

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT,  
DIVISION 8**

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**No. B205279**

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ELISHEBA SABI,

*Plaintiff and Appellant,*

v.

DONALD STERLING and  
THE DONALD T. STERLING CORPORATION,

*Defendants and Respondents.*

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Appeal from the Superior Court  
For the County of Los Angeles  
Honorable Soussan G. Bruguera, Judge  
Case No. BC313345

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**AMICUS BRIEF IN SUPPORT OF PLAINTIFF AND APPELLANT,  
ELISHEBA SABI**

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**CERTIFICATE OF INTERESTED PARTIES**

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## I. INTRODUCTION

This appeal concerns Elisheba Sabi (“Appellant”), an elderly woman of limited financial means and having multiple disabilities. Appellant’s Opening Br., 3. Mrs. Sabi has lived in Respondents’ apartment complex since 1987. *Id.* She lived there with her husband for fifteen years beginning in 1989 and until his death in 2004. *Id.*, 4. Since her husband’s death, Mrs. Sabi has been unable to afford the rent on her own without her husband’s SSI income, and has relied upon the charity of her children to support her rental payments. *Id.*, 7.

In 1998, Mrs. Sabi and her husband applied for and eventually received a Section 8 housing voucher. Appellant’s Opening Br., 5. Section 8 is a federal program enacted under the United States Housing Act of 1937 and codified at 42 U.S.C. § 1437f, which provides low-income tenants with housing assistance payments. Even though Mrs. Sabi has lived in Respondents’ apartment for over 20 years, Respondents refuse to accept her Section 8 voucher. Appellant’s Opening Br., 6. Respondents’ reasons for refusing her government granted housing subsidy include an unwillingness to comply with the administrative aspects of the program. Respondents’ Br., 1-2.

Two issues on appeal are of particular interest to Amici. The first issue is whether a property owner’s refusal to accept housing assistance payments from a public housing authority, on behalf of low-income tenants who qualify for a subsidy under the Federal Choice Housing Program, known as Section 8, constitutes source-of-income discrimination under the California Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code

§ 12955 *et seq.* (2009). The second issue is whether the refusal to accept a Section 8 voucher from an existing, disabled, and low-income tenant interferes with that tenant's "equal opportunity to use and enjoy" his or her home within the meaning of the California Disabled Persons Act ("DPA"), Cal. Civil Code § 54 *et seq.* (2009).

Respondents contend that Section 8 is a voluntary program, and that therefore a landlord is free to decline to participate at will. Respondents' Br., 10. It is Appellant's position that, although a landlord may choose his tenants, a landlord's refusal of a Section 8 tenant solely on the basis of the tenant's desire to use a government housing subsidy—*i.e.*, a Section 8 voucher—towards payment of rent constitutes unlawful "source of income" discrimination prohibited by FEHA. It is also Appellant's position that refusal of a Section 8 voucher from a disabled tenant violates the DPA if (a) it imposes a financial burden on the disabled tenant, thereby interfering with the disabled tenant's "equal opportunity to use and enjoy" his or her home, and (b) such accommodation would not be an unreasonable burden on the landlord.

Although several other states have addressed similar issues, these issues are a matter of first impression in California. The impact of this Court's decision will affect all disabled, low-income citizens who rely or wish to rely on Section 8 vouchers in order to secure housing in California's already tight housing market. Amici respectfully request the Court to uphold the legislative intent of FEHA to protect low-income

families, and to extend similar Ninth Circuit precedent on these issues for disabled low-income tenants under the DPA.

## ARGUMENT

### **II. CALIFORNIA’S FAIR EMPLOYMENT & HOUSING ACT (“FEHA”) PROHIBITS SOURCE OF INCOME DISCRIMINATION AGAINST SECTION 8 VOUCHER HOLDERS.**

FEHA, California Government Code § 12955 *et seq*, makes it unlawful “[f]or the owner of any housing accommodation to discriminate against ... any person because of the ... source of income ... of that person.” Cal. Gov’t. Code § 12955 (a). The trial court dismissed Appellant’s source of income discrimination claim, holding that Section 8 vouchers are not “source of income” under FEHA. Appellant’s Opening Br., 18. Amici respectfully submit that the lower court’s decision contradicts the legislative intent of the statute, and should therefore be reversed.

#### **A. The Legislative History of FEHA demonstrates that “source of income” discrimination against Section 8 voucher holders is prohibited under the statute.**

Although Section 8 vouchers are not specifically named in the statute as a “source of income,” the legislative history of FEHA demonstrates that the legislature intended to protect Section 8 voucher holders when it enacted this statute. Sen. Bill No. 1098 (1999-2000 Reg. Sess.), as introduced Feb. 26, 1999. When first introduced, the bill included language expressing the legislature’s intent to protect low-income tenants from source of income discrimination. *Id.* at 1. In discussing

subsequent amendments, the legislature reiterated its concerns regarding the eviction of Section 8 tenants and the discrimination they face in the housing market. *See e.g.* Sen. Judiciary Comm., Analysis of Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended Apr. 7, 1999, Hearing on Apr. 13, 1999 at 4-5. In addition to adding “source of income” as a general category for which a prospective tenant could not be discriminated against, the legislature also added specific provisions to ensure further protection against Section 8 voucher holders. *See e.g.* Assem. Comm. on Judiciary, Analysis of Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended July 8, 1999, Hearing on July 13, 1999 at 4. Furthermore, various groups supporting the bill, as well as the governor of California, understood the aim of the bill was to protect Section 8 voucher holders. *See e.g.* Ex. A, Letter from Jericho, July 7, 1999 (“SB 1098 would, until 2005, prohibit a landlord from discriminating based on a tenant’s source of income”); Ex. B, Letter from Protection & Advocacy, Inc., July 7, 1999 (“This bill will provide protections to people on SSI by prohibiting housing discrimination based on source of income”); Ex. C, Letter from Governor Gray Davis, Oct. 2, 1999, 1, approving Sen. Bill No. 1098, Stats, 1999, Ch. 590 (1999-2000 Reg. Sess.) (“I respect the hard work of the author, the advocates, and the housing industry to reach some accommodations for Section 8 tenants in tight housing markets.”)

The fundamental rule to statutory interpretation requires a court to determine the intent of the legislature in enacting the statute, so as to uphold the purpose of the law. *Phelps v. Stostad*, 16 Cal. 4<sup>th</sup> 23, 32 (1997).

To apply this rule, courts employ a three-step approach. *Sisemore v. Master Fin., Inc.*, 151 Cal. App. 4<sup>th</sup> 1386, 1411 (2007) (applying approach to interpret that FEHA is not limited to prohibiting source-of-income only in the rental housing context). First, a court must look at the words of the statute and give the words “their ordinary, everyday meaning.” *Sisemore*, 151 Cal. App. 4<sup>th</sup> at 1411; *People v. Hudson*, 38 Cal. 4<sup>th</sup> 1002, 1009 (2006). If, however, the statutory language is unclear, then a court must apply a second step, which is to ascertain “the Legislature’s intent as an aid to statutory construction.” *Id.* (quoting *Sand v. Superior Court*, 34 Cal. 3d 567, 570 (1983)); see also *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, 34 Cal. 4<sup>th</sup> 733, 737 (2004) (“If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.”) In order to ascertain that intent, the court “must examine the legislative history and statutory context of the act under scrutiny.” *Sisemore*, 151 Cal. App. 4<sup>th</sup> at 1411 (quoting *Sand*, 34 Cal. 3d at 570). If the meaning of the statutory language is still unclear after assessing legislative intent, the third step is to “apply reason, practicality, and common sense to the language at hand.” *Sisemore*, 151 Cal. App. 4<sup>th</sup> at 1411 (quoting *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4<sup>th</sup> at 1233, 1239-1240 (1992)).

Appellant has provided the Court with a detailed analysis of the language and plain meaning of the definition of “source of income” as a “lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant.” See Appellant's Opening Br., 20-26; see also

Cal. Gov't. Code § 12955 (p). Amici, therefore, focus on the “intent” prong of this three-part test, and submit that the legislative history of FEHA unequivocally demonstrates that “source of income” discrimination against Section 8 voucher holders is prohibited under the statute.

**1. The February 26, 1999 Introduction of SB 1098 (1999-2000 Reg. Sess.)**

FEHA’s “source of income” antidiscrimination provision was first presented on February 26, 1999 as Senate Bill No. 1098 (“SB 1098”), which sought to amend FEHA in order to protect California’s citizens from discrimination in the rental housing context. The preamble to SB 1098 explicitly stated that the legislature’s intent was to protect tenants against source of income discrimination:

This bill would declare the intent of the Legislature that all tenants, regardless of their source of income, receive equal treatment in the application and consideration for residential real property....

Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as introduced Feb. 26, 1999 at 1. The preamble further provided that the bill “would also, among other things, declare the intent of the Legislature to remove the incentive in rent-controlled localities to cancel rent assistance contracts for low-income, elderly, handicapped, and family tenants in order to vacate a rent-controlled unit.” *Id.*

**2. The April 7, 1999 (First) Amendment to SB 1098**

In accord with its aim to protect low-income families seeking affordable housing, on April 7, 1999, the Senate Judiciary Committee

amended SB 1098 to include additional protections. Sen. Amend. to Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended Apr. 7, 1999. In that amendment, the Senate Judiciary Committee attempted to clarify the “source of income” language in the bill’s preamble. *See Id.* at 1-2 (“This bill would ... prohibit discrimination under [FEHA] on the basis of the failure to account for the aggregate income of co-residents *or the failure to exclude a government rent subsidy in determining the rent to be paid by the tenant.*”). In addition, the amendment added more specific protections for low-income tenants, including a 90-day termination notice provision to the Civil Code for tenants subject to government rent limitations, and an anti-discrimination provision to FEHA that prevented landlords from using certain financial income standards in making rental decisions. *Id.* at 5. The amended anti-discrimination provision stated that it would be unlawful “to use a financial or income standard in the rental of housing... in instances where there is a government rent subsidy.” *Id.* at 7-8.

In drafting these April 7 amendments, the Senate Judiciary Committee addressed the need to afford Section 8 tenants specific protections against discrimination:

***This provision also arises out of the growing trend among landlords to flatly refuse to rent to anyone on Section 8 housing or, more blatantly, to evict an existing Section 8 tenant because the landlord no longer wants to accept Section 8 vouchers. The problem is widespread, with 15,200 Section 8 vouchers in San Francisco alone, and many more thousands statewide... [T]his form of discrimination is creating tremendous hardships for the disabled and the elderly, who now find that they are being lawfully discriminated against because they are recipients of Section 8 assistance.***

Sen. Judiciary Comm., Analysis of Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended Apr. 7, 1999, Hearing on April 13, 1999, at 4-5 (emphasis added). In raising the issue of unlawful discrimination based upon Section 8 assistance, the Senate Judiciary Committee further explained that the amendment represented “a pared down version of a broader proposal which sought to prohibit arbitrary discrimination based on sources of income.” *Id.* at 5.

### **3. The July 8, 1999 (Second) Amendment to SB 1098**

On July 8, 1999, SB 1098 was further amended. The amendment reiterated the original intent of the bill, stating that “the bill would ... prohibit discrimination under [FEHA] on the basis of a *person’s source of income* ... or the failure to include a government rent subsidy in determining rent to be paid by the tenant.” Sen. Amend. to Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended July 8, 1999, at 2; *see also*, Assem. Comm. on Judiciary, Analysis of Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended July 8, 1999, Hearing on July 13, 1999, at 4.

Although the term “source of income” had been removed by the earlier amendment, it was added back into the July 8, 1999 amendment. Sen. Bill No. 1098 (1999-2000 Reg. (Sess.) as amended July 8, 1999, at 2, 6-9. In discussing its reasoning, the Senate Judiciary Committee explained that other states had explicitly prohibited Section 8 discrimination, and it expressed a clear understanding that “source of income” discrimination and Section 8 discrimination described the same issue. Assem. Comm. on Judiciary, Analysis of Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as

amended July 8, 1999, Hearing on July 13, 2009, at 4. (“Proponents point out that at least 12 other states prohibit ‘source of income’ or Section 8 discrimination.”). The hearing notes further document that in discussing the 90-day notice and financial income standards provisions, the Senate Judiciary Committee reiterated the legislative intent to protect Section 8 voucher holders, the intended positive impact of the bill on the elderly and disabled, and the intended benefits for “people trying to transition from welfare to work, and for working families with low or modest incomes.” *Id.* (under Section entitled “Prohibiting ‘source of income’ discrimination and certain financial or income standards in the rental of housing”).

#### **4. The August 31, 1999 (Final) Amendment to SB 1098**

While SB 1098 was undergoing the April and July amendments, groups in support of the bill wrote letters to the Assembly Judiciary Committee stating that the enactment of the bill would benefit Section 8 voucher holders. *See e.g.* Ex. A, Letter from Jericho, July 7, 1999 (“SB 1098 would, until 2005, prohibit a landlord from discriminating based on a tenant’s source of income”); Ex. B, Letter from Protection & Advocacy, Inc., July 7, 1999 (“This bill will provide protections to people on SSI by prohibiting housing discrimination based on source of income.”).

SB 1098 was amended again on August 31, 1999, in which the Senate Judiciary Committee once again recognized the housing problems for Section 8 voucher holders. Assem. Comm. on Judiciary, Analysis of Sen. Bill No. 1098 (1999-2000 Reg. Sess.) as amended August 31, 1999. The Committee repeated proponents’ statements that “at least 12 other

states prohibit ‘source of income’ or Section 8 discrimination.” *Id.* at 3. The bill was passed on September 7, 1999 and enacted on October 2, 1999. In signing the bill, Governor Davis stated that he “respect[s] the hard work of the author, the advocates, and the housing industry to reach some accommodations *for Section 8 tenants in tight housing markets.*” Ex. C, Letter from Governor Gray Davis, Oct. 2, 1999, 1, approving Sen. Bill No. 1098, STATS. 1999, CH. 590 (1999-2000 Reg. Sess.).

From this legislative history of FEHA’s “source of income” anti-discrimination provision, it is undeniable that the legislature intended this provision to prohibit discrimination against Section 8 voucher holders.

**B. The 2005 amendment to FEHA did not alter FEHA’s protection against Section 8 discrimination.**

Effective on January 1, 2005, the California FEHA was amended to “repeal the sunset date of various landlord-tenant provisions that were enacted within the past few years.”<sup>1</sup> Despite the legislative history describing that amendment as a “minor or technical change of landlord-tenant law,”<sup>2</sup> Respondents argue that the following addition to the definition of “source of income” excluded Section 8 vouchers: “For the purpose of this section, a landlord is not considered a representative of a tenant.” Cal. Gov’t. Code § 12955 (p)(1). Respondents contend that Section 8 housing assistance payments “are paid directly *to the landlord,*

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<sup>1</sup> Assem. Comm. on Judiciary, Analysis of Sen. Bill No. 1145 (2003-2004 Reg. Sess.), Hearing on June 15, 2004, 1.

<sup>2</sup> Assem. Comm. on Judiciary, Analysis of Sen. Bill No. 1145 (2003-2004 Reg. Sess.), Hearing on June 15, 2004, 1.

not to the tenant.” Respondents’ Br., 13 (emphasis in original). In other words, Respondents argue that the 2005 FEHA amendment created a substantive “exception” to the prohibition against source-of-income discrimination by excluding Section 8 housing assistance payments from the definition of “source of income.” Respondents’ construction of the 2005 FEHA amendment must fail because, in addition to the many reasons provided by Appellant (*see e.g.* Appellant’s Reply Br., 5-12), it is inconsistent with FEHA’s clear intent to provide broad protection against discrimination.

FEHA prohibits source-of-income discrimination in a variety of housing contexts. *See* Cal. Gov’t. Code § 12955, *et. seq.* For example,

- Section 12955(a) prohibits landlords from “harass[ing] any person because of ... source of income.” *Id.*
- Section 12955(j) prohibits anyone from “deny[ing] a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of ... source of income.” *Id.*
- Section 12955(l) prohibits anyone from using “restrictive covenants, zoning laws, denials of use permits ... that makes housing opportunities unavailable” to “discriminate ... because of ... source of income.” *Id.*

When considered in the above contexts, carving out Section 8 housing assistance payments from the definition of “source of income” would lead to the impermissible conclusion that the legislature intended to

exclude Section 8 households from the above protections. Indeed, Respondents’ construction of the 2005 FEHA amendment suggests that the legislature intended to facilitate a landlord’s attempts to discourage Section 8 tenants, by removing tenant protections from harassment, and allowing landlords the freedom to deny Section 8 households from multiple listing services and to discriminate against Section 8 households with the use of restrictive covenants, zoning laws or use permits. The Court should reject Respondents’ construction because no evidence in the legislative record suggests that the legislature intended such an untenable result. *See Barnes v. Chamberlain*, 147 Cal. App. 3d 762, 767 (1983) (“Exceptions to the general rule of a statute are to be strictly construed.”).

Further, because Respondents’ construction of the 2005 amendment would eliminate the certain protections for Section 8 households, the Court should not presume that the legislature intended such results implicitly. *See Grubb & Ellis Co. v. Bello*, 19 Cal. App. 4<sup>th</sup> 231, 239 (1993) (“[a] court should not presume the Legislature intended to legislate by implication.”) Instead, the legislature would have explicitly carved out Section 8 vouchers from FEHA if it had intended to. For example, Oregon has explicitly excluded Section 8 subsidies from its definition of “source of income.”<sup>3</sup> In addition, the California legislature has explicitly regulated housing subsidies before: the subsection right before the definition of “source of

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<sup>3</sup> Or. Rev. Stat. § 659A.421(1) (2007) (banning discrimination in real estate transactions based on source of income); § 659A.421(5) (specifically excluding federal rent subsidy payments under 42 U.S.C. §1437f—Section 8 housing assistance payments—from its definition of source of income).

income” regulates “government rent subsidy,” which clearly encompasses Section 8 housing payments.<sup>4</sup> California’s 2005 FEHA amendment, however, had no reference to housing subsidies or Section 8. Instead, it merely made clear that a landlord is not a “tenant’s representative.” Cal. Gov’t Code § 12955 (p)(1).

FEHA must be construed “in furtherance of its broad objectives to proscribe discrimination in the employment and housing settings.” *Sisemore*, 151 Cal. App. 4<sup>th</sup> at 1416. Respondents’ overbroad interpretation of the 2005 amendment must therefore fail, as it unduly limits FEHA’s protection against discrimination in the housing settings.

**C. Other states’ “source of income” anti-discrimination laws protect Section 8 voucher holders.**

California, as well as twelve other states, has passed fair housing statutes that include source of income as a protected class. Those states include Connecticut,<sup>5</sup> Maine,<sup>6</sup> Massachusetts,<sup>7</sup> Minnesota,<sup>8</sup> New Jersey,<sup>9</sup>

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<sup>4</sup> Cal. Gov’t. Code § 12955(o) “[It shall be unlawful] in instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.”

<sup>5</sup> Conn. Gen. Stat. Ann. § 46a-54c(a) (2009) (banning source of income discrimination in housing sales and rentals); Conn. Gen. Stat. Ann. § 46a-63(3) (“lawful source of income” includes “social security [SSI], ... housing assistance, child support, alimony or public ... or general assistance”)

<sup>6</sup> Me. Rev. Stat. Ann. tit. 5 § 4582 (2008) (banning discrimination in housing rentals against recipients of public assistance, including housing subsidies, primarily because of the individuals’ recipient status).

<sup>7</sup> Mass. Gen. Laws Ann. ch. 151B: § 4(10) (2009) (banning discrimination in credit or services of rental accommodations against recipients of public  
(Continued...)

North Dakota,<sup>10</sup> Oklahoma,<sup>11</sup> Oregon,<sup>12</sup> Utah,<sup>13</sup> Vermont,<sup>14</sup> the District of Columbia,<sup>15</sup> and Wisconsin.<sup>16</sup> Large municipalities that face serious housing shortages like Chicago,<sup>17</sup> New York,<sup>18</sup> San Francisco,<sup>19</sup> and

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(...Continued)

assistance, including housing subsidies, based on the individuals' recipient status or any requirement of such housing subsidies).

<sup>8</sup> Minn. Stat. Ann. § 363.03(2) (2008) (banning discrimination in housing rentals and sales based on "status with regard to public assistance"); § 363.01. Subd. 47 ("status with regard to public assistance" is defined to mean "the condition of ... being a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements.")

<sup>9</sup> N.J. Stat. Ann. §§ 10:5-4, 10:5-12 (2009) (banning discrimination in housing rentals based on lawful source of income or "the source of lawful income used for rental or mortgage payment.")

<sup>10</sup> N.D. Cent. Code § 14-0.25-07 (2009) (banning discrimination in real property transactions based on status with regard to public assistance).

<sup>11</sup> Okla. Stat. tit. 25, § 1452 (2008) (banning discrimination in housing against person with a valid source of income, which includes public assistance, if based on race, gender or other protected categories).

<sup>12</sup> Or. Rev. Stat. § 659A.421(1) (2007) (banning discrimination in real estate transactions based on source of income but specifically excluding federal rent subsidy payments under 42 U.S.C. § 1437f from its definition of source of income).

<sup>13</sup> Utah Code Ann. § 57-21-5 (2008) (banning discrimination in housing rentals and sales based on a person's status as recipient of public assistance).

<sup>14</sup> Vt. Stat. Ann., tit. 9 §§4501(6) (2009), 4503 (banning discrimination in housing rentals or sales based upon receipt of "public assistance," which is defined to include assistance "provided by federal, state or local government, including housing assistance.")

<sup>15</sup> D.C. Stat. Ann. § 1-2515(a) (1994) (banning discrimination in real property transactions based on source of income); D.C. Stat. Ann. § 1-2502 (2009) (banning owners of housing accommodations from refusing rent to those using a Section 8 voucher).

<sup>16</sup> Wis. Stat. Ann. §106.50, (1)(2) (2008) (banning discrimination in housing rentals and sales based on lawful source of income).

<sup>17</sup> Chicago Fair Housing Ordinance § 5-08-030 (2008) (banning discrimination in real estate rental or sale based on source of income).

Seattle<sup>20</sup> have also passed ordinances explicitly prohibiting discrimination against Section 8 voucher holders. Cities in California such as Corte Madera,<sup>21</sup> East Palo Alto,<sup>22</sup> and the City of Woodland<sup>23</sup> have done the same.

State judiciaries have furthermore held fair housing laws to apply to discrimination against Section 8 voucher holders. In *Commission on Human Rights and Opportunities v. Sullivan Assocs.*, 739 A.2d 238 (Conn. 1999), the Supreme Court of Connecticut held that the state’s statutory protection against discrimination on the basis of “source of income” included Section 8 voucher holders. *Id.* at 241. Similarly, the Supreme Court of New Jersey in *Franklin Tower One v. N.M.*, 725 A.2d 1104 (N.J.

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<sup>18</sup> New York, N.Y. Admin Code §8-107(5)(a)(1)-(2) (2008) (banning discrimination in selling or renting housing accommodation due to any lawful source of income of such person); NYC Admin Code 8-102(25) (2008) (“lawful source of income includes Section 8 vouchers”).

<sup>19</sup> S.F. Cal. Police Code, Art. 33, § 3304 of San Francisco Police Code (2009) (banning discrimination based on source of income, including rental and other related subsidies).

<sup>20</sup> Seattle, Wash., Code §14.08.040 (2008) (banning discrimination in residential sales and rentals”).

<sup>21</sup> Corte Madera, Cal., Ch. 5.30.020-5.30.040; Ordinance 858 §§ 2-3 (requiring landlords to accept Section 8 vouchers from existing tenants who qualify for Section 8 after moving in).

<sup>22</sup> E.P.A. Ordinance No. 248 (2000) (banning “source of income” discrimination; “source of income” means all lawful sources of income, rental assistance, non-profit administered benefit or subsidy programs, as well as participation in rental assistance programs or housing subsidy programs.)

<sup>23</sup> Woodland, Cal. Code § 6A-4-60, Ordinance No. 1393, § 3 (banning developments owners with affordability restrictions from discriminating against Section 8 voucher holders.)

1999), interpreted the phrase “source of lawful rent payment” to include Section 8 vouchers. *Id.* At 1112-1113.<sup>24</sup> A ruling that California FEHA prohibits discrimination against Section 8 voucher holders would therefore be consistent with other states’ interpretation of “source of income” and the trend of explicitly announcing a voucher holders’ rights under the law.

**III. RESPONDENT’S ARGUMENT THAT A LANDLORD’S PARTICIPATION IN A SECTION 8 PROGRAM IS “VOLUNTARY” INCORRECTLY INTERPRETS THE LAW.**

Enacted by Congress under the United States Housing Act of 1937, Section 8 provides that “the selection of the tenants shall be the function of the owner.” 42 U.S.C. § 1437f (d)(1)(A). Respondents erroneously rely on this language in the statute to argue that a landlord cannot be forced to participate in the Section 8 program because such participation is “voluntary.” Respondents’ Br., 10. Respondents misinterpret the law.

First, nothing in the language of the statute expressly provides that the program is “voluntary” for landlords. *See* 42 U.S.C. § 1437f(d)(1)(A); *see also e.g. Franklin Tower One*, 725 A.2d at 1113 (“nothing in the statute, however, mandates that landlord participation in the Section 8 program be voluntary.”) Second, Section 8 allows states to impose stricter standards than what the statute provides, thereby allowing states to make landlord participation in the Section 8 program mandatory. *See e.g.* 42 U.S.C. § 1437 (2009) (“it is the policy of the United States ... to vest in local public housing agencies the maximum amount of responsibility in the

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<sup>24</sup> The statute in *Franklin Tower One* has since been repealed; however, the law is consistently similar.

administration of their housing programs”); 24 C.F.R. § 982.1 (2009) (providing that the Section 8 voucher program is administered by state or local housing authorities); 24 C.F.R. § 982.53(d) (“Nothing in part 982 is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder.”). Third, other courts have recognized that Congress, in enacting the statute, intended to protect low-income tenants from source of income discrimination, and *not* to protect landlords from any alleged inconvenience associated with accepting Section 8 vouchers. *See e.g. Franklin Tower One*, 725 A.2d at 1113; *Montgomery County v. Glenmont Hills Assocs.*, 936 A.2d 325, 336 (Md. App. 2007).

**A. Section 8 does not explicitly state that landlord participation is “voluntary.”**

Respondents urge this Court to accept the premise that, because “the selection of the tenants shall be the function of the owner,” a landlord’s participation in the Section 8 program is entirely voluntary. Respondents’ Br., 10-11. It is not. Indeed, other jurisdictions have flatly rejected that argument. *See e.g. Franklin Tower One*, 725 A.2d at 1113; *Montgomery County*, 936 A.2d at 336; *Commission on Human Rights*, 739 A.2d at 246.

*Franklin Tower One* is one of the most cited cases analyzing whether the statutory provision that “the selection of the tenants shall be the function of the owner” confers voluntary landlord participation in the Section 8 program. In that case, a New Jersey landlord refused a Section 8 voucher from an existing tenant who had become eligible for the Section 8 assistance program during her tenancy. *Id.* at 1106-07. In its analysis, the

New Jersey Supreme Court agreed with the landlord-defendant that it was “undisputed” that “42 U.S.C. § 1437f does not mandate landlord participation in the Section 8 program.” *Id.* at 1113. On the other hand, the court recognized that the language of Section 8 merely allows landlords to evaluate the fitness of Section 8 tenants as they would any other prospective tenant; in other words, a landlord has the right to review a prospective Section 8 tenant’s references, background, employment and rental history, and to verify that the prospective tenant would otherwise be qualified to reside in the landlord’s building. *Id.* at 1114. Under this analysis, the court held that the New Jersey statute at issue (N.J. Stat. Ann. § 2A:42-100) prohibited landlords from refusing to accept a Section 8 voucher from an existing tenant. *Id.* at 1112.

In holding *against* the landlord, the New Jersey court emphasized that “in the case of an existing tenant, the landlord had the opportunity to screen the tenant and has decided to accept the tenant prior to that tenant’s becoming eligible for Section 8 assistance.” *Id.* Furthermore, there was no language in the law that implied that a landlord had the right to reject a tenant solely because the tenant had received government rental assistance, such as Section 8 vouchers. *Id.* at 1113. Other courts have adopted this reasoning. *See e.g. Commission on Human Rights*, 739 A.2d at 246; *Godinez v. Sullivan-Lackey*, 815 N.E. 2d 822, 828 (Ill. App. Ct. 2004); *Montgomery County*, 936 A.2d at 339.

Here, as in *Franklin Tower One*, Respondents had the opportunity to screen Appellant and decided to accept her tenancy prior to her becoming

eligible for Section 8 assistance. Indeed, Appellant has lived peacefully in Respondents' apartment for over 20 years. Respondents' Br., 4-5. Amici respectfully urge this Court to follow the precedent of *Franklin Tower One*: to find that nothing in the statute states that landlord participation in the Section 8 program is voluntary, and to hold that a landlord may not reject a Section 8 tenant based solely on that tenant's desire to rely upon a government-granted housing subsidy.

**B. Section 8 allows states to mandate landlord participation.**

In addition to the absence of explicit statutory language that landlord participation in a Section 8 program is "voluntary," the federal statute and Code of Federal Regulations expressly allows individual states to mandate landlord participation:

Nothing in part 982 (Section 8 Regulations) is intended to preempt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as Section 8 voucher-holder.

24 C.F.R. § 982.53(d) (the Federal Regulations governing Section 8).

The fact that states are explicitly allowed to "prohibit discrimination against a Section 8 voucher-holder" under the federal regulations further contradicts Respondents' argument that landlord participation in Section 8 is voluntary under federal law. FEHA falls under this rule because it prohibits a California landlord from "source of income" discrimination based solely upon a prospective tenant's Section 8 voucher holder status.

Again, *Franklin Tower One* provides useful legal precedent on this issue. There, the court had to determine whether a landlord who had never

before participated in the Section 8 program violated New Jersey’s “source of income” anti-discrimination statute when he refused to accept a voucher from an existing tenant who had subsequently become eligible for Section 8 assistance. The statute at issue, N.J. Stat. Ann. § 2A:42-100, provided: “No person, firm, or corporation...shall refuse to rent or lease any house or apartment to another person because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the house or apartment.” *Id.* There, as here, the issue was whether the state housing statute encompassed Section 8 payments and, if so, whether it was preempted by the federal legislation. *Franklin Tower One* at 1106.

In its analysis, the New Jersey court analyzed both the purpose of its own statute—“to prohibit a landlord from refusing to rent to a person merely because of objections to the source of a person’s lawful income”—and the purpose of the Section 8 program:

The plain language of the statute, the legislative history, and our state’s important policy of providing protection for low-income tenants all support the conclusion that the statute encompasses Section 8 vouchers. We find it highly unlikely that the Legislature, having demonstrated its strong commitment to the protection of tenants from unjustifiable evictions, would have intended to permit the eviction of an exemplary tenant solely for the reason that the federal government has found her qualified to participate in the Section 8 housing program pursuant to which the government pays a portion of her rent.

*Id.* at 1112.

Similarly, in *Montgomery County*, a Maryland landlord’s refusal to participate in the Section 8 program was found to have violated a county ordinance that made it unlawful for a landlord “to refuse to lease or rent

housing to any person based on based on ‘source of income’” *Id.*, 936 A.2d at 342. Likewise, in *Godinez*, a Chicago landlord’s refusal to accept Section 8 tenants on the grounds that he “did not want to be audited” violated the Chicago Fair Housing Ordinance, which made it unlawful for a landlord to discriminate based upon “source of income” of a prospective tenant. *Id.*, 815 N.E.2d at 825. In both *Montgomery County* and in *Godinez*, the courts found that, although local ordinances did not explicitly define “source of income” to include Section 8 vouchers, such vouchers were logically and reasonably included in the definition; both courts, therefore, rejected the landlords’ arguments that participation in the Section 8 program was “voluntary.”

A state’s ability to mandate landlord participation undercuts Respondents’ argument that Section 8 is a purely voluntary program. This point was thoroughly developed under similar facts in *Commission on Human Rights*, 739 A.2d at 246. In that case, a landlord who never before participated in the Section 8 program had a policy that required prospective tenants to provide two months’ rent as a security deposit, which effectively precluded prospective Section 8 voucher holders from renting in his building. *Id.* at 242-43. Under Connecticut’s General Statutes §§ 46-64c, however, a landlord could not refuse to rent to a prospective low-income tenant who would pay the stipulated rent from a lawful source of income, such as rental assistance under Section 8, solely on source of income grounds. *Id.* at 241. As a defense, the landlord argued that if General Statutes §§ 46a-64c required landlords to accept tenants whose income

included Section 8 assistance, then its provisions were preempted by the Federal Section 8 statute itself (42 U.S.C. § 1437f), because the language of the federal statute made participation in the program voluntary.<sup>25</sup> After a preemption analysis, the Connecticut court rejected that argument and concluded that, because the state statute followed the intent of the federal program, and landlords could follow both the state and federal programs, the landlord could not discriminate against Section 8 voucher holders by refusing to participate in the Section 8 program:

We deem it to be especially significant that a mandatory state program for low income housing does not conflict with the purposes and objective of 42 U.S.C. § 1437f. The federal statute was enacted “for 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).... Requiring landlords to extend rental opportunities to otherwise eligible section 8 recipients, in accordance with the terms of section 8 leases, is not an obstacle to the congressional agenda but serves instead to advance its remedial purpose. Finally, it is not impossible for landlords to obey both 42 U.S.C. § 1437f and § 46a-64c, because nothing in the text of 42 U.S.C. § 1437f requires participation to be voluntary.

*Commission on Human Rights*, 739 A.2d at 246.

Respondents nonetheless contend that the federal statute does not allow a landlord to be forced into participating in the Section 8 program “against the landlord’s wishes.” Respondent’s’ Br., 10. Yet, although the Section 8 program does not mandate landlord participation, “the regulation

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<sup>25</sup> Although Respondents do not raise the issue of preemption *per se*, their argument is similar to the landlord-defendant’s arguments in *Commission on Human Rights*, insofar as Respondents argue that landlord participation in the Section 8 program is voluntary under the federal statute.

gives the *states* the power to make landlord participation mandatory.” *Commission on Human Rights*, 739 A.2d at 246 (emphasis added). Amici respectfully submit that here, as in *Franklin Tower One, Montgomery County, Godinez*, and *Commission on Human Rights*, California’s FEHA mandates landlord participation insofar as it expressly prohibits discrimination in housing based upon “source of income,” which, as explained above, should be deemed to include Section 8 vouchers.<sup>26</sup>

**C. The California Disabled Persons Act (“DPA”), similar to the Federal Fair Housing Amendments Act (“FHAA”), requires mandatory acceptance of Section 8 vouchers if it is a “reasonable accommodation” under the law.**

Even if a state or local housing statute does not expressly require landlords to participate in a Section 8 program, if *non*-participation would violate another state statute or other regulation, then a landlord must accept Section 8 vouchers. *Franklin Tower One*, 725 A.2d at 1112; *Montgomery*

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<sup>26</sup> Furthermore, state statutes or city ordinances may also prevent a landlord from withdrawing from the Section 8 program. For example, in *Rosario v. Diagonal Realty, LLC*, 872 N.E.2d 860 (N.Y. Ct. App. 2007), when New York City landlords who participated in the Section 8 program tried to discontinue their participation, the court held that a New York City tax abatement law, which protected tenants from discrimination based on Section 8 status, and New York state rent stabilization laws, which protected a rent stabilized tenant’s rights to a renewal lease on the same terms and conditions as the expired lease, prevented the landlords from withdrawing from the Section 8 program. *Id.* at 863. In its reasoning, the court held that “it is not impossible to comply with both federal and state law in this area . . . . The effectiveness of 42 USC § 1437f--as amended in 1998--in encouraging *free-market* landlords to participate in the Section 8 program is unaffected by the state regulations.” *Id.* at 865 (emphasis added).

*County*, 936 A.2d at 342; *Godinez*, 815 N.E.2d at 828; *Rosario*, 872 N.E.2d at 863. Here, Appellant argues that Respondents’ refusal to accept her Section 8 voucher is a violation of Section 54.1(b)(3)(B) of the California Disabled Person’s Act (“DPA”).

Under the California Disabled Persons Act, “[i]ndividuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state.” Cal. Civ. Code § 54.1(b)(3)(B). The DPA provides:

Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to make a reasonable accommodation in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises.

Cal. Civ. Code § 54.1(b)(3)(B).

Whether a landlord’s refusal to accept a Section 8 voucher as a “reasonable accommodation” under the DPA unlawfully interferes with a disabled person’s “equal opportunity to use and enjoy the rental premises” is an issue of first impression. Guidance may be found, however, in the Ninth Circuit, which has decided factually similar cases under the Federal Fair Housing Amendments Act of 1988 (“FHAA”). In those cases, the Ninth Circuit held that the imposition of a financial burden on a disabled person by the implementation of unreasonable policies may unlawfully interfere with that tenant’s “equal opportunity to use and enjoy the rental premises,” in violation of the FHAA, and thus requires reasonable

accommodation. *See e.g. McGary v. City of Portland*, 386 F.3d 1259, 1263 (9<sup>th</sup> Cir. 2004) (“the imposition of a financial burden on a disabled individual can interfere with the “use and enjoyment” of his property under the FHAA.”); *Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1155 (9<sup>th</sup> Cir. 2003) (“Imposition of burdensome policies, including financial policies, can interfere with disabled persons’ right to the use and enjoyment of their dwellings thus necessitating accommodation.”).

Similar to California’s DPA, the Federal FHAA provides, *inter alia*, that it is unlawful to discriminate against disabled persons in the rental of a dwelling because of a renter’s handicap. 42 U.S.C. § 3604(f)(1)(2009). The FHAA’s definition of prohibited discrimination encompasses “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B). The Ninth Circuit has repeatedly interpreted this language as imposing an affirmative duty on landlords and public agencies to reasonably accommodate the needs of disabled individuals. *See e.g. McGary*, 386 F.3d at 1261; *Giebeler*, 343 F.3d at 1146-47.

For example, in *Giebeler*, a man diagnosed with AIDS wanted to rent an apartment closer to his mother for assistance with daily tasks. Although he was receiving Social Security and other government subsidies, he could not afford the apartment, so his mother offered to co-sign the lease. The rental management company, however, had a policy against co-signers and refused to rent the apartment to the plaintiff. The Ninth Circuit

held that the plaintiff's "modest request" to allow his mother to co-sign the lease afforded him "the opportunity to live in a suitable dwelling despite his disability" and was therefore a request for reasonable accommodation within the meaning of the FHAA. *Giebeler*, 343 F.3d at 1159.

An accommodation is reasonable under the FHAA when it imposes no fundamental alteration in the nature of the program or any undue financial or administrative burdens on the landlord. *Giebeler*, 343 F.3d at 1157. Respondents, however, erroneously rely on a Second Circuit case, *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2<sup>nd</sup> Cir. 1998), to argue that acceptance of a Section 8 voucher would be an unreasonable burden under the FHAA because it would force landlords to participate in the Section 8 program, which Respondents contend is "voluntary." Respondents' Br. 21-24. However, in *Giebeler*, the Ninth Circuit rejected *Salute* as applicable legal precedent, based upon the Supreme Court's subsequent holding in *U.S. Airways v. Barnett*, 122 S.Ct. 1516, 1519 (2002). *Geibeler*, 343 F.3d at 1149-1153.

In *Barnett*, an airline cargo handler requested, as an accommodation for his back injuries, an exception to the company's seniority system so that he could transfer to a less physically demanding position. While holding that a proposed accommodation that conflicts with the seniority system's rules would ordinarily be "unreasonable," the Supreme Court clarified that an accommodation may sometimes require preferring disabled individuals over others who are otherwise similarly situated but who are not disabled. *Id.* at 1521. Second, accommodations may adjust for the *practical impact*

of a disability, not only for the immediate manifestations of the physical or mental impairment giving rise to the disability. *Id.*

The *Giebeler* court distinguished *Salute* because it contradicts both principles embraced by *Barnett*. *Giebeler*, 343 F.3d at 1154. The Ninth Circuit found that *Salute* unnecessarily required that accommodations be “framed by the nature of the particular handicap” because “the FHAA does not elevate the rights of the handicapped poor over the rights of the nonhandicapped poor.” *Giebeler*, at 1154 (quoting *Salute*, 136 F.3d at 301, 302). Respondents’ reliance on *Salute* is therefore misplaced.

Respondents argue that they have a neutral policy of no longer accepting Section 8 vouchers, even though they already participate in the Section 8 program in another one of their apartment complexes. Respondents’ Br., 6. Yet, the Ninth Circuit has made it clear that the FHAA “imposes an affirmative duty upon landlords reasonably to accommodate needs of handicapped persons,” *United States v. California Mobile Home Park Mgt. Co.*, 29 F.3d 1413, 1416 (9<sup>th</sup> Cir. 1994). “Reasonable accommodation” applies not only to physical accommodations but to the administrative policies governing rentals. *Giebeler*, 343 F.3d at 1147. Thus, an exception must be made to a neutral policy of not accepting new Section 8 voucher tenants if it is a reasonable accommodation under the FHAA.

Other Ninth Circuit cases hold that when a neutral policy interferes with a disabled tenant’s “use and enjoyment” of his rented property, a reasonable accommodation must be made. In *California Mobile Home*

*Park Management*, for example, the Ninth Circuit held that landlords may be required to assume reasonable financial burdens in accommodating handicapped residents. *Id.*, 29 F.3d at 1418. There, a California landlord refused to waive its policy of charging guest parking fees for a handicapped tenant's home health care aide. *Id.*, at 1414. In reaching its holding, the court reasoned that the history of the FHAA established that "Congress anticipated that landlords would have to shoulder certain costs... so long as they are not unduly burdensome." *Id.* at 1416.

Similarly, in *McGary*, a man diagnosed with AIDS could not comply with a city ordinance to clean his yard, and the city charged him for its cleaning services, disregarding his request to accommodate his need for additional time to clean his own yard. *Id.*, 386 F.3d at 1261. The court held that the city's failure to make the requested accommodation, which was necessary to afford the plaintiff an equal opportunity to use and enjoy his home, stated a cause of action under the FHAA. In explaining its reasoning, the court "explicitly joined other circuits in recognizing that exceptions to neutral policies may be mandated by the FHAA where disabled persons' disability-linked needs for alterations to the policies are essentially financial in nature." *Id.* at 1263.

Finally, other jurisdictions have applied Ninth Circuit law to hold that non-acceptance of a Section 8 voucher from a disabled tenant may violate the FHAA. For example, in *Freeland v. Sisao LLC*, No. CV-07-3741, 2008 U.S. Dist. LEXIS 26184 (E.D.N.Y., Apr. 1, 2008), an existing tenant who could not work due to her disabilities became eligible for a

Section 8 voucher, but the landlord refused to accept it. The New York district court applied *Giebeler*, holding that a disability discrimination claim is stated under the FHAA when a landlord refuses to accommodate an existing tenant's request that the landlord provide her with an exception to its policy of not accepting Section 8 vouchers. *Freeland*, 2008 U.S. Dist. LEXIS 26184 at 14.

Here, Amici respectfully urge the Court to follow Ninth Circuit precedent, and hold that a landlord's imposition of a financial burden on a disabled tenant may interfere with that tenant's use and enjoyment of the rental property, thus violating the DPA. Like the plaintiff in *Giebeler*, Appellant is unemployed due to her disabilities and therefore, without the benefit of her government granted housing subsidy, she has insufficient income to qualify for her apartment. Respondents' refusal to accept her Section 8 voucher imposes an undue financial burden on her, requiring her to seek charitable assistance from others in order to meet her rent. Appellant's Opening Br., 45. Respondents' alleged "neutral policy" of no longer accepting Section 8 vouchers therefore denies her an equal opportunity to use and enjoy her rental property as an independent living situation. Moreover, the burden on Respondents to accept Appellant's Section 8 voucher is not unreasonable, because the Respondents already participate in the Section 8 program, and would receive more rent from Appellant if her vouchers were accepted than if Appellant remained in her rent-controlled apartment without using her Section 8 vouchers. *Plaintiff's*

*Opp'n to Motion of Defendants' for Summary Judgment of First Amended Complaint*, 11, fn.3, Case No. BC313345, filed Jan. 25, 2006.

Respondents' refusal to accept Appellant's Section 8 voucher in partial payment for rent imposes a financial burden on Appellant, who is disabled, which unreasonably interferes with her use and enjoyment of her rental premises in violation of California's DPA. Amici therefore respectfully request that this Court extend Ninth Circuit precedent concerning the FHAA, to find that the California Disabled Persons Act, similar to the Federal Fair Housing Amendments Act, requires mandatory acceptance of Section 8 vouchers if it is a "reasonable accommodation" under the law.

**D. Congressional intent was to protect low-income tenants from discrimination—not to protect landlords from any alleged inconvenience associated with Section 8 participation.**

Finally, Respondents advocate an interpretation of the law that ignores Congress' intent in enacting Section 8 of United States Housing Act of 1937, which was to assist low-income families to secure affordable housing. This Congressional intent has not been overlooked in other jurisdictions. *See e.g. Franklin Tower One*, 725 A.2d 1104 at 1113 (whether Section 8 is voluntary for landlords is not "at the heart of the federal scheme"); *Montgomery County*, 936 A.2d at 338 (*quoting Attorney General v. Brown*, 511 N.E.2d 1103, 1106 (Mass. 1987)) (same).

For example, in *Montgomery County*, a Connecticut landlord who participated in other housing programs for low-income tenants, but refused to lease to Section 8 voucher holders, argued that a county ordinance

mandating participation in the Section 8 program conflicted with and was therefore preempted by “the ‘methodology’ chosen by Congress – that of voluntary participation.” The Connecticut court rejected that argument:

That argument hinges, however, on the assumption that, because the Federal law does not itself mandate participation by landlords, voluntary participation somehow lies at the heart of the Congressional purpose – that it was more important to Congress that the States and counties protect the right of landlords not to participate in HCVP than that they promote the declared goal of enlarging the stock of private housing available to low-income families by prohibiting discrimination based on Section 8 vouchers. That assumption is belied by the Federal law itself and unsupported by logic, any rational notion of public policy and existing case law.

936 A.2d at 336. Furthermore, the court noted that there was “nothing in any of the relevant Federal statutes even to indicate, much less establish, that voluntary participation by landlords was an important Congressional objective.” *Id.* Rather, the court found that, in enacting the Section 8 Program, the intent of Congress was to assist state and local governments in increasing affordable housing for low-income families; it was not the intent of Congress to assist landlords in picking and choosing their tenants, but to protect low-income families in securing housing. *Id.*

Amici therefore respectfully urge this Court to find Respondents’ argument—that landlord participation in the Section 8 voucher program is voluntary—to be without merit and contradicted by the language of the statute and congressional intent.

**IV. A RULING THAT LANDLORDS MAY DISCRIMINATE AGAINST SECTION 8 VOUCHER HOLDERS WOULD WORSEN AN ALREADY DIRE HOUSING SITUATION FOR**

## **CALIFORNIA’S DISABLED, ELDERLY, MINORITIES AND LOW-INCOME FAMILIES.**

In addition to the above legal precedent and clear legislative intent in enacting California FEHA and Section 8, numerous policy reasons favor a reversal of the lower court here. Most notably, several recent studies have shown that because affordable housing is limited, low-income families (such as Section 8 households) are priced out of the desirable housing market, as are the disabled, elderly, and other minority groups who particularly suffer from the housing shortage because they over-represent Section 8 tenants. Thus, if a landlords’ discrimination against Section 8 voucher holders were permitted—by a ruling in favor of Respondents—the consequences would disproportionately hurt California’s most vulnerable residents.

### **A. Section 8 voucher holders already have limited housing opportunities**

#### **1. Two nationwide HUD studies, and studies in large metropolitan areas, show that a housing shortage has existed since 2001.**

Section 8 vouchers are only useful where there is affordable housing available. Affordable housing for the purpose of Section 8 includes units at or below fair market rent (“FMR”) for the area. Yet, two nationwide studies conducted by the U.S. Department of Housing and Urban Development (“HUD”) in 2001 and 2003, as well as recent studies in major metropolitan areas, found that available housing units within Section 8 guidelines have been extremely limited since at least 2001.

First, the 2003 HUD study found that only one-quarter of all occupied housing in the 50 largest metropolitan areas are within the Section 8 guidelines.<sup>27</sup> In other words, three-quarters of all housing units are unreachable by low-income families even with the assistance of Section 8 vouchers. Second, among housing units at or below FMR, most of them are not available. The HUD considers a “tight” housing market to be a 4% vacancy rate.<sup>28</sup> In the 2001 HUD study, the greater Los Angeles area, where the Appellant is located, and four other municipalities in California were considered “tight” or “extremely tight” housing markets.<sup>29</sup> The housing shortage remains a serious problem in other cities. For example, Chicago’s vacancy rate in 1999 was 4.2%.<sup>30</sup> And in New York City, at least one study estimates that almost 20% of the apartments within New

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<sup>27</sup> U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Housing Choice Voucher Location Patterns: Implications For Participants And Neighborhood Welfare*, 8 (Jan. 2003), available at <http://www.huduser.org/publications/hsgfin/location/paper.html> (hereinafter “*Location Patterns*”).

<sup>28</sup> See U.S. Department of Housing and Urban Development, *Study on Section 8 Voucher Success Rates, Volume I, Quantitative Study of Success Rates in Metropolitan Areas*, ¶1-13 (Nov. 2001), available at <http://www.huduser.org/publications/pubasst/sec8success.html> (hereinafter “*Utilization Rate*”).

<sup>29</sup> See *Utilization Rate*, Exhibit C-1 (Los Angeles County, the greater Los Angeles area, and Sacramento county are considered to be “tight” housing markets, and San Buenaventura, San Diego, and Alameda counties are considered to be “extremely tight” housing markets.)

<sup>30</sup> Metropolitan Planning Council, *For Rent: Housing Options in the Chicago Region*, 11 (Nov. 1999), available at <http://www.metroplanning.org/cmimages/RRMA.pdf>.

York's FMR would need to be vacated in order for all voucher recipients to find housing.<sup>31</sup> The actual vacancy rate is 3.09%.<sup>32</sup>

In Santa Monica, where Appellant lives, the local public housing authority ("PHA") found that Section 8 program participants in 2009 continue to "struggle to secure housing units in Santa Monica where the marketplace continues to be robust. The demand for affordable housing in Santa Monica continues to outpace the supply."<sup>33</sup> These studies show a consistent scheme of limited affordable housing faced by Section 8 voucher holders across the country since at least 2001.

## **2. Landlords' refusals to accept Section 8 tenants result in low success rates of Section 8 programs.**

The already dire housing situation further worsens when landlords refuse to accept Section 8 vouchers in partial payment for rent, solely on the basis of the potential tenant's status as recipient of government subsidies. According to a 2004 study by the U.S. Census Bureau, over 40% of property owners and managers refuse to accept Section 8 vouchers.<sup>34</sup>

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<sup>31</sup> New York Association of Community Organizations for Reform Now, *Housing for Everyone: New York City, Section 8, and Source of Income Discrimination*, 7 (Apr. 2007), available at [http://www.acorn.org/fileadmin/Office\\_Storage/USA/New\\_York\\_share/Source\\_of\\_Income\\_Report.pdf](http://www.acorn.org/fileadmin/Office_Storage/USA/New_York_share/Source_of_Income_Report.pdf) (hereinafter "ACORN").

<sup>32</sup> ACORN, 7.

<sup>33</sup> City of Santa Monica Housing Authority, *PHA Plans, 5 Year Plan for Fiscal Year 2008-09 – 2003-14, Annual Plan for Fiscal Year 2009-2010* 12, available at <http://www01.smgov.net/housing/HA5-yr-AnnualPlan2009.pdf> (last visited June 5, 2009) (hereinafter "Santa Monica 2010 Plan")

<sup>34</sup> See Property Owners and Managers Survey, *Multi Family Properties: Reasons for Not Accepting Section 8 Tenants—Table 54, U.S. Census* (Continued...)

Local studies confirm the seriousness of the problem. In the greater Chicago area, for example, a 2002 study showed that nearly half of all landlords explicitly refused to accept Section 8 vouchers from investigators posing as prospective tenants.<sup>35</sup> An additional 22% of sampled landlords equivocated about accepting the Section 8 vouchers.<sup>36</sup> Because of landlords' discrimination, the study concluded, only 30% of available units in Chicago that qualify under Section 8 guidelines are actually available for rent to voucher holders.<sup>37</sup>

A landlord's discrimination against Section 8 voucher holders directly affects the voucher holder's success. In Los Angeles, with the second largest Section 8 program in the nation, the success rate of Section 8 vouchers in 2000 was less than 50%--a full twenty percentage points lower than the national success rate (69%).<sup>38</sup> In other words, over half of Section 8 voucher holders in Los Angeles were unable to find acceptable housing within the program's time limit. In Appellant's Santa Monica, Section 8

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*Bureau, Housing and Household Economics Statistics Division*, 1 (last revised Dec. 17, 2004). Available at <http://www.census.gov/hhes/www/housing/poms/multifam/mfsect8/mftab54.html>.

<sup>35</sup> Lawyer's Committee for Better Housing, Inc., *Locked Out: Barriers to Choice for Housing Voucher Holders*, 9 (Apr. 2002, available at <http://lcbh.org/images/2008/10/housing-voucher-barriers.pdf> (hereinafter "Locked Out") ("success rate" defined as the proportion of families issued a voucher who succeed in leasing a unit within the time frame provided by the program).

<sup>36</sup> *Locked Out*, 10.

<sup>37</sup> *Locked Out*, 10.

<sup>38</sup> *Utilization Rate*, ¶2-3.

program participants also “struggle to secure housing units.”<sup>39</sup> The low success rates of Section 8 vouchers are a manifestation of the obstacles that landlords put up to lock out Section 8 households from the affordable housing market.

**3. The net loss of public housing units, combined with the difficulty of obtaining and using the Section 8 vouchers, has led to a housing shortage, contributing to the homeless epidemic.**

The Section 8 voucher program was created, in part, to address the problems associated with public housing tenements, which had resulted in racially segregated, high-crime and high-poverty zones.<sup>40</sup> The voucher’s mobility and flexibility earned wide praise: low-income tenants were afforded an opportunity to enter the private market to find housing of their choices, provided that the housing complied with the program’s requirements. Demolition of public housing units accompanied the direction of more federal funding to the voucher program. The Section 8 voucher program grew dramatically, eventually becoming one of the primary subsidized housing programs in the country.

The Section 8 program failed, however, to meet the demand for affordable housing. Today, most Section 8 wait lists are long. Many are closed. In 2000, the national average time on the wait list was 28 months.<sup>41</sup>

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<sup>39</sup> *Santa Monica 2010 Plan*, 12.

<sup>40</sup> *See Voucher Demonstration in the Housing and Urban-Rural Recovery Act of 1983*, Pub. L. No. 98-181, 97 stat. 1153 (1983).

<sup>41</sup> U.S. Department of Housing and Urban Development, *Section 8 Tenant-Based Housing Assistance, A Look Back After 30 Years*, 13 (Mar. 2000),  
(Continued...)

The wait list for Santa Monica Housing Assistance, which provided Appellant with her Section 8 voucher, has been *closed* for the past 30 months.<sup>42</sup> It opened briefly between July 24 and August 14, 2006 but closed again due to overwhelming requests.<sup>43</sup> That wait list has 3,716 families.<sup>44</sup> Santa Monica's situation is endemic throughout the country. In New York City and Washington, D.C., the wait for a Section 8 voucher is eight years.<sup>45</sup> In Los Angeles it is ten years.<sup>46</sup>

Public housing and Section 8 vouchers are the last resort for low-income families. When housing is demolished and a family cannot find suitable housing due to discrimination, they have few remaining options: live on the streets or in the shelters, or double up with relatives. Thus, discrimination against Section 8 voucher holders not only perpetuates the concentration of poverty but can create further serious problems, including homelessness.

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available at <http://www.huduser.org/publications/pubasst/look.html> (hereinafter "*30 Years*").

<sup>42</sup> City of Santa Monica, *Adopted Consolidated Plan 2005-2010 and One Year Action Plan Fiscal Year 2005/06*, ¶3.31 (June 2005), available at [http://www01.smgov.net/hsd/NewHSDPages\\_bak/pdfs/ConPlan%2005-10.pdf](http://www01.smgov.net/hsd/NewHSDPages_bak/pdfs/ConPlan%2005-10.pdf) (hereinafter "*Santa Monica 5 Year Plan.*")

<sup>43</sup> *Santa Monica 2010 Plan*, 8.

<sup>44</sup> *Santa Monica 2010 Plan*, 7

<sup>45</sup> *30 Year*, 13.

<sup>46</sup> *30 Year*, 13.

**B. Rejecting Section 8 voucher holders on “source of income” grounds discriminates against the elderly, disabled and minorities, which is prohibited by FEHA**

Residents assisted by the Santa Monica Housing Authority today are “extremely poor, elderly and disabled.”<sup>47</sup> Out of all 1,082 housing assistance vouchers, the Santa Monica Housing Authority assigns 878 (67%) vouchers to the elderly, the disabled or the handicapped households.<sup>48</sup>

The 2001 HUD study shows similar households among Section 8 voucher holders nationwide. Section 8 households tend to be poor families with children. Three-quarters of households holding vouchers have to be “extremely low-income families,” defined as families with incomes at or below 30% of the local median for their household size.<sup>49</sup> Four percent of voucher holders had no income.<sup>50</sup> Nearly three-quarters of Section 8 households had children.<sup>51</sup>

The 2001 HUD study also found that Section 8 households tend to be minorities. More than half (56%) of all voucher holders are black.<sup>52</sup>

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<sup>47</sup> *Santa Monica 2010 Plan*, 11.

<sup>48</sup> *Santa Monica 5 Year Plan*, ¶3.31.

<sup>49</sup> *Utilization Rate*, ¶3-8; see also U.S. Department of Housing and Urban Development, *Voucher Program Guidebook*, ¶4-19 (Apr. 2001), available at <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>., (hereinafter “*Guidebook*”)

<sup>50</sup> *Utilization Rate*, ¶3-8.

<sup>51</sup> *Utilization Rate*, ¶3-10.

<sup>52</sup> See Ex. E (*Utilization Rate*, ¶1-9, Ex. 1-3).

Hispanics make up 22% of the sample.<sup>53</sup> These households are also over-represented by the elderly and the disabled; households with disabled members constitute 22% of voucher households.<sup>54</sup>

Consistent with the 2001 HUD study, minority populations are over-represented in households assisted by Santa Monica's PHA.<sup>55</sup> Forty-three percent of people currently assisted by the Santa Monica PHA are minorities, versus 28% of Santa Monica residents.<sup>56</sup> Blacks comprise 4% of the city's population but 24% of households assisted by Santa Monica PHA.<sup>57</sup> Hispanics comprise 13% of the city's population but represent 18% of those assisted by the Santa Monica PHA.<sup>58</sup>

California FEHA explicitly prohibits discrimination based on race, color, source of income, or disability. Cal. Gov't. Code § 12955(a). Importantly, studies have suggested that landlords discriminate against Section 8 voucher holders as a pretext for discriminating minorities.<sup>59</sup> The statistics discussed above provide compelling evidence that a landlord's discrimination against Section 8 voucher holders disproportionately hurts the elderly, the disabled, and minorities, all prohibited by the FEHA.

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<sup>53</sup> See Ex. E (*Utilization Rate*, ¶1-9, Ex. 1-3).

<sup>54</sup> See Ex. E (*Utilization Rate*, ¶1-9, Ex. 1-3).

<sup>55</sup> *Santa Monica 2010 Plan*, 11.

<sup>56</sup> *Santa Monica 2010 Plan*, 11.

<sup>57</sup> *Santa Monica 2010 Plan*, 11.

<sup>58</sup> *Santa Monica 2010 Plan*, 11.

<sup>59</sup> *Locked Out*, 8 (showed that even without physical encounter with the landlords, minority callers posing as Section 8 tenants received significantly higher rejection rates than white callers).

### **C. Section 8 discrimination is statistically pervasive**

For those who finally receive a Section 8 voucher after years of waiting, finding a suitable housing unit with a landlord willing to accept the voucher is a long and frustrating process. Studies confirm that Section 8 voucher households face pervasive discrimination. A landlord's discrimination, combined with housing shortages, results in many vouchers being wasted before their users can find an acceptable place to live.

#### **1. HUD statistics show many Section 8 households are not able to use their vouchers before the expiration date.**

##### **a. Low voucher success rate**

Many families that obtained a Section 8 voucher have difficulty finding a landlord willing to accept it.<sup>60</sup> Local PHAs generally limit search time to between 60 and 120 days,<sup>61</sup> after which the voucher expires. This expiration severely disadvantages the voucher holder, who must be placed back at the end of the wait list (often years long), *if* it is not closed.

In Los Angeles, the 2001 HUD study found that the search was so frustrating that 80% of households gave up their search by the end of the third month.<sup>62</sup> Among metropolitan areas, the success rate significantly decreases in tight and very tight housing markets.<sup>63</sup> Most California

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<sup>60</sup> *Locked Out*, 10-11.

<sup>61</sup> *Utilization Rate*, ¶2-5.

<sup>62</sup> *Utilization Rate*, ¶2-6.

<sup>63</sup> *Utilization Rate*, ¶3-14 (the tightness of a market was determined based on estimates of vacancy rates, PHA assessments of the local market, local fair market rents and payment standards).

metropolitan areas included in the 2001 HUD study, such as Los Angeles County, the greater Los Angeles area, Sacramento County, San Buenaventura County, San Diego County, and Alameda County, were considered tight or extremely tight housing markets.<sup>64</sup>

**b. Long time for Section 8 voucher holder to find housing**

The long search time that Section 8 voucher holders need to lease a unit is consistent with the voucher program's low success rate. Nationally, successful households in 2001 needed 83 days to find an acceptable unit.<sup>65</sup> Nearly one-quarter of successful households required an extension and took more than 120 days to lease a unit.<sup>66</sup> Not surprisingly, the elderly, the disabled, and minorities, all of whom constitute the majority of voucher holders, require more time to find affordable housing.<sup>67</sup> Search times are also significantly longer for all voucher holders in tight and very tight housing markets.<sup>68</sup> Today, the situation is still grim; affordable housing remains scarce, and the number of families and individuals who are waiting to receive Section 8 vouchers continues to increase.

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<sup>64</sup> *Utilization Rate*, Exhibit. C-3.

<sup>65</sup> *Utilization Rate*, ¶2-5.

<sup>66</sup> *Utilization Rate*, ¶2-5.

<sup>67</sup> *Utilization Rate*, ¶3-2 (elder is defined as older than 62 years old); *see also Id.*, ¶3-8.

<sup>68</sup> *Utilization Rate*, ¶3-16.

**2. Lawyers' Committee for Better Housing in Chicago and ACORN in New York found pervasive discrimination against Section 8 voucher holders.**

Two studies exemplify the pervasiveness of Section 8 discrimination. In the first study, the Lawyer's Committee for Better Housing ("LCBH") of Chicago recruited social workers posing as potential renters to investigate source of income and racial discrimination. Both white and minority social workers posed as either voucher holders or non-voucher holders and called landlords to inquire about their listed properties. In the second study, the New York Association of Community Organizations for Reform Now ("ACORN") asked social workers posing as potential tenants to call owners of the properties listed on Yellowpages.com, Craigslist, *The Daily News*, and *The New York Times* to inquire about their acceptance of Section 8 vouchers.<sup>69</sup>

The LCBH study found that Section 8 voucher holders "face[d] multi-level barriers of discrimination based on source of income, race, and ethnicity."<sup>70</sup> The discrimination was most severe in "exception rent areas," which are wealthier neighborhoods that are allowed an increased rental subsidy.<sup>71</sup> In these areas, 55% of landlords refused to accept Section 8 vouchers as suitable rent payment.<sup>72</sup> An additional 16% of sampled landlords equivocated in accepting the voucher as a means of rental

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<sup>69</sup> *ACORN*, 8.

<sup>70</sup> *Locked Out*, 10.

<sup>71</sup> *Locked Out*, 5.

<sup>72</sup> *Locked Out*, 10.

payment.<sup>73</sup> In the general Chicago area, 46% of landlords refused to accept Section 8 vouchers and 22% of landlords equivocated to accepting the voucher.<sup>74</sup> Together, about 70% of all landlords would not affirmatively accept Section 8 vouchers.

The LCBH study also found pervasive racial discrimination in the process of house searching. Even without physical encounter with landlords, minority follow-up callers were more likely to be refused tenancy by landlords who had previously agreed to accept Section 8 vouchers from white follow-up callers.<sup>75</sup> Thus, based merely on a caller's accent, the LCBH found that discrimination could occur at the early stages of the housing search.<sup>76</sup>

The ACORN study confirmed the LCBH's findings: landlord discrimination against Section 8 households remained severe in 2007. Only about 20% of the valid numbers on Yellowpages.com (which did not allow searches within a specific rent range) had apartments available within the Section 8 range.<sup>77</sup> Among those, only 43% were willing to take Section 8 vouchers,<sup>78</sup> and almost half of the landlords willing to accept Section 8 vouchers had properties concentrated in one area, the Bronx.<sup>79</sup> When

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<sup>73</sup> *Locked Out*, 10.

<sup>74</sup> *Locked Out*, 10-11.

<sup>75</sup> *Locked Out*, 8.

<sup>76</sup> *Locked Out*, 8.

<sup>77</sup> *ACORN*, 10.

<sup>78</sup> *ACORN*, 10.

<sup>79</sup> *ACORN*, 10.

properties listed on Craigslist, *The Daily News*, and *The New York Times* were limited to those within Section 8 rent range, only 13%—or 16 apartments out of 122—accepted Section 8 vouchers.<sup>80</sup> The ACORN study concludes that without “demanding that landlords take Section 8, the wealthy in New York City will be the only people living outside of the Bronx.”<sup>81</sup>

Both studies showed astonishingly low numbers for a person in search of a Section 8 apartment. Each sample point of a landlord’s refusal in these studies exemplifies the path of many Section 8 households, such as the Appellant’s. First, Section 8 tenants, many old or disabled, must wait for years to move to the front of the wait list. Those who persist through the waiting process will have a few months to find acceptable housing, only to discover a shortage of affordable housing in many tight housing markets. Among the few housing units that are both affordable and available, most landlords refuse to accept Section 8 households, particularly households seeking to enter wealthier neighborhoods. Once a voucher expires, its holder must give it to the next-in-line and re-apply, since the PHA cannot earn its administrative fee until a unit is leased.<sup>82</sup> Amici respectfully submit that the facts and law of this case compels a ruling that could help level this difficult path by prohibiting landlord discrimination against Section 8 households.

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<sup>80</sup> *ACORN*, 11.

<sup>81</sup> *ACORN*, 10.

<sup>82</sup> *See Guidebook*, ¶¶ 8-1; 8-13

**D. Establishing legal precedent against “source of income” discrimination would benefit landlords as well as California’s elderly, disabled, and minorities**

Establishing legal precedent against “source of income” discrimination is consistent with the legislative intent of California FEHA. Twelve states and major cities have taken legislative or judicial action to prohibit discrimination against Section 8 voucher holders. Legal prohibition against Section 8 voucher discrimination would benefit landlords because Section 8 tenants have strong incentives to retain their Section 8 subsidy. It would also benefit California’s elderly, disabled and minorities, who could then use their vouchers in more neighborhoods, thereby integrating into more affluent areas.

**1. Section 8 participation improves the likelihood of a successful tenancy.**

**a. Section 8 tenants have a strong incentive to become model tenants**

Public Housing Authorities are required to do criminal background checks on all applicants.<sup>83</sup> PHAs also have authority to screen voucher applicants for family behavior.<sup>84</sup> Thus, the Section 8 program provides additional protection for small landlords, who lack the resources to perform similar screenings. Under HUD’s One Strike policy, PHAs can deny admission or terminate assistance to individuals with a history of drug or alcohol abuse, or a history of criminal behavior that interferes with the

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<sup>83</sup> See 24 C.F.R. § 982.553(a)(1), (2); see also *Guidebook* ¶ 8-20.

<sup>84</sup> See *Guidebook*, ¶ 8-21

peaceful enjoyment of the premises by other residents.<sup>85</sup> In addition, tenants can be permanently removed from the Section 8 program if they damage the rental unit or fail to pay their share of the rent.<sup>86</sup> Because most successful Section 8 tenants had to endure a long wait list, and a difficult search process, they have strong incentives to be model tenants and remain in the Section 8 program. Thus, participating landlords ultimately benefit from having prescreened, high quality Section 8 tenants.

**b. Landlords are better off contracting with the government, which must pay rent**

Landlords also benefit from participating in the Section 8 program since they receive guaranteed payments from the PHA for its share of the rent. Under the Section 8 program, a landlord enters into a separate lease with the PHA. The PHA is independently obligated to pay the landlord the Section 8 voucher's share of the rent.<sup>87</sup> Like all rent, the PHA's payment is due on the first of each month.<sup>88</sup> PHAs that fail to pay rent in a timely manner risk losing participating landlords and administrative fees. Thus, the landlord is actually better off contracting with the PHA, which, as a government contractor, must honor its contract.

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<sup>85</sup> See *Dept. of Hous. v. Rucker*, 535 U.S. 125, 130 (2002) (upholding HUD's One Strike policy).

<sup>86</sup> See 24 C.F.R. § 982.404.

<sup>87</sup> See 24 C.F.R. § 982.311.

<sup>88</sup> See *Guidebook*, ¶ 24-12.

**2. Cities that prohibit discrimination based on source-of-income have higher voucher success rates.**

Barring discrimination against “source of income” provides Section 8 tenants more housing choices and reduces a tenant’s search time. The 2001 HUD study confirms that cities that provide any means of protection against source-of-income discrimination have higher voucher success rates: “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 over 12 percentage points.”<sup>89</sup> A higher success rate benefits both voucher holders and housing authorities. Section 8 voucher holders would have shorter wait lists, shorter search times, and more selections of housing units in more neighborhoods. Local PHAs would incur less administrative costs in managing Section 8 wait lists and in assisting Section 8 voucher holders to search for acceptable housing, and they would be able to divert funds to other redevelopment programs.

**3. Prohibiting Section 8 discrimination would further the legislative purpose of integrating low income, elderly, disabled, and minorities into low-poverty areas.**

The Section 8 program was created with the goal of “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

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<sup>89</sup> *Utilization Rate*, ¶3-17

for persons of lower incomes.”<sup>90</sup> The main goal of the Quality and Work Responsibility Act of 1998,<sup>91</sup> which made the Section 8 voucher program permanent, was “deconcentration-dispersal” of poverty in public housing, to be achieved through demolition of existing public housing and relocation with vouchers.<sup>92</sup>

Integration is desirable because low-poverty areas have better schools, better job access, and more opportunities for upward mobility.<sup>93</sup> High-poverty neighborhoods are often associated with high rates of teenage pregnancies, higher crime rates, substance abuse, and other manifestations of social dysfunction.<sup>94</sup> In neighborhoods where minorities cluster, the problems faced in such areas are often exacerbated by racial inequalities that affect the quality of public services and access to economic opportunities.<sup>95</sup>

Studies also show that the transition from welfare to decently paying jobs is more difficult in high-poverty neighborhoods because those

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<sup>90</sup> The Housing and Community Development Act of 1974, Pub. L. No. 93-383, §101(c)(6), 88 Stat. 633 (1974), codified at 42 U.S.C. § 5301(c)(6) (1995).

<sup>91</sup> The Quality Housing and Work Responsibility Act of 1998, (Pub. L. No. 105-276, §545, 112 Stat. 2461 (1998)).

<sup>92</sup> See Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, *Summary of the Quality Housing and Work Responsibility Act of 1998 (Title V of P.L. 105-276)*, 2 (Dec. 1998), available at <http://www.hud.gov/offices/pih/phr/about/titlev.pdf>. (the purpose of this title is to: ... 3) facilitate mixed income communities; 4) decrease concentrations of poverty in public housing ... and 9) replace or revitalize severely distressed public housing projects.”)

<sup>93</sup> *Location Patterns*, 25.

<sup>94</sup> *Location Patterns*, 25.

<sup>95</sup> *Location Patterns*, 25.

neighborhoods offer fewer economic opportunities and present more hurdles to residents seeking to better themselves.<sup>96</sup> Businesses avoid high-poverty areas because of the higher crime rates and lower shopping power. Businesses are disinclined to locate in poor neighborhoods where there is not an educated work force. Residents in high-poverty areas also lack role models and opportunities for socialization in ways that would encourage upward mobility. For these reasons, high-rise public housing has come under much criticism because of its density and concentration of low-income families.<sup>97</sup>

The Section 8 program is intended to encourage and assist low-income families to live in neighborhoods of their choice, provided that their choice complies with the program's requirements.<sup>98</sup> Families can select housing based on any number of factors, including employment opportunities, convenience in transportation, quality of the educational system, the characteristics of the housing or the neighborhood, or proximity to family and friends.

The integration rates of successful Section 8 households have been encouraging. The 2001 HUD study shows that only 21% of successful voucher holders used their vouchers to rent their pre-program unit.<sup>99</sup> In other words, Section 8 vouchers provided more than three-quarters of

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<sup>96</sup> *Location Patterns*, 43.

<sup>97</sup> *30 Years*, 17.

<sup>98</sup> *30 Years*, 9.

<sup>99</sup> *Utilization Rate*, Executive Summary iii.

voucher holders the mobility to move out of their existing units, which are often in high-poverty areas. Compared to other housing assistance programs, tenant participants in Section 8 programs are far more dispersed in terms of the neighborhoods in which they reside.<sup>100</sup>

The 2003 HUD study also found that successful Section 8 households are more likely to move to wealthier areas. Less than 10% of successful Section 8 households stayed in high-poverty neighborhoods.<sup>101</sup> Across all 50 metropolitan areas included in the study, a majority of tenant-based voucher holders (such as Section 8 tenants) lived in neighborhoods with less than 20% poverty concentration.<sup>102</sup> These numbers show that tenant-based vouchers (like Section 8 vouchers) have helped low income tenants move into more affluent areas.

Section 8 households that moved into low-poverty areas also demonstrated signs of upward mobility. The 2003 HUD study showed that black and Hispanic households with children in lower-poverty, more affluent neighborhoods tend to work more often, earn higher wages, and are less likely to receive additional welfare benefits than those living in higher-poverty neighborhoods.<sup>103</sup>

Encouraging results indicate that families able to use their Section 8 vouchers have jumped out of the vicious cycle of poverty. But many

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<sup>100</sup> *Location Patterns*, 15.

<sup>101</sup> *Location Patterns*, 31.

<sup>102</sup> *Location Patterns*, 27.

<sup>103</sup> *Location Patterns*, 53.

Section 8 families could never begin this process because of landlords' "source of income" discrimination. Since residents assisted by the Section 8 program are poor and are often elderly, disabled, or both, integrating them into low-poverty areas would further the protection afforded by California FEHA against discrimination. Establishing a legal precedent against Section 8 discrimination would remove one substantial impediment to a Section 8 households' integration.

## **V. CONCLUSION**

For all of the reasons set forth above, the judgment below should be reversed. Finding for Appellant would remediate the source-of-income discrimination widely faced by Section 8 voucher holders while advancing the California legislature's goals of assisting the elderly, the disabled, minorities, and low-income families. Amici Curiae respectfully request this Court to uphold the legislative intent of California's Fair Employment and Housing Act (FEHA) and to rule that Section 8 vouchers must be included as a "source of income" under its anti-discrimination provision. Amici Curiae also respectfully request the Court to rule that a landlord's participation in the Section 8 program is not voluntary when the refusal of a Section 8 voucher as a "reasonable accommodation" under California's Disabled Persons Act (DPA) unlawfully interferes with a disabled person's equal opportunity to use and enjoy the rental premises. Finally, as discussed above, an adverse ruling that FEHA's "source of income" anti-discrimination provision does not encompass Section 8 housing vouchers

would harmfully impact California's low-income families, including the disabled, elderly, and minorities.

Respectfully submitted,

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Pursuant to Rule 8.204(c), counsel for Amici certifies that the foregoing Amicus Brief (including footnotes) contains **12,824** words (as counted by the word processing program used to prepare the brief).

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**COMPLIANCE WITH CALIFORNIA RULE OF COURT 8.200(C)(3)**

Counsel for Amici certifies that no party or any counsel for a party in the pending appeal authored the proposed brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

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## **ATTACHMENT A**

## **ATTACHMENT B**

## **ATTACHMENT C**

**ATTACHMENT D**  
**(Opinion)**

## **ATTACHMENT E**

**PROOF OF SERVICE**  
**(insert)**