

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Consolidated Case Nos. 1573 CD 2025 & 1575 CD 2025

HOUSING EQUALITY CENTER OF PENNSYLVANIA, et al.,

Appellants,

v.

OCF REALTY, LLC. et al.,

Appellees.

***AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS**

On Appeal from the Order of the Court of Common Pleas of Philadelphia
County Entered on October 27, 2025, and the Related 1925(a) Opinion Entered
on April 30, 2026, in No. 2025-0568

Stanley J. Brown
Allison M. Wuertz
Conrad D. Noronha
HOGAN LOVELLS CADWALADER US LLP
200 Liberty Street
New York, NY 10281
(212) 504-6666
stanley.brown@hlc.com
allison.wuertz@hlc.com
conrad.noronha@hlc.com

Jasmeet K. Ahuja (Pa. Bar No. 322093)
David Newmann (Pa. Bar No. 82401)
HOGAN LOVELLS CADWALADER US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
(267) 675-4600
jasmeet.ahuja@hlc.com
david.newmann@hlc.com

***Counsel for Amici Curiae Poverty & Race Research Action Council,
National Housing Law Project, National Fair Housing Alliance, and
National Homelessness Law Center***

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INTEREST OF AMICI¹

The Poverty & Race Research Action Council (“PRRAC”) is a civil-rights advocacy organization focused on addressing structural inequality in housing and education policy. Through research-based strategies, PRRAC champions policies that reform structural impediments disadvantaging low-income people of color. PRRAC supports the Housing Choice Voucher Program and has published issue briefs and articles on HCV Program reform and history. By working closely with local public housing authorities and sourcing funding for housing mobility across the country, PRRAC has helped more than 17,000 families move to higher-opportunity neighborhoods.

The National Housing Law Project (“NHLP”) is a nonprofit organization that works to strengthen and enforce tenants’ rights, increase housing opportunities for underserved communities, and expand the nation’s supply of safe and affordable homes. NHLP publishes “HUD Housing Programs: Tenants’ Rights,” the seminal authority on the rights of Housing and Urban Development tenants, and coordinates more than 2,200 legal aid attorneys, advocates, and organizers through the Housing Justice Network.

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amici and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

National Fair Housing Alliance (“NFHA”) is a national 501(c)(3) non-profit organization dedicated to ending discrimination and ensuring equal opportunity in housing, including for voucher holders. NFHA undertakes enforcement efforts in cities and states nationwide and regularly participates as amicus curiae to further its goal of achieving equal housing opportunities for all.

The National Homelessness Law Center (“NHLC”) is a national 501(c)(3) non-profit organization that works to combat homelessness through expanding access to safe and affordable housing. NHLC has successfully advocated for federal legislation preventing and addressing homelessness.

INTRODUCTION AND SUMMARY OF ARGUMENT

Housing should be about stability—a stable place to live, a stable foundation on which to build a life. Too often, families lack that basic resource. This case involves a challenge to a statute designed to create the stability families need to thrive. This Court should rebuff Defendants’ attempt to weaken Philadelphia’s support of affordable housing and reverse the lower court’s decision.

For decades, Congress, state legislatures and municipal governments like Philadelphia have worked to make stable, affordable housing a reality for those who need it most. Congress enacted the Fair Housing Act to tear down the walls of discrimination. Congress created the Housing Choice Voucher Program (the “HCV

Program”)² to give low-income families a fighting chance in the private rental market. Many voucher holders, however, never get to use their vouchers. Landlords, like Defendants here, often discriminate against voucher holders, forcing a significant number of HCV Program participants to return vouchers unused. This discrimination leads to housing uncertainty and jeopardizes the program’s efficacy.

When landlords began turning away voucher holders *en masse*, the City of Philadelphia (the “City”), along with nineteen states, the District of Columbia, and over 130 localities, amended its fair housing law to ban source-of-income discrimination—ensuring that vouchers are not just pieces of paper, but keys to homes.³ The discrimination that prompted the City’s action is well-documented. Many landlords refuse to rent to voucher recipients based on unfounded stereotypes and have sought to circumvent anti-discrimination protections. Philadelphia responded by amending its fair housing law to prohibit landlords from discriminating against prospective tenants based on their lawful source of income, including any governmental assistance, benefit, or subsidy program.

Philadelphia’s Fair Practices Ordinance, Phila., Pa., Code § 9-1101 *et seq.*, which prohibits landlords from discriminating against prospective tenants based on

² 24 C.F.R. § 982.1 *et seq.*; *see also* 42 U.S.C. § 1437f (codifying the requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937).

³ *See* Poverty and Race Research Action Council, *Appendix B: State, Local, and Federal Laws Barring Source of Income Discrimination* (updated Mar. 2026), <https://www.prrac.org/pdf/AppendixB.pdf>.

their lawful source of income (the “SOI Ordinance”),⁴ advances the federal objectives of the HCV Program. By ensuring prospective tenants are not denied housing merely because they use a housing voucher, the SOI Ordinance furthers the federal scheme. The law does not compel landlords to accept every voucher applicant. It simply prohibits them from rejecting applicants because they intend to use a housing voucher.

The trial court’s decision is factually unfounded, legally untenable, and practically dangerous. If affirmed, thousands of Philadelphians will lose housing opportunities when the need for affordable housing in the City, the Commonwealth, and the Nation has reached unprecedented levels. This Court should find in favor of Plaintiffs Housing Equality Center of Pennsylvania (“HEC”), Jennifer Cooper, and intervenor City of Philadelphia, and reverse the Court of Common Pleas’ decision dismissing Plaintiffs’ complaint with prejudice.

ARGUMENT

I. SOURCE-OF-INCOME PROTECTIONS ARE NECESSARY FOR THE HCV PROGRAM TO FUNCTION AS CONGRESS INTENDED.

Congress created the HCV Program to expand meaningful housing choice, reduce racial and economic segregation, and enable low-income families to access

⁴ Added, 1980 Ordinances, p. 556; amended, City Council Bill No. 240060 (2024) (enacted) (amending the Fair Practices Ordinance to prohibit discrimination on the basis of a person’s lawful source of income).

neighborhoods of opportunity.⁵ These federal objectives depend on private landlord participation, but the HCV Program imposes only modest requirements, including the use of a standard contract, compliance with basic inspection requirements, and application of ordinary, lawful screening criteria. Because landlords' refusals to consider voucher holders undermine the HCV Program's central purpose, Philadelphia's source-of-income protections are necessary to ensure that vouchers operate as Congress intended: as a practical means of expanding access to safe, stable, and integrated housing in the private market.

A. Congress Created the HCV Program to End Racial Segregation in Housing and to Facilitate Upward Mobility.

The Fair Housing Act ("FHA")⁶ stands as one of the great legislative achievements of the civil-rights era. Fair housing bills⁷ were introduced in Congress in 1966, following the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Following civil unrest across the country in the summer of 1967, President Lyndon B. Johnson established the Kerner Commission to examine the root causes of the unrest.⁸ The Commission published the Kerner Report in 1968,

⁵ See 42 U.S.C. § 1437f(a) (stating the HCV Program's purpose is "aiding low-income families in obtaining a decent place to live and . . . promoting economically mixed housing")

⁶ 42 U.S.C. §§ 3601 et seq.

⁷ S. 3296, 89th Cong. (1966); H.R. 14765, 89th Cong. (1966).

⁸ See Report of the National Advisory Commission on Civil Disorders, at 1 (1968) ("Kerner Report").

concluding that the United States was “moving toward two societies, one black, one white—separate and unequal.”⁹ In intensified unrest following Martin Luther King Jr.’s assassination, Congress acted on the Kerner Report’s recommendation¹⁰ and passed the FHA.¹¹ 42 U.S.C. §§ 3601 *et seq.*

The FHA’s primary objective is to eradicate discriminatory practices in housing across the United States.¹² In enacting the FHA, Congress provided federal protection against discrimination in the private housing market. At a high level, the FHA makes it unlawful to refuse to sell or rent, or otherwise discriminate in the terms or conditions of housing, on the basis of race, color, religion, sex, national origin, familial status, or disability. *See* 42 U.S.C. § 3604. For the first time, individuals and families across the United States could seek recourse for racial and other forms of discrimination by landlords.¹³

But Congress continued to do more to ensure low-income families could obtain decent housing and to address racial segregation. In 1974, Congress enacted

⁹ *Id.*

¹⁰ *See id.* at 261 (recommending implementation of national programs, including an expanded and modified rent supplement program, to bring millions of housing units within reach of low and moderate-income families).

¹¹ *See* Paul A. Jargowsky, Lei Ding, & Natasha Fletcher, *The Fair Housing Act at 50: Successes, Failures, and Future Directions*, 29 Hous. Pol’y Debate 694, 695 (2019).

¹² *See Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 521 (2015).

¹³ *See* Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 1:1 (Westlaw 2026).

the Housing and Community Development Act, creating the HCV Program. *See* 42 U.S.C. §§ 1437 *et seq.*; 42 U.S.C. §§ 5301 *et seq.* The new law reinforced and extended the FHA’s goals. The HCV Program was designed to “aid[] low-income families in obtaining a decent place to live and . . . promot[e] economically mixed housing.” *See* 42 U.S.C. § 1437f(a). The Act expanded housing choice for elderly persons, veterans, and low-income families in the private rental market, deconcentrated poverty, and enabled families to move to neighborhoods of opportunity.¹⁴

Under the HCV Program, participants obtain vouchers that pay for a portion of their rent in privately owned units.¹⁵ The subsidy amount is based on local “payment standard[s].” 24 C.F.R. § 982.1(a)(3). Ordinarily, if the rent is less than the payment standard, a participating family must pay 30 percent or more of adjusted monthly income toward rent, with the voucher covering the remainder. *Id.* (“[T]he family generally pays 30 percent of adjusted monthly income for rent.”). By design, vouchers go to households most in need. Families typically must be “extremely low-income” or “very low-income” to qualify.¹⁶ In Philadelphia, a four-person household

¹⁴ *See* U.S. Dep’t of Hous. & Urb. Dev., *HCV Applicant and Tenant Resources*, <https://www.hud.gov/helping-americans/housing-choice-vouchers-tenants> (last visited July 23, 2026).

¹⁵ *See* Ctr. on Budget & Pol’y Priorities, *The Housing Choice Voucher Program*, (updated June 11, 2026), <https://www.cbpp.org/research/housing/the-housing-choice-voucher-program>.

¹⁶ *See* U.S. Dep’t of Hous. & Urb. Dev., *supra* n.14.

is “very low income” if it earns less than \$61,350 and “extremely low income” if it earns less than \$36,800.¹⁷

The HCV Program also emerged as the nation’s primary means of combating homelessness. One example is the Veterans Affairs Supportive Housing (“VASH”) program, which pairs case management and clinical services from the U.S. Department of Veterans Affairs with housing voucher assistance. VASH has served more than 144,000 formerly unhoused veterans since its inception in 2008.¹⁸ Between 2018 and 2022, the HCV Program—as administered with state and local partners—served approximately 2.3 million households nationwide annually.¹⁹ The vouchers worked: families with children who had vouchers were less likely to be living on the street, in shelters, or with friends than those without.²⁰

¹⁷ U.S. Dep’t of Hous. & Urb. Dev., *FY 2026 Income Limits Documentation System: FY 2026 Income Limits Summary (Philadelphia–Camden–Wilmington, PA–NJ–DE–MD MSA)*, <https://www.huduser.gov/datasets/il/il2026/summary?reporttype=hmfa&year=2026&hmfa=METRO37980M37980&q=Philadelphia-Camden-Wilmington,%20PA-NJ-DE-MD%20MSA> (last visited July 23, 2026).

¹⁸ Nat’l Coal. for Homeless Veterans, *HUD, VA Announce Award of Vouchers to House More Than 5,200 Veterans*, (Apr. 6, 2018), https://nchv.org/hud_va_announce_award_of_vouchers_to_house_more_than_5200_veterans/.

¹⁹ See Ingrid Gould Ellen, Katherine O’Regan & Sarah Stochak, *Success Rates in the Housing Choice Voucher Program: 2018–2022*, at 7 (NYU Furman Ctr. Apr. 2025), https://www.furmancenter.org/wp-content/uploads/ee-legacy/Success_Rates_in_the_Housing_Choice_Voucher_Program_508.pdf.

²⁰ See, e.g., Ctr. on Budget & Pol’y Priorities, *Housing Choice Vouchers Sharply Reduce Families’ Housing Instability*, <https://www.cbpp.org/media/in-focus-housing-choice-vouchers-sharply-reduce-families-housing-instability> (last visited July 23, 2026).

In addition to reducing housing instability, vouchers help reduce extreme poverty. Rental assistance raised three million people over the federal poverty line in 2018, including 665,000 elderly individuals and nearly one million children.²¹ The HCV Program also promotes childhood wellness across education, development, and health outcomes and improves adults' psychological well-being.²²

Vouchers are also a vital tool not just for children and families, but for older adults as well. An estimated nineteen million older adults lack the income required to cover basic living costs.²³ As a result, older adults have become the fastest growing segment of the unhoused population across the country, with the number expected to triple by 2030.²⁴ Given the financial stressors older adults face, and their increasing need for housing assistance, protecting their access to affordable housing through legislation like Philadelphia's is paramount.

²¹ See Ctr. on Budget & Pol'y Priorities, *Research Shows Rental Assistance Reduces Hardship and Provides Platform to Expand Opportunity for Low-Income Families* (Dec. 5, 2019), <https://www.cbpp.org/research/housing/research-shows-rental-assistance-reduces-hardship-and-provides-platform-to-expand>.

²² *Id.*

²³ See Nat'l Council on Aging, *Addressing the Nation's Retirement Crisis: The 80%* (Oct. 7, 2025), <https://www.ncoa.org/article/addressing-the-nations-retirement-crisis-the-80-percent-financially-struggling/>.

²⁴ See Dennis Culhane et al., *The Emerging Crisis of Aged Homelessness*, https://endhomelessness.org/wp-content/uploads/2024/10/Emerging-Crisis-of-Aged-Homelessness-1.pdf?utm_source=copilot.com.

B. The HCV Program Was Intended to Operate in the Private Market and Imposes Modest Requirements on Landlords.

The HCV Program operates in the private rental market and therefore relies on landlord participation. *See* 24 C.F.R. § 982.1(b) (describing the HCV Program as providing “tenant-based assistance” for privately owned housing); *see also, e.g.*, 42 U.S.C. § 1437(a)(4) (promoting “the goal of providing decent and affordable housing for all citizens . . . by the independent and collective actions of private citizens, organizations, and the private sector”).

To encourage landlord participation while protecting federal funds, the HCV Program imposes modest administrative requirements on landlords who rent to voucher holders. The United States Department of Housing and Urban Development (“HUD”) sets guidelines and provides funding for the HCV Program. *See* 24 C.F.R. §§ 982.1–982.643. HUD delegates administration to state and local public housing agencies (“PHAs”). *See* 42 U.S.C. § 1437a(b)(6); 24 C.F.R. § 982.51.

A landlord’s obligations under the HCV Program are straightforward. Before the PHA approves tenancy, the landlord must permit a routine inspection. *See* 24 C.F.R. § 982.305 (setting forth requirements for PHA approval, including inspection of the unit). This inspection confirms: (1) that the unit meets basic health and safety standards by checking heating, plumbing, electricity, and other features; and (2) that the proposed rent is “reasonable”—in line with rents for comparable units. *See* 24 C.F.R. § 5.703 (establishing housing standards for HUD units); 24 C.F.R.

§ 982.306(c)(6) (providing that a PHA may not approve tenancy if “[t]he owner has a history or practice of renting units that fail to meet State or local housing codes”); 24 C.F.R. § 982.507(b) (requiring the PHA to determine that “the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units”). Outside the voucher context, a prospective tenant would similarly assess a unit. The only financial inquiry is whether the landlord is overcharging relative to the market and the landlord’s other units—something landlords expect from all potential tenants, including those without vouchers.

Once the unit passes inspection, the landlord must enter into the standard Housing Assistance Payment (“HAP”) contract with the local PHA. 24 C.F.R. § 982.451(a)(1). Under the HAP contract, the landlord must provide pertinent information that the PHA or HUD may reasonably require, allow access for audits and inspections, and grant access to relevant records. *See* U.S. Dep’t of Hous. & Urb. Dev., *Housing Assistance Payments Contract (HAP Contract)*, Section 8 *Tenant-Based Assistance Housing Choice Voucher Program* § 11. During the lease term, the landlord must permit periodic inspections to confirm the unit continues to meet basic health and safety standards. *See* 24 C.F.R. § 982.405. These obligations largely overlap with the landlord’s independent obligation to comply with state and local housing codes and serve the landlord’s interest in maintaining the unit’s

habitability and marketability. HUD conditions do not supersede state and local housing codes. *Id.* § 5.703(f)(1).

This is precisely why courts across the country have overwhelmingly rejected landlords’ argument that the administrative burdens of the HCV Program are a defense against source-of-income discrimination claims. *See, e.g., Montgomery Cnty. v. Glenmont Hills Assocs. Priv. World at Glenmont Metro Ctr.*, 936 A.2d 325, 340 (Md. 2007) (“Most of the courts that have addressed an administrative burden defense have rejected it.”); *Franklin Tower One, L.L.C. v. N.M.*, 725 A.2d 1104, 1114 (N.J. 1999) (“[T]o permit a landlord to decline participation in the Section 8 program in order to avoid the ‘bureaucracy’ of the program would create the risk that ‘[i]f all landlords . . . did not want to “fill out the forms” then there would be no Section 8 housing available.’”) (citation omitted); *Feemster v. BSA Ltd. P’ship*, 548 F.3d 1063, 1070–71 (D.C. Cir. 2008) (“Permitting [a landlord] to refuse to accept Section 8 vouchers on the ground that it does not wish to comply with Section 8’s requirements would vitiate [the source of income] definition and the legal safeguard it was intended to provide.”); *Comm’n on Hum. Rights & Opportunities v. Sullivan Assocs.*, 739 A.2d 238, 247–48 (Conn. 1999) (reversing a trial court’s decision that held that landlords could refuse to accept voucher holders because of administrative burdens of the Section 8 lease terms); *DiLiddo v. Oxford St. Realty, Inc.*, 876 N.E.2d 421, 430–31 (Mass. 2007) (“[I]f landlords or their agents are permitted to reject for

their own reasons the ‘requirements’ of the [voucher] program, that could have . . . ‘a potentially widespread and profound impact on the ability of residents in the Commonwealth to utilize any rental assistance voucher to locate and then actually obtain affordable housing.’”); *Godinez v. Sullivan-Lackey*, 815 N.E.2d 822, 828 (Ill. App. Ct. 2004) (reinstating the determination of the state Commission on Human Relations that found that the landlord did not provide any evidence that it would be subjected to a substantial financial burden by accepting section 8 vouchers); *Cales v. New Castle Hill Realty*, No. 10 Civ. 3426 (DAB), 2011 WL 335599, at *5 (S.D.N.Y. Jan. 31, 2011) (“[L]andlords and agents cannot avoid liability for refusing to participate in government housing programs by claiming that the terms of or burdens imposed by a voucher program are undesirable.”).

The Court of Common Pleas’ conclusion that, “[t]hrough the [Fair Practices Ordinance], the City [of Philadelphia] requires landlords to accept all Section 8 applicants, even if a landlord has not sought or been approved by HUD,” *see* Op. at 1, misunderstands how the HCV Program works. Nothing in the SOI Ordinance or the Fair Practices Ordinance requires a landlord to accept every tenant seeking to rent with a voucher. Federal regulations permit landlords to **screen and deny** voucher participants using legally permissible criteria in the same manner as they would screen other applicants. *See, e.g.*, 24 C.F.R. § 982.307(a). For example, a landlord can review an applicant’s rental history in deciding whether to rent to a

particular voucher holder. *Id.* § 982.307(a)(3). The SOI Ordinance does not change this. Instead, it prevents landlords from refusing to rent to anyone who uses a voucher—exactly the conduct at issue here. The repercussions of invalidating the SOI Ordinance are clear: Plaintiff Cooper was homeless for five months, having moved into her son’s living room and stored her belongings in a rented storage unit until she finally found an apartment using a housing voucher. Fortunately for Cooper, her homelessness was only temporary. Others might not be so lucky.

Further, nothing in the SOI Ordinance requires HUD to approve every landlord. If a landlord’s unit does not comply with HUD’s standards, the PHA must not authorize leasing it under the HCV Program. *See* 24 C.F.R. § 982.306(c)(6); *see also id.* § 982.305 (providing that a “PHA may not give approval for the family . . . or execute a HAP contract” unless the unit and lease terms meet certain criteria); *id.* § 982.306(a) (requiring PHA not to approve tenancy if the landlord violates certain HUD requirements); *id.* § 982.306(b) (requiring PHA not to approve tenancy if a landlord is or may be in violation of the Fair Housing Act or other federal equal opportunity requirements).

In sum, the HCV Program is not unduly burdensome. The landlord’s obligations are more than offset by having monthly rent paid in significant part by the federal government—making payments more reliable than those paid entirely by individuals—and expanding the pool of potential renters.

C. The HCV Program Cannot Function as Congress Intended Without Protections Against Source-of-Income Discrimination.

Housing is a critical factor in promoting social and economic mobility. Stable, affordable housing in a well-resourced neighborhood can increase access to schools, cultural and recreational facilities, and employment opportunities. Conversely, when families are burdened with housing costs, they have less to spend on necessities like food and healthcare. Housing instability and segregation perpetuate the vicious cycle of poverty, lower educational attainment, and lack of employment opportunities.²⁵

As of 2024, nearly half of U.S. renter households spent more than 30% of their income on rent alone.²⁶ A far higher percentage of Black (56.2%), Hispanic (53.2%), and multiracial (51.4%) households were housing-cost burdened.²⁷ Over the past five years, average home values have increased dramatically.²⁸ This increase, along with rising mortgage rates, has made homeownership unaffordable, increasing strain on the rental market.²⁹ In 2025, the National Low Income Housing Coalition estimated that only 35 affordable and available rental homes exist for every 100 of

²⁵ See Riley N. Keelty & Walter E. Block, *The Housing Crisis in the United States*, 39 Prob. & Prop. 36, 37–38 (May/June 2025).

²⁶ See Press Release, United States Census Bureau, Nearly Half of Renter Household Are Cost-Burdened, Proportions Differ by Race (Sep. 12, 2024), <https://www.census.gov/newsroom/press-releases/2024/renter-households-cost-burdened-race.html>.

²⁷ *Id.*

²⁸ See Makinizi Hoover & Isabella Lucy, *The State of Housing in America*, U.S. Chamber of Com. (updated March 3, 2026), <https://www.uschamber.com/economy/the-state-of-housing-in-america>.

²⁹ *Id.*

the country's lowest-income renters.³⁰ Philadelphia alone faces a deficit of over 64,500 housing units affordable to extremely low-income households.³¹ More than half of Philadelphia renters are cost-burdened—allocating more than 30 percent of their income to housing—and almost one in three are severely cost-burdened, spending more than half their income on rent.³² The HCV Program remains crucial to ensuring affordable housing for millions of American families and a chance at the American dream. As of March 2026, approximately 22,566 households in Philadelphia and 81,150 in Pennsylvania receive vouchers.³³

The HCV Program particularly serves minority households in Philadelphia who are disproportionately low-income: 87% of voucher users in Philadelphia are Black and 83% of HCV households are headed by women.³⁴ The program also helps some of Philadelphia's most vulnerable residents: 48% of HCV households have at

³⁰ See Dan Emmanuel et al., *The Gap: A Shortage of Affordable Homes*, Nat'l Low Income Hous. Coal., at 4 (March 2025).

³¹ Angela D. Brooks, *Philadelphia's Housing Crisis Demands Bold Action - Mayor Parker's \$2 Billion H.O.M.E. Plan Delivers*, Nat'l League of Cities (Dec. 4, 2025), <https://www.nlc.org/article/2025/12/04/philadelphias-housing-crisis-demands-bold-action-mayor-parkers-2-billion-h-o-m-e-plan-delivers/>.

³² See Vincent Reina et al., *Current Housing Needs in Philadelphia*, at 2, The Housing Initiative at Penn (May 2025).

³³ Off. of Pub. & Indian Hous., *Housing Choice Voucher Data Dashboard*, U.S. Dep't of Hous. & Urb. Dev., <https://app.powerbigov.us/view?r=eyJrIjozMjY2OTQ2MTAtODVhNC00YmM2LTlhOWEtZWY4MGU5YWVmZDFmIiwidCI6IjYxNTUyNGM1LTlyZTk0NGJjZC1hODkzLTExODBhNTNmYzdiMiJ9> (last visited July 23, 2026).

³⁴ See U.S. Off. of Pol'y Dev. & Rsch., *Picture of Subsidized Households*, <https://www.huduser.gov/portal/datasets/assths.html> (last visited July 23, 2026).

least one disabled member.³⁵ Voucher-recipient households in Philadelphia have an average income of just \$19,020 per year—making³⁶ market-rate housing unattainable without assistance.

Landlord discrimination against voucher holders thwarts the HCV Program’s efficacy and significantly contributes to homelessness and housing insecurity.³⁷ Worse, because most voucher holders are people of color, landlords often use voucher status as a proxy for race, thereby engaging in racial discrimination.³⁸ Several prominent legal and civil-rights organizations, including the American Bar Association³⁹ and the NAACP,⁴⁰ have passed resolutions calling on federal, state,

³⁵ *Id.*

³⁶ *Id.*

³⁷ See U.S. Interagency Council on Homelessness, *All In: The Federal Strategic Plan to Prevent and End Homelessness*, at 19, 47 (Dec. 2022), https://usich.gov/sites/default/files/document/All_In.pdf; see also Office of Pol’y Dev. & Rsch., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*, U.S. Dep’t of Hous. & Urb. Dev., at 29–30 (Sep. 2018), <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

³⁸ See, e.g., Aaron Moselle, ‘It Shouldn’t Be This Hard’: Council Committee Explores Pervasive Form of Housing Discrimination in Philadelphia, *Phila. Trib.* (Mar. 21, 2023), https://www.phillytrib.com/news/local_news/it-shouldn-t-be-this-hard-council-committee-explores-pervasive-form-of-housing-discrimination-in/article_95972c18-154b-5dc0-982d-3916e6d9e16e.html.

³⁹ See Am. Bar Ass’n, *Your Money’s No Good Here: Source of Income Discrimination in Housing* (Dec. 19, 2018), <https://www.americanbar.org/groups/crsj/resources/on-demand/your-moneys-no-good-here-source-income-discrimination-housing/?login>.

⁴⁰ NAACP Resols. Libr., *Source of Income Discrimination* (2007), <https://naacp.org/resources/source-income-discrimination>.

and local governments to prohibit discrimination in housing based on a person's lawful SOI.

Philadelphia along with over 130 other localities and nineteen states and territories revised their fair housing laws to prevent landlords from discriminating against renters based on their source of income. The City's purpose in amending its statute is simple: protect prospective renters from being turned away for using housing vouchers.⁴¹ To achieve this, the SOI Ordinance makes "source of income" a protected characteristic. The SOI Ordinance defines "source of income" as including:

any lawful source of income . . . includ[ing], but not be limited to, earned income, child support, alimony, insurance and pension proceeds; all forms of public assistance, including Temporary Assistance for Needy Families; and housing assistance programs, including but not limited to the Housing Choice Voucher (sometimes referred to as "Section 8") Program and other comparable rental voucher programs.

See Phila., Pa. Code § 9-1102(1)(cc). The SOI Ordinance prohibits discrimination based on source of income at each stage of the housing process. *See id.* § 9-1108(1)(a) (prohibiting refusals to sell, rent, lease, or otherwise make housing available, and discrimination in terms, conditions, privileges, facilities, or services of housing); *id.* § 9-1108(1)(c) (prohibiting discriminatory advertisements,

⁴¹ *See, e.g.,* Philip M. E. Garboden, Eva Rosen & Isaiah Fleming-Klink, *Landlords and Housing Vouchers: 50 Years of Feedback*, 26 *Cityscape: J. Pol'y Dev. & Rsch.* 107, 108, 111 (2024), <https://www.huduser.gov/portal/periodicals/cityscape/vol26num2/ch5.pdf>.

applications, inquiries, records, credit reports, appraisals, and other statements); *id.* § 9-1108(1)(i) (prohibiting false or misleading representations about availability or eligibility); *id.* § 9-1108(1)(m) (prohibiting restrictions on availability, services, repairs, or improvements based on housing assistance or other protected source of income); *id.* § 9-1108(1)(n) (requiring cooperation with paperwork needed for a tenant or applicant to receive housing assistance, including Housing Choice Voucher assistance). The SOI Ordinance reaches both express refusals to accept lawful income sources and indirect practices that frustrate a tenant's ability to use those sources to obtain or maintain housing.

Laws like Philadelphia's work. One study using testers in five U.S. cities found varied voucher denial rates, but one trend was clear: denial rates were consistently lower in jurisdictions with source-of-income discrimination bans.⁴² Even with these protections, many landlords continue resisting voucher holders. And if the lower court's decision stands, discrimination will increase.

⁴² See Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary*, U.S. Dep't of Hous. & Urb. Dev., Off. of Pol'y Dev. & Rsch., at 4–5 (Aug. 2018), <https://www.huduser.gov/portal/sites/default/files/pdf/ExecSumm-Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

II. THE TRIAL COURT’S DECISION HAMSTRINGS FAIR HOUSING ORGANIZATIONS AND UNDERMINES CIVIL RIGHTS ENFORCEMENT.

Congress has long recognized that fair housing organizations are critical for FHA enforcement. According to a Government Accountability Office study, private fair housing organizations like HEC are integral to fair housing enforcement nationwide, carrying out investigations, bringing meritorious claims, and engaging in education programs to prevent discriminatory housing practices. *See* U.S. Gov’t Accountability Off., *Fair Housing: Funding and Activities Under the Fair Housing Initiatives Program* 3–5 (Mar. 26, 1997). HEC—the nation’s oldest fair housing council—is a direct service provider whose counseling, testing, and education programs were directly impaired by Defendants’ categorical refusal to accept housing vouchers. The trial court’s contrary holding misunderstands both fair housing enforcement and Pennsylvania standing doctrine.⁴³ If left undisturbed, it would strip civil-rights organizations of an important tool to investigate and counteract housing discrimination and thus weaken fair-housing enforcement.

⁴³ Additionally, the trial court’s reasoning that “[n]o tester was an actual prospective Section 8 tenant,” Op. at 18, flies in the face of the U.S. Supreme Court’s decision in *Havens* where the Supreme Court approved the use of testers to ferret out and identify housing discrimination. “testers” are individuals who, without an intent to rent or purchase a home or apartment and is irrelevant to whether HEC has suffered organizational harm, as opposed to whether the testers have suffered harm as potential individual plaintiffs. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373–74 (1982) (holding that “testers” who are individuals “without an intent to rent or purchase a home or apartment [and who] pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices” have standing).

A. Fair Housing Organizations Have a Congressionally Recognized Role in Enforcing the Fair Housing Act and Have Long Had Standing to Sue.

The United States Supreme Court has held that when a defendant's discriminatory practices "perceptibly impair" an organization's activities and produce a "consequent drain on the organization's resources," the organization suffers a cognizable injury and has standing. *Havens Realty Corp.*, 455 U.S. at 379; *see also FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (reaffirming *Havens* and holding that when a defendant's actions "directly affected and interfered with [an organization's] core business activities," including "counseling and referral services," the organization has standing). Standing in Pennsylvania is "granted more liberally than in federal courts." *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 832 (Pa. 2024). Unlike Article III standing, Pennsylvania's inquiry is prudential and judicially created, not constitutionally compelled. *Id.* The inquiry is simply whether the putative plaintiff has demonstrated "aggrievement" by establishing "a substantial, direct and immediate interest in the outcome of the litigation." *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013). An interest is "substantial" when it surpasses all citizens' common interest in procuring obedience to the law; "direct" when the alleged violation shares a causal connection with the alleged harm; and "immediate" when that causal connection is neither remote nor speculative. *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467,

481 (Pa. 2021). The Pennsylvania Supreme Court has repeatedly found organizational standing where an organization’s core activities were impaired, or its resources diverted by the challenged conduct.

This principle did not arise in a vacuum. Congress has long recognized that fair housing organizations like Plaintiff HEC play an indispensable role in enforcing the FHA and has repeatedly acted to ensure they have the broadest possible standing to sue. In 1988, Congress enacted the Fair Housing Amendments Act, Pub. L. 100-430, adopting a definition of “aggrieved person,” *see id.* § 5 (codified in 42 U.S.C. § 3602(i)), intended to define standing in FHA cases as broadly as federal or state constitutions permit. *See Bank of Am. Corp. v. City of Miami, Fla.*, 581 U.S. 189, 197 (2017); *see also Mitchell v. Cellone*, 389 F.3d 86, 90 (3d Cir. 2004) (holding that the Fair Housing Amendments Act indicated congressional intent to bolster FHA enforcement by easing the burden on low-income minorities most affected by housing discrimination).

In 1992, Congress went further, recognizing “the proven efficacy of private nonprofit fair housing enforcement organizations” and declaring that “support for [fair housing] organizations [was] a necessary component of the fair housing enforcement system.” Housing and Community Development Act of 1992, Pub. L. 102-550, § 905(a)(9). Congress established the Fair Housing Initiatives Program (“FHIP”) to provide grants to fair housing organizations that are “formulating or

carrying out programs to prevent or eliminate discriminatory housing practices,” including “complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.” 42 U.S.C. § 3616a(a), (h)(1)(B). Through FHIP, Congress requires fair housing organizations like Plaintiff HEC to investigate housing discrimination and, where evidence exists, “bring a private action in court.” *See* Cong. Rsch. Serv., *The Fair Housing Act: HUD Oversight, Programs, and Activities*, Rep. No. R44557, at 7 (updated June 15, 2018). Congressional intent is clear: fair housing organizations may bring private actions to enforce housing discrimination laws, and courts must grant them the broadest permitted standing.

Plaintiff HEC is the nation’s oldest fair housing council—a nonprofit whose mission is to ensure equal access to housing. Compl. ¶ 8. HEC is a direct service provider operating ongoing programs that deliver free, specialized housing services to its community. HEC serves Philadelphia and six surrounding counties, providing education, consulting, counseling, testing, and investigation services in furtherance of fair housing. *Id.* HEC receives calls for housing help, assesses discrimination complaints, deploys trained investigators to test whether housing providers engage in unlawful practices, and educates the community about fair housing rights. *See id.* ¶¶ 29–31, 56, 60. And when HEC responds to discriminatory housing practices by spending money and diverting resources to counteract those practices, its response

preserves and protects the efficacy of its mission-aligned housing programs and services.

Pennsylvania courts have consistently found standing in circumstances similar to those here. *See, e.g., Applewhite v. Com.*, No. 330 M.D.2012, 2014 WL 184988, at *7–8 (Pa. Commw. Ct. Jan. 17, 2014) (holding organizational petitioners had standing to challenge a voter identification law where the organization had to divert resources to voter education); *Allegheny Reprod. Health Ctr.*, 309 A.3d, at 832–42 (finding organization of health-care providers had standing where a federal policy caused an organization to “incur additional expenses to further counsel patients, secure funding, and provide medical care”); *Black Pol. Empowerment Project v. Schmidt*, No. 283 M.D. 2024, 2024 WL 4002321, at *2 (Pa. Commw. Ct. Aug. 30, 2024), *vacated on other grounds*, 322 A.3d 221 (Pa. 2024) (finding organizational standing where the organization incurred “additional expenditures and diversion of resources to educate and assist voters”). Most telling, the authorities the trial court invoked to conclude that HEC lacked standing—*Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), and *South Whitehall Township Police Service v. South Whitehall Township*, 555 A.2d 793 (Pa. 1989)—are cases in which the Pennsylvania Supreme Court *recognized* organizational standing. *See Ball*, 289 A.3d at 19–20 (finding organization’s expenditure of resources to educate voters conferred standing);

S. Whitehall Twp. Police Serv., 555 A.2d at 797 (finding standing where there was clear legislative intent).

Testing, in particular, is a long-established enforcement tool that federal and Pennsylvania courts have recognized as crucial to investigating civil-rights violations. *See, e.g., J. Howard Brandt, Inc. v. Commonwealth, Hum. Rels. Comm'n*, 324 A.2d 840, 842 (Pa. Commw. Ct. 1974) (holding that the use of testers is a permissible method under the Pennsylvania Human Relations Act); *Bryan v. Commonwealth, Pa. Hum. Rels. Comm'n*, 404 A.2d 1368, 1371 (Pa. Commw. Ct. 1979) (permitting the use of testers in showing discrimination in housing); *Coel v. Rose Tree Manor Apartments, Inc.*, No. CIV.A. 84-1521, 1987 WL 18393, at *6 (E.D. Pa. Oct. 13, 1987) (finding that the Fair Housing Act extends the broadest standing to testers); *City of Pittsburgh Comm'n on Hum. Rels. v. DeFelice*, 782 A.2d 586, 592–93 (Pa. Commw. Ct. 2001) (finding that evidence established through testers proved that defendants engaged in unlawful housing practices).

B. Without Organizational Standing, Source-of-Income Discrimination Will Be Systematically Under-Enforced.

The practical stakes of the trial court's standing ruling are considerable. If organizations like HEC are stripped of standing, source-of-income discrimination will be systematically under-enforced. Individual tenants face formidable structural barriers to bringing such suits. A prospective renter rarely has the information needed to know whether she has been singled out, seldom has documentary proof of

refusal, and ordinarily lacks the time and resources to litigate while urgently searching for housing.

Screening-stage refusals are precisely where source-of-income discrimination frequently occurs and where individual enforcement is weakest. Organizations like HEC, which counsel voucher holders on housing options and are equipped to test, document, and aggregate refusals, are often the only parties capable of bringing them to light. The indispensable role of organizations like HEC in fair housing enforcement is well documented. A comprehensive HUD-commissioned study confirmed that funding for private fair housing organizations is “a critical component of the U.S. civil rights enforcement infrastructure . . . [and] without . . . funding [to such organizations] it is likely that most enforcement and investigatory work, particularly paired testing, would no longer occur.”⁴⁴ The study further found that when fair housing organizations like HEC are the first point of contact for discrimination complaints, they add value in two critical ways: cases without merit are weeded out, and investigative evidence provided to HUD and state agencies is much more likely to result in resolution or a finding of discrimination than cases where complainants go directly to government agencies.⁴⁵

⁴⁴ Kenneth Temkin, Tracy McCracken & Veralee Liban, *Study of the Fair Housing Initiatives Program*, U.S. Dep’t of Hous. & Urb. Dev., at iii (May 2011), https://www.huduser.gov/publications/pdf/fhip_2011.pdf.

⁴⁵ *Id.* at iii, xi.

The data bears this out. In 2023, 75.52% of all 34,150 fair housing complaints filed nationwide were brought by fair housing organizations—not individual complainants.⁴⁶ Complaints supported by testing evidence gathered by organizations like HEC are significantly more likely to result in favorable settlements or decisions that remove barriers to housing.⁴⁷ These statistics underscore a plain reality: without organizational plaintiffs equipped with standing to test, investigate, and litigate, the vast majority of fair housing discrimination will go undetected, unreported, and unremedied.

CONCLUSION

As discussed in Section I.C *supra*, the City of Philadelphia, like most of the country, faces a major housing crisis. The HCV Program provides a critical lifeline for Philadelphians facing housing stress and uncertainty, and the SOI Ordinance is necessary for the program to function as Congress intended. The trial court’s decision contradicts congressional intent, is untethered to the facts, contrary to judicial precedent, and would end enforcement of a critical law protecting Philadelphians from housing discrimination.

⁴⁶ Lindsay Augustine et al., Nat’l Fair Hous. All., 2024 Fair Housing Trends Report 6 (2024), https://nationalfairhousing.org/wp-content/uploads/2023/04/2024-Fair-Housing-Trends-Report-FINAL_07.2024.pdf.

⁴⁷ Temkin, *supra* note 44, at xi.

Amici therefore respectfully urge this Court to reverse the Court of Common Pleas' Decision, uphold the validity of the SOI Ordinance, and remand to proceed in accordance with civil procedure and law.

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Respectfully submitted,

/s/ Jasmeet K. Ahuja

Stanley J. Brown
Allison M. Wuertz
Conrad D. Noronha
HOGAN LOVELLS CADWALADER US LLP
200 Liberty Street
New York, NY 10281
(212) 504-6666
stanley.brown@hlc.com
allison.wuertz@hlc.com
conrad.noronha@hlc.com

Jasmeet K. Ahuja (Pa. Bar No. 322093)
David Newmann (Pa. Bar No. 82401)
HOGAN LOVELLS CADWALADER US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
(267) 675-4600
jasmeet.ahuja@hlc.com
david.newmann@hlc.com

CERTIFICATE OF PUBLIC ACCESS COMPLIANCE
PURSUANT TO Pa. R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Jasmeet K. Ahuja

Jasmeet K. Ahuja

*Counsel for Amici Curiae Poverty &
Race Research Action Council,
National Housing Law Project,
National Fair Housing Alliance, and
National Homelessness Law Center*