No. A09-1616

State of Minnesota

In Court of Appeals

Jimmie Edwards,

Appellant,

v

Hopkins Plaza Limited Partnership and
Stuart Management Corporation,

Respondents

BRIEF AND APPENDIX OF MINNESOTA MULTI HOUSING ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

LAW OFFICES OF THE LEGAL
AID SOCIETY OF MINNEAPOLIS
Lael Robertson (#0348211)
125 West Broadway Avenue, Suite 105
Minneapolis, MN 55402
Tel· (612) 977-1803
Fax· (612) 521-8325
Attorneys for Appellant

JAMES R. BEHRENBRINKER
Attorney at Law
James R. Behrenbrinker (#186739)
1700 U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, MN 55402
Tel· (612) 341-1213
Fax· (612) 436-9019
Attorney for Respondents

FAEGRE & BENSON LLP
Aaron D. Van Oort (#315539)
Alissa M. Raddatz (#334376)
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

Todd B. Liljenquist (#386859)
Minnesota Multi Housing Association
1600 West 82nd Street, Suite 110
Bloomington, MN 55431
(952) 854-8500

Attorneys for Amicus Curiae Minnesota Multi Housing Association

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

The Minnesota Multi Housing Association is a statewide, non-profit, membership-based trade association that has been in existence for more than 40 years, promoting the highest standards in the development, management, and maintenance of rental and owner-occupied multi-housing. Its members include owners and managers of rental housing, from single-family homes and duplexes to large apartment complexes. The Multi Housing Association strongly supports the voluntary Section 8 program. It has worked for years through its national affiliates, as well as at the local and state levels, to improve the program to make it more usable and attractive to landlords. Mandating Section 8 participation, however, would severely and unduly burden many owners and managers of rental housing in the state of Minnesota. Those consequences, plus the potential disruption to the settled understanding of Section 8 as a voluntary program, compel the Association to file this *amicus* brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court should affirm the trial court's grant of summary judgment to respondent landlords because they declined to rent an apartment to Jimmie Edwards, not on account of his status with regard to receiving public assistance, but for the neutral, non-discriminatory reason of ability to pay.

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than Minnesota Multi Housing Association, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

The Minnesota Human Rights Act ("MHRA") prohibits landlords from refusing to rent real property to a person "because of" that person's "status with regard to public assistance." Minn. Stat. § 363A.09, subd. 1(1). The landlords in this case committed no such discrimination. Had Edwards been able to pay, it is undisputed that the landlords would have rented him the apartment. They made no distinction between money Edwards got from private sources and money he got through public assistance, whether welfare, social security, or another source. Edwards, however, could not pay his rent from any funds in his possession, regardless of their source. The landlords declined to rent him an apartment because of that neutral, non-discriminatory reason.

On appeal, Edwards insists that landlords *must* participate in the voluntary, federal Section 8 program so they can receive payments directly from the government making up for tenants' inability to pay, and that the refusal to participate violates state and federal discrimination laws.

First, Edwards argues that it is *per se* discriminatory under the MHRA for landlords not to participate in Section 8. That is simply wrong. The plain language of the MHRA does not regulate a landlord's decision to participate in federal programs. It regulates the decision to rent based on a person's status with regard to public assistance. A landlord's choice to participate in the Section 8 program is distinct from its decision whether to rent, and the MHRA does not regulate the former choice.[2]

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[2] This case does not present the question whether a landlord who participates in Section 8 may choose to accept some but not other Section 8 tenants, as federal law allows.

Second, Edwards argues that respondent landlords were required to participate in Section 8 to accommodate his alleged disability. This argument acknowledges the truth of what Edwards wants—he does not want equal treatment, he wants special treatment by requiring landlords to enter into leases with special terms, to sign non-negotiable contracts with the government, to pass special inspections, and to comply with all the other Section 8 requirements. Federal courts, however, have flatly rejected this argument as a request for something that is not a true accommodation of a disability. "We think it is fundamental," explained the Second Circuit, "that the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps." *Salute v. Stratford Greens Garden Apts.*, 136 F.3d 293, 301 (2d Cir. 1998); *see also Hemisphere Bldg. Co. v. Village of Richton Park*, 171 F.3d 437, 440-41 (7th Cir. 1999) (stating that reasonable accommodations in rules and policies only apply to rules and policies that "hurt handicapped people by reason of their handicap, rather than that hurt them solely by virtue of what they have in common with other people, such as a limited amount of money to spend on housing."). For these reasons, the trial court correctly granted summary judgment for the landlords.

In this brief, the Multi Housing Association addresses two points that further support the trial court's decision below.

(continued)
Hopkins Plaza Limited Partnership ended its participation in Section 8. Although Stuart Management Corporation managed Section 8 programs for other property owners, it did not do so for Hopkins, and it would be crippling to impute a management company's participation in Section 8 for any one of its client to all other clients.

First, adopting Edwards' position and using the MHRA to mandate participation in Section 8 would directly contradict the settled understanding of Section 8 in Minnesota. For thirty years, Minnesota institutions—including all three branches of State government as well as the state, county, and local agencies that administer the program—have expressed their belief that participation in Section 8 is voluntary

Second, the burdens of participating in Section 8 are significant and, especially for many small landlords, wholly unjustified. Participating landlords must sign lengthy, detailed contracts directly with the government, giving the government not just regulatory but contractual power over them. Section 8 landlords become subject to inspection, both as to their apartments and as to their books. They run the risk that the government will be late in paying, with no remedy of eviction to cut off the loss. Burdens like these and others are why Congress made participation in Section 8 voluntary. This Court should reject Edwards' argument to use the MHRA to make it mandatory.

ARGUMENT

I. For More Than Thirty Years, Institutions At Every Level Of Minnesota Government Have Consistently Expressed Their Belief And Advised Landlords That Participating In Section 8 Is Voluntary.

Ever since 1974, when Congress created the Section 8 program by enacting the Housing and Community Development Act of 1974 (Pub. L. No. 93-383, 88 Stat. 633 (codified at 42 U.S.C. §§ 1437, 5301)), Minnesota governmental institutions have consistently expressed their belief and advised landlords that participating in Section 8 is voluntary. Tenants and landlords alike, including many members of *amicus* Minnesota Multi Housing Association, have relied on this advice to guide their business and housing

choices. More than 30 years of Minnesota practice thus stands in direct contradiction of Edwards' argument that provisions of the MHRA addressing discrimination on the basis of status with respect to public assistance, which have been unchanged since 1973, actually make Section 8 participation mandatory. *Compare* 1973 Minn. Laws 2162 *with* Minn. Stat 363A.09 subd. 1 (2009).

A. The Minnesota legislative branch enacted other statutes showing that it did not understand the MHRA to mandate participation in Section 8.

This Court does not interpret statutes in a vacuum but instead considers other statutes that address the same subject. *Stabs v. City of Tower*, 229 Minn. 552, 40 N.W.2d 362, 366-67 (1949). Two statutes enacted by the Minnesota Legislature—one providing tax incentives for landlords to participate in Section 8 and another commissioning a study on participation in Section 8—show that the Legislature did not understand the MHRA to mandate participation in Section 8.

First, in 1997, the Minnesota legislature created a new property tax class 4d to give landowners tax incentives to participate in Section 8.[3] Minn. Stats. §§ 273.126, 462A.071 (1997). Under the 4d tax class, a landowner could qualify for favorable tax treatment if it made "20 percent of the units in the metropolitan area and 10 percent of the units in greater Minnesota" "available to a family with a section 8 certificate." Minn. Stat. § 273.126, subd. 3(b) (1997). If Edwards were correct and the Legislature intended

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[3] In 2001, the 4d tax classification rate was repealed (for taxes payable in 2004 and beyond) as part of the state legislature's property tax reform. Repealed by Minn. Laws 2001, 1st Sp., c. 5, art. 3, § 96, par. (d).

MHRA to mandate participation in Section 8, then the 4d legislation would be superfluous, because no legislature would spend money to encourage participation that was already mandatory.

Second, another statute enacted by the Minnesota Legislature commissioned studies of participation rates in Section 8, further reinforcing the legislative understanding of Section 8 as a voluntary program. Beginning in 1998, the Legislature required all government agencies who administered "a public housing program" to produce annual reports studying "the reduction in . . . Section 8 certificates or vouchers during the year" and providing "an assessment of the reasons for the reduction, including whether it is due to the state's welfare reform initiatives." Minn. Stat. 469.0305, subd. 1 (2009). This statute, too, would be superfluous if participation in Section 8 were mandatory.

B. The Minnesota executive branch held in an administrative decision that the MHRA does not mandate participation in Section 8.

In an administrative decision issued shortly after both Section 8 and the MHRA public-assistance provisions were enacted, the Minnesota Department of Human Rights ("Department") directly rejected the argument that the MHRA mandates participation in Section 8. *See Commissioner of the Minnesota Department of Human Rights v. High View North Apartments* (1979) (App 001-008)[4]. The landlord, having been informed that the Section 8 program was voluntary, "came to the conclusion that the provisions of the

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[4] For the Court's convenience, *amicus* has included a copy of the decision and two other documents in the attached appendix. All documents included in the appendix are publicly available and therefore appropriate for the Court to consider.

contract between themselves and HUD were onerous, difficult, deprived them of certain rights of independent judgment and decision-making in operating the apartments, and caused them to enter into an agreement with a third party for the rental of an apartment." *Id.* at App-003. Based on these factors and others, an administrative law judge issued a final decision on behalf of the Department finding that the landlord had shown a "business necessity" for not participating in the Section 8 program[5]:

> The burdens that would be imposed upon Respondents by the Section 8 program are substantial and would require Respondents to alter the way they currently do business. They would be entering into a contract whose terms could be changed by subsequent legislation or regulations. Their eviction rights would be substantially changed and limited. Respondents' ability to sell their property would be restricted by the requirement that the HRA consent to any assignment of the HRA contract. Further, allowing another government agency the right to inspect business records is relinquishing a significant right.

Id. at App-008. The Department concluded that there were no alternative means for allowing persons receiving Section 8 assistance to lease an apartment from the landlord without requiring the landlord to participate in the Section 8 program, and that the MHRA did not mandate the landlord's participation. *Id.* The Department's interpretation of the MHRA in this respect is entitled to great weight, *see Cummings v Koehnen*, 556

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[5] The administrative law judge applied a "disparate impact" analysis in its opinion. Edwards does not contend that the MHRA provides a disparate impact claim for public assistance. Indeed, as this Court held in *Babcock v. BBY Chestnut*, No. 0117160, 2003 WL 21743771, at *2 (Minn. App. July 29, 2003), the MHRA does not provide for a disparate impact claim any place outside the employment context. Even under this erroneously high standard, however, the ALJ found in favor of the defendant landlord.

N.W.2d 586, 589 (Minn. Ct. App. 1996), and it reinforces the conclusion that the MHRA does not mandate participation by landlords in Section 8.

C. The Minnesota judicial branch held in an unpublished decision of this Court that the MHRA does not mandate participation in Section 8.

This Court has also held in an unpublished decision that the MHRA does not mandate participation by landlords in Section 8. *Babcock v. BBY Chestnut*, No. 0117160, 2003 WL 21743771, at *2 (Minn. App. July 29, 2003). In *Babcock*, the landlord decided not to participate in the Section 8 housing subsidy program and for that reason declined to lease an apartment to Babcock. *Id.* at *1. Babcock sued for damages under the MHRA, claiming that the landlord's refusal to participate in the Section 8 voucher program constituted a *per se* violation of the MHRA's prohibition of discrimination based on receipt of public assistance. *Id.* This Court rejected the argument, holding:

> To contend that a refusal to participate in the Section 8 program constitutes a per se violation of section 363.03 is to disregard the importance of the landlord's intent under the statute. In its plain terms, the statute requires a showing of both a refusal to rent and a failure to do so because of [the prospective tenant's] status with regard to public assistance. Minn. Stat. 363.03, subd. 2 (emphasis added).

Id. The court went on to state that "a landlord might choose not to participate in the Section 8 program for non-discriminatory reasons, such as an unwillingness to bear the cost of satisfying the administrative requirements of the program." *Id* Put another way, the plain language of the MHRA does not regulate a landlord's decision not to participate in a voluntary, burdensome federal program.

D. Governmental agencies at every level of county and local government have advised landlords and tenants that participation in Section 8 is voluntary.

In addition to all three branches of state government, the county and local housing associations and administrative agencies that are directly responsible for administering Section 8 have consistently advised landlords and tenants that Section 8 is a voluntary program. The following quotes from their brochures and websites are just a sample of the advice that these organizations have given landlords for more than 30 years:

The Metropolitan Council HRA:

> The success of [Section 8] at Metro HRA is due to the willingness and cooperation of . . . property owners and managers.
>
> . . .
>
> The Metro HRA is committed to providing property owners and managers with the information needed to *make a sound decision regarding participation* in the Housing Choice Voucher Program.
>
> . . .
>
> *Your decision* to join other rental property colleagues in the Housing Choice Voucher (HCV) Program will make a difference in providing affordable housing in the Twin Cities' region.

Metropolitan Council HRA Owner/Landlord Information, http://www.metrocouncil.org/housing/hra/landlord.htm (last visited October 23, 2009) (emphasis added).

Minneapolis Public Housing Authority:

> HOW DOES AN OWNER GET INVOLVED IN THE PROGRAM?
>
> . . . The family looking for a rental unit will ask the owner *if he/she is willing* to participate in the program.
>
> IS AN OWNER REQUIRED TO PARTICIPATE IN THE SECTION 8 PROGRAM?
>
> An owner has the same right to select Section 8 tenants as any other tenants. Federal, State and Local Laws, however, prohibit housing discrimination based on race, color, creed, sex, national origin, source of income, marital status, and/or

disability.

New Owner Introduction to Section 8, http://www.mphaonline.org/newowner.html (last visited October 23, 2009) (emphasis added).

Dakota County Community Development Agency:

> Program participants choose a rental unit from the private rental market and the property owner *must be willing to accept* voucher-assisted tenants.

Dakota County Community Development Agency, *Rental Assistance Programs*, http://www.dakotacda.org/rentalassistance_program.htm (last visited October 23, 2009) (emphasis added).

Minnesota Crime Free Multi-Housing Program

> Make an informed decision about whether you *choose to participate* in the section 8 Program. . . . Before participating . . . learn about the program's benefits and drawbacks.

Minnesota Crime Free Multi-Housing Program, *Chapter Seven, Housing Choice Voucher Program* (App-014).

St. Paul Public Housing Authority:

> An owner *can participate* in the program *if you .. are willing* to sign a lease which does not contain certain clauses not approvable by the PHA and HUD; and *are willing* to sign the Housing Assistance Payments (HAP) Contract with the PHA.

Section 8 Landlord Information Packet, http://www.stpaulpha.org/forms/S8%20Landlord%20Information.pdf (last visited October 23, 2009) (emphasis added).

City of Mankato & Blue Earth County Economic Development Authorities:

> Section 8 . . . makes a continuous *effort to attract owners* of rental property to participate in the Section 8 program.

Housing Choice Voucher Program, http://www.mankato-mn.gov/upload/contents/367/Housing%20choice%20voucher%20program.pdf (last visited October 23, 2009) (emphasis added).

HRA of Duluth:

> After you have found a unit that meets these standards, make sure the *landlord agrees to lease* to your family under the Section 8 program.

Section 8 Housing, http://www.duluthhousing.com/programs/program.php?sect=S8 (last visited October 23, 2009) (emphasis added).
Fergus Falls/Otter Tail County HRA: The HRA will approve a rental unit if the following conditions are met: . . . (2) The owner's lease is approved and *landlord agrees to participate* in program. *Section 8 Housing Choice Voucher Program*, http://www.fergusfallshra.com/assisted/rent_type.php (last visited October 23, 2009) (emphasis added).
HousingLink: Some properties *may choose not to accept* vouchers. *Section 8 Voucher Program*, http://www.housinglink.org/Section_8.htm (last visited October 23, 2009) (emphasis added).
Citizens League: The [Section 8] program is *voluntary* for landlords and requires that the housing unit be certified to accept such subsidies. *The Case for a Regional Housing Policy in the Twin Cities Metropolitan Area*, http://www.citizensleague.org/publications/reports/452.Report.Regional%20Housing%20Policy.PDF (last visited October 23, 2009) (emphasis added).
HOME Line: The Housing Choice Voucher program, administered by the Department of HUD, relies on *voluntary participation* by landlords to give voucher holders some choice in where they can live. *Section 8 Report #14, Long Waits, Eroding Choices*, http://www.homelinemn.org/downloads/section8/2008Section8report.pdf (last visited October 23, 2009) (emphasis added).

Decades of this advice have produced decades of reliance by landlords and tenants in making their business and housing decisions. This Court should reject Edwards' decades-late request to interpret the MHRA, against all evidence, to mandate landlord participation in Section 8.

E. The Legal Aid Society itself joined a federal consent decree designed to increase voluntary participation by landlords in Section 8.

As recently as 1995, the Legal Aid Society itself joined a consent decree designed to increase voluntary participation by landlords in Section 8, indicating the widespread acknowledgment by federal, state, and local housing authorities and tenant advocates that the MHRA does not mandate participation in the program. *Hollman v. Cisneros*, Civ. Case No. 4-92-712 (D. Minn. Apr. 20, 1995) (App 017-114). In *Hollman*, the Legal Aid Society of Minneapolis and the NAACP had filed suit against the Minneapolis Public Housing Authority, the City of Minneapolis, the Minneapolis Community Development Agency, the U.S. Department of Housing and Urban development, and later, the Metropolitan Council, alleging historical patterns of segregation in the placement of public housing. To resolve the lawsuit, all of the entities involved on both the plaintiffs' and defendants' sides agreed to a consent decree that, among other things, included a detailed plan for increasing participation in the Section 8 program by Minnesota landlords. *Id.* at App-044. The plan required the signatories to "market[] the [Section 8] program to landlords in non-concentrated areas, survey the literature to find techniques "used to recruit landlords," conduct a survey to "identify interest in and barriers to participation in the Section 8 program," and "coordinate metropolitan-wide landlord recruitment for the section 8 program." *Id.* at p. App-042, 044-045, 048. The signatories further planned to work with *amicus* Minnesota Multi Housing Association, the Star Tribune FONAHOME staff, and other entities to promote the Section 8 program among real estate professionals. *Id.* at App-045. Had any party believed that landlord

participation in Section 8 was mandated by the MHRA, all of these plans would have been superfluous. The consent decree thus unmistakably shows that in 1995, every level of state and federal government—and even the Legal Aid Society itself—understood participation in Section 8 to be voluntary.

* * *

Every branch of state government, every variety of county and local agencies, and all types of consumer groups have historically expressed their understanding that landlord participation in Section 8 is voluntary and not mandated by the MHRA. This Court should reject Edwards' effort 30 years after the fact to change that settled understanding.[6]

II. The Section 8 Program Places Significant Administrative Burdens And Substantive Restrictions On Participating Landlords.

If this Court were to adopt Edwards' position and hold that the MHRA requires all Minnesota landlords to participate in the Section 8 program, the consequences would be sweeping—not just for landlords, but also for the agencies that administer Section 8—because of the program's significant administrative and substantive burdens.

Landlords who participate in Section 8 take on the following burdens, among others:

- **Forced Contract with the Government.** Landlords surrender the freedom of contract that they would enjoy in an ordinary private transaction and must sign

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[6] Edwards cites cases from other states applying their discrimination laws to Section 8. None of the cases, however, discusses a history comparable to the one in Minnesota, where every branch of state government has expressed its view that participation in Section 8 is voluntary. For that reason, as well as the reasons given by respondent landlords, those cases should not guide this Court's interpretation of the MHRA.

a contract with the government, which is referred to as a HAP contract. 24 C.F.R. § 982.305(c). Modification of the HAP contract is not permitted—it must be word-for-word in the form prescribed by HUD. 24 C.F.R. § 982.451.

- **Required Lease Addendum**. Landlords must sign a HUD-prescribed tenancy addendum for each Section 8 tenant. 24 C.F.R. § 982.302(c). Modification of the lease addendum is not permitted. 24 C.F.R. § 982.308(f)(2). The tenant has the right to enforce the tenancy addendum against the landlords, and the terms of the tenancy addendum prevail over any other provisions of the lease.

- **Limited Security Deposit.** HUD limits the amount of a security deposit that a landlord may require to that of "private market practice." 24 C.F.R. § 982.313(b).

- **Initial Inspections**. Before a Section 8 voucher holder can rent an apartment, the HRA must inspect the unit to confirm that it complies with the extensive, HUD-prescribed Housing Quality Standards (HQS). 24 U.S.C. §§ 982.305(b)(2)(i), 982.401(a)-(n). While approval is pending, the apartment unit remains empty, depriving the owner of rent.

- **Annual Inspections**. Section 8 requires annual inspections. 42 C.F.R. § 982.405(a). Inspectors may order repairs, which the landlord must make within the time allotted by the HRA or else the HRA may withhold rent. 24 C.F.R. § 982.404(a). If the tenant damages the unit, causing the unit to fail an inspection and the HRA to terminate the lease, the owner has no recourse against the tenant for the termination of the lease.

- **Limitations on Rent Increases**. The HRA must be notified of any change in rent at least 60 days prior to the date the change is supposed to go into effect. Any rent increase must meet HRA's "rent reasonableness requirements." 24 C.F.R. §§ 982.308(g)(4), 982.507(2)(i)

- **No Payment After Lease Abandonment.** The HRA will not make any rent payments after a Section 8 tenant moves out of a unit, even if the tenant breaks the lease and moves out before the end of the term. 24 C.F.R. § 982.311(d).

- **Limitations on Lease Termination**. A landlord may only terminate a Section 8 lease during its term for certain enumerated reasons, such as serious or repeated violation of the lease or law. Nonpayment by the HRA for its portion of the rent is not grounds for terminating the tenancy. 24 C.F.R. § 982.310(a)-(b).

- **Increased Compliance Work.** Subsidy programs change frequently, forcing landlords to devote time and money to keeping up-to-date on program requirements.

Recent press reports and studies illustrate the practical impact of these burdens. On May 6, 2009, the StarTribune.com published a story on a "recent flurry of window violations" cited by St. Paul city fire inspectors, which arose out of mandatory Section 8 inspections. *Fire Code Disputes in St. Paul are a Pane*, http://www.startribune.com/local/stpaul/44234302.html?elr=KArksUUUoDEy3LGDiO7aiU (last visited Nov. 4, 2009). The *Star Tribune* reported that "inconsistency led to situations in which one St. Paul inspector issued permits for new windows, only to have another inspector condemn those windows as unsafe weeks later." *Id.* Although landlords can appeal inspection results such as these, the government-provided portion of their rent payments may be reduced or discontinued until they meet the inspector's requirements. *Id.*

Similarly, a recent study highlighted the risk that landlords run of not being paid the government portion of their rent simply because the government runs out of money. HOME Line, a Minnesota non-profit tenant advocacy organization, conducts an annual survey of the Section 8 program in Anoka, Dakota, and suburban Hennepin Counties. The 2008 study found that HUD had a shortfall of funding for project-based Section 8 housing, with severe consequences for the landlords:

> Last year, HUD ran out of money for renewing its project based Section 8 contracts with private landlords. This resulted in late payments to owners, some by as much as three months. . . .
>
> It is difficult to determine how many units will continue to be threatened by the continued shortfall under this year's Continuing Resolution. The reason owners participated in the program was often because it was guaranteed

> rent. With a history of delayed payments, and continued under-funding of the Section 8 program, some owners are leaving the program resulting in even fewer units available for low-income renters. Consequently, owners are choosing to opt-out of the Section 8 program to operate in the free market.

The HOME Line, *Section 8 Report # 14 Long Waits, Eroding Choices,* http://www.homelinemn.org/downloads/section8/2008Section8report.pdf (November 2008). This appeal involves the Section 8 voucher program, not the project-based program. But HUD's shortfall in project-based housing illustrates the risk of non-payment landlords run in accepting vouchers as well.

Federal courts have recognized that the burdens of participation in the Section 8 program are so substantial that participation should not be forced on rental property owners. In *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998), a landlord declined to participate in the Section 8 program, and two apartment applicants sued for disability discrimination. In rejecting the claim, the court found that:

> it is easy to conclude that, for landlords who reject voluntary Section 8 participation, the contract with the federal government, the retention of counsel to make the Section 8 arrangements, the requirements for compliance, and the limitations on use (actual and potential), are "unreasonable costs," an "undue hardship," and a "substantial burden," which are not required by the FHAA's reasonable accommodation provision.

Id. at 301.

The burdens of participating in Section 8 are severe enough for large landlords, but the position Edwards is advocating would require Section 8 participation to be *universal*, even for small landlords. The burden of complying with the complicated and extensive laws governing the Section 8 program will fall particularly hard on these small

landlords, who may rent only one or a handful of units and who have neither the resources nor the knowledge to comply.

Local housing and redevelopment authorities ("HRAs"), many of whom are already struggling to manage the Section 8 program, will also be severely affected by mandatory, universal participation. Less than one month ago, MPR News reported that a new federal audit of the St. Paul Public Housing Agency's Section 8 program found that "the Agency lacks adequate procedures and controls to ensure compliance with HUD's requirements and its program administrative plan regarding the administration of its program." *St. Paul's Section 8 Program Denies Mishandling of Federal Funds*, http://minnesota.publicradio.org/display/web/2009/10/12/section-8-audit/ (last visited Nov. 4, 2009). The St. Paul agency's executive director, John Gutzman, responded that "I guess it's the golden rule. The people with the gold [referring to HUD] make the rules. It's a difficult program to administer." *Id.* It is difficult even with voluntary participation. If this Court adopts Edwards' position and mandates universal landlord participation, it will overwhelm the agencies with a flood of new landlords who never previously participated in Section 8 and will require extensive training and assistance in complying with the program's regulations.

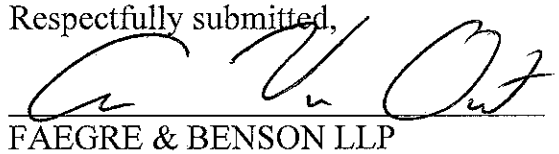
CONCLUSION

This Court should reject Edwards' argument that the MHRA mandates landlord participation in Section 8. That interpretation would directly contradict the longstanding settled understanding in this State that Section 8 is voluntary. It would also inflict severe, unjustified burdens on landlords and the agencies who administer the program. *Amicus*

Minnesota Multi Housing Association urges the Court to affirm the district court's grant of summary judgment for respondents.

Date: November 9, 2009

Respectfully submitted,



FAEGRE & BENSON LLP
Aaron D. Van Oort, Lic. 315539
Alissa M. Raddatz, Lic. 334376
Faegre & Benson, LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000
Attorneys for Amicus Curiae Minnesota Multi Housing Association

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