

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 23-7348

Caption [use short title]

Motion for: Leave to File Amicus Brief

Fair Housing Justice Center, Inc., et al.

v.

Pelican Management Inc., et al.

Set forth below precise, complete statement of relief sought:

Leave to file brief as Amici Curiae on behalf of

National Fair Housing Alliance; Long Island Housing Services, Inc.;

Housing Opportunities Made Equal; CNY Fair Housing;

Westchester Residential Opportunities, Inc.; and Connecticut

Fair Housing Center in support of Plaintiff-Appellee

pursuant to Federal Rule Appellate Procedure 29(a)(3).

MOVING PARTY: National Fair Housing Alliance as Amicus Curiae

OPPOSING PARTY: Pelican Management Inc., Defendants-Counter-Claimants-Appellants

Plaintiff

Defendant

Appellant/Petitioner

Appellee/Respondent

MOVING ATTORNEY: Zachary Best

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Court- Judge/ Agency appealed from: Hon. Edgardo Ramos (U.S.D.J), U.S. District Court for the Southern District of New York (NYC)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

Yes  No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?  Yes  No

Has this relief been previously sought in this court?  Yes  No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

Unopposed  Opposed  Don't Know

Does opposing counsel intend to file a response:

Yes  No  Don't Know

Is the oral argument on motion requested?  Yes  No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set?  Yes  No If yes, enter date:

Signature of Moving Attorney:

/s/ Zachary Best

Date: 05/10/2024

Service:  Electronic  Other [Attach proof of service]

# 23-7348

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IN THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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FAIR HOUSING JUSTICE CENTER, INC.,  
*Plaintiff-Appellee,*

– and –

ALFRED SPOONER,  
*Plaintiff,*

v.

PELICAN MANAGEMENT, INC., FORDHAM ONE COMPANY, LLC.  
and CEDAR TWO, LLC.,

*Defendants-Counter-Claimants-Appellants,*

– and –

GOLDFARB PROPERTIES and DEEGAN TWO COMPANY,  
*Defendants.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK (NEW YORK CITY)**

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**MOTION BY NATIONAL FAIR HOUSING ALLIANCE FOR LEAVE TO FILE BRIEF  
BY NATIONAL FAIR HOUSING ALLIANCE; HOUSING OPPORTUNITIES MADE  
EQUAL, INC.; WESTCHESTER RESIDENTIAL OPPORTUNITIES, INC.; CNY FAIR  
HOUSING; LONG ISLAND HOUSING SERVICES, INC.; AND CONNECTICUT FAIR  
HOUSING CENTER AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE**

---

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*Counsel for Amici Curiae*

Movants National Fair Housing Alliance; Long Island Housing Services, Inc.; Housing Opportunities Made Equal, Inc.; Westchester Residential Opportunities, Inc.; CNY Fair Housing, Inc.; Connecticut Fair Housing Center (“Proposed *Amici*”) respectfully move the Court for leave to file a brief as *Amici Curiae* in support of Plaintiff-Appellee and affirmance of the District Court’s decision. *See* Fed. R. App. P. 29(a)(3); L.R. 29.1(a).

Counsel for Proposed *Amici* have consulted with counsel for the parties concerning this motion. Counsel for Appellee Fair Housing Justice Center consents to this motion; Counsel for Appellants Pelican Management, Inc., Fordham One Company, LLC., and Cedar Two, LLC. do not consent to this motion.

This case presents the question of whether a housing provider’s minimum income policy has an adverse disparate impact on partial subsidy holders in violation of the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107.

Proposed *Amicus Curiae* National Fair Housing Alliance (“NFHA”) is a national organization dedicated to ending discrimination and ensuring equal opportunity in housing for all people. Founded in 1988, NFHA is a consortium of 250 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals. NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all people through leadership, homeownership, credit access, tech equity, education, member services, public

policy, community development, and enforcement initiatives. Relying on the federal, state, and local fair housing laws, NFHA undertakes important enforcement initiatives in cities and states across the country and participates as *amicus curiae* in other cases to further its goal of achieving equal housing opportunities for all.

Long Island Housing Services, Inc.; Housing Opportunities Made Equal, Inc. (“HOME”); Westchester Residential Opportunities, Inc. (“WRO”); CNY Fair Housing, Inc. (“CNYFH”); and Connecticut Fair Housing Center (“CFHC”) are nonprofit, public interest fair housing organizations within the Second Circuit and members of NFHA.

Long Island Housing Services, Inc. is an over-50-year-old civil rights organization focused on fair housing. It provides fair housing education, advocacy, counseling, investigation and enforcement in Suffolk and Nassau counties in New York. Long Island Housing Services’ mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. Its enforcement activities are bolstered by the broad scope of fair housing protections within the New York region, and the organization would be hindered if that scope were improperly narrowed to permit the discriminatory policy at issue here.

HOME is a nonprofit corporation organized and existing under the laws of New York State with its principal place of business located in Buffalo, New York.

HOME provides comprehensive fair housing services in Erie, Niagara, Cattaraugus, Chautauqua, Genesee, Wyoming, and Orleans Counties, all of which are within the Second Circuit. Founded in 1963, HOME's mission is to promote the value of diversity and ensure all people an equal opportunity to live in the housing and communities of their choice through education, advocacy, the creation of housing opportunities, and the enforcement of fair housing laws through investigating allegations of housing discrimination and taking necessary legal action to counteract and eliminate discriminatory practices. HOME's enforcement work is strengthened by the broad scope of state and local fair housing laws, including those with source-of-income protections.

WRO is a New York nonprofit corporation with its principal place of business in White Plains, New York. It is the mission of WRO to promote equal, affordable and accessible housing opportunities for all residents in the region in which it operates, all of which is within the Second Circuit. To achieve its mission, WRO's fair housing department provides education about fair housing rights and responsibilities, conducts investigations of allegations of housing discrimination, conducts systemic testing for fair housing violations, and enforces fair housing laws. WRO's enforcement work is strengthened by the broad scope of state and local fair housing laws, including those with source-of-income protections.

CNYFH is a non-profit organization located in Syracuse, New York. CNYFH is dedicated to eliminating housing discrimination, promoting open communities, and ensuring equal access to housing opportunity for all people in Central and Northern New York. CNYFH engages in a variety of research, education, and enforcement activities in service of this mission. Among other work, CNYFH provides fair housing education to renters and housing providers, advocates for local and state housing policies to promote residential integration and improve access to housing, investigates allegations of housing discrimination through testing and other means, and brings fair housing enforcement actions in federal and state courts. CNY's investigation and enforcement work includes uncovering and opposing discriminatory minimum income requirements that operate to exclude recipients of Housing Choice Vouchers and other forms of government rental assistance from accessing the housing of their choice.

CFHC is a nonprofit corporation organized and existing under the laws of the State of Connecticut with its principal place of business located in Hartford, Connecticut. CFHC's mission to ensure that all people have equal access to housing opportunities in Connecticut, free from discrimination. To that end, for the past thirty years, CFHC has provided comprehensive fair housing services throughout the State of Connecticut. CFHC undertakes fair housing education, advocacy, conducts investigations of alleged housing discrimination, and enforces

the fair housing laws through direct representation. CFHC's efforts are strengthened by the broad scope of Connecticut's fair housing laws, which include protections for those utilizing vouchers and other lawful sources of income.

All of the proposed *Amici Curiae* are dedicated to vigorous enforcement of the state and local fair housing laws, including those that embrace disparate-impact liability and protect against source-of-income discrimination. Proposed *Amici's* interests will be adversely affected by a decision that limits the reach of disparate-impact liability or that permits a housing provider to discriminate based on source of income.

Proposed *Amici* have a long history of opposing interpretations of fair housing laws impede their abilities to combat residential segregation and housing discrimination.

Proposed *Amici* believe that their familiarity with the history and purpose of source-of-income laws may be of assistance to this Court in determining whether the District Court properly declared Appellants' policy unlawful. Proposed *Amici* likewise believe that their familiarity with the relief necessary to redress fair housing violations makes them well suited to address the District Court's injunction.

Participation by these fair housing organizations as *Amici Curiae* will not delay the briefing or argument in this case. Proposed *Amici* are filing their brief within the time allowed by Federal Rule of Appellate Procedure 29(a)(6).

Accordingly, NFHA, Long Island Housing Services, HOME, WRO, CFHC, and CNYFH respectfully request that the Court grant this motion and that the Court accept for filing the proposed brief that is attached as an exhibit to this motion.

Dated: May 10, 2024

Respectfully Submitted,

/s/ Zachary Best

Zachary Best

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**CERTIFICATION OF SERVICE**

This motion was electronically filed on May 10, 2024 with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the ACMS system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate ACMS system.

*/s/ Zachary Best*

Zachary Best

*Counsel for Amici Curiae*

# 23-7348

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IN THE  
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FAIR HOUSING JUSTICE CENTER, INC.,  
*Plaintiff-Appellee,*

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GOLDFARB PROPERTIES and DEEGAN TWO COMPANY,  
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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK (NEW YORK CITY)**

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**BRIEF OF AMICI CURIAE NATIONAL FAIR HOUSING ALLIANCE; HOUSING  
OPPORTUNITIES MADE EQUAL, INC.; WESTCHESTER RESIDENTIAL  
OPPORTUNITIES, INC.; CNY FAIR HOUSING; LONG ISLAND HOUSING  
SERVICES, INC.; AND CONNECTICUT FAIR HOUSING CENTER AS *AMICI CURIAE*  
IN SUPPORT OF PLAINTIFF-APPELLEE**

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## **CORPORATE DISCLOSURE STATEMENT**

*Amici Curiae* National Fair Housing Alliance; Housing Opportunities Made Equal, Inc.; Westchester Residential Opportunities; CNY Fair Housing; Long Island Housing Inc.; and Connecticut Fair Housing Center are non-profit organizations. They have no parent corporation and no publicly held corporation owns a portion of them.

### **INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amici Curiae* are nonprofit fair housing organizations that work to ensure equal housing opportunities in their communities and engage in efforts to end residential segregation.

The National Fair Housing Alliance (“NFHA”) is a national organization dedicated to ending discrimination and ensuring equal opportunity in housing for all people. Founded in 1988, NFHA is a consortium of 250 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals. NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all people through leadership, homeownership, credit access, tech equity,

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<sup>1</sup> Under Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici Curiae* National Fair Housing Alliance; Housing Opportunities Made Equal, Inc.; Westchester Residential Opportunities; CNY Fair Housing; Long Island Housing, Inc.; and Connecticut Fair Housing Center certify that no party’s counsel authored this brief in whole or in part, that no party or party’s counsel contributed money intended to fund the preparation or submission of the brief, and that no person (other than *Amici Curiae*, their members, and their counsel) contributed money intended to fund the preparation or submission of the brief.



education, member services, public policy, community development, and enforcement initiatives. Relying on the Fair Housing Act (“FHA”) and other civil rights laws, NFHA undertakes important enforcement initiatives in cities and states across the country and participates as *amicus curiae* in other cases to further its goal of achieving equal housing opportunities for all.

Housing Opportunities Made Equal, Inc. (“HOME”) is a nonprofit corporation organized and existing under the laws of New York State with its principal place of business located in Buffalo, New York. HOME provides comprehensive fair housing services in Erie, Niagara, Cattaraugus, Chautauqua, Genesee, Wyoming, and Orleans Counties, all of which are within the Second Circuit. Founded in 1963, HOME’s mission is to promote the value of diversity and ensure all people an equal opportunity to live in the housing and communities of their choice through education, advocacy, the creation of housing opportunities, and the enforcement of fair housing laws through investigating allegations of housing discrimination and taking necessary legal action to counteract and eliminate discriminatory practices. HOME’s enforcement work is strengthened by the broad scope of state and local fair housing laws, including those with source-of-income protections.

Westchester Residential Opportunities, Inc. (“WRO”) is a New York nonprofit corporation with its principal place of business in White Plains, New

York. It is the mission of WRO to promote equal, affordable and accessible housing opportunities for all residents in the region in which it operates, all of which is within the Second Circuit. To achieve its mission, WRO's fair housing department provides education about fair housing rights and responsibilities, conducts investigations of allegations of housing discrimination, conducts systemic testing for fair housing violations, and enforces fair housing laws. WRO's enforcement work is strengthened by the broad scope of state and local fair housing laws, including those with source-of-income protections.

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Vouchers and other forms of government rental assistance from accessing the housing of their choice.

Connecticut Fair Housing Center (“CFHC”) is a nonprofit corporation organized and existing under the laws of the State of Connecticut with its principal place of business located in Hartford, Connecticut. CFHC’s mission to ensure that all people have equal access to housing opportunities in Connecticut, free from discrimination. To that end, for the past thirty years, CFHC has provided comprehensive fair housing services throughout the State of Connecticut. CFHC undertakes fair housing education, advocacy, conducts investigations of alleged housing discrimination, and enforces the fair housing laws through direct representation. CFHC’s efforts are strengthened by the broad scope of Connecticut’s fair housing laws, which include protections for those utilizing vouchers and other lawful sources of income.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

Following a bench trial, the District Court declared Appellants’ 2019 minimum income policy (the “2019 Policy”) unlawful under the New York City Human Rights Law (NYCHRL), N.Y.C. Admin. Code § 8-107, because it causes an “adverse disparate impact based on source of income” for rental applicants with partial subsidies. Appellants now seek to overturn that reasoned decision by misreading this Court’s disparate-impact precedent and by asking this Court to

wade into a battle of the experts. For the reasons articulated by the Plaintiff-Appellee, the District Court's decision was not only error free, but also the plainly correct outcome. There exists another important reason to affirm the decision below: adopting Appellants' position would severely undermine the NYCHRL's prohibition on source-of-income discrimination, which would disproportionately harm people with disabilities and other protected groups. *Amici* therefore submits this brief to emphasize two points relevant to this appeal. First, the importance of rigorous enforcement and application of anti-discrimination laws—including the NYCHRL—that prohibit housing discrimination based on lawful source of income. And second, the importance of broad judicial authority to fashion injunctive relief that will prevent housing providers like Appellants from violating fair housing laws in the future.

Source-of-income laws like the NYCHRL are essential to securing access to higher-opportunity neighborhoods for low-income individuals and families who rely on housing subsidies to pay their rent. It is well-documented that neighborhoods have a significant impact on opportunity and wellbeing. Areas with a high concentration of poverty are associated with significantly worse outcomes in health, education, environmental factors, and employment opportunities, and studies have found that children who move from high-poverty areas to low-poverty areas fare measurably better than children who do not.

The federal Housing Choice Voucher (“HCV”) program is supposed to offer at least a partial solution by giving people with low incomes the freedom to choose to live in neighborhoods with greater opportunity. But in practice, landlord discrimination against subsidy holders—particularly in more affluent areas—has erected a substantial barrier. This barrier has an outsized effect on people of color and members of other protected classes who comprise a disproportionate share of voucher holders, and evidence indicates that some housing providers use source-of-income discrimination as a cover for race discrimination. And, as this case shows, prohibiting source-of-income discrimination is also essential to ensure that people with disabilities can access rental housing that meets their needs.

Laws that prohibit source-of-income discrimination exist to keep the avenues to greater opportunity open, and to ensure that everyone—including renters with disabilities who rely on housing subsidies—can access affordable housing in a place of their choosing. For low-income individuals and families to have access to higher-opportunity areas, and individuals with disabilities to have access to housing, faithful enforcement and application of those laws is critical. The District Court’s finding that Appellants violated the NYCHRL should stand.

With respect to injunctive relief, the Appellants’ brief failed to articulate any defect in that aspect of the District Court’s order, and there were none. Courts enjoy broad authority to award appropriate injunctive relief under both the Fair

Housing Act and the NYCHRL. This authority is essential to realizing the twin aims of fair housing laws: remediating past discrimination and preventing future discrimination. Courts have long awarded broad injunctive relief in fair housing cases—both prohibitive and affirmative—especially where a defendant has exhibited a pattern of offending conduct and/or the conduct was particularly egregious. Here, Appellee FHJC received at least three complaints arising from Appellants’ source-of-income policy over the course of several years, despite multiple opportunities for Appellants’ to come into compliance.<sup>2</sup> The District Court had not only the discretion but also the duty to (a) enjoin Appellants from applying minimum income requirements and (b) require Appellants to adopt written non-discriminatory rental criteria, hire a third party to provide fair housing training, and maintain records to verify its compliance with the injunction. This injunctive relief was necessary to prevent the reoccurrence of Appellants’ discriminatory conduct.

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<sup>2</sup> These three complaints are likely only the tip of the iceberg given that Appellants manage approximately 6,000 units in New York City and Westchester. (*See* JA450.)

## ARGUMENT

### **I. Rigorous Application of Source-of-Income Laws Is Vital to Securing Access to Higher-Opportunity Neighborhoods for Low-Income Persons and Preventing Backdoor Discrimination Based on Race or Other Protected Characteristics**

Before housing subsidy programs became the predominant policy tool for meeting the housing needs of people with low incomes, the federal government’s main way of meeting those needs was through the construction and operation of public housing developments.<sup>3</sup> The federal government’s public housing approach posed a major problem, however: it contributed to concentrated poverty in inner cities and the corresponding isolation of low-income households (particularly households of color) away from important economic and educational opportunities.<sup>4</sup> In 1968, the National Advisory Commission on Civil Disorders—known as the Kerner Commission—famously catalogued the causes and effects of this poverty and isolation, finding that “[s]egregation and poverty have created in

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<sup>3</sup> Maggie McCarty, Cong. Rsch. Serv., RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance* 1 (2014), <https://crsreports.congress.gov/product/pdf/RL/RL32284/19>.

<sup>4</sup> Margery Austin Turner, *Strengths and Weaknesses of the Housing Voucher Program*, The Urban Institute (June 17, 2003). (“Federal housing construction programs have historically clustered assisted families in low-income, central city neighborhoods, contributed to both concentrated poverty and racial segregation.”).

the racial ghetto a destructive environment totally unknown to most white Americans.”<sup>5</sup>

The Kerner Commission made a slew of recommendations to combat these problems, among them the recommendation to enact a “national, comprehensive and enforceable open-occupancy law,”<sup>6</sup> which would come to fruition when Congress passed the Fair Housing Act less than two months later. Along with the enactment of a federal fair housing law, the Kerner Commission also recommended a “[r]eorientation of Federal housing programs to place more low- and moderate-income housing outside of ghetto areas” and the use of “rent supplements . . . wherever possible, . . . in nonghetto areas.”<sup>7</sup> The Commission warned that, in the absence of these strategies, “[Federal housing programs] will continue to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them.”<sup>8</sup>

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<sup>5</sup> Report of the National Advisory Commission on Civil Disorders, at 1 (1968), [https://belonging.berkeley.edu/sites/default/files/kerner\\_commission\\_full\\_report.pdf?file=1&force=1](https://belonging.berkeley.edu/sites/default/files/kerner_commission_full_report.pdf?file=1&force=1); *see also id.* at 262 (“The resulting large concentration of low-income families [from public housing] has often created conditions generating great resistance in communities to new projects of this type.”).

<sup>6</sup> *Id.* at 263.

<sup>7</sup> *Id.* at 263.

<sup>8</sup> *Id.* at 260.



Congress took up the Kerner Commission’s call two years later when it mandated that the Department of Housing and Urban Development (“HUD”) test the “feasibility of providing low-income families with allowances to assist them in obtaining existing, decent rental housing of their choice.”<sup>9</sup> Over the ensuing 30 years, the federal government’s policy on rental allowances evolved to the current iteration of the HCV program, sometimes referred to as Section 8. The HCV program allows voucher recipients to choose housing available in the private market and pay roughly 30 percent of their income towards rent, with the government paying the remainder. The program has two main goals: first, “the reduction of the isolation of income groups within communities and geographical areas,” and second, “the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income.”<sup>10</sup>

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<sup>9</sup> Cong. Rsch. Serv. Report, *supra* note 3, at 2.

<sup>10</sup> 42 U.S.C. § 5301(c)(6); *see also* 42 U.S.C. § 1437f(a) (stating that housing assistance programs are “[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing”); J. Rose Tighe et al., “Source of Income Discrimination and Fair Housing Policy,” 32 J. Plan. Lit. 3-15 (2017) (the HCV program “was designed with two main goals in mind: to eliminate concentrations of poverty and the social problems it causes and to provide poor households with greater access to higher-opportunity neighborhoods.”).

There are very good reasons for deconcentrating poverty and giving low-income families access to more affluent, higher-opportunity areas. In short, neighborhoods matter. Areas of concentrated poverty—particularly segregated areas with higher concentrations of people of color—are associated with worse health outcomes,<sup>11</sup> less access to quality food,<sup>12</sup> higher levels of pollution,<sup>13</sup> lower-performing schools,<sup>14</sup> and limited economic opportunity.<sup>15</sup> Research demonstrates that every additional year of childhood spent in a higher-opportunity neighborhood significantly improves a child’s long-term outcomes.<sup>16</sup> For children below age thirteen in particular, moving from high-poverty housing projects to lower-poverty neighborhoods “significantly improves college attendance and [future] earnings,” and such children “also live in better neighborhoods themselves as adults and are less likely to become single parents.”<sup>17</sup>

Research also confirms another essential function of housing subsidy programs: vouchers materially reduce homelessness and housing instability. One

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<sup>11</sup> U.S. Dep’t of Health and Hum. Svcs., Office of Disease Prevention and Health Promotion, *Literature Summary on Poverty*, <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/poverty> (“Across the lifespan, residents of impoverished communities are at increased risk for mental illness, chronic disease, higher mortality, and lower life expectancy.”); C. André Christie-Mizell, *Neighborhood Disadvantage and Poor Health: The Consequences of Race, Gender, and Age among Young Adults*, 19 Int’l J. Env’t Rsch. Pub. Health. 1 (July 1, 2022) (“Research on health outcomes has firmly established that residents of disadvantaged neighborhoods (e.g., high crime rates, elevated poverty rates, and few employment opportunities) suffer worse health than their counterparts in more affluent communities.”).

<sup>12</sup> Kelly M. Bower et al., *The Intersection of Neighborhood Racial Segregation, Poverty, and Urbanicity and its Impact on Food Store Availability in the United States*, 58 Prev. Med. 33

evaluation examined the effect of vouchers on low-income families with children and found that participation in the HCV program reduced homelessness and housing instability among study participants by over 35%.<sup>18</sup> This evaluation found

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(2014) (“Neighborhoods with greater poverty and large minority populations have less access to supermarkets. The combination of living in an impoverished and a segregated black neighborhood presents a double disadvantage in access to high quality foods.”); Madeleine I. G. Daepf, “PRICES AND AVAILABILITY OF HEALTHY FOODS ACROSS ST. LOUIS,” 60 *The American Economist* 209–24 (2015) (“The evidence from this study suggests that low-income area residents may face constraints on their ability to purchase healthy items. Limited food access for low-income consumers is most likely to be seen in the form of lower availability of healthy options, but prices may also be higher in some cases.”).

<sup>13</sup> Ihab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 *Am. J. Pub. Health* 480, 483 (2018) (“We characterized the populations residing near [National Emissions Inventory] facilities to determine whether individuals from certain subgroups face disproportionately high burden from nearby [particulate matter] emissions. We observed disproportionately high burdens for non-Whites and those living in poverty.”).

<sup>14</sup> John R. Logan & Julia Burdick-Will, *School Segregation and Disparities in Urban, Suburban, and Rural Areas*, 672 *Annals Am. Acad. Pol. & Soc. Sci.* 185 (2017) (“Study after study has documented the large gaps between city and suburban schools[.]”); Barbara Sard & Douglas Rice, *Realizing the Housing Voucher Program’s Potential to Enable Families to Move to Better Neighborhoods*, Center for Budget and Policy Priorities (Jan. 12, 2016) (“A strong body of research shows that growing up in safe, low-poverty neighborhoods with good schools improves children’s academic achievement and long-term chances of success, and may reduce inter-generational poverty. Studies have also consistently found that living in segregated neighborhoods with low-quality schools and high rates of poverty and violent crime diminishes families’ well-being and children’s long-term outcomes.”).

<sup>15</sup> *Literature Summary on Poverty*, *supra* note 11 (“Poverty can also limit access to educational and employment opportunities, which further contributes to income inequality and perpetuates cyclical effects of poverty.”).

<sup>16</sup> Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects*, 133 *Q. J. Econ.* 1107, 1140 (2018).

<sup>17</sup> Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 *Am. Econ. Rev.* 855 (2016); *see also* David J. Harding, *Counterfactual Models of Neighborhood Effects: The Effect of Neighborhood Poverty on Dropping Out and Teenage Pregnancy*, 109 *Am. J. Socio.* 676 (2003) (“[T]hose in high-poverty neighborhoods are more likely to drop out of high school and have teenage pregnancy than those in low-poverty neighborhoods.”).

<sup>18</sup> Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children* 3, Center on Budget and Policy Priorities, Oct. 7, 2015.

that the HCV program was more effective at reducing homelessness than other interventions like rapid rehousing or transitional housing placements.<sup>19</sup> The study randomly assigned families in emergency shelters in multiple cities to receive vouchers and found that after three years, vouchers reduced the probability of having been homeless or doubled up in the past six months by eighteen percentage points and increased the probability of living in one's home by sixteen percentage points, as compared to families receiving the usual care provided to families in emergency shelters.<sup>20</sup> Whether to provide increased opportunity or a much-needed safety net, housing subsidies are critical for those who receive them.

In theory, housing subsidy programs should give low-income families access to higher-opportunity neighborhoods and all their benefits. In practice, landlord discrimination against subsidy holders remains a major barrier. Studies have found that voucher denials are common in low-poverty neighborhoods,<sup>21</sup> more frequent in neighborhoods with high-performing schools,<sup>22</sup> and more frequent in areas with

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<sup>19</sup> *Id.* at 2, 4.

<sup>20</sup> Daniel Gubits et al., *Family Options Study: Three-Year Impacts of Housing and Services Interventions for Homeless Families*, U.S. Dep't Hous. Urb. Dev. 84 (2016).

<sup>21</sup> Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*, U.S. Dep't Hous. Urb. Dev. 32 (2018), <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

<sup>22</sup> The Urban Institute, *Why Schools Should Care about Housing Voucher Discrimination* (Aug. 12, 2020), <https://housingmatters.urban.org/feature/why-schools-should-care-about-housing-voucher-discrimination> (finding that in Los Angeles, Newark, and Philadelphia, denials for voucher holders were more common in school catchment areas for higher-performing schools).

higher rents.<sup>23</sup> And research suggests that, although voucher holders would like to move to higher-opportunity neighborhoods, landlord discrimination significantly restricts their ability to do so.<sup>24</sup>

This exclusion disproportionately burdens groups protected under fair housing laws. Nationally, 66% of voucher holders are Black or Hispanic, 83% are female-headed households (including thirty-two percent living with children), and 34% include a family member who is elderly or disabled.<sup>25</sup> Indeed, the Olmstead Housing Subsidy (“OHS”) and the New York City HIV/AIDS Services Administration (“HASA”) subsidy are available only to people with disabilities, and the third type of subsidy, Section 8 vouchers, is disproportionately held by households that include members with a disability. (SPA-13; JA-1112-1113.)

Among all voucher holders, the barriers to accessing low-poverty neighborhoods are particularly difficult to overcome for Black and Hispanic voucher holders. In the fifty largest metropolitan areas in 2000, over 25% of Black

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<sup>23</sup> Dionissi Aliprantis et al., *Can Landlords Be Paid to Stop Avoiding Voucher Tenants?*, The Federal Reserve Bank of Cleveland 1 (2019) (“The voucher penalty is larger in high rent neighborhoods, pushing voucher tenants to low rent neighborhoods.”).

<sup>24</sup> See Tighe et al., *supra* note 10; Daniel Teles & Yipeng Su, *Source of Income Protections and Access to Low-Poverty Neighborhoods*, The Urban Institute 3 (2022), <https://www.urban.org/sites/default/files/2022-10/Source%20of%20Income%20Protections%20and%20Access%20to%20Low-Poverty%20Neighborhoods.pdf>

(“[P]ast research has documented several barriers that prevent voucher holders from moving to housing and neighborhoods of their choice. The main barrier . . . is landlord discrimination against voucher holders, which appears to be widespread.”).

<sup>25</sup> Fannie Mae, *Housing Choice Vouchers Explained* (2021), <https://fm.fanniemae.com/media/5861/display>.

and Hispanic households using vouchers lived in census tracts with poverty rates over thirty percent, compared to just 8% of white households using vouchers.<sup>26</sup> And less than 10% of Black and Hispanic HCV households were found in low-poverty tracts, which was less than half the rate of white households.<sup>27</sup> There is also evidence that intentional race discrimination contributes to these differences. For example, an investigation in Chicago found that 18% of landlords who refused to accept housing subsidies discriminated against Black applicants but not similarly situated white applicants.<sup>28</sup> In other words, some landlords use voucher status as a cover for discriminating based on race.

Source-of-income discrimination undercuts the goals of housing subsidy programs by limiting mobility to higher-opportunity areas. And, to the extent it facilitates discrimination based on race or other protected characteristics, it undercuts Congress's fair housing policy, too. As a result, state and local laws prohibiting source-of-income discrimination are an important complement to

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<sup>26</sup> Turner, *supra* note 4.

<sup>27</sup> Deborah J. Devine et al., *Housing Choice Voucher Location Patterns: Implications for Participant and Neighborhood Welfare*, U.S. Dep't Hous. Urb. Dev. 1, 28 (2003).

<sup>28</sup> Chicago Lawyers' Committee for Civil Rights Under Law, LLC., *Source of Income and Race Investigation 2*, <https://fd555e0b6a931ed67e14-5f725ae859038890dd64bb8d954d0327.ssl.cf5.rackcdn.com/591/pdf/soi.and.race.report.final.1013151.pdf>. See also Teles & Su, *supra* note 24, at 13 (finding that, prior to enactment of laws banning source of income discrimination, "the pattern of declining relative access to low-poverty neighborhoods was most severe among families with Black or African American household head.").

housing subsidy programs and federal fair housing requirements. They help open higher-opportunity areas to low-income families—as Congress intended—and prevent housing providers from using source of income as a proxy for other protected characteristics like race, familial status, or disability. Many jurisdictions have come to recognize the importance of banning source-of-income discrimination in housing. In 2017, the American Bar Association adopted a resolution urging federal, state, and local governments to enact legislation prohibiting housing discrimination based on lawful source of income. States and localities across the country have answered the call. As of July 2021, sixteen states plus the District of Columbia and 106 local governments had passed laws prohibiting source-of-income discrimination, including New York City. Researchers studying mobility in these jurisdictions have found that the data supports the hypothesis: source-of-income protections help low-income families get into low-poverty neighborhoods<sup>29</sup> and neighborhoods that are less segregated.<sup>30</sup>

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<sup>29</sup> See Ingrid Gould Ellen et al., *Advancing Choice in the Housing Choice Voucher Program: Source of Income Protections and Locational Outcomes*, Housing Policy Debate (May 11, 2022) (“[E]xisting voucher holders who move post enactment [of laws banning source of income discrimination] experience greater reductions in neighborhood poverty rates and voucher holder shares.”); see also Teles & Su, *supra* note 25, at 13 (“Between the fourth and eighth year after [source of income] protections take effect, the share of voucher-assisted households with children moving into low-poverty neighborhoods increases by about 3 percentage points and is greater than the year before the laws took effect.”).

<sup>30</sup> Ellen et al., *supra* note 29 (“We also find that after SOI laws pass, voucher holders move to neighborhoods with larger white population shares than their original neighborhoods.”).

Importantly, prohibiting only express source-of-income discrimination is not enough. Outlawing facially neutral policies that have a disparate impact on subsidy holders—as the New York City law does—is just as important. Seemingly neutral but unjustified policies that have the effect of excluding subsidy holders from low-poverty areas undermine the aims of housing subsidy programs in the same way that outright refusal does. If the ideals of mobility and neighborhood choice are to be achieved, housing providers cannot have the ability to achieve discriminatory ends by seemingly neutral means. As the Supreme Court has recognized, disparate impact liability plays an important role in “uncovering discriminatory intent: [i]t permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. In this way disparate-impact liability may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.” *Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 540 (2015).

Disparate impact liability is tailor-made for policies like Appellants’ 2019 partial subsidy policy: a seemingly neutral policy with a clear adverse effect on those who rely on housing subsidies, but with no evidence that the policy is even needed. In the absence of any evidence showing need, Appellants’ minimum income policy embodies exactly the kind of “covert and illicit stereotyping” that disparate impact liability is meant to root out. Faithful application of the



NYCHRL’s prohibition on source-of-income discrimination is critical to rooting out proxy discrimination and facilitating low-income families’ access to greater opportunity. The District Court did just that.

## **II. Broad Authority to Fashion Appropriate Injunctive Relief Is Essential to the Full Enforcement of Fair Housing Laws**

Appellants identified prospective relief as an issue before this Court yet failed to articulate any defect in that aspect of the District Court’s order. That is because there is no legitimate challenge to the injunctive relief ordered here. In fact, this case illustrates why broad authority to fashion appropriate injunctive relief is so important in fair housing cases.

In addition to authorizing compensatory and punitive damages, the NYCHRL also allows for “injunctive relief and such other remedies as may be appropriate.” N.Y.C. Admin. Code § 8-502. The Fair Housing Act (“FHA”) is similarly broad. *See* 42 U.S.C. § 3613(c) (authorizing “any permanent or temporary injunction . . . or other order” as the court “deems appropriate”). FHA case law is therefore instructive in considering the scope of injunctive relief under the NYCHRL. At the same time, federal law is a “*floor* below which the City’s Human Rights law cannot fall.” *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 278 (2d Cir. 2009) (emphasis in original) (quoting The Local Civil Rights Restoration Act of 2005, N.Y.C. Local Law No. 85, § 1 (2005)). The NYCHRL

must be “construed liberally” to accomplish its “uniquely broad and remedial purposes,” regardless of how courts have construed comparably worded federal statutes. *Id.* (quoting Restoration Act § 7).

Crafting appropriate injunctive relief is a matter within the trial court’s discretion. *Gore v. Turner*, 563 F.2d 159, 165 (5th Cir. 1977); *see also U.S. v. Hylton*, 590 F. App’x 13, 19 (2d Cir. 2014) (the district court “did not abuse its discretion” in ordering injunctive relief in FHA case). “[A] trial court must be permitted sufficient flexibility to fashion effective and equitable remedies in civil rights cases.” *Gore*, 563 F.2d at 165. And multiple courts have explained that courts should craft injunctive relief to effectuate the “twin goals in housing discrimination cases [which] are to [e]nsure that no future violations occur and to remove any lingering effects of past discrimination.” *Rogers v. 66-36 Yellowstone Blvd. Co-op. Owners, Inc.*, 599 F. Supp. 79, 83 (E.D.N.Y. 1984) (alteration in original) (quoting *Gore*, 563 F.3d at 165); *see also Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983) (“Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination.”). The Second Circuit has stated that District Courts have “not merely the power but the duty to render a decree” that will “eliminate the discriminatory effects of the past as well as bar like

discrimination in the future.” *U.S. v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1236 (2d Cir. 1987).

This broad power to fashion injunctive relief is essential to securing adherence to fair housing laws, especially where the defendant’s conduct was particularly egregious and/or part of a pattern of violations. *See, e.g., Sandford v. R. L. Coleman Realty Co.*, 573 F.2d 173, 179 (4th Cir. 1978) (reversing District Court’s denial of an injunction because “the facts present a sufficiently clear and flagrant case of discrimination”); *U.S. v. Space Hunters, Inc.*, No. 00 CIV. 1781, 2004 WL 2674608, at \*8-9 (S.D.N.Y. Nov. 23, 2004), *aff’d*, 429 F.3d 416 (2d Cir. 2005) (granting injunction where defendant failed to comply with prior court and administrative orders); *Short v. Manhattan Apartments, Inc.*, 916 F. Supp. 2d 375, 403 (S.D.N.Y. 2012) (grant injunction under the NYCHRL arising from housing provider’s refusal to rent to applicants with HIV/AIDS). In such circumstances, injunctive relief provides assurance that the defendant will not repeat its unlawful conduct, thereby causing additional harm and potentially requiring follow-on legal action. *Rogers*, 599 F. Supp. at 84 (explaining that purpose of relief in many FHA cases was “to arrest . . . past misconduct and prevent its non-repetition”). This is particularly important where, as here, denial of housing can have immediate and dire consequences—such as becoming homeless, losing a rent subsidy, having to

move into substandard housing, or being confined to a high-poverty neighborhood—that cannot fully be remedied by a money judgment years later.

Federal courts have a long history fashioning extensive injunctive relief to remedy and prevent housing discrimination. Oftentimes injunctive relief in fair housing cases has been both prohibitive (requiring defendants to refrain from certain conduct) and affirmative (requiring defendants to engage in certain conduct). In *Rogers*, for example, a jury found that the defendant rejected the plaintiff’s attempt to purchase an apartment because she was Black, not because she did not meet the defendant’s financial criteria, as it had claimed. *Id.* at 80. The court issued an injunction prohibiting the defendant from withholding consent to a sale because of the applicant’s race and banning defendant from denying any “minority applicant the opportunity to purchase an apartment because of unsubstantiated views on that person’s finances.” *Id.* at 86. The injunction further required defendant to engage in a range of affirmative conduct, including placing advertisements in the *New York Times* and the *Amsterdam News* every three to four months stating that it welcomes applications from qualified minorities, collecting information about each applicant’s race, and providing rejected applicants with reasons for the rejection. *Id.* at 86-87.

Examples of similarly extensive injunctive relief abound. In *Space Hunters, Inc.*, for example, a District Court within this circuit ordered a defendant who had

existed a pattern of violative, discriminatory conduct to record incoming service call audio and maintain certain records for a period of three years. 2004 WL 2674608, at \*8-9. In *Ueno v. Napolitano*, the court found a range of injunctive relief appropriate given the jury's determination that the defendant had refused to rent apartments based on race, including an affirmative injunction requiring the defendant to (1) provide notice of any vacancies to the organization representing the plaintiffs, (2) accept rental applications referred by the organization, and (3) provide a written statement of reasons for each referral to whom a rental was not offered. No. 04 CV 1873, 2007 WL 1395517, at \*11 (E.D.N.Y. May 11, 2007). And in *Mhany Mgt. Inc. v. Incorporated Vill. of Garden City*, the court issued a prohibitory injunction and affirmative relief requiring the defendant to implement yearly fair housing training, enact a resolution to "assure equal housing opportunities and nondiscrimination in its zoning and other land use processes," and to appoint an independent fair housing compliance officer. 4 F. Supp. 3d 549, 556-60 (E.D.N.Y. 2014); *see also, e.g., Sentinel v. Komar*, No. 119CV00708, 2021 WL 2284462, at \*3 (E.D. Cal. June 4, 2021), *on reconsideration in part sub nom. Project Sentinel v. Komar*, No. 119CV00708, 2021 WL 3051991 (E.D. Cal. July 20, 2021) (enjoining defendant from discriminating in the rental of dwellings, including "[e]mploying overly restrictive occupancy limits that have a disparate impact on families with children," and requiring fair housing training, fair housing

disclosures, and maintenance of certain records). This practice of awarding injunctive relief goes back decades. *See, e.g., U.S. v. W. Peachtree Tenth Corp.*, 437 F.2d 221, 229 (5th Cir. 1971) (requiring defendants to establish written standards and criteria for the processing and approval of applications, and requiring defendants to implement an affirmative program to notify past applicants of a right to reapply); *Zuch v. Hussey*, 394 F. Supp. 1028, 1056 (E.D. Mich. 1975), *aff'd and remanded sub nom. Zuch v. John H. Hussey Co.*, 547 F.2d 1168 (6th Cir. 1977) (enjoining defendants from all telephonic, personal, and mail solicitations of homeowners at their residences, and requiring other affirmative relief). In each of these cases, robust injunctive relief was needed to prevent future violations of the FHA.

This matter is a textbook case illustrating the importance of broad authority to award injunctive relief. Up until 2015, Appellants were blatantly violating the NYCHRL by refusing to accept tenants with HASA subsidies. Appellants were sued and settled, agreeing not to withhold apartments based on lawful source of income. But Appellants then designed a new income policy that was even more exclusionary. The 2015 policy gave rise to this litigation, and as the District Court found, it disproportionately excluded holders of any housing subsidy without justification (resulting in an award of both compensatory and punitive damages). Moreover, after this case was initially filed to challenge the 2015 policy,

Appellants created yet another exclusionary policy in 2019. The District Court correctly determined that the 2019 policy violated the NYCHRL because it had an unjustified disparate impact on partial subsidy holders.

Given this track record of repeated violations and attempts to evade NYCHRL requirements, a simple declaration that the 2015 and 2019 policies were unlawful would have provided no assurance that Appellants could or would design an income policy that would comply with the NYCHRL. Only an injunction barring Appellants from maintaining a minimum income policy and requiring certain affirmative conduct would “arrest past misconduct and prevent its non-repetition.” *Rogers*, 599 F. Supp. at 84. Far from abusing discretion, the court’s injunction is necessary under the circumstances to “insure that no future violations occur.” *Id.* at 83.

### **CONCLUSION**

For the reasons above, *Amici Curiae* respectfully urge this Court to rule in favor of Plaintiff-Appellee and affirm the District Court’s decision.

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Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) and Local Rules 29(a)(5), 29.1(c) and 32(a)(4)(A) because it contains 5,677 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

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**CERTIFICATION OF SERVICE**

This brief was electronically filed on May 10, 2024 with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the ACMS system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate ACMS system.

*/s/ Zachary Best*

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