cir. 2001) (citation omitted) ("[W]hile some courts have imposed an obligation on employers and employees to engage in an interactive process, there is no such language in the Fair Housing Act"); Lapid-Laurel, 284 F.3d at 456 (citation omitted) ("Therefore, we hold that notwithstanding the 'interactive process' requirement that exists in . . . the employment context under the Rehabilitation Act, . . . the FHAA imposes no such requirement"). Just as the Ninth Circuit in Howard, 988 F.3d at 1192, "lack[ed] the authority to expand the bases for liability adopted by Congress" under the FHAA, we too, along with the HCRC, lack the authority to expand the bases for liability adopted by the Hawai'i State Legislature under HRS § 515-3(a)(9).

Two courts, the First and Seventh Circuits, have taken slightly different approaches, linking a landlord's failure to engage with a tenant to the final element of a reasonable

accommodation claim: whether the landlord refused to make the requested accommodation. Astralis Condo. Ass'n v. Sec'y, U.S. Dep't of Hous. & Urb. Dev., 620 F.3d 62, 67-68 (1st Cir. 2010); see Jankowski Lee & Assocs. v. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996) (noting that if a landlord knows of a tenant's disability but questions the extent of its impact, it is incumbent on the landlord to ask for more information). But these courts did not carve an independent basis for liability out of the landlords' failure to inquire; rather, they grounded their decisions in a violation of 42 U.S.C. § 3604(f)(3)(B). Jankowski, 91 F.3d at 895 ("[The landlords] had a duty to make a reasonable accommodation. They did not make a reasonable accommodation, so they violated the FHA.") As the Ninth Circuit noted in Howard, "[t]hese circuits have found that the interactive process matters only if it sheds light on whether the elements of the statutory claim have been met." 988 F.3d at 1193.

The HCRC's decision in Ramos v. Beretania Hale, Ltd. also held that a failure to engage in the interactive process did not create per se liability under HRS § 515-3(a)(9).¹⁰ Docket No. 99-001-H-D, at 5-8 (HCRC Feb. 28, 2000) (Final Decision and Order). We agree with the public policy goal articulated in

¹⁰ This case is available at <http://labor.hawaii.gov/hcrc/contested-case-decisions/> [<https://perma.cc/5GX3-DXJL>]. The Commission cited HRS § 515-13(1), which we believe was in error.

Ramos that landlord-tenant engagement serves "to encourage settlement . . . and possibly avoid litigation." No. 99-001-H-D, at 4.

But although we encourage parties to engage in an interactive process, we hold that, under current Hawai'i law, there is no standalone liability if there is a breakdown in such engagement.

V. Conclusion

For these reasons, we affirm the ICA's December 17, 2025, judgment on appeal and remand to the circuit court for further proceedings consistent with this opinion.

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