

IN THE SUPREME COURT OF MARYLAND

KATRINA HARE,

* September Term, 2024

*

Petitioner,

*

v.

* SCM-PET-0250-2024

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DAVID S. BROWN ENTERPRISES, LTD,

*

*

Respondent.

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* * * * *

BRIEF OF AMICI CURIAE THE PUBLIC JUSTICE CENTER, LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW, NATIONAL HOUSING LAW PROJECT, EQUAL RIGHTS CENTER, NATIONAL FAIR HOUSING ALLIANCE, HOMELESS PERSONS REPRESENTATION PROJECT, FAIR HOUSING JUSTICE CENTER, AND DISABILITY RIGHTS MARYLAND IN SUPPORT OF PETITION FOR CERTIORARI

INTRODUCTION

Petitioner Katrina Hare asks the Supreme Court of Maryland to examine a critical issue of first impression involving the proper interpretation of Maryland’s Housing Opportunities Made Equal (HOME) Act. The Respondent violated the HOME Act by requiring Petitioner, a Housing Choice Voucher (HCV) holder, to have income at least 2.5 times the full monthly rent. The landlord’s discriminatory practice in this case is not unique but instead reflective of a widespread practice throughout Maryland that irreparably harms *Amici’s* clients in addition to reinforcing racial segregation and

reducing access to safe, affordable housing for Black families specifically.¹ *Amici* ask this Court to respond with urgency and grant Ms. Hare’s petition for certiorari.

ARGUMENT

I. Maryland residents continue to suffer irreparable harm from the discriminatory requirement at issue.

Clients of respective *Amici* will continue to suffer irreparable harm from the discriminatory screening criteria at issue for as long as this appeal is pending. For example, one client is a 70-year-old, Frederick County woman with a disability who applied for a unit with a landlord. She had already been given an extension on using her voucher because she had difficulty finding accessible housing. The landlord denied her application because her income of \$1,686 was not at least 2.7 times the total monthly rent of \$2,441—despite such a requirement having no relevance to whether this renter could pay her share of the rent, approximately \$505.80 (30% of her income). 42 U.S.C. § 1437(1)(a); 24 C.F.R. § 982.201. Nevertheless, because of this discriminatory requirement and to keep her voucher, she was forced to choose a different unit that was far from family.

Another client in Baltimore County was required to show that she had income that was three times the rent. The client, who is a widow with a disability, desired to be near her support network. The rejection forced her to rent an unsafe apartment far from family. An Anne Arundel County client, a full-time student and mother, paid over \$625 in application fees only to be denied over 25 times by landlords with similar

¹ Statements of interest of *Amici* are in the Appendix.

discriminatory requirements. Without action from this Court, Maryland landlords will look to the circuit court’s decision to continue this discriminatory practice with irreversible, devastating consequences for tens of thousands of families.

II. The practice at issue has a substantial, adverse impact on vulnerable Maryland households seeking housing.

There are approximately 52,909 HCV households in Maryland, consisting of 121,283 persons. U.S. Dep’t of Hous. and Urb. Dev., Off. of Pol’y Dev. and Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited September 3, 2024). These households are disproportionately “extremely low-income” (78%)² and Black (78%).³ *Id.*

The overrepresentation of vulnerable and historically disenfranchised renters in the HCV program amplifies the need for *certiorari*. Every day that the circuit court ruling stands as a guidepost to landlords, discrimination against voucher holders will continue to perpetuate the concentration of poverty and racial segregation. Molly W. Metzger, *The Reconcentration of Poverty: Patterns of Housing Voucher Use 2000-2008*, 24 Hous. Pol’y Debate 544, 552 (July 2014). In 2008, voucher households were more concentrated in areas with lower proportions of white residents than the comparison

² Household incomes that do not exceed the Federal poverty level or 30% of area median income.

³ Maryland’s population is 35.3% Black. America Counts Staff, *Maryland’s Population Grew 7% to 6,177,244 Last Decade*, United States Census Bureau (Aug. 25, 2021) <https://www.census.gov/library/stories/state-by-state/maryland-population-change-between-census-decade.html>.

group of extremely low-income families. *Id.* This is in part because HCV discrimination often serves as a proxy to discriminate against constitutionally-protected identities such as race, gender, and disability. Antonia K. Fasanelli and Phillip Tegeler, “*Your Money’s No Good Here*” *Combatting Source of Income Discrimination in Housing*,” A.B.A. Sec. Civ. Rts. & Soc. Just. 44 (3) Human Rights 16 (2019).

Children are the most impacted. HCV families are often unable to move to higher opportunity neighborhoods that have schools with higher test scores, lower poverty rates, more employment opportunities, and better transportation because landlords in those neighborhoods refuse vouchers.⁴ Thus, HCV families with children are relegated to neighborhoods of concentrated poverty: In 2017, 315,000 children in HCV families nationally still lived in extremely poor neighborhoods. *Id.*

Such discrimination against voucher holders also often causes homelessness. HCV holders typically only have 60 to 90 days to secure a home with their voucher. If a renter is unable to find a home, the family loses the subsidy. *HOME Act: Hearing on S.B. 530 Before the S. Jud. Proc. Comm.*, 2020 Leg., 442nd Sess. (Md. 2020) (written testimony of Antonia Fasanelli, Exec. Dir. of Homeless Pers. Representation Project).

Where the average Maryland HCV household has an income of \$1,723 per month,⁵ and

⁴ Barbara Sard et al., *Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher-Opportunity Areas*, Center on Budget and Policy Priorities, (Sept. 4, 2018), <https://www.cbpp.org/research/housing/federal-policy-changes-can-help-more-families-with-housing-vouchers-live-in-higher>.

⁵ U.S. Dep’t of Hous. and Urb. Dev., Off. of Pol’y Dev. and Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited Sept. 3, 2024).

the average monthly rent for a two-bedroom unit is \$1,909,⁶ the loss of a voucher often leaves a family exposed to “worrying levels of housing hardship and instability.”⁷ Or, with the fear of HCV loss, many renters settle for neighborhoods that deprive their children of better schools or force them to accept inaccessible units. *HOME Act: Hearing on S.B. 530 Before the S. Jud. Proc. Comm.*, 2020 Leg., 442nd Sess. (Md. 2020) (written testimony of David Prater, Attorney for Disability Rights Md).

III. The HOME Act is remedial legislation intended to expand fair housing protections for HCV families.

The legislative history of the HOME Act shows the General Assembly intended to protect HCV families from discrimination. The Act’s preamble reads in part: “This Act seeks to deconcentrate poverty by providing additional opportunities for tenants utilizing public subsidies to live in neighborhoods other than the neighborhoods in which those individuals are currently and disproportionately residing.” S.B. No. 530, 441st Sess. (Md. 2020). Senate sponsor Will Smith, testified: “There are tens of thousands of Marylanders that use the Section 8 voucher but can’t avail themselves because of this law that we have in place.” *Id.* (oral testimony of William C. Smith, Jr., Chair, S. Jud. Proc. Comm.). Then-delegate Brooke Lierman, the House sponsor, similarly identified that “tens of thousands of families use housing choice (section 8) vouchers (and tens of

⁶ Fair market rent of a two-bedroom in Maryland is \$1,909 per month. *See* <https://nlihc.org/oor/state/md>.

⁷ U.S. Dep’t of Hous. and Urb. Dev., Off. of Pol’y Dev. and Rsch., *What Happens to Housing Assistance Leavers?*, https://www.huduser.gov/portal/oup/pdf/hsg_asst_leavers_rpt.pdf (last visited Sept. 4, 2024)

thousands more are on waiting lists)” were the primary beneficiaries. *HOME Act: Hearing on H.B. 231 Before the House Env’t & Transp. Comm., 2020 Leg., 442nd Sess. 3* (Md. 2020) (written testimony of Brooke Lierman, Member, House Env’t & Transp. Comm.).

IV. Allowing landlords to impose income criteria divorced from whether a voucher holder can pay their share of the rent defeats the remedial intent.

It is beyond cavil that a remedial statute like the HOME Act must be liberally construed to effectuate its broad remedial purpose, yet allowing landlords to require renters to have income that is multiples of the full monthly rent would eviscerate that intent.

The HOME Act should be construed to eradicate that which it seeks to outlaw: the unjust refusal to rent to HCV families. Their difficult financial circumstances are the very reason they require the housing subsidy. The discriminatory criteria at issue in this case will lead to the exclusion of tenants with income levels typical of most households with HCVs. 78% of Maryland HCV households are “extremely low income,” i.e., they have an income of less than \$2,804 per month for a family of three. *See* n. 2, *supra*. Yet with an average two-bedroom rent of \$1,909 per month, a family would need to show an income of \$4,773 (2.5 times the rent) to meet the requirement at issue here. Even including the value of the voucher into the renter’s income, i.e., adding \$1,068 (the rent (\$1,909) minus the renter’s portion (\$841 or 30% of income)) to the *maximum* income of an extremely low-income household (\$2,804) yields \$3,872 – still well below the 2.5-times-rent requirement of \$4,773. HCV holders will almost always—and the 78% that

are extremely low-income holders will always—fail to meet this arbitrary requirement because it is divorced from the tenant’s ability to pay their portion of the rent.

If the circuit court’s reasoning holds, the individuals the HOME Act was intended to protect will be categorically excluded from housing, despite possessing a subsidy that covers most of their rent and sufficient income to cover their own portion.

V. Courts and regulatory agencies interpreting analogous laws allow such criteria only if grounded in the renter’s ability to pay their portion.

Other jurisdictions with provisions analogous to the HOME Act have found that verification of a renter’s income must begin and end with whether the renter can pay *their* share of the rent. Connecticut’s law allows landlords to deny an applicant if the renter has “insufficient income.” CONN. GEN. STAT. ANN. § 46a-64c (2023). However, Connecticut’s Supreme Court found that an income criterion like the one in the case at bar was illegal:

It would be inconsistent with the purpose of the provision, as well as basic principles of statutory construction, to construe the exception so broadly that a landlord may set income requirements that are not reasonably related to the personal periodic rental obligations of a prospective tenant who is a section 8 participant.... Put another way, a landlord ... may [only use] income requirements that bear a reasonable relationship to a prospective *tenant's ability to meet his or her personal rental obligations.*

Comm'n on Hum. Rts. & Opportunities v. Sullivan, 939 A.2d 541, 551 (2008) (emphasis added).

Under a similar statute to Maryland’s, the Virginia Real Estate and Fair Housing Board addressed this point: “[T]he relevant factor for a landlord’s risk assessment is *the tenant’s portion of rent, not the total rent.*” Va. Real Est. Board, *Guidance Document*,

Housing Discrimination on the Basis of Source of Funds, Dep't of Prof. & Occupational Reg., 1, 7 (April 16, 2021),

https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\222\GDoc_DPOR_6978_v1.pdf. (emphasis added).

New York City's Commission on Human Rights published similar guidance:

“When a voucher program calculates a tenants’ [sic] rent based on their income, the government has already determined that they can afford to pay their required portion. [In this situation], it is a violation of the Law to impose any additional income requirements ...”, *Best Practices for Housing Providers to Avoid Source of Income Discrimination*, N.Y.C. Comm'n on Hum. Rts., 1 (Jan. 2021),

https://www.nyc.gov/assets/cchr/downloads/pdf/materials/FairHouse_FAQs-Landlord-English.pdf. Washington D.C.'s Office of Human Rights published the same: “[A]

housing provider can only require that you meet the income requirement for your portion of rent.” *Frequently Asked Questions in Fair Housing: Do I Have a Case?*, D.C. Off. on Hum. Rts., 1, 3 (Aug. 2024),

https://ohr.dc.gov/sites/default/files/dc/sites/ohr/OHR%27s%20Fair%20Housing%20FAQ_English_8.6.2024.pdf.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully urge this Court to grant certiorari.

Respectfully submitted,

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STATEMENT OF INTENT TO FILE SUPPLEMENTAL BRIEF PURSUANT TO RULE 8-511(E)(2)

Should this Court grant the petition for a writ of *certiorari*, *Amici* intend to seek consent of the parties or leave to file an *amicus curiae* brief on the issues before the Court.

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 1,837 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Albert Turner

Albert Turner

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on September 5, 2024, the foregoing Brief of *Amici Curiae* in Support of Petition for Writ of Certiorari was served via the MDEC File and Serve Module, and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

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APPENDIX

STATEMENT OF INTEREST

The **Public Justice Center** (PJC) is a non-profit civil rights and anti-poverty legal organization established in 1985. The PJC uses impact litigation, public education, and legislative advocacy through a race equity lens to accomplish law reform for its clients. The organization also represents indigent and disadvantaged persons in eviction and fair housing cases in Maryland. It also supports adoption of fair housing legislation that has a deep impact on Maryland renters. The PJC has a long standing commitment to ensuring all landlord/tenant and fair housing laws are applied justly with a focus on improving the lives of low-income Maryland renters. *See, e.g., Assanah-Carroll v. L. Offs. of Edward J. Maher, P.C.*, 480 Md. 394 (2022), *Aleti v. Metro. Baltimore, LLC*, 251 Md. App. 482 (2021), *Pettiford v. Next Gen. Trust Serv.*, 467 Md. 624 (2020), *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016), *Westminster v. Smith*, 486 Md. 616 (2024). The PJC has an interest in this case because of its potential impact on their clients and fair housing laws.

The **Lawyers' Committee for Civil Rights Under Law** ("Lawyers' Committee") is a nonprofit civil rights organization founded in 1963 to secure equal justice for all through the rule of law, targeting, in particular, the inequities confronting Black Americans and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our

democracy real. The Lawyers' Committee has for decades sought to ensure that Black families are able to exercise true fair housing choice free from arbitrary and discriminatory barriers like source of income discrimination. Interpreting the scope of Maryland's prohibition on source of income discrimination to include transparent strategies to evade the law – like that at issue in this case – is critical to achieving that goal.

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 preserve and expand the nation's supply of safe and affordable homes. Since 1981, NHLP has published HUD Housing Programs: Tenants' Rights, the seminal authority on the rights of HUD tenants—including families participating in the Housing Choice Voucher program. And NHLP coordinates the Housing Justice Network (HJN), of more than 2,200 legal aid attorneys, advocates, and organizers who have collaborated on important and complex housing law issues for over 40 years. NHLP staff and HJN members have extensive experience advocating for participants in federal housing voucher programs and working to enact and enforce state and local laws prohibiting housing discrimination based on the use of vouchers or other unjustly stigmatized income sources.

The **Equal Rights Center** (ERC) is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations, throughout the Greater Washington, D.C. area, the State of Maryland, and nationwide. For many years, the ERC has conducted intakes with individuals in

Maryland who believe they may have experienced housing discrimination, investigated individual claims and systemic forms of housing discrimination, conducted education and outreach about fair housing protections and requirements, and pursued enforcement of fair housing laws in Maryland as needed. The ERC regularly assists voucher holders who are reporting source of income discrimination, including voucher holders in Maryland who have been unfairly denied housing due to improperly applied minimum income requirements. ERC has an interest in this case because of its potential impact on ERC clients who are voucher holders attempting to locate housing without experiencing discrimination in Maryland and on ERC's ability to meaningfully enforce source of income protections in Maryland.

National Fair Housing Alliance (“NFHA”) is a national organization dedicated to ending discrimination and ensuring equal opportunity in housing for all people. Founded in 1988, NFHA is a consortium of 250 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals. NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all people through education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs. Relying on the federal, state, and local fair housing laws, NFHA undertakes important enforcement initiatives in cities and states across the country and participates as *amicus curiae* in other cases to further its goal of achieving equal housing opportunities for all.

The **Homeless Persons Representation Project, Inc.** (“HPRP”), founded in 1990, is a non-profit organization whose mission is to end homelessness in Maryland by providing free legal services and advocacy for persons who are homeless or at risk of homelessness. HPRP was one of the lead advocates supporting the passage of the Maryland HOME Act, and its housing practice focuses on the rights of tenants and prospective tenants of affordable housing subsidized by federal, state, and local programs. HPRP has acted as Amicus Curiae and counsel in the Maryland appellate courts in matters seeking to enforce the rights of renters including those using Housing Choice Vouchers. See, e.g., *Montgomery Cty. v. Glenmont Hills Assocs.*, 402 Md. 250 (2007); *Grady Mgmt. v. Epps*, 218 Md. App. 712 (2012); *Matthews v. Hous. Auth. of Balt. City*, 216 Md. App. 672 (2014); *Foghorn v. Hosford*, 455 Md. 462 (2017); *McDonell v. Harford Cty. Hous. Agency*, 462 Md. 586 (2019), and *Westminster Management, LLC, et al. v. Tenae Smith et al*, 486 Md. 616 (2024) HPRP has a strong interest in ensuring that tenants using Housing Choice Vouchers and other rental subsidies are not subject to discrimination and denied housing based on their source of income. Discrimination based on source of income both causes homelessness and prevents families from ending their homelessness.

The **Fair Housing Justice Center** (“FHJC”), is a nonprofit civil rights organization dedicated to eliminating housing discrimination, promoting policies that foster open, accessible, and inclusive communities, and strengthening enforcement of fair housing laws. The FHJC serves all five boroughs of New York City and the seven surrounding New York counties of Dutchess, Nassau, Orange, Putnam, Rockland,

Suffolk, and Westchester. The FHJC uses testing and other tools to investigate allegations of housing discrimination. When the FHJC uncovers evidence of discrimination, it files lawsuits and other enforcement actions alleging violations of fair housing laws. The FHJC has extensive experience advocating for voucher holders who have been subject to source of income discrimination and working to enact and enforce state and local laws prohibiting housing discrimination based on the use of vouchers. The FHJC has an interest in this case because of its potential impact on fair housing laws and the communities it serves.

Disability Rights Maryland (“DRM”) is the federally designated Protection & Advocacy (P&A) agency in Maryland, mandated by Congress since 1975 to advance the civil rights of people with disabilities. One of DRM’s goals is to end the unnecessary segregation and institutionalization of people with disabilities. As such, DRM works to expand housing opportunities so that Marylanders with disabilities have access to safe, affordable, and accessible housing, while fully participating in all aspects of community life. DRM also represents low-income people with disabilities in eviction cases and voucher holders who are at risk of voucher termination through Maryland’s Access to Counsel in Eviction (ACE) Program, as well as representing people with disabilities in fair housing cases. The enforcement of federal, state, and local fair housing laws is critically important for people with disabilities who continue to face disproportionately high levels of discrimination in housing.⁸ DRM has an interest in this case because

⁸ NATIONAL FAIR HOUSING ALLIANCE, ADVANCING A BLUEPRINT FOR EQUITY: 2023 FAIR HOUSING TRENDS REPORT. In FY 2023, 48% of all housing cases received by the Maryland Commission on Civil Rights alleged disability discrimination. MARYLAND STATE COMMISSION ON CIVIL RIGHTS, 2023 ANNUAL REPORT, *available at*

housing choice vouchers are an essential tool for low-income families seeking housing in integrated communities that may offer better transportation, more accessibility, and greater opportunities for them their families.