



## CT FAIR HOUSING CENTER

### The National Commission on Fair Housing and Equal Opportunity in Housing Hearing

September 22, 2008 – Boston, MA

#### Written Testimony of Cynthia Watts Elder

##### I. Introduction

I want to thank the Committee for allowing me to address you today. My name is Cynthia Watts Elder and I currently serve as Co-President of the Board of Directors for the Connecticut Fair Housing Center. I am currently employed as in-house counsel for The Phoenix, a life insurance and financial services company located in Hartford, Connecticut. I also have the pleasure of serving on the Board of Directors of the Urban League of Greater Hartford and I served as the Executive Director of the Connecticut Commission on Human Rights and Opportunities from 1999 to 2003.

I am here to discuss Connecticut's lawful source of income protections and how this law assists in providing mobility for some of Connecticut's poorest residents and what Connecticut's experience with this law says about the need for such protections nation-wide.<sup>1</sup>

##### II. The Need for Source of Income Protections

Residential racial and economic segregation is a recalcitrant reality in the state of Connecticut. The majority of minority residents in Connecticut are clustered in only five cities: Bridgeport, Hartford, New Haven, Stamford, and Waterbury.<sup>2</sup> The concentration of minorities in

<sup>1</sup>I want to thank Joseph Rich and Nicole Birch of the Lawyers' Committee for Civil Rights Under Law in Washington, D.C. and Amy Eppler-Epstein of the New Haven Legal Assistance Association of New Haven, CT. Much of the information in my testimony was taken from briefs they submitted on behalf of *amici curiae* in the case of *Commission on Human Rights and Opportunities v. Sullivan*, 285 Conn. 208, 939 A.2d 541 (2008)(Sullivan II).

<sup>2</sup>See Connecticut Department of Economic & Community Development, *Connecticut's Long Range Housing Plan* (2000), <http://www.ct.gov/ecd/cwp/view.asp?a=1105&q=250530> (Finding that in 1998, over 53.3 percent of all minorities in Connecticut resided in these cities); *Connecticut Analysis of Impediments to Fair Housing Choice, Update*, 5 (2006), [http://www.ct.gov/ecd/lib/ecd/housing\\_plans/analysis\\_of\\_impediments\\_10-2006.pdf](http://www.ct.gov/ecd/lib/ecd/housing_plans/analysis_of_impediments_10-2006.pdf) (noting the clear pattern of socioeconomic segregation in Connecticut and the heavy concentration of racial and ethnic minority groups and low-income families in Connecticut's urban centers, particularly in its largest and majority minority cities of Bridgeport, Hartford, and New Haven).

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these urban neighborhoods is particularly extreme in the hyper-segregated cities of Bridgeport, Hartford, and New Haven where minorities comprise a vastly disproportionate percentage of the population -- 69.1 %, 82.1%, and 64.5 % respectively.<sup>3</sup> The levels of racial isolation these numbers reflect become even more apparent when contrasted with the comparatively minimal percentage of minorities in the suburbs surrounding these cities-- 7.7 % in the suburbs of Bridgeport, 13.7% in Hartford's suburbs, and 19% in suburban New Haven.<sup>4</sup> Further, the poverty rates in Bridgeport, Hartford, and New Haven far surpass those in their suburban counterparts. Specifically, the poverty rates in these three cities are 18.4%, 30.6%, and 24.4%, whereas the poverty rates for the corresponding suburbs are a mere 2.8 %, 5.3 % and 7.3%.<sup>5</sup>

Yet racial isolation is not a result of economic disparities because poor whites are less segregated than poor minorities.<sup>6</sup> Economic realities make it difficult for low income tenants in Connecticut to escape the cities and move to a less impacted suburb. In the 2008 survey of housing costs conducted annually by the National Low Income Housing Coalition, Connecticut ranks as the seventh most expensive state in the nation for housing, with the Stamford-Norwalk region ranking as the most expensive metropolitan area in the entire country.<sup>7</sup>

In such an expensive housing market, one of the only ways low income tenants living on disability payments, welfare assistance, Social Security or similar income sources can afford housing in the private market is if they have a housing subsidy. In addition, the level of residential integration in Connecticut is significantly enhanced by a ban on discrimination against voucher holders, a predominantly minority group who, with the assistance provided by vouchers, are often financially able to reside outside the city centers. Minorities comprise approximately 72% of voucher holders in Connecticut statewide<sup>8</sup> and range from 91% to 96% of the voucher holders in Bridgeport, Hartford, and New Haven.<sup>9</sup> These voucher holders reside in majority minority cities where 23 % to 33% of the population in the census tracts where they reside lives below the poverty level.<sup>10</sup>

Recognizing the urgent need for more housing affordable to low income people, in 1985 Connecticut created its own housing subsidy program, modeled on the federal Section 8 program, called the Rental Assistance Program (RAP). See, Conn. Gen. Stat. § 17b-812. According to the state Department of Social Services, there are currently about 1,800 families in

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<sup>3</sup> *See* U.S. Department of Housing and Urban Development, *State of the Cities Data Systems (SOCDS)*(2000), <http://socds.huduser.org>.

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

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

<sup>6</sup> *See Connecticut Consolidated Plan 2000-2005, Section VI, Antipoverty Strategy*, 1 (2000), <http://www.ct.gov/ecd/cwp/view.asp?a=1105&q=250556>.

<sup>7</sup> *Out of Reach* 2008, [www.nlihc.org/oor/oor2008](http://www.nlihc.org/oor/oor2008). Each year the National Low Income Housing Coalition conducts a survey of affordable housing in all 50 states and issues a report which includes state-by-state data. In Connecticut, the Fair Market Rent (FMR) for a two-bedroom apartment, including utilities, is \$1,062. In order to afford this level of rent and utilities without paying more than 30% of income on housing, a household must earn \$3,540 monthly or \$42,480 annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into a Housing Wage of \$20.42 per hour.

In Connecticut, a minimum wage worker earns an hourly wage of \$7.40. In order to afford the FMR for a two-bedroom apartment, a minimum wage earner must work 110 hours per week, 52 weeks per year. Or, a household must include 2.8 minimum wage earner(s) working 40 hours per week year-round in order to make the two bedroom FMR affordable.” *Out of Reach*, Connecticut Data, [www.nlihc.org/oor/oor2008](http://www.nlihc.org/oor/oor2008).

<sup>8</sup> *See* U.S. Department of Housing and Urban Development, *A Picture of Subsidized Households* (2000), <http://www.huduser.org/picture2000>.

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

<sup>10</sup> *Id.*

Connecticut receiving RAP certificates. Like Section 8, RAP enables tenants to afford rental housing in the private market, by paying a specified portion of their adjusted gross income for rent and utilities with the government paying the balance of the rent directly to private landlords.

Since its inception, the Section 8 program has been a crucial tool in promoting opportunity for racial and economic housing desegregation. The Section 8 program provides a rare and much needed opportunity for low income and minority families to move into lower-poverty and less-segregated neighborhoods. Unlike other federal housing programs that are site-specific and determine where the recipient of federal aid may reside, (often in economically and racially segregated inner-city public housing communities), the Section 8 program gives the voucher holder an expanded choice of where to live including market rate private housing in suburban communities. Indeed, housing choice is the paradigmatic feature of the Section 8 program.

The official name of the program--the *Housing Choice Voucher Program*--reflects the centrality of housing choice to the purpose of the Section 8 voucher program. As Congress became concerned about the increasing concentration of poverty in urban communities,<sup>11</sup> it initiated the voucher program to provide greater housing choice to low-income residents.<sup>12</sup> The Housing Choice Voucher program seeks to “aid[] low-income families in obtaining a decent place to live and ... promot[e] economically mixed housing.” 42 USC § 1437f(a).

Further, the Section 8 regulations emphasize voucher holders’ freedom of choice in selecting a residence. The regulations provide that Housing Choice Voucher recipients may generally select units anywhere in the country so long as program requirements are met, 24 C.F.R. 982.1(a)(2) and (b) (1), and so long as location restrictions are not necessary to achieve desegregation or to comply with a court order, 24 C.F.R. 982.353(a). Voucher recipients have “freedom of choice”, which means that the local public housing agencies (hereinafter “PHAs”) administering the Section 8 program may not directly or indirectly reduce families’ opportunities to select among available units. 24 C.F.R. §982.353(f). Section 8 voucher holders are also allowed to move with their voucher from one jurisdiction to another with continued rental assistance. 24 CFR § 982.353 *et seq*; 42 USC § 1437f(r)(1). Thus PHAs may not discourage families from utilizing their voucher to live in an area outside their jurisdiction. 24 C.F.R. §982.301(a)(2). PHAs must also take the affirmative step of explaining to Section 8 recipients the advantages of moving to an area with a small concentration of low-income families. 24 C.F.R. 982.301 (a)(3).

Additionally, the U.S. Department of Housing and Urban Development has created a Section 8 management assessment program (hereinafter “SEMAP”) that provides incentives for PHAs to administer their Section 8 program in a manner that expands housing opportunities for voucher holders in areas that do not have high concentrations of low-income or minority residents. For example, PHAs can receive a more favorable assessment under SEMAP if the PHA has a written policy, and has taken actions indicated in the policy, to encourage participation by owners of units located outside areas of poverty or minority concentration. 24 CFR 985.3

<sup>11</sup> See Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(a)(1), (c)(6), 88 Stat. 633, 633-634 (codified as amended at 42 U.S.C. §5301 (1988)) (the statute creating the Section 8 program in which Congress acknowledges that “the nation’s cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from... the concentration of persons of lower income in central cities”).

<sup>12</sup> *Id.* (listing “the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income,” as one of the objectives of the program).

(ii)(g)(3)(i)(A) and (B). PHAs can also increase their assessment score by encouraging voucher holders to search for housing opportunities in areas with low poverty and minority concentration, such as by preparing maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within its jurisdiction and neighboring jurisdictions, assembling information about the characteristics of those areas, and demonstrating that it uses the maps and area characteristics information when briefing voucher holders about the full range of housing options. 24 CFR 985.3 (ii)(g)(3)(i)(C).

Connecticut's rental assistance program is modeled after the federal Housing Choice Voucher program. Conn. Gen Stat. § 17b-812. Like the federal program, the RAP is required to be administered in a manner that "promote[s] housing choice for certificate holders" and allows the voucher to be used for housing in any municipality in the state. Conn. Gen. Stat. § 17b-812(e). Further, it too requires affirmative action on the part of the Commissioner overseeing the RAP to "inform certificate holders that a certificate may be used in any municipality and, to the extent practicable,... assist certificate holders in finding housing in the municipality of their choice." *Id.* Moreover, similar to the federal program's incentives for PHAs that promote racial and economic desegregation, the RAP must "encourage racial and economic integration." *Id.*

The ability of these rental assistance programs to promote residential integration is further enhanced by the fair housing obligations placed on the administration of both programs. Specifically, the Fair Housing Act requires HUD to administer its housing programs "in a manner affirmatively to further" the purposes and policies of the Fair Housing Act. 42 U.S.C. 3608(d), (e)(5). Connecticut law requires its housing agencies to "affirmatively promote fair housing choice and racial and economic integration in all programs administered or supervised by such housing agency." Conn. Gen. Stat. § 8-37cc(b).

The promise of these rental assistance programs to promote residential integration, particularly the Housing Choice Voucher program, has been recognized nationwide by advocates and policy makers.<sup>13</sup> As HUD stated in its 1995 report to Congress regarding promoting housing choice in HUD's rental assistance programs:

[T]rue freedom of housing choice is denied when assisted housing opportunities are limited to minority or poor areas in central city locations....HUD rental certificates and vouchers offer a remedy to [the spatial isolation of people by income and race] by providing an assistance mechanism that low-income families can use to rent modestly priced housing anywhere in the private market.<sup>14</sup>

Connecticut has established housing mobility programs in Bridgeport, Hartford, and New Haven to help ensure that the Section 8 and RAP programs serve this remedial purpose. "These programs provide tenants with Section 8 vouchers information about new communities and assistance with the process of finding housing, applying, and securing housing units in suburban towns" to "expand[] access to housing outside of [the] segregated neighborhoods" of Bridgeport, Hartford and New Haven.<sup>15</sup> Housing mobility programs, such as those in Bridgeport, Hartford and New Haven, were first implemented as a remedy in a federal lawsuit that challenged racial discrimination in Chicago's public housing system.<sup>16</sup> Studies of these mobility programs show that the opportunities created by housing mobility have led to a variety of quality of life

<sup>13</sup> See, e.g., *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program*, (Philip Tegeler et al. eds, 2005).

<sup>14</sup> U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Promoting Housing Choice in HUD's Rental Assistance Programs: A Report to Congress* 79 (1995).

<sup>15</sup> *Report of the Blue Ribbon Commission to Study Affordable Housing* 45 (2000), [http://www.ct.gov/ecd/lib/ecd/affordable\\_housing\\_2000.pdf](http://www.ct.gov/ecd/lib/ecd/affordable_housing_2000.pdf).

improvements for the recipient families, including improvements in health, safety, educational success, employment, and earnings.<sup>17</sup>

The important public policy goal of utilizing the Housing Choice and RAP programs as tools for racial and economic integration cannot be realized if tenants are unable to utilize their vouchers because landlords will not rent to them. Research concludes that landlords' refusal to accept rental subsidies in more affluent, predominantly white suburban communities is a significant barrier to economic and racial integration.<sup>18</sup> Prohibiting discrimination in rental housing based on Section 8 and RAP is an important civil rights and public policy tool that helps expand opportunities for Section 8 and RAP voucher holders to live in integrated, low-poverty neighborhoods throughout the state of Connecticut.

Prohibiting source of income discrimination also promotes a variety of other state programs and policies. In addition to Section 8 and RAP, Connecticut administers the federally funded shelter-plus-care program that utilizes housing subsidies similar to Section 8 vouchers to provide social services and to make rental housing affordable to homeless people with mental disabilities. See 42 U.S.C. § 11403. Major state-funded housing initiatives, such as the Supportive Housing Pilots Initiative and the Next Steps Initiative, are also premised on the tenant's ability to use a housing subsidy to find rental housing in the private market. See, Conn. Gen. Stat. 17a-485c. Prohibiting source of income discrimination is a critical element in ensuring that these state-supported housing subsidy programs will actually work for their intended beneficiaries. Indeed, in recognition of this goal, the state in 2005 supported tenants in prosecuting housing discrimination cases by providing greater financial incentives to do so, by removing the state lien that normally attaches when welfare recipients obtain money damages in litigation. Conn. Gen. Stat. § 17b-93.

### **III. The Response of Connecticut and Other States**

But these state and federal housing subsidies are usable only if landlords in the private market agree to rent to tenants who have such subsidies. Connecticut legislators were frustrated to learn that their efforts to respond to the affordable housing crisis by creating housing subsidy programs like RAP, and providing public benefits, were being thwarted by landlords who would not rent to tenants with housing subsidies or governmental benefits. As stated by the sponsor of the source of income legislation, Representative Lynn Taborsak, in her floor statements:

Madam Speaker, . . . I would like to tell members why this bill was raised and heard by three Committees and why it is before us today. In 1988, the state provided 198.6 million dollars through these programs to subsidize shelter cost of low and moderate income families. And over and over again, in public hearings and in a 1986 report of the

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<sup>16</sup> *Hills v. Gautreaux*, 425 U.S. 284 (1976) created a mobility program as part of a consent decree in a lawsuit finding racial discrimination in the administration of Chicago's public housing. The program gave public housing residents Section 8 vouchers and helped over 7000 families move into apartments in mostly white suburbs or in revitalized areas of Chicago. The program was widely studied, and because of its success, HUD funded the Moving to Opportunity demonstration project in five urban areas to provide housing mobility to areas of low poverty using Section 8 vouchers. See Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 152, 106 Stat. 3672, 3716 (1992)(codified as amended at 42 USC § 1437f (Supp. V 1993)).

<sup>17</sup> See Margery Austin Turner and Dolores Acevedo-Garcia, *The Benefits of Housing Mobility: A Review of the Research Evidence in Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program*, *supra* note 11, 14-18.

<sup>18</sup> See Susan J. Popkin & Mary K. Cunningham, Urban Inst., *CHAC Section 8 Program: Barriers to Successful Leasing Up* 4-5 (1999). Accordingly, it is not surprising that the majority of Connecticut's voucher discrimination cases have come from minorities. Between 1996 and the present, 61% of the Connecticut Fair Housing Center's voucher discrimination cases were brought by minorities.

Commission on Human Rights and Opportunities on Housing Discrimination, this assistance that we provide has been reported as the reason used for rejecting a tenant's rental application.

Our assistance disadvantages the people that we are trying to shelter without the protections of this bill. Housing opportunities especially for low and moderate income families are severely limited in Connecticut. The families we assist need an equal chance in the rental housing market." House Transcript, May 24, 1989 (p.8777). [32 H.R. Proc., pt25, 1989 Sess., p.8777]

The Connecticut Legislature adopted the state prohibition against housing discrimination based on lawful source of income, Conn. Gen. Stat. § 46a-64c, in 1989. A lawful source of income is defined as "income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance." Con. Gen. Stat. §46a-63. Unfortunately, this did not end discrimination against people receiving public or rental assistance in Connecticut. According to the Connecticut Fair Housing Center, 39% of the complaints received by the Center between 2000 and the present concern source of income discrimination, more than all of the other protected categories put together except disability. The Center's investigations of these complaints also reveal ample independent evidence of discrimination. The Center's fair housing testing evidence shows that discrimination could be ruled out in only 15% of source of income tests. This is contrasted with tests done on all other protected classes where discrimination could be ruled out in 30% of investigations.

Connecticut is one of only 12 states and the District of Columbia to protect its citizens based on a lawful source of income. Other states with similar protections include California, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin.<sup>19</sup> An additional 18 cities or counties around the country also protect their citizens from source of income discrimination. Unfortunately, compliance with the law in other jurisdictions is equally dismal. A recent review by the Fair Housing Justice Center (FHJC) in New York City of advertisements listed on the popular website [www.craigslist.com](http://www.craigslist.com) revealed that on Monday, July 29, 2008 no fewer than 1,543 advertisements for rental units indicated a limitation or discrimination based on source of income. To ensure that this snapshot was not an aberration the FHJC logged on again to [www.craigslist.org](http://www.craigslist.org) on Sunday, August 3, 2008 and examined advertisements for rental housing in New York City. This time, no fewer than 1,641 rental advertisements indicated a limitation or discrimination based on source of income.<sup>20</sup>

Several jurisdictions providing source of income protections, including Connecticut, have faced legal challenges to the statute. In Connecticut, a large landlord, Michael Sullivan, has pursued not one, but two challenges to Connecticut's source of income protection arguing that the law did not apply to recipients of housing subsidies. Both challenges were defeated. *Commission on Human Rights & Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999) (Sullivan I) (upholding statute and finding that landlords may only consider the section 8 recipient's personal rent obligation and other reasonable obligations associated with the rental when assessing sufficiency of income); *Commission on Human Rights & Opportunities v. Sullivan*, 939 A.2d 541 (Conn. 2008) (upholding statute and affirming Sullivan I). In Massachusetts, several challenges to the law were defeated in the courts, the most recent occurring in 2007. *DiLiddo v Oxford Street Realty, Inc., and another*, 450 Mass.876, 876 N.E.2d 421 (2007) (holding that the terms of the voucher program lease are requirements that cannot be rejected by landlords or their agents, and that agents can be held liable for discrimination.) Residents of Minnesota have not been as fortunate. A recent case gutted the protections of the

<sup>19</sup> See, [http://prrac.org/pdf/Appendix\\_B.pdf](http://prrac.org/pdf/Appendix_B.pdf).

<sup>20</sup> See, [http://www.helpusa.org/site/DocServer/License\\_to\\_Discriminate\\_finalDRAFT.pdf?docID=2141](http://www.helpusa.org/site/DocServer/License_to_Discriminate_finalDRAFT.pdf?docID=2141).

statute holding that the law required a showing both of a refusal to rent and a failure to do so because of the tenant's status with respect to public assistance thus permitting the landlord to choose not to participate in the Section 8 program for non-discriminatory reasons, such as an unwillingness to pay for the administrative requirements of the program. *Babcock v. BBY Chestnut Limited Partnership*, Court of Appeals of Minnesota, No. CX-03-90 (2003).

There is also a lack of uniformity in the source of income laws which weaken their effectiveness. For example, Oregon's statute excludes federal rent subsidies from being considered income while Massachusetts prohibits discrimination based on receipt of rental assistance or a housing subsidy. Other states protect lawful sources of income without qualifying the protection where Connecticut's law does not prohibit the denial of full and equal accommodations solely on the basis of insufficient income without defining the term "insufficient income." The lack of uniformity and the patchwork of states providing protections have significantly cut down on the effectiveness of the protections.

#### **IV. A National Response Is Needed**

To truly make the Section 8 voucher program as well as any state housing subsidy programs work as a tool for integration, I recommend five strategies. First, source of income must be a federally protected class with a definition that is uniform throughout the country. Exemptions for landlords who do not like the Section 8 lease or other requirements of any housing voucher program must be specifically prohibited. Second, there must be concentrated outreach and publicity campaign to notify housing providers and tenants about source of income protections. As is evidenced by the investigations carried out by the Fair Housing Justice Center in New York City this summer, landlords believe it is legal to openly state their intention to discrimination against voucher holders. Third, fair market rents must be reviewed and increased in order to pay for housing in all neighborhoods. Too often housing voucher holders are confined to inner city neighborhoods because that is where the housing is the cheapest and the voucher will go farther. Fourth, the administrative requirements of the voucher program must be streamlined to ensure that there is little time between finding an apartment and lease-up. Many tenants report delays in inspections, rent certifications and lease signing which result in them losing desirable apartments. Finally, there must be vigorous enforcement of any new and all existing protections based on source of income by the state and federal governments as well as by private enforcement groups. Housing location effects every facet of a family's life. It determines access to employment, where the children go to school, access to grocery stores, and even where a family goes to church, synagogue, or temple. Source of income protections enhance housing choice and ensure that our nation's families have access to the housing of their choice.

Thank you for your attention. I would be happy to answer any questions.