APL-2026-00035
Tompkins County Clerk's Index No. EF2022-0558
Appellate Division–Third Department Case No. CV-23-1255

Court of Appeals

of the

State of New York

PEOPLE OF THE STATE OF NEW YORK by Letitia James,
Attorney General of the State of New York,
Petitioner-Appellant,

– against –

COMMONS WEST, LLC, COLLEGETOWN PLAZA, LLC, CITYVIEW, LLC, COLLEGETOWN CENTER, LLC, COLLEGETOWN COURT, LLC, FANE ENTERPRISES, INC. and JASON H FANE, individually and D/B/A Ithaca Renting Company, and as the Sole Member of Commons West, LLC, Collegetown Plaza, LLC, Cityview, LLC, Collegetown Center, LLC and Collegetown Court, LLC, and as President, Director and Shareholder of Fane Enterprises, Inc.,
Respondents-Respondents.

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* NATIONAL HOUSING LAW PROJECT, POVERTY & RACE RESEARCH ACTION COUNCIL, NATIONAL HOMELESSNESS LAW CENTER, ENTERPRISE COMMUNITY PARTNERS, AND NATIONAL FAIR HOUSING ALLIANCE IN SUPPORT OF PETITIONER-APPELLANT PEOPLE OF THE STATE OF NEW YORK

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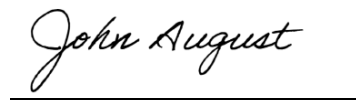
PLEASE TAKE NOTICE, that upon the annexed affirmation of John J. August, dated August 27, 2026, and the accompanying proposed brief, proposed *amici curiae* National Housing Law Project, Poverty & Race Research Action Council, National Homelessness Law Center, Enterprise Community Partners, and National Fair Housing Alliance by their attorneys Covington & Burling LLP, will move this Court on September 8 at 10:00am or as soon thereafter as counsel may be heard, at Court of Appeals Hall, 20 Eagle Street, Albany, NY 12207, for an order pursuant to Rule 500.23 of the Rules of Practice of the Court of Appeals of the State of New York granting the proposed *amici* leave to file the accompanying brief as *amici curiae* in support of the Petitioner-Appellant in the above-captioned action and for such other further relief as the Court may deem just and proper.

Dated: August 27, 2026
New York, NY

Respectfully submitted,



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JOHN J. AUGUST, an attorney duly admitted to practice before this Court, hereby affirms the following to be true under penalty of perjury pursuant to CPLR § 2106:

1. I am an attorney at the law firm Covington & Burling LLP, counsel for proposed *amici curiae* National Housing Law Project, Poverty & Race Research Action Council, National Homelessness Law Center, Enterprise Community Partners, and National Fair Housing Alliance in the above-captioned action.

2. Specifically, the proposed *amici* are:

   a. The National Law Housing Project ("NLHP") is an advocacy organization that seeks to promote access to housing and strives to protect the rights of tenants and low-income homeowners through multiple strategies such as public policy advocacy and impact litigation. NHLP is an established expert on housing voucher utilization, having testified before Congress on policies which increase effectiveness of housing voucher programs to create upward economic mobility.

   b. The Poverty & Race Research Action Council ("PRRAC")'s goal is to reduce structural inequality to help low-income people of color. PRRAC advocates for research-based strategies on housing

and education policy issues to ameliorate structural segregation. PRRAC has authored and published academic articles on the history and present implementation of the Housing Choice Voucher Program.

c. The National Homelessness Law Center ("NHLC") consists of attorneys and advocates collaborating to use the power of law to combat homelessness. NHLC works through policy advocacy, public education, and impact litigation. NHLC's experience in combatting homelessness has demonstrated the importance of Section 8 housing vouchers in eliminating homelessness.

d. Enterprise Community Partners ("Enterprise") is a national nonprofit that exists to make a good home possible for the millions of families without one. For more than four decades, Enterprise has worked to expand housing access through policy advocacy, housing mobility programs, technical assistance, and the construction and preservation of affordable homes. In New York, Enterprise is a leading advocate for fair housing and the rights of voucher holders and co-led the successful 2019 campaign to enact statewide protections against source-of-income discrimination.

e. National Fair Housing Alliance ("NFHA") is a national organization dedicated to ending discrimination and ensuring equal opportunity in housing for all people, including voucher holders. Founded in 1988, NFHA is a consortium of private, non-profit fair housing organizations and state and local civil rights agencies from throughout the United States. Relying on federal, state, and local fair housing laws, including the federal Fair Housing Act as well as state and local laws such as the one at issue here, NFHA and its members undertake important enforcement initiatives in cities and states across the country.

3. I submit this affirmation in support of the proposed *amici*'s motion for leave to file an *amicus curiae* brief in support of Petitioner-Appellant the People of the State of New York in the above-captioned action.

4. A copy of the *amicus curiae* brief is attached hereto.

5. This Court may grant nonparties leave to file an *amicus curiae* brief if the nonparties "demonstrate that the parties are not capable of a full and adequate presentation and that movant could remedy this deficiency; movant could identify law or arguments that might otherwise escape the Court's consideration; or [if] the proposed amicus curiae brief otherwise would be of assistance to the Court[.]" Rule of Practice 500.23(a)(1)(i).

6. Proposed *amici* are national housing policy organizations uniquely situated to assist the Court in resolving the key issues in dispute in this appeal. Proposed *amici* possess substantial expertise regarding the operation and objectives of federal assisted housing programs cultivated through decades of scholarship and policy development concerning the Housing Choice Voucher Program and homelessness prevention.

7. The *amicus curiae* brief does not duplicate the parties' submissions. Rather, it offers broader legal and policy context concerning the role of the Housing Choice Voucher Program in advancing important federal, state, and local governmental interests, the reasonableness of the challenged Program requirements, and the implications that the Third Department's ruling may have for administration of the Housing Choice Voucher Program and affordable housing access nationwide.

8. Granting the proposed *amici* leave to file an *amicus curiae* brief would not impose an undue burden on the Court, given that their brief is well within the 7,000-word limit on *amicus curiae* briefs, and because it will aid the Court's consideration of the issues.

9. No party or its counsel contributed content to this brief or otherwise participated in the brief's preparation.

10. No party or its counsel contributed money that was intended to fund preparation or submission of the brief.

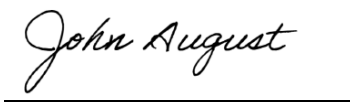
11. No person or entity, other than movant or movant's counsel, contributed money that was intended to fund preparation or submission of the brief.

12. The proposed *amici* have duly authorized me to submit this brief on their behalf.

WHEREFORE, for the reasons set forth herein, proposed *amici* respectfully request that the Court grant this motion in all respects, and grant proposed *amici* leave to file their attached brief of *amici curiae* in this appeal.

Dated: August 27, 2026
New York, New York

Respectfully submitted,



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ATTACHMENT

To be Submitted by:
JOHN J. AUGUST

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BRIEF OF AMICI CURIAE NATIONAL HOUSING LAW PROJECT, POVERTY & RACE RESEARCH ACTION COUNCIL, NATIONAL HOMELESSNESS LAW CENTER, ENTERPRISE COMMUNITY PARTNERS, AND NATIONAL FAIR HOUSING ALLIANCE IN SUPPORT OF PETITIONER-APPELLANT PEOPLE OF THE STATE OF NEW YORK

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STATUS OF RELATED LITIGATION

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.13(a), *Amici Curiae* state that they are not aware of any related litigation as of the date of filing this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.1(f), *Amici Curiae* state that no such corporate parents, subsidiaries or affiliates exist.

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Camara v. Municipal Court,
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Carpenter v. United States,
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City of Los Angeles v. Patel,
576 U.S. 409 (2015).....17

Fair Hous. Just. Ctr., Inc. v. Pelican Mgmt., Inc.,
No. 18-CV-1564 (ER) (OTW), 2023 WL 6390159
(S.D.N.Y. Sept. 29, 2023), aff'd, No. 23-7348-CV,
2025 WL 251723 (2d Cir. Jan. 21, 2025)..... 22-23

Griffin v. Wisconsin,
483 U.S. 868 (1987).....19

Hudson Shore Assocs. Ltd. P'ship v. New York,
139 F.4th 99 (2d Cir. 2025) .....*passim*

Mhany Mgmt., Inc. v. Cnty. of Nassau,
819 F.3d 581 (2d Cir. 2016) 23

Mitchell v. Shane,
350 F.3d 39 (2d Cir. 2003) 23

New York v. Burger,
482 U.S. 691 (1987).....19

Olmstead v. L.C.,
527 U.S. 581 (1999).....11

People v. Commons W., LLC,
254 N.Y.S.3d 276 (App. Div. 2026).....24

People v. Cosme,
48 N.Y.2d 286, 397 N.E.2d 1319 (1979) 25

Singh v. City of New York,
40 N.Y.3d 138, 217 N.E.3d 1 (2023).....26

Smith v. Maryland,
442 U.S. 735 (1979).....27

Sokolov v. Village of Freeport,
52 N.Y.2d 341, 420 N.E.2d 55 (1981).....21, 22, 28

United States v. Miller,
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Wyman v. James,
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Zap v. United States,
328 U.S. 624 (1946).....25, 28

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42 U.S.C. § 1437.....9, 10

42 U.S.C. § 3604 (Fair Housing Act) 8

42 U.S.C. § 3610(e) 23

Executive Law § 296(5)(a)(1).....*passim*

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N.Y.C. Admin. Code § 8107(5)(a) 30

Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, §§ 701–704, 123 Stat. 1632, 1660–62 (codified at 12 U.S.C. § 5220 note) 3

Other Authorities

24 C.F.R. § 5.703(a).....18

24 C.F.R. § 91.5 7

24 C.F.R. § 982.302(b) 21

24 C.F.R. § 982.305 .....18, 19, 20, 21

24 C.F.R. § 982.307(a)(3) 30

24 C.F.R. § 982.401 18

24 C.F.R. § 982.405 .....*passim*

24 C.F.R. § 982.451 16

Alison Bell, Barbara Sard & Becky Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, Ctr. on Budget & Pol'y Priorities (2018) 13

Ann Elizabeth Montgomery et al., *Demographic Characteristics Associated with Homelessness and Risk Among Female and Male Veterans Accessing VHA Outpatient Care*, 25 Women's Health Issues 42 (2015) 14

Cong. Rsch. Serv., *Veterans and Homelessness* (2023), https://www.congress.gov/crs-product/RL34024 14

Hector Blanco & Jaehee Song, *Discrimination Against Housing Vouchers: Evidence from Online Rental Listings* (CESifo, Working Paper No. 11920, 2025), https://perma.cc/2AQZ-HMGE 12, 29

Joint Ctr. for Hous. Stud. of Harv. Univ., *America's Rental Housing 2026: Appendix Tables* (2026), https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard_JCHS_Americas_Rental_Housing_2026_Appendix_Tables.xlsx 7

Martha Galvez & Brian Knudsen, *Discrimination Against Voucher Holders and the Laws to Prevent It: Reviewing the Evidence on Source of Income Discrimination*, 26 Cityscape 149 (2024) 12, 30

Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary* (U.S. Dep't of Hous. & Urb. Dev., Office of Pol'y Dev. & Research, 2018), https://perma.cc/VQ78-QVWM 11

Nat'l Ctr. on Homelessness Among Veterans, *Women Veterans and Homelessness*, (2016) 14

Nat'l Equity Atlas, *Housing Burden: New York*, https://www.nationalequityatlas.org/indicators/housing-burden?geo=02000000000036000 8

Nat'l Hous. Conf., *Housing and Service Needs of Our Changing Veteran Population* (2017), https://nhc.org/wp-content/uploads/2017/10/Housing-and-Services-Needs-of-Our-Changing-Veteran-Population.pdf.....14

Nat'l Low Income Hous. Coal., *Out of Reach: New York*, https://nlihc.org/oor/state/ny 10

Nat'l Low Income Hous. Coal., *The Gap: New York*, https://nlihc.org/gap/state/ny.....7

Nat'l Low Income Hous. Coal., *FY26 Budget Chart for Selected Federal Housing Programs* (2026), https://nlihc.org/sites/default/files/Senate_HUD_Budget-Chart_FY26_v1.pdf 13

N.Y. Ass'n on Indep. Living, *Olmstead Housing Subsidy*, https://ilny.us/programs/olmstead-housing-subsidy-ohs 11

N.Y.C. Hous. Auth., *About Section 8*, https://www.nyc.gov/site/nycha/section-8/about-section-8.page.....20

Restatement (Second) of Contracts § 203(a) (Am. L. Inst. 1981).....25

U.S. Const. amend. IV .....*passim*

U.S. Dep't of Hous. & Urb. Dev., *HUD-VASH Best Practices – Version 1.0* (2012), https://www.hud.gov/sites/documents/vash-bestpractices.pdf.....16

U.S. Dep't of Hous. & Urb. Dev., *HUD-VASH Vouchers*, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash 14

U.S. Dep't of Hous. & Urb. Dev., *Emergency Housing Vouchers*, https://www.hud.gov/ehv.....14

U.S. Dep't of Hous. & Urb. Dev., *FYI Vouchers for the Foster Youth to Independence*, https://www.hud.gov/hud-partners/public-indian-housing-fyi.....14

U.S. Dep't of Hous. & Urb. Dev., *2007–2025 PIT Counts by State* (2026), https://www.huduser.gov/portal/sites/default/files/xls/2007-2025-PIT-Counts-by-State.xlsb 8

U.S. Dep't of Hous. & Urb. Dev., *Housing Assistance Payments Contract: Section 8 Tenant-Based Assistance, Housing Choice Voucher Program*, Form HUD-52641 (2023), https://www.hud.gov/sites/dfiles/OCHCO/documents/52641ENG.pdf.....16

U.S. Dep't of Hous. & Urb. Dev., *HUD 2025 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations: NY-510 Ithaca-Tompkins County CoC* (2025), https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_IL-507-2025_IL_2025.pdf 9

U.S. Gov't Accountability Off., *Veteran Homelessness Programs: Opportunities to Improve Data Collection and Establish an Evaluation Plan*, GAO-26-107517 (2026), https://files.gao.gov/reports/GAO-26-107517/index.html 15

William N. Evans et al., *Housing and Urban Development–Veterans Affairs Supportive Housing Vouchers and Veterans' Homelessness, 2007–2017*, 109 Am. J. Pub. Health 1440 (2019) 15

Will Fischer et al., *Research Shows Rental Assistance Reduces Hardship and Provides Platform to Expand Opportunity for Low-Income Families*, Ctr. on Budget & Pol'y Priorities (2019), https://www.cbpp.org/research/housing/research-shows-rental-assistance-reduces-hardship-and-provides-platform-to-expand.....10

QUESTIONS PRESENTED

1. Whether the numerous constitutional applications of New York's law prohibiting discrimination by landlords and their agents against Section 8 voucher holders defeats this facial Fourth Amendment challenge to that statute.

2. Alternatively, whether the rental-housing industry has become so highly regulated in the State that it now qualifies for the closely regulated industry exception to the warrant requirement.

3. Whether this facial Fourth Amendment challenge is justiciable, where it is raised by landlords who have thus far categorically refused to consider the rental applications of Section 8 voucher holders and therefore have never been threatened with a Section 8 inspection of any kind.

INTEREST OF *AMICI CURIAE*

Amici, listed below, are organizations with nationally recognized expertise in housing research and policy, and in expanding access to safe, affordable, and equitable housing. Through decades of research, policy advocacy, litigation and published scholarship, *amici* have worked to reduce barriers to affordable housing and to combat discrimination in rental housing markets. Among other subjects, they have extensively studied and published about the Housing Choice Voucher Program. As organizations dedicated to ensuring meaningful access to housing opportunities for low-income households, *amici* share a strong interest in promoting a proper understanding of the real-world incentives and effects, policies, and constitutional principles at issue in this case and therefore fulfill the requirements of 22 N.Y.C.R.R. § 500.23(a)(4)(iii).

- National Housing Law Project ("NHLP") advances housing justice for low-income tenants and supports the Housing Choice Voucher Program through advocacy, litigation, and policy development designed to make vouchers more effective and to strengthen tenants' rights. Since 1981, NHLP has published HUD Housing Programs: Tenants' Rights, commonly known as the "Greenbook," the leading national treatise on the rights of HUD tenants and program participants. The Greenbook is widely relied upon by tenant advocates, housing practitioners, courts, and

public housing agencies throughout the United States. NHLP has also published extensively on source-of-income discrimination, voucher utilization, and barriers that prevent voucher holders from accessing housing.

- National Homelessness Law Center ("NHLC") is the nation's leading legal advocacy organization dedicated to preventing and ending homelessness. Through litigation, policy advocacy, public education, and research, NHLC works to expand access to stable and habitable housing and to eliminate legal and structural barriers that contribute to homelessness. NHLC has long advocated for laws and policies that protect tenants and preserve housing opportunities for low-income households, including successful efforts supporting enactment of the Protecting Tenants at Foreclosure Act. NHLC regularly publishes research and policy analyses addressing homelessness, housing instability, and the effectiveness of federal housing assistance programs.
- Poverty & Race Research Action Council ("PRRAC") is a civil rights law and policy organization that develops and promotes research-based solutions to address structural inequality and expand access to opportunity. For decades, PRRAC has been a leading voice on fair housing and the Housing Choice Voucher Program, publishing influential

research, policy briefs, and reports on voucher reform, residential segregation, housing mobility, and the role of housing assistance in promoting equal opportunity. PRRAC works closely with researchers, policymakers, and advocates nationwide to develop and advance policies that help voucher holders access safe, affordable housing in communities of their choice.

- Enterprise Community Partners ("Enterprise") is a national nonprofit that exists to make a good home possible for the millions of families without one. For more than four decades, Enterprise has worked to expand housing access through policy advocacy, housing mobility programs, technical assistance, and the construction and preservation of affordable homes. In New York, Enterprise is a leading advocate for fair housing and the rights of voucher holders and co-led the successful 2019 campaign to enact statewide protections against source-of-income discrimination.
- National Fair Housing Alliance ("NFHA") is a national organization dedicated to ending discrimination and ensuring equal opportunity in housing for all people, including voucher holders. Founded in 1988, NFHA is a consortium of private, non-profit fair housing organizations and state and local civil rights agencies from throughout the United

States. Relying on federal, state, and local fair housing laws, including the federal Fair Housing Act as well as state and local laws such as the one at issue here, NFHA and its members undertake important enforcement initiatives in cities and states across the country.

PRELIMINARY STATEMENT

Amici curiae are national organizations with expertise in affordable housing, homelessness, the Housing Choice Voucher Program, and fair-housing enforcement. They file to explain the Housing Choice Voucher Program's role in advancing important federal housing objectives and to demonstrate why effective source-of-income protections are necessary to ensure that voucher holders can use housing vouchers in the private rental market.

ARGUMENT

Executive Law Section 296(5)(a)(1) does not compel unconstitutional searches. Instead, it prevents landlords from invoking minor routine program requirements as a pretext to exclude voucher holders, while leaving room for legitimate, non-pretextual objections to a particular inspection. The Third Department's ruling therefore should be reversed.

The Housing Choice Voucher Program is the primary federal tool for securing stable, habitable housing for low-income families. However, housing vouchers can achieve those objectives only when recipients can use them reliably

and consistently across the private rental market. Protections against source-of-income discrimination are therefore essential to ensure that housing assistance under the Program produces actual housing opportunities.

Protection against source-of-income discrimination does not come at the expense of landlords' Fourth Amendment rights. The Housing Quality Standards and records inspections contemplated by Housing Assistance Payments contracts serve legitimate administrative purposes and impose minor burdens that are reasonable and proportional to the needs of the Housing Choice Voucher Program. Voucher-related inspections are not unreasonable as typically conducted and, given the varied circumstances of records requests, the inspections contemplated by the voucher Program do not constitute facial Fourth Amendment violations.

I. THE HOUSING CHOICE VOUCHER PROGRAM IS CENTRAL TO NUMEROUS IMPORTANT GOVERNMENTAL HOUSING POLICY INTERESTS, INCLUDING THE ALLEVIATION OF POVERTY, EXPANSION OF OPPORTUNITY, AND FAIR HOUSING

The Housing Choice Voucher Program, funded by the federal government and administered in New York by the New York State Division of Homes and Community Renewal as well as dozens of local public housing authorities ("PHAs"), is the public sector's signature intervention for meeting the badly underserved housing needs of extremely low-income and very low-income families. Vouchers can fulfill that critical role only if recipients are able to use them consistently and reliably. Given the Housing Choice Voucher Program's central

role in helping lower-income families obtain housing, state and local protections against source-of-income discrimination are critically important to the Program's success.

A. The United States and New York Have Been Experiencing a Significant Fair and Affordable Housing Crisis That Disproportionately Harms People of Color, Female-Headed Households, and Disabled People

New York, like the country as a whole, suffers from an acute housing affordability crisis. Over 49 percent of renter households in New York and the U.S. are cost-burdened, paying more than 30 percent of their income towards rent.[1] *See* 24 C.F.R. § 91.5 (2026) (defining cost burden). Housing affordability challenges are especially pronounced for lower-income renters. Approximately 86 percent of extremely low-income renter households (with incomes up to 30 percent of the area median income) in New York are cost-burdened, as are 77 percent of very low-income renter households (with incomes of more than 30 percent and up to 50 percent of the area median income).[2]

Housing unaffordability falls especially heavily on Black and Latino households: 56 percent of Black renter households and 58 percent of Latino renter

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[1] Joint Ctr. for Hous. Stud. of Harv. Univ., *America's Rental Housing 2026*: *Appendix Tables,* tbl. W-8, F7, F40 (2026), https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard_JCHS_Americas_Rental_Housing_2026_Appendix_Tables.xlsx.

[2] Nat'l Low Income Hous. Coal., *The Gap: New York*¸ Nat'l Low Income Hous. Coal. https://nlihc.org/gap/state/ny (last visited Aug. 16, 2026).

households in New York are cost-burdened.[3] Female-headed renter households experience similarly elevated precarity: 55 percent of female-headed renter households in New York are cost-burdened.[4] These statistics demonstrate that housing affordability challenges disproportionately affect Black, Latino, and female-headed households and emphasize that race and gender discrimination are barriers to affordable housing.

New York's housing affordability crisis has severe and far-reaching consequences, including homelessness. These consequences disproportionately affect the same communities Congress sought to protect through the Fair Housing Act. *See* 42 U.S.C. § 3604 (enumerating protected classes under the Fair Housing Act). In 2025, the most recent year for which data is available, there were 145,560 unhoused individuals in New York, including 5,856 who were unsheltered and living outdoors.[5] The overall number of unhoused people in New York is the second highest of any state in the country, following only California.[6] As with cost

[3] Nat'l Equity Atlas, *Housing Burden: New York*, https://www.nationalequityatlas.org/indicators/housing-burden?geo=02000000000036000 (last visited Aug. 16, 2026).

[4] *Id*.

[5] U.S. Dep't of Hous. & Urb. Dev., *2007–2025 PIT Counts by State*, tbl. 2025, cells C18, FG18 (2026), https://www.huduser.gov/portal/sites/default/files/xls/2007-2025-PIT-Counts-by-State.xlsb.

[6] *Id*.

burden, Black New Yorkers are disproportionately more likely to be unhoused.[7] People with disabilities are also disproportionately more likely to be unhoused, including in the area served by the Ithaca-Tompkins County Continuum of Care, which covers the area where Respondent is alleged to have engaged in source-of-income discrimination.[8]

B. Vouchers Are an Effective Tool for Addressing Housing Needs That Cannot Be Met Without Public Subsidies

In the face of high rates of rental cost burden and homelessness, the Housing Choice Voucher Program is extremely effective at offering financial stability to individuals and families with insufficient earned income to compete for housing in the private market. Households with vouchers commit 30 percent of their earned income towards rent and utilities, with the voucher subsidy covering the difference between the tenants' contribution from earned income and the contract rent for the unit. The voucher subsidy is paid by funds from the U.S. Department of Housing and Urban Development ("HUD"). 42 U.S.C. § 1437f(o)(2)(A)(i). Research confirms that the basic design of the Housing Choice Voucher Program advances important governmental interests by increasing housing affordability, reducing

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[7] *Id*.

[8] U.S. Dep't of Hous. & Urb. Dev., *HUD 2025 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations: NY-510 Ithaca-Tompkins County CoC*, *HUD Exchange* (Jan. 29, 2025), https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_IL-507-2025_IL_2025.pdf.

homelessness, decreasing poverty, and improving health and other outcomes for children and adults.[9] These goals cannot be achieved if landlords refuse to rent to tenants simply because they participate in the Housing Choice Voucher Program.

Congress expressly intended for the Housing Choice Voucher Program to serve the lowest income households. By statute, housing authorities must prioritize at least three-quarters of their vouchers for extremely low-income households. 42 U.S.C. § 1437n(b)(1). These are the households that are at the greatest risk of homelessness, the most unable to afford rent in the private market, and the least likely to receive significant earnings from employment, whether because they have disabilities that prevent them from working or because they work low-wage jobs. In New York, a full-time worker employed at a minimum wage job would have to work 108 hours per week to afford a modest one-bedroom apartment and 121 hours a week to afford a two-bedroom apartment.[10]

A meaningful proportion of extremely low-income households consists of households with members who would be at significant risk of institutionalization in the absence of rental assistance and voluntary, community-based supportive

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

[10] Nat'l Low Income Hous. Coal., *Out of Reach: New York*, https://nlihc.org/oor/state/ny (last visited Aug. 16, 2026).

services. Indeed, programs like the Housing Choice Voucher program have played a significant role in helping states like New York comply with the community integration mandate of the Americans with Disabilities Act as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999).[11] Whether by helping a homeless family with children find a single-family home to rent in a well-resourced school district, or ensuring that a vulnerable older adult or person with a disability can live independently rather than in an institution, vouchers are extremely effective at ensuring housing stability and avoiding worst-case situations for vulnerable New York State residents.

C. Source-of-Income Discrimination Protections Are Critical for Ensuring the Success of the Voucher Program, and Reversal Is Necessary to Avoid Harmful Consequences

Notwithstanding the centrality of the Housing Choice Voucher Program to the strategy of the United States and the State of New York for addressing the housing crisis, source-of-income discrimination remains common and undermines the effectiveness of the Program.[12] One nationwide study analyzed data from Craigslist rental listings, finding discrimination in advertisements that expressly

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[11] *See* N. Y. Ass'n on Indep. Living, *Olmstead Housing Subsidy*, https://ilny.us/programs/olmstead-housing-subsidy-ohs (last visited Aug. 16, 2026).

[12] Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary* (U.S. Dep't of Hous. & Urb. Dev., Office of Pol'y Dev. & Research Aug. 2018), https://perma.cc/VQ78-QVWM (hereinafter, "*A Pilot Study*").

note that voucher holders need not apply.[13] Such exclusions were particularly prevalent in neighborhoods in metropolitan areas with large minority, voucher-holding populations, demonstrating that source-of-income discrimination fuels residential racial segregation in contravention of Congress' purpose in passing the Fair Housing Act.[14] Source-of-income protections—like the one at issue in this case—directly address this conduct. The evidence is clear that, relative to jurisdictions that lack such protections, voucher holders in communities that have banned source-of-income discrimination face less discrimination when attempting to use their assistance.[15]

One study comparing municipalities with and without source-of-income protections found that landlords were "more likely to accept vouchers in places with [source-of-income] protections . . . compared with the markets without protections."[16] Not only are landlords more likely to accept vouchers in states with source-of-income anti-discrimination laws; recent studies using HUD administrative data show that voucher recipients are more likely to find—and

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[13] *See* Hector Blanco & Jaehee Song, *Discrimination Against Housing Vouchers: Evidence from Online Rental Listings*, CESifo Working Paper No. 11920 (June 2025), https://perma.cc/2AQZ-HMGE.

[14] *Id*.

[15] *See A Pilot Study*.

[16] *See* Martha Galvez & Brian Knudsen, *Discrimination Against Voucher Holders and the Laws to Prevent It: Reviewing the Evidence on Source of Income Discrimination*, 26 Cityscape 149, No. 2. at 149 (2024).

actually rent—eligible units in states with source-of-income protections relative to those without them.[17] Other research has also identified that source-of-income protections can increase voucher "utilization"—that is, the share of a local housing authority's authorized vouchers that actually result in units leased to individuals and families (and paid for, in part, by those vouchers).[18]

Congress invests significant federal resources in the Housing Choice Voucher Program, with an appropriation of over $36 billion for Fiscal Year 2025.[19] The longer households spend searching for housing, the less this investment fulfills Congress' intent of ensuring stable housing for low-income households. When searches take longer, vouchers time out and have to be returned to the housing authority, and Congress's investment increasingly funds administrative costs rather than putting roofs over the heads of individuals and families. Reversal of the Third Department's decision is critical to efforts to reduce source-of-income discrimination, and underlying racial and disability discrimination, and thereby increase voucher holders' ability to successfully use the assistance as intended by Congress.

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[17] *Id.* at 152-53.

[18] Alison Bell, Barbara Sard & Becky Koepnick, Prohibiting *Discrimination Against Renters Using Housing Vouchers Improves Results*, at 7, Ctr. on Budget & Pol'y Priorities (Dec. 20, 2018).

[19] Nat'l Low Income Hous. Coal., *FY26 Budget Chart for Selected Federal Housing Programs*, https://nlihc.org/sites/default/files/Senate_HUD_Budget-Chart_FY26_v1.pdf (last accessed July 26, 2026).

II. THE SUCCESS OF THE HUD-VASH PROGRAM UNDERSCORES THE NEED FOR PROTECTIONS AGAINST VOUCHER DISCRIMINATION

Since the Vietnam war, veterans have been historically overrepresented among homeless populations.[20] In particular, female veterans face a significantly higher risk of homelessness than non-veteran women.[21] In this context, the Department of Veteran Affairs ("VA") and HUD established the Veterans Affairs Supportive Services Housing ("VASH" or "HUD-VASH") program. HUD-VASH pairs case management and clinical services from the VA with housing voucher assistance from HUD.[22] Since its inception in 2008, the HUD-VASH program has served more than 144,000 formerly unhoused veterans.[23]

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[20] Cong. Rsch. Serv., *Veterans and Homelessness*, at 2 (Apr. 12, 2023), available at https://www.congress.gov/crs-product/RL34024.

[21] Ann Elizabeth Montgomery, Melissa E. Dichter, Arwin M. Thomasson et al., *Demographic Characteristics Associated with Homelessness and Risk Among Female and Male Veterans Accessing VHA Outpatient Care*, 25 Women's Health Issues 42, 43 (2015); Nat'l Ctr. on Homelessness Among Veterans, *Women Veterans and Homelessness*, at 5 (July 2016). *See also* Nat'l Hous. Conf., *Housing and Service Needs of Our Changing Veteran Population* (2017) (finding that nearly 50% of single mother veterans are cost burdened and housing options are nonexistent in some areas), available at https://nhc.org/wp-content/uploads/2017/10/Housing-and-Services-Needs-of-Our-Changing-Veteran-Population.pdf (last visited July 6, 2026).

[22] U.S. Dep't of Hous. & Urb. Dev., *HUD-VASH Vouchers*, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash (last visited July 6, 2025). Other examples of voucher programs specifically for homeless persons include the Foster Youth to Independence Program (*see* U.S. Dep't of Hous. & Urb. Dev., *FYI Vouchers for the Foster Youth to Independence*, https://www.hud.gov/hud-partners/public-indian-housing-fyi (last visited July 6, 2025)) and the Emergency Housing Voucher Program (*see* U.S. Dep't of Hous. & Urb. Dev., *Emergency Housing Vouchers*, https://www.hud.gov/ehv (last visited July 6, 2025)).

[23] U.S. Dep't of Hous. & Urb. Dev., *HUD-VASH Vouchers*, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash (last visited July 6, 2025).

The HUD-VASH program provides a contained data set to evaluate the efficacy of targeted housing vouchers over an extended period. A 2019 study evaluating ten years of program data (2008-2017) concluded that HUD-VASH vouchers played a direct role in reducing veteran homelessness.[24] Specifically, the study found that each HUD-VASH voucher reduced the number of homeless veterans by approximately one person.[25] Without HUD-VASH, the homeless veteran population would have reached nearly 130,000 by 2017, rather than the observed 40,000.[26] Between 2008 and 2017, HUD-VASH vouchers produced a 55-percent reduction in homelessness among unsheltered veterans and roughly a 60-percent increase in permanent supportive housing, with 90 percent of the vouchers issued during this period resulted in housing placements.[27]

The federal government invests over $1.1 billion annually in HUD-VASH, representing a major commitment to eradicating homelessness among U.S. veterans.[28] Yet, HUD reports that landlord unwillingness to accept vouchers

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[24] William N. Evans, Sarah Kroeger, Caroline Palmer & Emily Pohl, *Housing and Urban Development–Veterans Affairs Supportive Housing Vouchers and Veterans' Homelessness, 2007–2017*, 109 Am. J. Pub. Health 1440, 1440–45 (2019)

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] U.S. Gov't Accountability Off. Report GAO-26-107517, *Veteran Homelessness Programs: Opportunities to Improve Data Collection and Establish an Evaluation Plan* (Mar. 20, 2026), available at https://files.gao.gov/reports/GAO-26-107517/index.html.

remains a "primary challenge" in administering the program. Indeed, the federal government has identified landlord discrimination against voucher holders as a direct contributor to ongoing homelessness.[29]

Policies that prohibit landlords from refusing to accept vouchers significantly increase lease-up success, preventing vouchers from sitting unused. Ultimately, a decade of HUD-VASH data reinforces the necessity of policies requiring landlords to accept vouchers, as the efficacy of federally funded housing assistance depends directly on meaningful access to private rental market.

III. THE HOUSING QUALITY STANDARDS AND RECORDS INSPECTIONS SPECIFIED IN HOUSING ASSISTANCE PAYMENTS CONTRACTS ARE REASONABLE AND PROPORTIONAL TO THE NEEDS OF THE HOUSING CHOICE VOUCHER PROGRAM

To participate in the Housing Choice Voucher Program, a landlord (i.e., "owner") must enter into a "Housing Assistance Payments" ("HAP") contract with the administering housing authority. *See* 24 C.F.R. § 982.451. The terms of the contract are fixed by a HUD form.[30] 24 C.F.R. § 982.451(a)(1). As currently written, the HAP contract provides for two distinct types of inspections: "Housing Quality Standards" (or "HQS") inspections and "records inspections." *See* HAP

[29] U.S. Dep't of Hous. & Urb. Dev., *HUD-VASH Best Practices – Version 1.0*, at 19 (Apr. 2012), available at https://www.hud.gov/sites/documents/vash-bestpractices.pdf.

[30] U.S. Dep't of Hous. & Urb. Dev., *Housing Assistance Payments Contract: Section 8 Tenant-Based Assistance, Housing Choice Voucher Program*, Form HUD-52641 (Apr. 2023), https://www.hud.gov/sites/dfiles/OCHCO/documents/52641ENG.pdf.

Contract (Form HUD-52641), ¶ 3(e) (HQS inspections), ¶ 11 (records inspections). Neither type of inspection renders Executive Law Section 296(5)(a)(1) facially unconstitutional. The administrative exception to the warrant requirement applies to these low-burden HQS inspections. Further, records inspections from HAP contracts are also low-burden, are too diverse factually to support a facial challenge, and they do not violate Fourth Amendment protections in every circumstance.

A. HQS Inspections Fit the Administrative Exception for Warrantless Searches

The United States Supreme Court repeatedly has held that an administrative search may be reasonable without a warrant where its primary purpose is not related to general crime control, special needs make a warrant procedure impracticable, and there is "an opportunity to obtain precompliance review before a neutral decisionmaker." *City of Los Angeles v. Patel,* 576 U.S. 409, 420 (2015); *see also Hudson Shore Assocs. Ltd. P'ship v. New York,* 139 F.4th 99, 108 (2d Cir. 2025). Housing Quality Standards inspections fit squarely within the administrative exception to the warrant requirement because they serve regulatory and public-benefit objectives that are distinct from ordinary law-enforcement purposes, the volume of HQS inspections makes warrant procedures impracticable, and landlords have opportunities for precompliance review.

1. Administrative Purpose of HQS Inspections

Housing authorities are required to conduct HQS inspections for every voucher-assisted tenancy, both "prior to the initial term of the lease" and periodically thereafter. *See* 24 C.F.R. § 982.405; see 24 C.F.R. § 982.305(f). The primary purpose of HQS inspections is to ensure assisted "residents live in safe, habitable dwellings," and the premises are "functionally adequate, operable, and free of health and safety hazards" 24 C.F.R. § 5.703(a); *see also* 24 C.F.R. § 982.401. HQS inspections also help determine whether the amount of rent is reasonable in light of the property's location, condition, and other characteristics. *See* 24 C.F.R. § 982.305. None of these administrative purposes are related to crime control. *See generally Hudson Shore,* 139 F.4th at 108 (finding that mandatory data requests from landlords, used to administer rent stabilization laws, met administrative exception).

To determine whether an administrative need may justify a warrantless search, a court weighs the special need and against the privacy interest at stake, focusing on three factors:

(1) the nature of the privacy interest compromised by the search;

(2) "the character of the intrusion imposed by" the search; and

(3) the nature and immediacy of the state's concerns and the efficacy of the search in meeting them.

Palmieri v. Lynch, 392 F.3d 73 at 81 (2d Cir. 2004), *quoting Bd. of Educ. v. Earls,* 536 U.S. 822, 830-34 (2002). For HQS inspections, all three factors support applying the administrative exception. A property offered to the public for rent is tantamount to commercial premises, where the landlord's expectation of privacy "is different from, and indeed less than, a similar expectation in an individual's home." *New York v. Burger,* 482 U.S. 691, 700 (1987). And the HQS inspection is straightforwardly effective for meeting the housing authority's immediate practical need to verify the safety and habitability of the premises and assess the reasonableness of the rent. *See* 24 C.F.R. § 982.305.

2. A Warrant Requirement Would Be Impractical for HQS Inspections

For special needs to justify a warrantless search, "'the usual warrant or probable-cause requirements' [must] have somehow been rendered impracticable." *Palmieri*, 392 F.3d at 79, *quoting Griffin v. Wisconsin,* 483 U.S. 868, 873 (1987). An example of such a situation was *Hudson Shore,* where the Second Circuit affirmed that "the 'special need[ ]' to quickly collect data for hundreds or thousands of properties makes it 'impracticable' to obtain a warrant for each surveyed landlord." *Hudson Shore,* 139 F.4th at 109. The same rationale alone justifies HQS inspections; housing authorities administer anywhere from dozens to

tens of thousands of housing vouchers, and HQS inspections are required for all of them.[31] *See* 24 C.F.R. § 982.305.

Beyond sheer numbers, a United States Supreme Court case involving home visits to welfare recipients demonstrates other special needs that may justify a warrantless administrative search. *See Wyman v. James,* 400 U.S. 309, 318-19 (1971). In *Wyman*, the special needs justifying a warrantless administrative search included ensuring the responsible expenditure of public funds and guarding against the exploitation of children on whose behalf assistance is paid, particularly where the agency could not have obtained all the critical information through documents, meetings outside the home, or speaking with doctors, school officials, or other third-parties. *See Wyman*, 400 U.S. at 322. A warrant scheme in that context would not have been practical as "it could be applied for ex parte, its execution would require no notice, it would justify entry by force, and its hours for execution would not be so limited as those prescribed for home visitation." *Wyman* 400 U.S. at 323-24. Warrants would have entailed a much greater invasion of privacy than a home visit, the only consequence for refusal was the denial or cessation of aid." *Wyman*, 400 U.S. at 317-18 (holding home visit is "not forced or compelled" because if caseworker denied entry "[t]here is no entry of the home and there is no search.")

[31] N.Y.C. Hous. Auth., *About Section 8*, https://www.nyc.gov/site/nycha/section-8/about-section-8.page (last visited Aug. 13, 2026) ("Approximately 107,979 Section 8 vouchers and over 26,933 owners currently participate in the program.").

Many of the same considerations are present with HQS inspections. A PHA has an identical responsibility to confirm proper expenditure of federal housing funds, to ensure assisted housing is safe and habitable for the entire family—including any children or other vulnerable household members—and a unique duty to evaluate the reasonableness of the rent amount. *See* 24 C.F.R. § 982.305. An HQS inspection is indispensable for these purposes. And a warrant regime would also intrude on a landlord's privacy much more heavily than reliance on landlord cooperation. Probable cause for a warrant would likely arise as soon as the housing authority was asked to approve a dwelling unit for occupancy. *See* 24 C.F.R. § 982.302(b) ("If the family finds a unit, and the owner is willing to lease the unit under the program, the family may request PHA approval of the tenancy."). A warrant would deny the landlord any input into the timing or scope of the inspection, which could be conducted even by force. *See Wyman*, 400 U.S. at 323-24. This does not protect a landlord's privacy and is not practical for inspectors who are not trained or equipped to carry out inspections without the landlord's cooperation.

3. Precompliance Review Is Available for HQS Inspections

The *Sokolov* court believed that an ex parte warrant requirement could "prevent inspections based upon caprice or spite [or] as a pretext for police investigations" and "may also lead to appropriate restrictions on the place to be

searched." *Sokolov v. Village of Freeport*, 52 N.Y.2d 341, 346, 420 N.E.2d 55, 342-43 (1981). However, the ability of a judicial officer faced with a warrant request to spontaneously detect such ulterior objectives or impose limits on an overbroad search seems dubious—and is certainly inferior to an adversary proceeding in which the landlord can articulate objections. But in *Sokolov*, warrants were found to be necessary because in that case, unlike here, the denial of a permit had the immediate and automatic effect of prohibiting the landlord from leasing premises. *See Sokolov*, 52 N.Y.2d at 346 (refusal of building inspection resulted in denial leasing permit, amounting to "effective deprivation of any economic benefit from his rental property.")

By contrast, there is no immediate adverse effect on the landlord from denying an HQS inspection, other than being denied approval for the voucher program. *See* 24 C.F.R. § 982.405. As in *Wyman*, there is no entry into the property and no search occurs. *See Wyman*, 400 U.S. at 323-24. Though a voucher holder may be aggrieved by this outcome, liability for source-of-income discrimination does not necessarily follow. Establishing a claim under Executive Law Section 296(5)(a)(1) requires establishing either that the landlord's motives for refusing the HQS inspection included avoiding voucher holders—or, at the very least, the policy of refusing HQS inspections did not further a legitimate, bona fide interest. *Fair Hous. Just. Ctr., Inc. v. Pelican Mgmt., Inc.,* No. 18-CV-1564 (ER)

(OTW), 2023 WL 6390159, at *13 (S.D.N.Y. Sept. 29, 2023), aff'd, No. 23-7348-CV, 2025 WL 251723 (2d Cir. Jan. 21, 2025) (*citing Mhany Mgmt., Inc. v. Cnty. of Nassau,* 819 F.3d 581, 614 (2d Cir. 2016)). Denying an HQS inspection for a lawful and sincerely-held reason that serves a genuine interest of the landlord—such as inconvenience as to the date or time, unreasonableness as to scope or duration, etc.—would thus be a cognizable defense. *See generally Mitchell v. Shane,* 350 F.3d 39, 47 (2d Cir. 2003) (legitimate, nondiscriminatory reason overcomes inference of discriminatory intent); *see also Mhany*, 819 F.3d at 617-19 (policy that causes a disparate impact on members of a protected class not actionable where it serves a legitimate, bona fide interest and no alternative would serve that interest with less discriminatory effect).

A landlord therefore has ample opportunity for judicial review before any adverse consequence is imposed for refusing an HQS inspection. The landlord may rent to other tenants before an enforcement proceeding is brought or while it remains pending. It is true that a complainant could seek a preliminary injunction or a temporary restraining order to prevent a landlord from renting a unit while an Executive Law § 296(5)(a)(1) enforcement proceeding is pending.[32] But the

[32] 42 U.S.C. § 3610(e) authorizes the Secretary of HUD to seek "appropriate temporary or preliminary relief," including a temporary restraining order, to carry out the Fair Housing Act's purposes. Similarly, Executive Law § 297(6) provides that, at any time after a complaint for discrimination is filed, if the Division of Human Rights determines that a respondent "is doing or

availability of interim relief does not eliminate the landlord's opportunity for judicial review of the underlying inspection requirement, and the landlord may assert any legitimate, genuinely held objection to the HQS inspection as a defense.

Alternatively, a landlord could initiate an affirmative proceeding, such as an action seeking a declaratory judgment that the inspection the PHA sought to conduct was not reasonable (whether as to time, scope, or other aspect). *See Hudson Shore Assocs. Ltd. P'ship v. New York,* 139 F.4th 99, 111 (2d Cir. 2025) (finding precompliance review available if landlord has time to obtain judicial review under Article 78 before incurring penalties for noncompliance).

The Appellate Division in the decision below disagreed that precompliance review was available, finding a landlord gives "blanket consent" to all inspection upon signing the Housing Assistance Payments contract. *See People v. Commons W., LLC*, 254 N.Y.S.3d 276, 283 (App. Div. 2026). But this conclusion was flawed in several ways—perhaps most notably that HQS inspections for new assisted tenancies must be conducted *before* the contract is signed. *See* 24 C.F.R. § 982.405(a). Since tenants can consent to inspections of their own occupied dwelling units, landlords with vacant units awaiting inspection before a new tenancy are substantially the only landlords who could assert a relevant privacy

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procuring to be done any act tending to render ineffectual any order the commissioner may enter," the commissioner may apply to the New York State Supreme Court for an order to show cause, which "may contain a temporary restraining order."

interest. *See, e.g.*, *People v. Cosme,* 48 N.Y.2d 286, 292, 397 N.E.2d 1319, 1322 (1979) ("an individual who possesses the requisite degree of control over specific premises is vested in his own right with the authority to permit an official inspection of such premises" even if authority is shared with others). The Respondent landlords have not waived any right to object to an unreasonable search.

Even after being signed, the HAP contract cannot properly be interpreted to authorize or waive *any* objection a landlord might have to a future inspection. *See* Restatement (Second) of Contracts § 203(a) (Am. L. Inst. 1981) ("an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.") A contractual promise to permit access to accounts and records, such as the HAP contract provides for, waives only the privacy interest that landlord "otherwise might have had as respects business documents related to those contracts." *Zap v. United States,* 328 U.S. 624, 628 (1946). Such a waiver does not automatically entitle the government to inspect outside regular hours, at locations other than the landlord's place of business, or gain "access through force, fraud, or trickery." *See Zap*, 328 U.S. at 628-29. All contracts carry an implied obligation of good faith and fair dealing. Accordingly, a landlord would not breach the contract (or commit source-of-income discrimination) by refusing to permit an inspection at

unusual times, without reasonable notice, into areas beyond what the HQS standards require, or otherwise outside what a reasonable landlord would be justified in believing the contract authorized. *See Singh v. City of New York,* 40 N.Y.3d 138, 146, 217 N.E.3d 1, 5 (2023).

B. Records Searches Are Not Amenable to Facial Challenge

Unlike HQS inspections, which are required for every voucher tenancy, vanishingly few of the landlords who participate in the Housing Choice Voucher Program are ever asked to undergo a records inspection. This fact alone undermines any claim that New York's source-of-income discrimination law facially violates the Fourth Amendment by reason of HAP records inspections. A facial challenge requires proving that statute is unconstitutional in every application. *See Hudson Shore,* 139 F.4th at 108. Yet the record suggests that the overwhelming majority of landlords participating in the Housing Choice Voucher Program will never face a records inspection, foreclosing any argument that the statute is unconstitutional facially in every circumstance to which it applies.

There are at least some ways a records inspection could be conducted without a warrant, consistent with the Fourth Amendment. For example, at least some records inspections would meet the administrative warrant exception in the same way HQS inspections do. Indeed, probably the most common type of records inspection in the voucher program involve requests for landlords' rent rolls—which

may be sought to help the housing authority determine whether the rent the landlord is charging is reasonable and to ensure the amount voucher tenants are charged is consistent with other tenants in the property. As the Second Circuit recently concluded, a warrantless administrative search of rent roll information is not per se unreasonable. *See Hudson Shore*, 139 F.4th at 109.

Another type of records inspection that would not require a warrant could involve records in the custody of a third-party, over which the landlord has no reasonable expectation of privacy. *See Carpenter v. United States,* 585 U.S. 296, 308 (2018) ("a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties . . . even if the information is revealed on the assumption that it will be used only for a limited purpose."), *quoting Smith v. Maryland,* 442 U.S. 735, 743-44 (1979); *United States v. Miller,* 425 U.S. 435, 443 (1976). Examples of records relevant to HAP contracts which landlords routinely provide to third parties include records demonstrating the rents charged for comparable units, which landlords provide to accountants, lenders, and property managers in the ordinary course of business, as well as property maintenance and repair records shared with contractors and insurers.

The form HAP contract does obligate all participating landlords to *consent* to records inspections, so it is true that any landlord who signs the contract potentially could *theoretically* face such an inspection. But, as with HQS

inspections, a landlord's promise to generally allow access to its records and facilities does not naturally imply complete and unfettered access at all times, regardless of purpose, method, or justification. *See Zap*, 328 U.S. at 628-29. And if consent is revoked at the time of an actual records inspection, then there is no search. Such refusal does not lead automatically to criminal prosecution as in *Camara v. Municipal Court*, 387 U.S. 523, 534 (1967), or even the denial of a permit necessary to rent out (and thereby realize the economic value of) the premises as in *Sokolov,* 52 N.Y.2d at 344.

A landlord's refusal of an HQS inspection is at most a breach of the HAP contract or, should the denial of the search have the effect of denying housing to a voucher holder and discrimination against voucher holders is otherwise demonstrated, potentially a violation of Executive Law Section 296(5)(a)(1). But as discussed above with respect to HQS inspections, the contract ought not be interpreted to authorize unreasonable searches as to time, place, or scope. Such unreasonable searches would presumably amount to a legitimate non-discriminatory reason for denying a records inspection, and thus a cognizable defense to a source-of-income discrimination claim.

Therefore, even if a HAP records inspection were conducted in an unreasonable or unconstitutional manner, any resulting constitutional injury would depend on the specific facts and circumstances of that inspection. However, these

additional facts must be established in an as-applied challenge. That some permissible applications exist is adequate to defeat a facial challenge. *See Hudson Shore,* 139 F.4th at 108.

IV. EXECUTIVE LAW SECTION 296(5)(A)(1) PREVENTS LANDLORDS FROM USING REASONABLE PROGRAM REQUIREMENTS AS A PRETEXT FOR DISCRIMINATION

Executive Law Section 296(5)(a)(1) does not force landlords to consent to searches of their rental properties and records. Landlords may refuse HQS inspections of rental properties and bring reasonable objections to the time, place, and scope of searches as defenses to source-of-income discrimination claims. There is nothing in the record to suggest that records inspections are common, and landlords could refuse records inspections and bring similar defenses if subjected to unreasonable records requests.

Rather, Executive Law Section 296(5)(a)(1) prevents landlords from using routine voucher program requirements as a pretext for discrimination against families which will pay a portion of their rent with housing vouchers. Empirical research demonstrates that source-of-income discrimination is especially prevalent in neighborhoods with large racial-minority populations, thereby reinforcing racial residential segregation.[33] Source-of-income protections, like Executive Law

[33] *See* Hector Blanco & Jaehee Song, *Discrimination Against Housing Vouchers: Evidence from Online Rental Listings* 3–4 (CESifo, Working Paper No. 11920, June 2025),

Section 296(5)(a)(1), reduce racial discrimination and increase voucher utilization.[34]

Landlords remain free to apply lawful screening criteria to voucher applicants on the same terms as other applicants, but they may not reject an applicant on the basis that rent will be paid with a voucher. *See* 24 C.F.R. § 982.307(a)(3); N.Y.C. Admin. Code § 8107(5)(a); N.Y. Exec. Law § 296(5)(a)(1).

V. CONCLUSION

For the reasons stated here, and in the Petitioner-Appellant's brief, this Court should reverse the decision of the Appellate Division, Third Department and the matter should be remanded to Supreme Court for further proceedings on the Attorney General's petition. Executive Law Section 296(5)(a)(1) is not facially unconstitutional under the Fourth Amendment. The inspections contemplated by HAP contracts either satisfy the administrative-search exception to the warrant requirement or are otherwise constitutional.

The Housing Choice Voucher Program is one of the nation's most important tools for expanding access to safe and affordable housing, providing hundreds of

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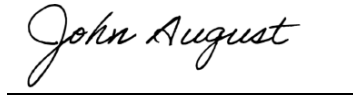
https://perma.cc/2AQZ-HMGE; Martha Galvez & Brian Knudsen, *Discrimination Against Voucher Holders and the Laws to Prevent It: Reviewing the Evidence on Source of Income Discrimination*, 26 Cityscape 149, 152-53 (2024).

[34] *Id.*

thousands of low-income families, seniors, veterans, and individuals with disabilities the opportunity to secure stable housing in the private rental market. New York's prohibition on source-of-income discrimination helps ensure that these households have a meaningful opportunity to use that assistance as Congress intended.

Dated: August 27, 2026
New York, New York

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), John J. August, an attorney barred in the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,452 words, which complies with the limitations stated in § 500.13(c).

JOHN J. AUGUST

STATE OF NEW YORK)		**AFFIDAVIT OF SERVICE**
)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 1702 Clay Avenue, Apt 11, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On August 27, 2026

deponent served the within: **BRIEF OF AMICI CURIAE NATIONAL HOUSING LAW PROJECT, POVERTY & RACE RESEARCH ACTION COUNCIL, NATIONAL HOMELESSNESS LAW CENTER, ENTERPRISE COMMUNITY PARTNERS, AND NATIONAL FAIR HOUSING ALLIANCE IN SUPPORT OF PETITIONER-APPELLANT PEOPLE OF THE STATE OF NEW YORK**

upon:

BOND, SCHOENECK & KING, PLLC
Curtis A. Johnson, Esq.
Attorney for Respondents
350 Linden Oaks, Third Floor
Rochester, New York 14625
(585) 362-4812

LETITIA JAMES
Attorney General State of New York
Patrick A. Woods
Assistant Solicitor General
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The Capitol
Albany, New York 12224
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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on August 27, 2026

Mariana Braylovskiy

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2030

T. Heath

Job# 395987

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deponent served the within: **MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE NATIONAL HOUSING LAW PROJECT, POVERTY & RACE RESEARCH ACTION COUNCIL, NATIONAL HOMELESSNESS LAW CENTER, ENTERPRISE COMMUNITY PARTNERS, AND NATIONAL FAIR HOUSING ALLIANCE IN SUPPORT OF PETITIONER-APPELLANT PEOPLE OF THE STATE OF NEW YORK**

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