

No. A09-1616

---

STATE OF MINNESOTA  
IN COURT OF APPEALS

---

Jimmie Edwards,

Appellant,

vs.

Hopkins Plaza Limited Partnership, Stuart Management Corporation,

Respondents.

---

BRIEF OF *AMICI CURIAE* NATIONAL FAIR HOUSING ALLIANCE,  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,  
AND WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND  
URBAN AFFAIRS

---

JOSEPH D. RICH (D.C. Bar #463885)  
Lawyers' Committee for Civil Rights  
Under Law  
1401 New York Ave., Suite 400  
Washington, D.C. 20005  
(202) 662-8600  
*Attorney for Amici Curiae*  
Admitted Pro Hac Vice

LAEL ROBERTSON  
Legal Aid Society of Minneapolis  
125 W. Broadway Ave., Suite 105  
Minneapolis, MN 55402  
(612) 977-1803

MICHAEL FARGIONE  
Legal Aid Society of Minneapolis  
430 First Ave North, Suite 300  
Minneapolis, MN 55401  
(612) 746-3763  
*Attorneys for Appellant*

JAMES BEHRENBRINKER  
Schaefer Law Firm, LLC  
1700 U.S. Bank Plaza South  
220 South Sixth St  
Minneapolis, MN 55402  
(612) 341-1213  
*Attorney for Respondents*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
INTERESTS OF AMICI CURIAE.....	1
STATEMENT OF ISSUES OF AMICI CURIAE.....	2
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	4
I. ECONOMIC AND RACIAL HOUSING SEGREGATION ARE PERVASIVE PROBLEMS IN MINNESOTA.....	4
A. Minnesota is an Affluent State with Poor Core Cities.....	4
B. Racial Segregation in Minnesota Mirrors Economic Segregation .....	5
C. The Placement of Publicly Subsidized Affordable Housing Units Contributes to Such Economic and Racial Segregation.....	7
II. THE HOUSING CHOICE VOUCHER PROGRAM SEEKS TO INCREASE HOUSING CHOICE AND TO PROMOTE ECONOMICALLY MIXED HOUSING.....	7
A. Overview of the Housing Choice Voucher Program.....	8
B. Tenant Choice is the Key Feature of the Housing Choice Voucher Program	9
C. Increasing Economically Mixed Housing is One of the Key Purposes of the Housing Choice Voucher Program.....	10
D. The Promise the Housing Choice Voucher Program Holds to Promote Residential Integration has been Recognized Nationally and Locally.....	11
III. IF VOUCHER HOLDERS ARE NOT PROTECTED FROM DISCRIMINATION, THE PROMISE OF HOUSING CHOICE AND THE POTENTIAL IT OFFERS FOR ECONOMIC AND RACIAL INTEGRATION WILL NOT BE FULFILLED .....	14
A. Discrimination Against Voucher Holders is Widespread Locally and Nationally .....	14
B. Discrimination Against Voucher Holders Thwarts the Promise of Choice and Integration.....	16

C. Section 363A.09 of the Minnesota Human Rights Act is One of Many State and Local Laws that Support the Goals of the Housing Choice Voucher Program by Prohibiting Landlords from Refusing to Rent to Individuals Because they are Voucher Holders ..... 17

D. Vigorous Enforcement of Such Protections is Crucial to Ensuring True Choice and Breaking the Pattern of Concentrated Poverty..... 19

CONCLUSION.....22

## TABLE OF AUTHORITIES

### Cases

<i>Comm'n on Human Rights and Opportunities v. Sullivan</i> ("Sullivan I"), 739 A.2d 238 (Conn. 1999).....	23
<i>Comm'n on Human Rights and Opportunities v. Sullivan Assoc. (Sullivan II)</i> , 939 A.2d 541 (2008) .....	21
<i>Feemster v. BSA Ltd. P'ship</i> , 548 F.3d 1063 (D.C. Cir. 2008) .....	21, 22
<i>Franklin Tower One, L.L.C. v. N.M.</i> , 725 A.2d 1104 (NJ 1999).....	21, 22
<i>Godinez v. Sullivan-Lackey</i> , 815 N.E.2d 822 (Ill. App. Ct. 2004) .....	21
<i>Knapp v. Eagle Prop. Mgmt.</i> , 54 F.3d 1272 (7th Cir. 1995) .....	21
<i>Montgomery Co. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.</i> , 936 A.2d 325 (Md. 2007) .....	21, 22

### Federal Statutes

42 U.S.C. § 1437f (a) (2006) .....	25
42 U.S.C. § 1437f (b) (1) (2006).....	12
42 U.S.C. § 1437f (r)(1) (2006) .....	13
42 U.S.C. § 5301 (2006) .....	14

### State Statutes

Minn. Stat. § 363A.02, subdiv. 1 (2009).....	6
Minn. Stat. § 363A.03, subdiv. 47 (2009).....	5
Minn. Stat. § 363A.09, subdiv. 1(1) (2009) .....	5

### Regulations

24 C.F.R. § 982.301 (a)(3) (2009) .....	14
24 C.F.R. § 882.101 (2009) .....	12
24 C.F.R. § 882.105 (2009) .....	11
24 C.F.R. § 982.1(a)(2) (2009) .....	13
24 C.F.R. § 982.301 (a)(2) (2009) .....	13
24 C.F.R. § 982.353 (2009) .....	13
24 C.F.R. § 982.353 (f) (2009) .....	13
24 C.F.R. § 982.353(a) (2009) .....	13
24 C.F.R. § 982.53(d) (2009) .....	22
24 C.F.R. § 985.3 (ii)(g)(3)(i)(C) (2009) .....	15
24 C.F.R. §§ 985.3 (ii)(g)(3)(i) (2009) .....	14

## INTERESTS OF AMICI CURIAE

As described in the Motion for Leave to File, *amici curiae* are non-profit organizations committed to promoting opportunity and eradicating discriminatory practices.<sup>1</sup> The National Fair Housing Alliance (“NFHA”) is the only national organization dedicated solely to ending discrimination in housing. The Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”) partners with the private bar to provide legal services to address racial discrimination. Among its fields of specialization, the Lawyers’ Committee works with communities across the nation to combat, protest, and remediate discriminatory housing practices. The Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“WLC”) seeks to eradicate discrimination and entrenched poverty by enforcing civil rights laws through the provision of legal assistance to the residents of the greater Washington, D.C., metropolitan area and elsewhere. Over the last decade, the WLC has represented individuals and fair housing organizations in cases involving violations of local and state ordinances prohibiting discrimination against recipients of Housing Choice Vouchers in D.C., Maryland, New Jersey, and Connecticut.

*Amici* have a strong public interest in ensuring enforcement of fair housing laws. Accordingly, *amici* submit this brief in support of Appellant Edwards’s efforts to enforce the Minnesota Human Rights Act.

---

<sup>1</sup> No part of this brief was authored by counsel for a party. No person or entity, other than Amici, made any monetary contribution to the preparation or submission of this brief.

## STATEMENT OF ISSUES OF AMICI CURIAE<sup>2</sup>

This brief addresses the implications of the court's interpretation of section 363A.09 of the Minnesota Human Rights Act, which prohibits discrimination because of a person's "status with regard to public assistance," on the availability of decent affordable housing, and on the important role the provision plays in providing choices that promote economically and racially integrated housing.

### SUMMARY OF ARGUMENT

Under the Minnesota Human Rights Act, it is unlawful "to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of . . . status with regard to public assistance . . ." Minn. Stat. § 363A.09, subdiv. 1(1) (2009). "Status with regard to public assistance" is defined to include "the condition of being . . . a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements." Minn. Stat. § 363A.03, subdiv. 47. Because Section 8 vouchers are a form of federal rental assistance, Minnesota law prohibits landlords from refusing to rent to prospective tenants "because of" their status as recipients of Section 8 assistance. The district court determined that although Respondents refused to rent to Edwards because he needed to pay his rent in part with a Section 8 housing voucher, their action did not violate the Minnesota Human Rights Act because it was motivated by business considerations rather than animus against Section 8

---

<sup>2</sup> *Amici* adopt the Statement of the Case and the Statement of Facts set forth in the brief of Appellant Jimmie Edwards.

voucher holders. *Amici* agree with Appellant Edwards that this decision is incorrect as a matter of law for the reasons put forth in Appellant's brief.

This brief addresses an important policy reason for reversing the district court's decision and vigorously enforcing section 363A.09: Minnesota's prohibition on discrimination against housing voucher holders significantly expands access to decent, affordable housing and opportunities for economic and racial integration in housing. Fair housing laws seek to eliminate discrimination in the housing market, Minn. Stat. § 363A.02, subdiv. 1, and to replace racially and economically isolated neighborhoods with "truly integrated and balanced living patterns." *Trafficante v. Met. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (quoting 114 Cong. Rec. 3422 (1968)). Although Minnesota is residentially segregated by race and income, existing state and federal law offer tremendous potential for increasing residential integration and reducing concentrated poverty by providing low income families with the opportunity to live in economically diverse communities. The federal Housing Choice Voucher Program, which provides very low-income persons with portable Section 8 vouchers to subsidize housing available in the private market, allows voucher holders to live in communities with lower concentrations of poverty and less segregation than the public housing communities that were long the only option for the very poor. Minnesota's prohibition on discrimination against voucher holders supports the federal program by ensuring that program beneficiaries are able to use their vouchers in the private market. If the Court affirms the district court's decision permitting landlords to refuse to accept tenants who use Section 8 vouchers, access to decent, affordable housing in Minnesota will be threatened and the

integrative purposes of the Housing Choice Voucher Program and Minnesota fair housing law will be not be realized.

## ARGUMENT

### I. ECONOMIC AND RACIAL HOUSING SEGREGATION ARE PERVASIVE PROBLEMS IN MINNESOTA

#### *A. Minnesota is an Affluent State with Poor Core Cities*

Minnesota is among the most affluent and economically secure states in the nation. In the Census Bureau's most recent American Community Survey covering economic data, Minnesota ranked tenth in the nation in median household income, and exceeded the national median income by 11.5 percent.<sup>3</sup> Minnesota also enjoys the eighth lowest poverty rate in the country, with approximately 9.8 percent of residents falling below the poverty line in 2006, well below the 13.3 percent national average.<sup>4</sup>

However, many Minnesotans have fallen through the cracks in the state's prosperity, and those that have disproportionately live in the central cities of Minneapolis and St. Paul. In 2007, approximately 599,530 Minnesotans lived below the federal poverty line.<sup>5</sup> Of that group, more than two-thirds lived in the Minneapolis-St. Paul

---

<sup>3</sup> See U.S. Census Bureau, *American Community Survey* (2006), available at <http://factfinder.census.gov>.

<sup>4</sup> *Id.*

<sup>5</sup> See Kaiser Family Foundation, *State Health Facts*, Data Source: Minnesota Poverty Rate by Metropolitan Status – U.S. Census Bureau 2007 Current Population Survey, available at <http://www.statehealthfacts.org/profileind.jsp?ind=13&cat=1&rgn=25>.

Metropolitan Region.<sup>6</sup> Although the Twin Cities region as a whole is quite affluent, with a higher median income and lower poverty rate than the statewide average,<sup>7</sup> the large cities at the core of the region suffer from concentrated poverty. In 2006, the Census Bureau estimated that more than one in five Minneapolis and St. Paul residents lived below the poverty line, more than twice the rate for the metropolitan region as a whole.<sup>8</sup>

*B. Racial Segregation in Minnesota Mirrors Economic Segregation*

Minnesota is residentially segregated by race as well as income, with minorities largely concentrated in the same core cities of Minneapolis and St. Paul. In Minnesota, those in poverty are disproportionately minorities. In 2007, the poverty rate for Minnesotans varied dramatically by race and ethnicity, with approximately 8.9 percent of whites living below the poverty line, but 41.2 percent of blacks and 28 percent of Latinos living in poverty.<sup>9</sup> In other words, blacks are nearly five times and Latinos are over three times more likely to live in poverty than are whites statewide. With racial segregation in housing correlating with the patterns of economic segregation in Minnesota, it is not surprising that minorities are concentrated in the Twin Cities. Although less than 15 percent of Minnesotans are racial or ethnic minorities, and minorities compose 18.7

---

<sup>6</sup> *Id.*

<sup>7</sup> In 2006, the Minneapolis-St Paul Metropolitan region had a poverty rate of 8.9 percent and a median household income of \$62,223, well above the statewide median of \$54,023 and the national median of \$48,451. U.S. Census Bureau, *American Community Survey* (2006), available at <http://factfinder.census.gov>.

<sup>8</sup> *Id.*

<sup>9</sup> See Kaiser Family Foundation, *State Health Facts*, Data Source: Minnesota Poverty Rate by Race/Ethnicity – U.S. Census Bureau 2007 Current Population Survey; available at <http://www.statehealthfacts.org/profileind.jsp?ind=14&cat=1&rgn=25>.

percent of those living in the Minneapolis-St. Paul Metropolitan Region, 36.1 percent of Minneapolis residents and 39.2 percent of St. Paul residents are racial or ethnic minorities.<sup>10</sup>

Furthermore, residential segregation persists at the neighborhood level. In 2000, 86 percent of Twin Cities residents lived in racially segregated neighborhoods.<sup>11</sup> And while many black Twin Cities residents moved from the city to the suburbs between 1990 and 2000, “most black suburbanites live in the region’s most economically at-risk suburbs.”<sup>12</sup>

Such economic and racial segregation is amplified in the region’s school districts. In 2005, 68 percent of Minneapolis public school students received free or reduced price lunches, and 73 percent were racial or ethnic minorities.<sup>13</sup> Moreover, 46 percent of Minneapolis schools were hyper-segregated, meaning that they had enrollments between 81 and 100 percent non-white.<sup>14</sup>

---

<sup>10</sup> See U.S. Census Bureau, *American Community Survey* (2008); available at <http://factfinder.census.gov>.

<sup>11</sup> See Institute on Race & Poverty, *The Choice is Ours: Expanding Educational Opportunity for all Twin Cities Children* 21 (2006) [hereinafter *The Choice is Ours*] (citing Institute on Race and Poverty, *Minority Suburbanization and Racial Change* Table D9 (2005) [hereinafter *Minority Suburbanization*]). The report defined a racially segregated neighborhood as a census tract that was either: (1) predominantly black (greater than 50 percent black and less than 10 percent Hispanic); (2) predominantly Hispanic (greater than 50 percent Hispanic and less than 10 percent black); (3) Hispanic and black (less than 40 percent white and greater than 10 percent black and greater than 10 percent Hispanic); (4) predominantly white (less than 10 percent black and less than 10 percent Hispanic). See *Minority Suburbanization* at 9.

<sup>12</sup> *The Choice is Ours*, *supra* note 11, at 21.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.* at 5.

*C The Placement of Publicly Subsidized Affordable Housing Units Contributes to Such Economic and Racial Segregation*

Two of the primary programs through which the federal government supports affordable housing in Minnesota are the Low Income Housing Tax Credit (“LIHTC”), which provides federal tax credit for the development of low-income housing, and project-based Section 8 housing. Both programs offer public support for buildings providing affordable housing units; therefore, where these units are located plays a significant role in determining where low-income families live. In the Twin Cities Region, these units are disproportionately located in the central cities. Although Minneapolis and St. Paul are home to less than a quarter of the metropolitan region’s population, half of the region’s roughly 10,000 LIHTC units are located in these central cities, along with approximately 55 percent of the region’s project-based Section 8 units.<sup>15</sup> Moreover, “the majority of LIHTC sites are clustered in . . . census tracts in which at least 50 percent of households have an income that is below 60 percent of the region’s adjusted gross median income.”<sup>16</sup> The disproportionate placement of federally-supported affordable housing in the region’s core cities thus contributes to the concentration of poverty in the cities and the racial and economic segregation of the region.

**II. THE HOUSING CHOICE VOUCHER PROGRAM SEEKS TO INCREASE HOUSING CHOICE AND TO PROMOTE ECONOMICALLY MIXED HOUSING**

---

<sup>15</sup> *Id.* at 51.

<sup>16</sup> *Id.* at 15.

*A. Overview of the Housing Choice Voucher Program*

In recognition of the “critical social, economic, and environmental problems” arising from the concentration of poverty in urban communities nationwide, and the ways in which limiting public housing primarily to inner-city neighborhoods contributed to substantial residential segregation, Congress created the Housing Choice Voucher Program.<sup>17</sup> Commonly known as the “Section 8” voucher program, the Housing Choice Voucher Program differs from site-specific public housing programs by providing qualified “low income” or “very low income” persons<sup>18</sup> with portable vouchers that can be used to subsidize rent at market rate private housing units. With a voucher, the tenant pays only a portion of the total rent, with the remainder paid from public housing funds. *See* 24 C.F.R. § 882.105 (2009).

The program represents a cooperative venture between the Department of Housing and Urban Development (HUD) and state and local public housing agencies that administer the program within the confines of applicable federal regulations. *See* 24 C.F.R. § 882.101 (2009). When a Section 8 voucher holder contracts with a landlord to rent housing, the local agency also contracts with the landlord to provide for payment of the subsidized portion of the tenant’s rent. *See* 42 U.S.C. § 1437f (b) (1) (2006). Because Section 8 vouchers are portable and may be used to rent private housing, the

---

<sup>17</sup> *See* Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(a)(1), (c)(6), 88 Stat. 633, 633-634 (codified as amended at 42 U.S.C. § 5301 (2006)) (acknowledging that “the nation’s cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from . . . the concentration of persons of lower income in central cities”).

<sup>18</sup> *See* 24 C.F.R. §§ 813.102 and 813.105 (2009).

Housing Choice Voucher Program provides a rare and much needed opportunity for low-income and minority families to move into economically and racially diverse neighborhoods that provide greater access to safe streets, jobs, transportation networks, social services, and better schools for the children.

*B. Tenant Choice is the Key Feature of the Housing Choice Voucher Program*

While the district court's determination that landlords do not violate the Minnesota Human Rights Act by refusing to rent to Section 8 tenants turned largely on its concerns about infringement on landlord choice, and in particular the choice *not* to contract, the court said little about tenant choice. Tenant choice is a key goal of fair housing laws generally, and is the paradigmatic feature of the Housing *Choice* Voucher Program, which aims to give tenants the opportunity to reside anywhere in the country, and particularly outside of the economically and often racially segregated public housing projects.<sup>19</sup>

The promise of tenant choice is emphasized throughout the Section 8 regulations. The regulations provide that Housing Choice Voucher recipients may generally select units anywhere in the country so long as program requirements are met, 24 C.F.R. §§ 982.1(a)(2) and (b) (1), and so long as location restrictions are not necessary to achieve desegregation or to comply with a court order, 24 C.F.R. § 982.353(a). The regulations

---

<sup>19</sup> See Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(a)(1), (c)(6), 88 Stat. 633, 633-634 (codified as amended at 42 U.S.C. § 5301 (2006)) (listing as a program objective “the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income”).

also assure voucher recipients “freedom of choice,” meaning that local public housing agencies administering the Section 8 program may not directly or indirectly reduce families’ opportunities to select among available units. 24 C.F.R. § 982.353 (f). Section 8 voucher holders are also allowed to move with their voucher from one jurisdiction to another with continued rental assistance. 24 C.F.R. § 982.353 *et seq*; 42 U.S.C. § 1437f (r)(1). Thus public housing agencies may not discourage families from utilizing their voucher to live in an area outside their jurisdiction. 24 C.F.R. § 982.301 (a)(2).

*C. Increasing Economically Mixed Housing is One of the Key Purposes of the Housing Choice Voucher Program*

In addition to increasing the housing choices available to low income persons generally, the Housing Choice Voucher Program explicitly aims to improve the opportunities of low income families to escape neighborhoods of concentrated poverty and to live in economically diverse communities. Thus legislation providing for the program explains that it exists “[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing.” 42 U.S.C. § 1437f (a) (2006). Further, among the program’s objectives is “the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income.” Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(a)(1), (c)(6), 88 Stat. 633, 633-634 (codified as amended at 42 U.S.C. § 5301 (2006)).

HUD's regulations and assessment program further this goal. For example, local public housing agencies administering the Section 8 program are required to take the affirmative step of explaining to Section 8 recipients the advantages of moving to an area with a small concentration of low-income families. 24 C.F.R § 982.301 (a)(3). Additionally, HUD has created a Section 8 assessment program (hereinafter "SEMAP") that provides incentives for public housing agencies to administer their Section 8 program in a manner that expands housing opportunities for voucher holders in areas that do not have high concentrations of low-income or minority residents. Thus, a public housing agency can receive a more favorable assessment under SEMAP if the agency has a written policy, and has taken actions indicated in the policy, to encourage participation by owners of units located outside areas of poverty or minority concentration. 24 C.F.R. §§ 985.3 (ii)(g)(3)(i)(A) and (B). Agencies can also increase their assessment score by encouraging voucher holders to search for housing opportunities in areas with low poverty and minority concentration, such as by preparing maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within their jurisdictions and neighboring jurisdictions, assembling information about the characteristics of those areas, and demonstrating that they use the maps and area characteristics information when briefing voucher holders about the full range of housing options. 24 C.F.R. § 985.3 (ii)(g)(3)(i)(C).

*D. The Promise the Housing Choice Voucher Program Holds to Promote Residential Integration has been Recognized Nationally and Locally*

Policymakers and housing scholars across the nation have recognized the potential

of the Housing Choice Voucher Program to increase residential integration and decrease concentrated poverty.<sup>20</sup> As HUD stated in its 1995 report to Congress regarding promoting housing choice in HUD's rental assistance programs:

[T]rue freedom of housing choice is denied when assisted housing opportunities are limited to minority or poor areas in central city locations. . . . HUD rental certificates and vouchers offer a remedy to [the spatial isolation of people by income and race] by providing an assistance mechanism that low-income families can use to rent modestly priced housing anywhere in the private market.<sup>21</sup>

Similarly, HUD has stated that the Housing Choice Voucher Program has "substantial potential in addressing the dangerous level of racial and class segregation in the United States."<sup>22</sup> Many metropolitan regions have taken additional steps to foster the potential of the program by establishing housing mobility programs, which assist interested voucher holders in finding and securing housing units in economically secure suburban neighborhoods and revitalized urban areas.<sup>23</sup> Studies of these programs show that the

---

<sup>20</sup> See, e.g., *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program* (Philip Tegeler et al. eds, 2005).

<sup>21</sup> U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Promoting Housing Choice in HUD's Rental Assistance Programs: A Report to Congress 79* (1995).

<sup>22</sup> See Editorial, *HUD Helps Move to the Suburbs*, St. Louis Post-Dispatch, Sept. 9, 1994, at 6C.

<sup>23</sup> A mobility program was created in the Chicago region pursuant to a 1976 consent decree in a lawsuit alleging racial discrimination in the administration of the area's public housing. The program gave public housing residents housing vouchers and helped over 7,000 families move into apartments in mostly white suburbs or in revitalized areas of Chicago. In light of the program's significant success, it was replicated in five urban areas by HUD, and has additionally been replicated by states, including Connecticut. See Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 152, 106 Stat. 3672, 3716 (1992)(codified as amended at 42 USC § 1437f (Supp. V 1993); *Report of the Blue Ribbon Commission to Study Affordable Housing* 45 (2000), [http://www.ct.gov/ece/lib/ece/affordable\\_housing\\_2000.pdf](http://www.ct.gov/ece/lib/ece/affordable_housing_2000.pdf).

opportunities created by housing mobility lead to a variety of quality of life improvements for the recipient families, including improvements in health, safety, educational success, employment, and earnings.<sup>24</sup>

Importantly, the promise of housing vouchers to decrease segregation and concentrated poverty has also been recognized and embraced in Minnesota. In 1995, following a suit alleging a history of discriminatory housing practices in the Minneapolis region and targeting in particular the dangerous conditions in poverty-stricken Minneapolis public housing projects, Housing Choice Vouchers were sought as a remedy. The parties ultimately entered into a settlement agreement that sought to redress the isolation of low-income minorities in Minneapolis by providing for 900 additional Section 8 housing vouchers, as well as the replacement of over 700 housing units in economically depressed neighborhoods with dispersed suburban units.<sup>25</sup> Then Mayor of Minneapolis Sharon Sayles Benton hailed the agreement as a “giant step toward dissolving the concentrations of poverty in Minneapolis” that “strangle[] . . . neighborhoods economically, making it impossible for residents to have access to jobs, good schools, health care, [and] transportation.”<sup>26</sup>

---

<sup>24</sup> See Margery Austin Turner and Dolores Acevedo-Garcia, *The Benefits of Housing Mobility: A Review of the Research Evidence in Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program* 14-18 (Poverty & Race Action Council, 2005)..

<sup>25</sup> Kevin Diaz, *\$ 100 million coming from HUD*, Star Tribune (Minneapolis), Jan. 14, 1995, at 1A; see also Steve Brandt, *Action sought on suburban public housing*, Star Tribune (Minneapolis), Feb. 12, 2001, at 1B. Surveys of those eligible for settlement housing assistance reported a preference for suburban housing. *Id.*

<sup>26</sup> Quoted in Kevin Diaz, *\$ 100 million coming from HUD*, Star Tribune (Minneapolis), Jan. 14, 1995, at 1A

### III. IF VOUCHER HOLDERS ARE NOT PROTECTED FROM DISCRIMINATION, THE PROMISE OF HOUSING CHOICE AND THE POTENTIAL IT OFFERS FOR ECONOMIC AND RACIAL INTEGRATION WILL NOT BE FULFILLED

#### *A. Discrimination Against Voucher Holders is Widespread Locally and Nationally*

Studies confirm that discrimination against Section 8 voucher holders is a pervasive problem in Minnesota. The Analysis of Impediments to Fair Housing Choice for the Twin Cities Region, a regular review mandated by HUD, has repeatedly cited landlord refusal to rent to tenants with government rental subsidies, including Section 8 vouchers, as a widespread practice and a barrier to fair housing choice.<sup>27</sup> Additionally, HOME Line, a Minnesota tenant advocacy organization, has conducted annual surveys assessing acceptance of Section 8 vouchers in Anoka, Dakota, and suburban Hennepin County for seven years. Their surveys reach approximately half of all rental units in these counties, and consistently reveal significant levels of discrimination against Section 8 voucher holders. In their most recent report, HOME Line found that while 58.9 percent of surveyed units rented at rates within the voucher payment standard, over half of those affordable units were unavailable to voucher holders because landlords refused to accept

---

<sup>27</sup> See *Summary of Regional Analysis of Impediments to Fair Housing* (2001) 12-13, available at <http://www.metrocouncil.org/planning/housing/FairHousingSummary.pdf>; Fair Housing Implementation Council Twin Cities Metro Region, 2009 Analysis of Impediments to Fair Housing Choice (Draft Report for Public Review, August 7, 2009), available at [http://www.co.washington.mn.us/client\\_files/documents/css/CSS\\_CDBG/CSS--\\_AI\\_Fair\\_Housing\\_1st\\_Draft\\_080709\\_Part\\_one.pdf](http://www.co.washington.mn.us/client_files/documents/css/CSS_CDBG/CSS--_AI_Fair_Housing_1st_Draft_080709_Part_one.pdf).

Section 8 tenants.<sup>28</sup> As a result of such discrimination, the housing options available to voucher holders are significantly limited, a problem that is particularly acute when the rental vacancy rate is low. The Star Tribune reported that in 1999, the rental vacancy rate in the Twin Cities region was a mere 1.5 percent, and that as a result of the tight market and landlords' refusal to accept Section 8 tenants, many of the 900 vouchers introduced to the region following the 1995 settlement went unused, to the point that the parties discussed rerouting some of the subsidy funds away from the Housing Choice Voucher Program.<sup>29</sup>

These studies are consistent with findings elsewhere in the nation. For example, a report on the effectiveness of Section 8 vouchers in Chicago concluded that “discrimination [against voucher holders] is a far larger problem than previously imagined and . . . the available rental pool for voucher holders is drastically reduced by systemic and illegal discrimination.”<sup>30</sup> Fair housing advocates have identified landlord refusals to accept Section 8 vouchers as one of the most critical problems with the Housing Choice Voucher Program.<sup>31</sup>

---

<sup>28</sup> *HOME Line Section 8 Report #14* at 4 (2008).

<sup>29</sup> Steve Brandt, *City Ahead in Public Housing for Suburbs*, Star Tribune (Minneapolis), Sept. 20, 1999, at 1B.

<sup>30</sup> Lawyers' Committee for Better Housing, Inc., *Locked Out: Barriers to Choice for Housing Voucher Holders* 3 (Apr. 2002).

<sup>31</sup> See, e.g., Mark A. Malaspina, Note, *Demanding the Best: How to Restructure the Section 8 Household-Based Rental Assistance Program*, 14 *Yale L. & Pol'y Rev.* 287–288, 311 (1996); The Equal Rights Center, *In Search of Decent Housing in the D.C. Metropolitan Area: The Affordable Housing Crisis for Section 8 Voucher Holders* (2005), available at <http://www.equalrightscenter.org/publications/documents/InSearchofDecentHousing2005.pdf> (reporting that 61% of test calls in D.C. to apartments renting units within the

*B. Discrimination Against Voucher Holders Thwarts the Promise of Choice and Integration*

In addition to limiting the overall availability of housing to Section 8 voucher holders, research reveals that landlords' refusal to accept rental subsidies in more affluent, predominantly white suburban communities is a significant barrier to economic and racial integration.<sup>32</sup>

The facts of the present case exemplify this problem. Lisa Moe, President and CEO of Stuart Management Corp., testified in her deposition that Respondents continued to accept Section 8 vouchers in their Lamplighter Village apartment property while discontinuing such acceptance at Hopkins Plaza because "[t]he structures are dramatically different."<sup>33</sup> She then proceeded to describe the relevant differences by pointing to the ways in which Hopkins Plaza is a more desirable property, noting that in addition to Hopkins' superior amenities, it is "located in downtown Hopkins, which has gone through [over] the last couple of years a giant revitalization program,"<sup>34</sup> whereas

---

Section 8 price range resulted in responses of either explicit refusals to rent to voucher holders or of significant barriers to voucher usage); *see also* H.R. No. 100-122(I), at 32 (1987), *reprinted in* 1987 *U.S.C.C.A.N.* at 3348 (expressing concern over fact that Section 8 voucher/certificate holders experience problems securing units "[b]ecause owners often unreasonably refuse to rent units to applicants who hold [Section 8 vouchers/certificates]").

<sup>32</sup> *See* Susan J. Popkin & Mark K. Cunningham, Urban Inst., *CHAC Section 8 Program: Barriers to Successful Leasing Up* 4-5 (1999); Margery Austin Turner & Dolores Acevedo-Garcia, *The Benefits of Housing Mobility: A Review of the Research Evidence*, in *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program* (Poverty & Race Action Council, 2005).

<sup>33</sup> Moe Deposition, Feb. 24, 2009, at 62.

<sup>34</sup> *Id.* at 64.

Lamplighter lacks such amenities and “the community surrounding Lamplighter Village is declining, [in] economic decline,”<sup>35</sup> such that “the economic social outlook at — in Hopkins is on the upswing versus East St. Paul,” where Lamplighter is located.<sup>36</sup> Moe stated that although market rents at Lamplighter Village are “substantially less than” at Hopkins Plaza, in order to rent the Lamplighter units at a “reasonable market rate” while maintaining a “decent occupancy,” “Section 8 is a great option for us.”<sup>37</sup> She also testified that the percentage of tenants at Lamplighter using Section 8 vouchers “exceeds 20 percent by far.”<sup>38</sup>

Moe’s testimony illustrates an unsurprising pattern that emerges when landlords are allowed to opt out of the Section 8 program: landlords will rent to voucher holders in undesirable properties located in depressed neighborhoods, where the free market alone would not supply sufficient demand at the rents sought, but will refuse Section 8 tenants at properties in more desirable neighborhoods, where they can obtain high rents and optimal capacity without renting to Section 8 tenants. If such behavior is widespread, the integrative purpose at the core of the Housing Choice Voucher Program is severely undermined.

*C. Section 363A.09 of the Minnesota Human Rights Act is One of Many State and Local Laws that Support the Goals of the Housing Choice Voucher Program by Prohibiting Landlords from Refusing to Rent to Individuals Because they are Voucher Holders*

---

<sup>35</sup> *Id.* at 62.

<sup>36</sup> *Id.* at 64.

<sup>37</sup> *Id.* at 63.

<sup>38</sup> *Id.* at 61.

Recognizing the limits of a voluntary voucher program, many states (including California, Connecticut, Maine, Massachusetts, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin), the District of Columbia, and several cities and counties across the country have enacted statutes prohibiting discrimination against voucher holders. These anti-discrimination provisions, many of which are structured as prohibitions on discrimination based on a tenant's "source of income," have been construed by most courts to address them as barring landlords from refusing to rent to Section 8 voucher holders because they seek to pay a portion of their rent through the voucher program. See *Feemster v. BSA Ltd. P'ship*, 548 F.3d 1063, 1069–71 (D.C. Cir. 2008); *Comm'n on Human Rights and Opportunities v. Sullivan Assoc. (Sullivan II)*, 939 A.2d 541, 548–59 (2008); *Montgomery Co. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.*, 936 A.2d 325, 333–34, 339–42 (Md. 2007); *Franklin Tower One, L.L.C. v. N.M.*, 725 A.2d 1104, 1112–15 (NJ 1999); *Godinez v. Sullivan-Lackey*, 815 N.E.2d 822, 826–28 (Ill. App. Ct. 2004); but see *Knapp v. Eagle Prop. Mgmt.*, 54 F.3d 1272 (7th Cir. 1995).

The enactment of such state and local laws was explicitly envisioned and approved by HUD, which allowed that while participation in the Housing Choice Voucher Program is voluntary under federal law, "[n]othing in [the regulations] is intended to pre-empt operation of State laws that prohibit discrimination against a Section 8 voucher-holder." *Glenmont Hills*, 936 A.2d at 337 (quoting 24 C.F.R. § 982.53(d)).

*D. Vigorous Enforcement of Such Protections is Crucial to Ensuring True Choice and Breaking the Pattern of Concentrated Poverty*

The important policy goals of the Housing Choice Voucher Program cannot be realized if tenants are unable to utilize their vouchers outside of economically depressed neighborhoods because landlords refuse to rent to them. As the discussion above indicates, such refusals are common where permitted, as exemplified by Respondents' refusal to continue renting to voucher holders at Hopkins Plaza as the area underwent economic revitalization and their contemporaneous acceptance of voucher holders at their property in a more economically depressed neighborhood.

However, research shows that fair housing laws prohibiting discrimination against Section 8 voucher holders are effective. A 2001 HUD study concluded that "all else equal, enrollees in programs that are in jurisdictions with laws that bar discrimination based on source of income (with or without Section 8) had a statistically significant higher probability of success [in leasing a unit before their voucher expired] of over 12 percentage points."<sup>39</sup> Further, almost all courts to consider the scope of such protections have interpreted them broadly, concluding that allowing as a defense that the landlords bear no animosity to voucher holders and simply choose not to accept vouchers for business reasons would create an exception to the anti-discrimination law that would swallow the rule. *See, e.g., Feemster*, 548 F.3d at 1071 ("Were we to accept [the defense that the landlord refused Section 8 tenants because it sought to avoid the program's

---

<sup>39</sup> Office of Policy Development and Research, U.S. Dep't of Housing and Urban Development, 1 *Study on Section 8 Voucher Success Rates* 3-17 (Nov. 2001), available at <http://www.huduser.org/Publications/pdf/sec8success.pdf>.

administrative requirements], we would render the Human Rights Act's definition of 'source of income' nugatory. . . . Permitting BSA to refuse to accept Section 8 vouchers on the ground that it does not wish to comply with Section 8's requirements would vitiate that definition and the legal safeguard it was intended to provide."); *Glenmont Hills*, 936 A.2d at 340 (noting that "[m]ost of the courts that have considered the administrative burden defense have rejected it" and proceeding to join that majority"); *Franklin Tower*, 725 A.2d at 1114 (observing that owners of rental properties have long been subject to many regulatory requirements, and declaring that "[t]o permit a landlord to decline participation in the Section 8 program in order to avoid the 'bureaucracy' of the program would create the risk that '[i]f all landlords . . . did not want to 'fill out the forms' then there would be no Section 8 housing available'" (quoting *Templeton Arms v. Feins*, 220 N.J. Super. 1, 9, 531 A.2d 361 (App.Div.1987)); *Comm'n on Human Rights and Opportunities v. Sullivan* ("*Sullivan I*"), 739 A.2d 238, 248 (Conn. 1999) ("Interpreting § 46a-64c . . . to allow an exception to its antidiscrimination provisions for those landlords who refuse to use the required section 8 lease[] would eviscerate the basic protection envisioned by the statute. It would lead to the unreasonable result that while the legislature mandated that landlords may not reject tenants because their income included section 8 assistance, the legislature at the same time also intended that landlords might avoid the statutory mandate by refusing to accede to a condition essential to its fulfillment."); *see also id.* at 253 (rejecting the arguments that landlords can categorically reject Section 8 tenants as having insufficient income pursuant to the statutory exception

allowing for refusals to rent on such basis because, “[s]uch a construction would swallow the statute whole and render it meaningless”).

*Amici* agree, and urge the court not to read an exception into the law here that would obliterate its protections. Indeed, it would be nonsensical for the Minnesota legislature to mandate that landlords not discriminate on the basis of status with regard to public assistance and expressly include “rental assistance or rent supplements” in its protections, yet allow a landlord to sidestep the legislature’s clear mandate by simply asserting that it did not want to fill out paperwork to comply with the law. Any landlord could make such an assertion, and, as virtually every court has recognized, such a judicially-created exception would effectively nullify the statute’s protections for recipients of rent supplements. The loss of such protections would significantly impede the ability of voucher holders to act on the promise of choice held out by the Housing Choice Voucher Program, and would hinder progress toward residential integration in Minnesota. In *Trafficante v. Met. Life Ins Co.*, 409 U.S. 205, 211 (1972) (quoting 114 Cong. Rec. 2706, 3422) the Supreme Court stated that an overarching goal of the federal Fair Housing Act was to replace racially and economically isolated urban neighborhoods with “truly integrated and balanced living patterns.” The Minnesota Human Rights Act’s prohibition on discrimination against recipients of public assistance should be interpreted to promote this same basic goal.

## CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to decline to adopt an interpretation of section 363A.09 of the Minnesota Human Rights Act that would permit landlords to refuse to rent to otherwise qualified Section 8 voucher holders. As this case demonstrates, if landlords are allowed to close their doors to Section 8 tenants, the barriers to housing integration will remain high and concentrated poverty will persist. Applying Minnesota's anti-discrimination provision as written will ensure that the Housing Choice Voucher Program can effectively serve its "purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. § 1437f (a) (2006).

Respectfully submitted,

Dated: 10/7/09

By: 

Joseph D. Rich  
D.C. Bar # 463885, Admitted Pro Hac Vice  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Ave., Suite 400  
Washington, D.C. 20005  
(202) 662-8600

Counsel for *Amici Curiae*

National Fair Housing Alliance, Lawyers'  
Committee for Civil Rights Under Law, and  
Washington Lawyers' Committee for Civil Rights  
and Urban Affairs

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies, pursuant to Rule 132.01, subd. 3(c), that this brief (exclusive of the Table of Contents and Table of Authorities) contains approximately 5,764 words, as ascertained using the word count feature of the Microsoft Word word-processing software used to prepare this brief.

Dated: 10/7/09

By: 

Joseph D. Rich  
D.C. Bar # 463885, Admitted Pro Hac Vice  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Ave., Suite 400  
Washington, D.C. 20005  
(202) 662-8600

Counsel for *Amici Curiae*

National Fair Housing Alliance, Lawyers'  
Committee for Civil Rights Under Law, and  
Washington Lawyers' Committee for Civil Rights  
and Urban Affairs