No. A17-1286

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State of Minnesota

In Supreme Court

Central Housing Associates, LP,

Respondent,

vs.

Aaron Olson,

Appellant.

BRIEF AND ADDENDUM OF AMICUS CURIAE INQUILINXS UNIDXS POR JUSTICIA

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INTEREST OF AMICUS CURIAE

Pursuant to Minn. R. Civ. App. P. 129 and 132.01, InquilinXs UnidXs por Justicia ("United Renters") respectfully submits this brief as *amicus curiae* in support of appellant Aaron Olson.[1] United Renters is a Minnesota-incorporated nonprofit organization that assists vulnerable tenants with housing problems and works to create affordable and dignified housing for all tenants within the City of Minneapolis ("the City"). United Renters is a housing-related neighborhood organization as defined in Minn. Stat. § 504B.001, subd. 5.

United Renters was founded in 2015 by a group of tenants in the Lyndale neighborhood of Minneapolis who banded together to persuade their landlord to make repairs to their housing and found strength in numbers against their fear of landlord retaliation. Since its founding, United Renters has worked to organize tenants in order to persuade landlords to make necessary repairs and improvements to their properties. These efforts take the form of letters, calls to the City or other authorities, community education events, partnerships in research initiatives, and lawsuits on behalf of tenants, such as Tenant Remedies Act actions.[2]

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[1] Pursuant to Minn. R. Civ. App. P. 129.03, United Renters certifies that counsel for United Renters authored this brief in its entirety, and that no other person or entity made a monetary contribution toward the preparation or submission of this brief.

[2] *See, e.g., IX of North Minneapolis v. Mahmood Khan*, File No. 27-CV-HC-17-5608 (4th Jud. Dist. Minn. 2017) (concluding that United Renters is a housing-related neighborhood organization and thus a proper plaintiff in a tenant remedies action on behalf of tenants), included in addendum at p. A-24.

The members of United Renters are tenants who are among the most at risk of retaliation by their landlords: immigrants, people of color, and those living near or below the poverty line. Such tenants often are afraid to complain directly to their landlords, but they have found strength in numbers by working with United Renters and other community housing organizations. United Renters annually works with approximately 250 tenants and their families who face eviction or seek to exercise their rights as tenants.

The matter before the Supreme Court in this case presents an issue of critical concern to the members of United Renters and thousands of residential tenants in Minnesota. As *amicus curiae*, United Renters speaks on behalf of its members as well as tenants across the state who face landlord retaliation for exercising their rights.

FACTUAL BACKGROUND AND STATEMENT OF THE CASE

The anti-retaliation provision of the Tenant Remedies Act ("TRA"), Minn. Stat. § 504B.441, protects residential tenants from eviction and other retaliatory measures if they are imposed by the landlord as a penalty for the tenant's "complaint of a violation." The Court of Appeals' narrow and *sua sponte* construction of "complaint of a violation," as limited to formal complaints filed to institute civil actions against landlords in court, severely limits the protection provided by this provision to the detriment of Minnesota tenants.

Based on available data, the Court of Appeals' decision would limit the retaliation defense under section 504B.441 to only a small percentage of the Minnesota tenants who are potential victims of landlord retaliation.

The only tenants protected by the anti-retaliation provision of Minn. Stat. § 504B.441 under the Court of Appeals' interpretation are tenants who have filed formal "complaints" to institute tenant remedies actions under Minn. Stat. § 504B.395 against landlords in court. But according to Hennepin County Housing Court records, a grand total of five tenant remedies actions were filed on behalf of tenants in Hennepin County in all of 2017.[3] *See* Declaration of Tien Cai, addendum at p. A-7, ¶ 6. Most tenants are unaware of their rights under the law and lack the legal representation and resources needed to file a formal complaint under section 504B.395. The result is that under the Court of Appeals' interpretation, the anti-retaliation protections of section 504B.441 would have been made available to an exceedingly small number of Hennepin County tenants in 2017.

Data shows that Minnesota's landlord retaliation problem is widespread and goes well beyond retaliation actions against tenants who have filed formal actions in civil court. Indeed, some landlords appear to have made a practice of evicting tenants who complain to the City, as though it is part of their business model. By way of illustration, the City of Minneapolis found that, over a two-year period, a single landlord filed 26 eviction actions against tenants after the tenants lodged complaints about repairs or

[3] Three of these cases were filed by tenants; two were filed by housing organizations on behalf of tenants. We were unable to survey court records outside of Hennepin County in advance of preparing this brief, but the number of statewide TRA proceedings filed is likely also very low. Hennepin County is home to 22.4% of the state's population and 30% of the state's rental units. *See* Minnesota State Demographic Center, *Our Estimates*, https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/; *see also* U.S. Census Bureau, *Selected Characteristics of the Native and Foreign-Born Populations*, American Community Survey 5-Year Estimates (2016).

corrections with the City. *See* Declaration of Glendon Haslerud, addendum at p. A-9, ¶¶ 2-6. According to the 2016 *Evictions in Minneapolis* report by the City of Minneapolis Innovation Team, three Minneapolis landlords had an eviction rate (i.e., number of eviction cases filed per year divided by number of units owned) of 100 percent or greater in 2015.[4]

United Renters was made aware of dozens of instances in the last year of landlords retaliating against member tenants for requesting repairs or otherwise exercising their rights. The retaliation can include increasing rent, loss of privileges such as use of party or common room, letters of intimidation, incorrect dissemination of information about a tenant, and fines and towing. United Renters was informed of one instance in which a landlord issued a notice to terminate the lease before the end of the lease term to a tenant in apparent retaliation one day after the tenant called to notify the police that her apartment was burglarized. *See* Declaration of Mary Nesbitt, addendum at p. A-19. In 2016, a staff member at United Renters was subjected to intimidation from her landlord, who then declined to renew her lease, after she began to organize tenants in her building to request repairs. *See* Declaration of Edain Altamirano, addendum at p. A-1. Also, the same landlord sent notices declining to renew the leases of five of seven tenants who wrote a letter to the landlord requesting repairs. *Id.* at ¶ 5. These acts of retaliation, which can be devastating for tenants, were not in response to formal complaints filed by

[4] Minneapolis Innovation Team, *Evictions in Minneapolis* (July 2016), http://innovateminneapolis.com/documents/Evictions%20in%20Minneapolis%20Report.pdf.

tenants to initiate a civil action in district court, but instead were in response to requests for repairs made directly to the landlords by the tenants or through United Renters or where they sought police assistance for their own safety.

The total number of complaints made by residential tenants (to their landlords, city inspectors, tenants' rights organizations, etc.) is difficult to quantify, but the total number of tenant complaints in Hennepin County in 2017 was certainly far greater than the five tenant remedies actions filed in Hennepin County in 2017. In 2017, HOME Line, a small nonprofit organization which is representing the Petitioner in this appeal, received over 3,500 tenant complaints statewide relating to privacy, discrimination, lock outs, infestation, and repairs. This number does not count the complaints that Minnesota tenants raised directly to their landlords, to other tenants, through social media, or to cities, counties, state agencies, nonprofits, and other tenant organizations.

Furthermore, landlord retaliation is a familiar problem to many and the prospect of such retaliation deters many tenants from requesting repairs in the first place. United Renters has observed through its members that tenants are afraid to request repairs or call the City for fear of retaliatory action. This is especially the case in immigrant communities, among tenants who do not have immigration status or feel that their status could be questioned or revoked if they call the housing inspector or complain to the landlord. United Renters is anecdotally aware of landlords who target the immigrant tenant population specifically because the landlords know those tenants will be afraid to complain or can be threatened into silence.

The Center for Urban and Regional Affairs ("CURA") at the University of Minnesota is currently undertaking an in-depth qualitative study of Evictions in the City of Minneapolis, led by researcher Dr. Brittany Lewis. United Renters is a partner on this study along with Hennepin County, the City of Minneapolis Innovation Team, and other organizations. The CURA study is intended to gather information about evictions in Minneapolis through interviews with tenants who have been evicted and landlords who file evictions. This study is not scheduled to be completed until 2019, but to date, Dr. Lewis and her team have interviewed 38 tenants and 32 landlords. *See* Declaration of Dr. Brittany Lewis, addendum at p. A-15, ¶ 15. Of the 38 tenants CURA has interviewed, 11 (29% of the interviewed tenants), have "experienced what the tenant perceived to be a form of retaliation by their landlord in response to the tenant complaining about an issue with their housing arrangement." *Id.* at ¶ 16. Five of these individuals (13% of the interviewed tenants) specifically reported that their landlord filed an eviction action shortly after the tenant called the City Inspections Department to report a problem with their housing. *Id.* at p. A-16, ¶ 18.[5] Only one tenant in this group of 11 that faced retaliation was fully aware of their rights, placed their money into rent escrow, and took their landlord to court. *Id.*

[5] If one assumes that the 38 interviewed tenants accurately represent the broader Minneapolis tenant community and one applies that percentage (13%) to the total number of tenants in Minneapolis, one could extrapolate that thousands of tenants in the City of Minneapolis alone have been evicted in retaliation for calling the City Inspections Department. There were 89,240 renter households in Minneapolis in 2016. *See* Minneapolis Housing Partnership, *Market Watch: Minneapolis*, https://www.mhponline.org/images/stories/docs/research/NOAH-MPLS-final.pdf. Thirteen percent of 89,240 is over 11,000.

CURA's initial findings also shed light on the informal nature of many rental arrangements, which shifts even more bargaining power to landlords and makes the anti-retaliation provision in section 504B.441 all the more important. Certain tenants have reported to Dr. Lewis that as a result of deplorable living conditions including open plumbing, severe mold, and vermin infestation, landlords often make informal verbal arrangements for late rental payments. *Id.* However, if the tenant subsequently called the City Inspections Department to complain about the conditions of the property, the landlord would file an eviction action immediately. *Id.* As discussed further in Section II.B of this brief, this tenant is in technical breach of the lease due to late payment and, therefore, would not be protected from retaliation under the Court of Appeals' decision under section 504B.285, and under the Court of Appeals' interpretation would only be protected under section 504B.441 if the tenant filed a lawsuit. The result is empowering landlords who maintain rental units that endanger health and safety.

This data makes clear that the problem of retaliation goes far beyond those individuals who file a formal complaint against their landlords in court. Under the Court of Appeals' interpretation of section 504B.441, Minnesota's landlord retaliation problem would only get worse—unscrupulous landlords would be emboldened to retaliate against complaining tenants, landlords would be incentivized to take retaliatory actions at the first sign of a complaint (to head off a possible retaliation defense), and a chilling effect would result in more tenants choosing to live in unhealthy conditions instead of exercising their rights to live in safe conditions free from discrimination.

These negative outcomes would disproportionately impact the State's most vulnerable citizens. As the Minneapolis Housing Partnership's "Market Watch: Minneapolis" report shows, households of color are far more likely to be renters than white households. While 45% of white households are renters, 80% of Black, 80% of Native American, 75% of Latino and 66% of Asian households in Minneapolis are renters.[6] And, in view of the current affordable housing crisis in the Twin Cities, low income renters who are evicted run a serious risk of becoming homeless.[7]

SUMMARY OF ARGUMENT

Minn. Stat. § 504B.441 protects residential tenants from eviction and other retaliatory measures if they are imposed by the landlord as a penalty for the tenant's or housing-related tenant organization's "complaint of a violation." The plain language and legislative history of section 504B.441 indicate that it provides broad protection to tenants who exercise their rights under their lease and the law. The term "complaint of a violation" does not refer to a civil complaint filed in court, but rather a complaint in its "common and approved usage"—an expression of dissatisfaction regarding a "violation" as that term is defined in Chapter 504B. Furthermore, the legislative history surrounding the TRA shows that the anti-retaliation provision was not intended to narrowly apply to civil complaints, but rather was originally intended to prevent retaliation against tenants who complain to the city inspector, and then was later expanded to protect tenants who

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[6] *Id.*

[7] *See, e.g.,* Greta Kaul, *Is there—or is there not—an affordable housing crisis in the Twin Cities?*, MINNPOST, Oct. 4, 2017, https://www.minnpost.com/politics-policy/2017/10/there-or-there-not-affordable-housing-crisis-twin-cities.

complain about a broader range of "violations" than just those that would be raised with the city inspector.

Moreover, as a matter of public policy, it is of vital importance to the common good that section 504B.441 not be so narrowly construed as to only apply to complaints initiating a civil action. Empirical and anecdotal data gathered by United Renters and other organizations indicate that landlord retaliation takes many forms beyond the narrow category of evictions contemplated by section 504B.285, including fines, towing, and reduced use of common areas. Section 504B.441, when properly construed, also provides important protections for tenants, including the Appellant here, who is in technical breach of his lease but is subject to unsafe living conditions, discrimination, or other violations of the law or lease. Under the Court of Appeals' decision this tenant would have no protection against retaliation if he or a tenant organization complained about their living conditions, unless they file a formal civil lawsuit.

The Court of Appeals' erroneous and *sua sponte* interpretation of section 504B.441 will create unintended consequences and disastrous policy results by chilling residential tenants from requesting repairs and thus resulting in more Minnesotans living in unsafe conditions. Moreover, tenants who do want to complain with statutory protection against retaliation will be incentivized to immediately file a lawsuit in order to obtain protection from retaliation, even in situations that might be most effectively and efficiently resolved outside of court. And critically, the Court of Appeals' decision leads to an absurdity—as landlords would have an opportunity before any tenant remedies action is filed to retaliate against the tenant with impunity during the mandatory fourteen-

day period after the tenant provides the statutorily required notice to the landlord before the civil complaint to initiate the action can be filed.

Not only is the Court of Appeals' interpretation contrary to this State's canons of statutory construction, but as a housing-related neighborhood organization that represents residential tenants in disputes with their landlords on a daily basis, United Renters believes the Court of Appeals' decision would have disastrous consequences and should be reversed. A proper interpretation of the statute would reflect the Legislature's intent to protect the thousands of Minnesotans who complain about violations short of filing a civil action, and would send a clear message to unscrupulous landlords that retaliation will not be tolerated.

ARGUMENT

I. The Anti-Retaliation Statute Applies Broad Protections and Is Not Limited to Protecting Tenants Who File Civil Complaints.

The anti-retaliation provision of the TRA states that a residential tenant may not be evicted, have their obligations increased, or have their services decreased, if it "is intended as a penalty for the residential tenant's or housing related neighborhood organization's *complaint of a violation*."[8] Minn. Stat. § 504B.441 (emphasis added).

[8] The statute, in full, including the burden-shifting provision not directly applicable here (given that the jury found for Olson on retaliation with Olson bearing the burden), provides:

> A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant's or housing-related neighborhood organization's complaint of a violation. The burden of proving otherwise is on the landlord if the eviction or

This case turns on the interpretation of the term "complaint of a violation," which was read narrowly and *sua sponte*[9] by the Court of Appeals to refer only to a civil complaint commencing a judicial proceeding under the TRA.

A. The Plain Language Protects Residential Tenants from Retaliation for Expressions of Dissatisfaction over Statutorily-Defined "Violations".

The Supreme Court reviews questions of statutory construction under a *de novo* standard. *State v. Loge*, 608 N.W. 2d 152, 155 (Minn. 2000). The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature," and words and phrases are construed "according to their common and approved usage." Minn. Stat. §§ 645.16, 645.08. "When the language of a statute is plain and unambiguous, that plain language must be followed." *Amaral v. St. Cloud Hosp.*, 598 N.W. 2d 379, 384 (Minn. 1999). Here, for the reasons described below, a reading of the statute based on common usage and defined terms indicates that the term "complaint of a violation" refers to any complaint—*i.e.*, statement or expression—by a residential tenant or housing-related neighborhood organization (on behalf of a tenant), of a "violation," as that term is defined in the statute.

> increase of obligations or decrease of services occurs within 90 days after the filing of the complaint, unless the court finds that the complaint was not made in good faith. After 90 days the burden of proof is on the residential tenant.

Minn. Stat. § 504B.441.

[9] The question of whether "the Court of Appeals [can] dispose of a case based upon statutory interpretation, when the statute's interpretation was not disputed or ruled upon at the district court," is currently before the Minnesota Supreme Court in *Heilman v. Courtney*, No. A17-0863 (Minn.) (oral argument scheduled Sept. 4, 2018).

The Court of Appeals improperly concluded that the term "complaint" in the context of the phrase "the residential tenant's or housing-related neighborhood organization's complaint of a violation" in section 504B.441 should be given the same meaning as the term "complaint" used in different contexts that specifically deal with the procedure for filing a tenant remedies action in civil court, despite the fact that no definition is provided for "complaint" as used in section 504B.441. This interpretation conflicts with the rules of statutory construction and creates an absurd result whereby landlords are always afforded a safe harbor in which they can retaliate with impunity.

1. The Plain Meaning of Section 504B.441 Is not Limited to Protection from Retaliation after Civil Complaints Are Filed.

The term "complaint" is not defined in the statute. "When determining the plain and ordinary meaning of undefined words or phrases in a statute, courts should look to the dictionary definitions of those words and apply them in the context of the statute." *State v. Haywood*, 886 N.W. 2d 485, 488 (Minn. 2016). *Merriam-Webster* defines "complaint" as an "expression of grief, pain, or dissatisfaction." "Complaint," Merriam-Webster.com, accessed July 27, 2018; *see also* the *American Heritage Dictionary*, AHDictionary.com, accessed July 27, 2018, (defining "complaint" as "[a]n expression of pain, dissatisfaction, or resentment"). Thus the plain and ordinary meaning of "complaint" here can be characterized as an expression of dissatisfaction.

While the term "complaint" itself has a broad construction under its plain and ordinary meaning, other terms in Section 504B.441 limit its scope. First, protection from retaliation does not extend to any complaint, but only a "complaint *of a violation*." The

term "violation" is explicitly defined in Chapter 504B as: "(1) a violation of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building;" (2) a violation of the implied covenants that the premises are fit for use as intended, will be maintained in reasonable repair, and that unlawful activity will not be permitted; or "(3) a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building." Minn. Stat. § 504B.001, subd. 14. Thus when read as a single term, "complaint of a violation" refers to an expression of dissatisfaction associated with a violation of the law, the lease agreement, or the covenants that are required by law in every lease of residential premises.

This statutory definition of "violation" also gives context to what such "complaints of a violation" may look like. Complaints regarding violations of state, county, or city laws or codes may be made to government departments or agencies, like notices to city inspectors of code violations as envisioned under Minn. Stat. § 504B.185 and as recognized by the State of Minnesota,[10] or complaints to the Minnesota

[10] *See* Office of the Minnesota Attorney General Handbook, *Landlords and Tenants: Rights and Responsibilities*, at p. 17, 33 (citing section 504B.441 for the proposition that a "landlord may not evict a tenant or end a tenancy in retaliation for the tenant's 'good faith' attempt to enforce the tenant's rights, nor can a landlord respond to such an attempt by raising the tenant's rent, cutting services, or otherwise adversely changing the rental terms.").

The Attorney General is directed by statute to publish this handbook, "which summarizes the significant legal rights and obligations of landlords and residential tenants of rental dwelling units," and must annually revise it to ensure that it "continues accurately to describe the statutory and case law" in this field. Minn. Stat. § 504B.275.

Department of Human Rights like Olson made here. And complaints regarding violations of implied covenants and lease terms correspondingly reflect that the statute protects against such complaints to the landlord, management company, or building supervisor.

Likewise, the "complaint of a violation" cannot be made by anyone. Rather protection against retaliation under Section 504B.441 is limited to a "complaint of a violation" by the "residential tenant" or "housing-related neighborhood organization." This extension to "complaints of a violation" by a housing-related neighborhood organization makes sense, given that under Chapter 504B, housing-related neighborhood organizations are authorized to, with written permission of the tenant: request an inspection (§ 504B.185, subd. 1); inform the landlord in writing of an alleged violation (§ 504B.395, subd. 4); and file a tenant remedies action (§ 504B.395, subd. 1). Moreover, for a multiple-dwelling building, a housing-related neighborhood organization can take the same actions with written permission of the residential tenants of a majority of the occupied units of the building. *See* Minn. Stat. § 504B.001, subd. 5. Section 504B.441 thus expressly protects a residential tenant from retaliation as a penalty for a housing-related neighborhood organization's "complaint of a violation" on his or her behalf. Furthermore, section 504B.441, under its plain text, would also protect a residential tenant against retaliation for any "complaint of a violation" to the housing-related neighborhood organization itself, regardless of any future action that organization might make.

Of course, a landlord cannot be found to have retaliated in response to a "complaint of a violation" of which he or she had no knowledge. But this requirement that the landlord be aware of the complaint in some manner, does not change what form a "complaint of a violation" must take or to whom it must be made. Instead, Section 504B.441 accounts for this by only applying if the landlord's actions are "*intended as a penalty* for the residential tenant's or housing-related neighborhood organization's complaint of a violation." Minn. Stat. § 504B.441 (emphasis added). The plain text of the statute thus compels that residential tenants are protected from retaliation for any statement or expression of dissatisfaction, made by the tenant or a housing-related neighborhood organization, regarding any "violation" as that term is defined in the statute.

2. The Court of Appeals' Narrow Reading of "Complaint" Is Inconsistent with the Plain Text and Leads to Absurd Results.

The Court of Appeals' narrow interpretation of Section 504B.441 turned entirely upon its construction of the term "complaint" as being limited to "a tenant-remedies action in the district court." *Cent. Hous. Assoc. v. Olson*, 910 N.W. 2d 485, 490 (Minn. Ct. App. 2018). That construction rested upon other uses of the words "complain" or "complaint" in Chapter 504B. The cited provisions admittedly use the words "complaint," "a complaint" and "the complaint" to refer specifically to a document filed in court. For example, the Chapter includes references to a "complaint and summons" filed under section 504B.395, which goes on to describe the required procedure for and defenses to tenant remedies actions. Later, the statute authorizes the court to take certain

actions if it finds "that the *complaint in section 504B.395* has been proved…" Minn. Stat. § 504B.425(a) (emphasis added). In these examples, which were both cited by the Court of Appeals, the plain language of the statute clearly refers to the commencement of a lawsuit. *See Cent. Hous. Assoc. v. Olson*, 910 N.W. 2d at 490. Elsewhere in Chapter 504B, the statute specifically references a civil complaint filed under the TRA, including in section 504B.415 (establishing defenses "to a complaint under section 504B.385 or 504B.395").

The first sentence of Section 504B.441, by contrast, is the only place in all of Chapter 504B governing Landlord and Tenant law where the phrase "complaint of a violation" and the larger phrase "the residential tenant's or housing-related neighborhood organization's complaint of a violation" are used. The phrase "the residential tenant's . . . complaint of a violation" refers to the tenant's action of complaining. Similarly, the section's title "RESIDENTIAL TENANT MAY NOT BE PENALIZED FOR COMPLAINT" suggests that a tenant may not be penalized for the action of complaining.

If the legislature had intended to limit the applicability of section 504B.441 to only when a lawsuit is filed, it would have used a phrase like the following:

> "A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant or housing-related neighborhood organization commencing a civil action against the landlord for a violation."

The phrase "complaint of a violation" in section 504B.441 contains no reference to a formal lawsuit nor does it contain a cross-reference to section 504B.395. Other uses

of the word "complaint" do not control section 504B.441,[11] and in fact indicate that when the statute is referring to a formal complaint filed in civil court, it is very clear in doing so.

Moreover, a full reading of Chapter 504B makes clear that "complaint of a violation" in section 504B.441 does not and cannot refer solely to a civil tenant remedies action complaint filed under section 504B.395, because such a construction would lead to absurd results. Under the procedures outlined in 504B.395, "[a] landlord must be informed in writing of an alleged violation at least 14 days *before an action is brought*" by the tenant or housing-related neighborhood organization. Minn. Stat. § 504B.395, subd. 4 (emphasis added). This requirement gives the landlord an opportunity to cure an alleged violation of the lease or the covenants of habitability and reasonable repair before the tenant files a TRA complaint in court. But under the Court of Appeals' interpretation, it also creates a perverse 14-day safe harbor for landlords to retaliate against tenants with impunity before the civil complaint can be filed and the protections of section 504B.441 kick in.

Similarly, when a landlord is informed of a code violation following an inspection, the tenant or housing-related neighborhood organization must allow the landlord a

[11] Among the other uses of "complaint" in Chapter 504B cited by the Court of Appeals is the second clause of section 504B.441, which places the burden of proving that a particular action is not retaliatory on the landlord "if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint…" Minn. Stat. § 504B.441. This clause referring to "filing the complaint" only applies to the 90-day burden-shifting provision, and does not modify the definition of prohibited retaliation in the previous sentence. Here, the jury determined that Petitioner met his burden to show retaliation, so this provision is not at issue in this case.

"reasonable period of time" for repairs to be made before bringing an action. Minn. Stat. § 504B.395, subd. 3; *see also* Minn. Stat. 504B.185, subd. 2 (requiring the inspector to notify the landlord of any violations and allow a "reasonable period of time" to correct the violations). Again, under the Court of Appeals' reading of section 504B.441, the tenant would have no protection from retaliation during this "reasonable period of time," leading to an unreasonable and absurd result. This is a real concern, even when it is a housing-related neighborhood organization acting on behalf of the tenants. For example, United Renters often calls the City inspector on behalf of tenants or groups of tenants who fear retaliation if they make the request under their own name. However, landlords are sometimes able to determine which tenant or tenants are the source of the request. Under the Court of Appeals' interpretation, individuals who call the City under their own name and those who United Renters calls on behalf of would not be protected against retaliation during the "reasonable period of time" after the violation is reported to the landlord. The Court can and should presume that the legislature did not intend such an absurd and unreasonable result in enacting Chapter 504B. *See* Minn. Stat. § 645.17.

B. The Legislative History of Section 504B.441 Indicates that It Was Intended to Protect a Broader Range of Complaints.

The legislative history likewise confirms that "complaint of a violation" was never intended to be limited to a civil complaint commencing a judicial proceeding. *See* Minn. Stat. § 645.16; *Hansen v. Robert Half Int'l, Inc.*, 813 N.W. 2d 906, 916 (Minn. 2012) (discussing canons of construction).

The history of the TRA, which was first enacted in 1973, shows that the law is remedial legislation that should be broadly constructed to protect tenants. *See Blankholm v. Fearing,* 22 N.W. 2d 853, 855 (Minn. 1946) ("statutes which are remedial in nature are entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute"). While audiotapes of legislative hearings and floor debate from 1973 are not available, the original authors of the TRA have attested that the legislation was not intended to have the narrow construction applied by the Court of Appeals, but instead was to provide "anti-retaliation protection to tenants after they contacted the local housing inspector." *See* Declaration of Robert Tennessen and Thomas Berg, addendum at p. A-23, ¶ 7. Both authors represented many tenants in the City of Minneapolis, and neither can "recall any discussion at all indicating [the anti-retaliation provision] was designed just to protect tenants after they had filed a lawsuit." *Id.* In fact, now-section 504B.441 "was motivated by numerous contacts from tenants in [their] own district and elsewhere whose landlords retaliated and evicted them after they complained to city officials (housing inspectors) about unmet repairs." *Id.* at ¶ 6. These statements are relevant and admissible to assist the Court in ascertaining the contemporaneous legislative history and the circumstances under which the law was enacted, as required by Minn. Stat. § 645.16 subdivisions 2 and 7.

Moreover, subsequent amendments to the law further reflect that "complaints of a violation" now extend beyond complaints to a housing inspector. Five years after the TRA's passage, in 1978, the Legislature expanded the definition of "violation" to its current form, which includes code violations, violations of the covenants of habitability

and reasonable repair, and violations of the lease. Minn. Stat. § 504B.001, subd. 14.[12] Thus the term "complaint of a violation" in section 504B.441 refers to calls to the inspector, but also to complaints beyond those for housing code violations, and in turn likewise reflects that such complaints may be made to different organizations and individuals beyond city housing inspectors, such as housing-related neighborhood organizations, the Minnesota Department of Human Rights, or complaints to the landlord himself.

Finally, the Court of Appeals's erroneous *sua sponte* decision is ground shifting. Before the decision, the Court of Appeals,[13] the State,[14] and both parties to this litigation[15] interpreted section 504B.441 as extending beyond retaliation for filing a complaint to initiate a civil tenant remedies action under section 504B.395. The Court of

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[12] The current form of Chapter 504B is the result of a non-substantive recodification of Minnesota's housing laws, which were formerly spread across Chapters 504 and 566, into a new Chapter 504B. The Legislature made clear at the time that this recodification was not intended to change the law, but rather was intended to consolidate, clarify, and recodify Minnesota's housing statutes under one chapter. *Occhino v. Grover,* 640 N.W. 2d 357, 362 (Minn. Ct. App. 2002) (citing contemporaneous legislative history).

[13] For example, in an unpublished opinion, the Court of Appeals held that section 504B.441 protected a tenant who complained to the City of Richfield about code violations and then circulated flyers and convened meetings encouraging other tenants to assert their rights. The Court found that the landlord's deactivation of the tenant's access card and subsequent eviction were retaliatory and blocked under section 504B.441. *Dominium Mgmt. Servs. v. C. L.*, 2003 Minn. App. LEXIS 1439 (Minn. Ct. App. 2003), *review denied,* 2004 Minn. LEXIS 99 (Minn. 2004).

[14] *See supra,* n. 10.

[15] Respondent CHA's brief to the Court of Appeals is telling in this regard. CHA acknowledged in its brief that Appellant "*filed a complaint* with the Minnesota Department of Human Rights alleging discrimination under Minnesota Statute 363A." Respondent's Br. at 3 (emphasis added). Respondent never argued that this complaint was not a "complaint of a violation" under section 504B.441.

Appeals' novel interpretation is contrary to the plain text, the legislative history, and the construction by the State and the parties in this case, and should be reversed.

II. The Court of Appeals' Decision Will Have Unintended and Detrimental Policy Impacts Including Fewer Protections for Tenants.

As discussed above, landlord retaliation is a statewide problem that Section 504B.441 is intended to remedy. The Court of Appeals' interpretation severely limits the protections of this statute and should be overturned. If the decision were allowed to stand, Minnesota's landlord retaliation problem would only get worse—unscrupulous landlords would be emboldened to retaliate against complaining tenants, landlords would be incentivized to file retaliatory actions at the first sign of a complaint (to head off a possible retaliation defense), and a chilling effect would result in more tenants choosing to live in unhealthy conditions instead of complaining for fear of retaliation.

A. The Court of Appeals' Decision Would Effectively Eliminate All Protections of Section 504B.441.

For the reasons already stated, the Court of Appeals' decision, if allowed to stand, would effectively eliminate all of Section 504B.441's protections. *See supra* Section I.A.2. First, very few tenants actually file formal complaints in court against their landlord. As noted in the Factual Background section of this brief, only *five* tenant remedies actions under section 504B.395 were commenced in Hennepin County in 2017. *See supra* p. 3. Second, all tenants who do file civil complaints under the procedures in section 504B.395, are required to first give their landlord advance notice—at least fourteen days for tenant remedies actions that allege violations of the lease or covenants within the lease, and a "reasonable period of time" following an inspector identifying a

code violation. This thus gives landlords a period of time in every circumstance in which they can retaliate against the tenant with impunity before the retaliation protection is triggered.

Given that so few tenants file formal TRA complaints in court and that landlords are entitled to either a "reasonable period of time" or fourteen days to respond, depending on how the allegation was made, the Court of Appeals interpretation would nullify virtually all impact of section 504B.441. This contravenes common sense and the canon of construction that "[e]very law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16.

B. Section 504B.441 Provides Important Protections Beyond Section 504B.285.

Respondents argued in their response to the Petition for Review that the Court of Appeals decision should stand because retaliation is still recognized as a defense to eviction in section 504B.285, subd. 2. This argument fails for at least two reasons.

First, the retaliation defense in section 504B.285 is limited to evictions following notices to quit, and thus only applies where the lease is a tenancy at will. *See* Minn. Stat. § 504B.135. Section 504B.441, on the other hand, is applicable to most types of leases and is intended to protect not only against retaliatory evictions but also against many other forms of retaliation, because there are many other ways that a landlord can retaliate against a tenant who exercises their rights. For example, the landlord can issue fines, send or post letters of intimidation, revoke parking privileges, have the tenant's car towed, limit the tenant's use of common areas, or refuse to allow pets. Members of

United Renters have experienced all of these forms of retaliation, and the CURA research team has documented these types of retaliation in their initial research findings. *See* Declaration of Dr. Brittany Lewis, addendum at p. A-17, ¶ 19; *see also* Declaration of Edain Altamirano, addendum at p. A-3, ¶¶ 6-7. Section 504B.441 is designed to protect against retaliation in these other forms—i.e., these are examples of the "increase of obligations or decrease of services" contemplated by the statute.

Second, the Court of Appeals limited the retaliation defense in section 504B.285 by holding that it is unavailable to tenants who are found to be in breach of the lease. Petitioner did not appeal this issue to this Court, which makes the protections of Section 504B.441 all the more necessary. Many tenants may be in technical breach of their lease, because, for example, they pay rent in installments rather than monthly, through an informal arrangement with the landlord, but are otherwise fully compliant. The CURA research team has documented this problem, finding that many tenants in substandard housing reach verbal agreements with their landlords on payment plans allowing delayed payment of rent that are not contemplated by the terms of their leases. Landlords apparently find such arrangements to be acceptable because they often involve payment of significant late fees. However, as soon as the tenant raises a complaint about the conditions of the property—to the City Inspections Department or otherwise—the landlord files an eviction action immediately. *See* Declaration of Dr. Brittany Lewis, addendum at p. A-16, ¶ 18. By limiting section 504B.441, the Court of Appeals decision allows landlords who are themselves in violation of housing codes and the covenant of habitability to retaliate against these tenants under the pretense of breach of lease. The

result of this scenario is an evicted tenant with an eviction on their record, and the substandard unit remains in the housing stock. Indeed, a number of members of United Renters who have experience with these types of payment arrangements have stated that they have been threatened with eviction based on breach of the lease in retaliation for the tenant's complaint about their housing conditions to the landlord or the City. This operates as a substantial chill on the willingness of tenants to complain about conditions that are a threat to health and safety, and further empowers landlords who maintain substandard rental units. In the instant case, the trial court found that although Mr. Olson breached his lease, he was evicted because he complained about discrimination, which his lease prohibits. *See* Appeals Record Document Index #72, at 5-6. Section 504B.441 is designed to protect tenants from retaliation in these situations and should not be limited to individuals who file lawsuits.

C. The Court of Appeals' Decision Will Result in More Litigation and Less Protection for Tenants.

The Court of Appeals' narrow reading of Section 504B.441 will result in more litigation in housing court but fewer protections for tenants under this remedial statute. As discussed above, the Court of Appeals decision creates a trap for tenants that will discourage the vast majority of tenants from exercising their rights and leave them vulnerable to retaliation and eviction.

As a housing-related neighborhood organization, United Renters often requests repairs from landlords on behalf of tenants or otherwise communicates complaints from tenants to landlords. While United Renters was founded in part to provide anonymity to

tenants who feared retaliation, the landlord can often determine which tenants United Renters represents. Under the Court of Appeals' decision, the tenants that United Renters serves would be more vulnerable to retaliation than ever before. If word were to get out tenants are eligible for protection from landlord retaliation only to the extent they file a formal complaint against their landlord, United Renters would expect that far fewer tenants would be willing to discuss their complaints with the organization, and the ability of the organization to make a meaningful impact in the lives of our most vulnerable citizens would be severely restricted.

CONCLUSION

For the foregoing reasons, the Supreme Court should reverse the decision of the Court of Appeals and restore the proper interpretation of this statute.

Dated: August 3, 2018

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CERTIFICATION OF BRIEF LENGTH

United Renters hereby certifies that this brief conforms with the length limit and typeface requirements of Minn. R. Civ. App. P. 132.01, subd. 3. This brief was prepared using a proportional spaced, 13-point font in Microsoft Word 2016, which reports that the brief contains 6,995 words, exclusive of the cover page, table of contents, table of authorities, addendum, and this certification.

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