Case No. A18-1271

STATE OF MINNESOTA
IN THE COURT OF APPEALS

City of Minneapolis,

Appellant,

v.

Fletcher Properties, Inc., et al.,

Respondents.

BRIEF OF AMICI CURIAE HOUSING JUSTICE CENTER, NATIONAL HOUSING LAW PROJECT, AND THE POVERTY & RACE RESEARCH ACTION COUNCIL

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Housing Justice Center (HJC) is a nonprofit legal organization based in Saint Paul, Minnesota, the mission of which is to preserve and expand the supply of affordable housing. Staff attorneys at HJC have been working on expanding the acceptance of Section 8 Housing Choice Vouchers for the last decade through education, direct advocacy and litigation.[1]

The National Housing Law Project (NHLP) is a nonprofit organization that advances housing justice for poor people and communities, predominantly through technical assistance and training to legal aid attorneys, policy advocacy, and co- counseling on key litigation. NHLP works to strengthening 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 (commonly known as the "Greenbook"), the seminal authority on the rights of HUD tenants—including families participating in the Housing Choice Voucher program.

NHLP also coordinates the Housing Justice Network, a collection of over 1,400 legal aid attorneys, advocates, and organizers from around the U.S. that has collaborated on important and complex housing law issues for over 40

[1] Rule 129.03 Certification: this brief was authored entirely by counsel for Amici Curiae and no one other than amici made a monetary contribution to the preparation or submission of the brief.

years, including through a dynamic listserv, working groups, and a periodic national conference. NHLP and its staff have extensive experience both advocating for and enforcing state and local laws prohibiting discrimination in housing based on voucher use or other forms of "source of income discrimination."

The Poverty & Race Research Action Council ("PRRAC") is a civil rights policy organization based in Washington, D.C., committed to bringing the insights of social science research to the fields of civil rights and poverty law. PRRAC's housing work focuses on the government's role in creating and perpetuating patterns of racial and economic segregation, the long-term consequences of segregation for low-income families of color in the areas of health, education, employment, and economic mobility, and the government policies that are necessary to remedy these disparities. For over a decade, PRRAC has engaged in research, policy analysis, and advocacy on the barriers facing families using federal Housing Choice Vouchers (HCVs) to move to higher opportunity areas. One of the key barriers is the prevalence of discrimination against HCV families. As part of its work PRRAC has researched best practices in local source of income discrimination laws, and since 2005, has maintained a directory of all state and local statutes and ordinances barring source of income discrimination.

ARGUMENT

The City of Minneapolis enacted Ordinance No. 2017-078 to prohibit discrimination in rental housing based on participation in public assistance programs. The City, reasoning that making discrimination against public assistance recipients unlawful would improve housing opportunities for people who rely on federally-funded Housing Choice Vouchers[2] and other public benefits, passed the Ordinance based on extensive evidence that large numbers of Minneapolis landlords refused to accept vouchers.[3] In passing the Ordinance, Minneapolis joined eleven states, the District of Columbia, and more than 70 other cities and counties that have restricted or prohibited housing discrimination based either on the use of a voucher subsidy to pay rent, or, more broadly, on a tenant's source of income.[4]

The trial court struck down the Minneapolis Ordinance as arbitrary, however, reasoning that "discrimination" entails "socially evil" practices motivated by prejudice and unfair stereotypes, and that landlords may have reasons other

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[2] See 42 U.S.C. § 1437f(o) (creating voucher program); see 24 C.F.R. § 982.1 for overview of voucher program.

[3] See *Fletcher Properties, Inc., v. City of Minneapolis*, Hennepin County Dist. Ct. No. 27-CV-17-9410, Memorandum on Order Granting Plaintiffs' Motion and Denying Defendant's Motion for Summary Judgment at 21-22 (June 7, 2018) (hereafter referred to as "Opinion").

[4] See Poverty & Race Research Action Council, "Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program," Appx. B: State, Local, and Federal Laws Barring Source-of-Income Discrimination (Sept. 14, 2018), on-line at: https://www.prrac.org/pdf/AppendixB.pdf

than unfair prejudice or stereotypes for avoiding public assistance recipients as tenants.[5] The trial court further ruled that the Ordinance violates the Minnesota Equal Protection Clause by exempting from its coverage duplex owners who live in one unit and rent the other to tenants.

Both rulings are deeply and fundamentally flawed. Minneapolis had a rational basis for prohibiting income-based discrimination, which frustrates public policy objectives--such as increasing housing opportunities for low-income persons, combating residential segregation, and affirmatively furthering fair housing—whether that discrimination is motivated by animus (e.g., as a proxy for racial or other prejudice-based discrimination) or economic concerns (such as avoiding costs associated with voucher participation). And because the legislation effectively requires landlords to shoulder the ordinary requirements of participating in voucher programs, the City rationally exempted duplex owners (who live in one unit and lease the other)—small landlords who provide a minimal amount of rental housing, and who may find the burdens of participating in voucher programs more difficult to cope with. This Court should reject the trial court's conclusions on both the substantive due process and equal protection claims, and reverse the injunction against enforcement of Ordinance No. 2017-078.

[5] See Opinion at 29-30, 38.

A. Animosity or prejudice against public assistance recipients is not necessary to support a prohibition of housing discrimination against such persons.

The central flaw in the trial court's reasoning was its view of "discrimination" as meaning only different treatment that is motivated by "animus"—i.e., hostility, fear, or prejudice, rather than rational business or economic reasons. See Opinion at 30 ("In short, the Ordinance is based on a conclusive presumption that landlords refusing to rent to Section 8 tenants are motivated by prejudice … they are engaged in 'unfair' discrimination that promotes hatred and degradation. [Landlords] are not making legitimate business decisions, they are really engaged in conduct that is 'socially evil.'"). In fact, "discrimination" entails only inferior treatment based on a particular characteristic, irrespective of its motive or purpose.

1. Discrimination can occur in the absence of animus.

As strictly defined, "discrimination" means only "[t]he intellectual faculty of noting differences and similarities." Black's Law Dict., 10th Ed., "discrimination" (2014). Thus, discrimination occurs whenever one person is treated differently than another, no matter what the basis or rationale for the different treatment happens to be. Hence the term appears in various contexts throughout American law, ranging from the Bankruptcy Code's prohibition on certain forms of discrimination against "bankrupts" and "debtors," see 11 U.S.C. § 525, to a federal law against certain forms of employment discrimination against military reservists, see 38 U.S.C. § 4311 et seq., to interpretations of communications

laws barring discrimination by common carriers of long-distance services in the rates and terms available to similarly-situated customers, see *AT&T Co. v. Central Office Telephone, Inc.,* 524 U.S. 214, 223; 118 S.Ct. 1956 (1998) (interpreting 47 U.S.C. § 203(a) to establish a "policy of nondiscriminatory rates [that] is violated when similarly situated customers pay different rates for the same services." ").

In the fair housing context, of course, "discrimination" generally means less-favorable treatment on a statutorily-proscribed basis, such as race, sex, familial status, religion, disability, or, as here, participation in a public assistance program. But even in this context examples of proscribed discrimination that scarcely reflect responses to hatred or animus are commonplace. Perhaps the best example is the federal Fair Housing Act Amendments of 1988, which prohibits housing discrimination against families with children. See 42 U.S.C. § 3604 ("familial status," added by Pub. L. 100-430). Congress passed this law based on findings that "25 percent of all rental units did not allow children; 50 percent were subject to restrictive policies that limited the ability of families to live in those units; and almost 20 percent of families were living in homes they considered less desirable because of restrictive practices." H.R. Rep. No. 711, 100th Cong., 2d Sess. 1988, 1988 U.S.C.C.A.N. 2173, 2180. Congress found discrimination against families within children contrary to public policy goals such as "protecting families as 'perhaps the most fundamental social institution of our

society' and "provid[ing] a decent home and suitable living environment for every American family." *Id*. at 2180.

Importantly, in the House Report accompanying the 1988 amendments, Congress made no findings that the prevalence of familial discrimination was related to animosity or a hatred of children. *See generally id*. A HUD study, recent at the time, had attributed much of the discrimination against families with children to economic reasons, including higher maintenance costs, increased risks of tort liability and higher insurance premiums, as well as a willingness of many tenants to pay more rent to live in rental communities without children. See Robert A. Bilott, Note, "The Fair Housing Amendments Act of 1988: A Promising First Step Toward the Elimination of Familial Homelessness?" 50 Ohio St. L.J. 1275, 1277-78 (1989) ("Many of these households prefer to avoid the noisy and disturbing nature of children in general, to avoid the consequences of the destructive nature of children, to avoid dealing with the generally bad behavior of unsupervised children, or to avoid dealing with the clutter created by children in hallways and common areas."). The veracity of these concerns was always dubious. See Charles McC Mathias Jr., "The Fair Housing Amendments Act," 15 Real Est. L.J. 353, 360 (1987) ("Some claim that renting to families results in decreased property values, and increased costs for maintenance, operations, and liability insurance. These claims are unsubstantiated. No direct correlation has been made between any of these factors and the presence of children … Similarly, noise is not solely related to children[.]). But these

business concerns were not even acknowledged in the House Report, an omission that strongly suggests ensuring access to rental housing for families with children would have taken preeminence regardless.

In fact, animus is not necessary to demonstrate any Fair Housing Act violation. See, e.g., *Williams v. Matthews Co.,* 499 F.2d 819, 827 (8th Cir. 1974) (rejecting lower court's conclusion that "subjective good intentions could overcome the prima facie showing of discrimination"); see also *Comm. Servs, Inc. v. Wind Gap Municipal Auth*., 421 F.3d 170, 177 (3d Cir. 2005) (noting that the "discriminatory purpose need not be malicious or invidious, nor need it figure in [']solely, primarily, or even predominantly[']] into the motivation behind the challenged action") (citations omitted); *Developmental Services of Nebraska v. City of Lincoln,* 504 F. Supp. 2d 726, 737 (D. Neb. 2007) (failure to provide a reasonable accommodation claim "does not require proof of discriminatory animus"); *Fair Housing Congress v. Webe*r, 993 F. Supp. 1286, 1293 (C.D. Cal. 1997) (even if informal policy of not renting certain apartments to families with children by steering them to other units is based on "legitimate safety concerns," this does not cure fair housing violation); *Horizon House Developmental Servs, Inc. v. Township of Upper Southhampton,* 804 F. Supp. 683, 696 (E.D. Pa. 1992) ("[I]t is not necessary to show an evil or hostile motive," as it is a fair housing violation to discriminate "even if the motive was benign or paternalistic."); *United States v. Reece*, 457 F. Supp. 43, 48 (D. Mont. 1978) (rejecting landlord's

"allegedly benign motivation" of refusing to rent apartments to women who did not own cars due to concerns for their safety).

Disparate impact theory under the Fair Housing Act has been cognizable in the federal courts for decades, meaning a plaintiff may establish liability for housing discrimination without even proving intent—let alone animus. See *Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project, Inc.,* 135 S. Ct. 2507, 2520 (2015); see also 24 C.F.R. § 100.500(a) ("A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin."). Accordingly, HUD's discriminatory effects regulation, 24 C.F.R. § 100.500, states that "Liability may be established under the Fair Housing Act based on a practice's discriminatory effect... even if the practice was not motivated by a discriminatory intent."

That discrimination based on characteristics like race or religion has historically been driven by fear, animosity, and other manifestations of prejudice is true enough. But just as federal anti-discrimination laws serve broader policy goals and are not limited to counteracting animus, so are those at Chapter 139 of the Minneapolis City Code—which does not require animus as an element (of discrimination). See M.C.O. § 139.20 ("*Discriminate* or *discrimination*: Includes any act, attempted act, policy or practice, which results in the unequal treatment, separation or segregation of or which otherwise adversely affects any person

who is a member of a class or combination of classes protected by this title"). Indeed, Minneapolis has recognized that discrimination based on certain characteristics harms the public interest *not only* "by, among other things, degrading individuals [and] fostering intolerance and hate," *but also* by "creating and intensifying unemployment, substandard housing, under education, ill health, lawlessness and poverty[.]" M.C.O. § 139.10(a).

2. Minneapolis, like many other jurisdictions, had good reasons for prohibiting discrimination against voucher holders and other public assistance recipients.

By prohibiting housing discrimination against voucher holders and other public assistance recipients, Ordinance 2017-078 advances a number of these municipal interests, including expanding housing opportunities for low-income persons and reducing poverty. The trial court found this arbitrary, because in its view discrimination can only occur when motivated by animus and thus the Ordinance amounted to an untenable "conclusive presumption that landlords refusing to rent to Section 8 tenants are motivated by prejudice[.]" Opinion at 30. But "discrimination" in this connection merely means treating voucher holders less favorably, no matter what the reason for the inferior treatment happens to be.

The primary objective behind Ordinance 2017-078 was to address the refusal of many housing providers to accept housing vouchers or other forms of public assistance. The refusal to accept vouchers or other public assistance benefits constitutes a form of less-favorable treatment—i.e., discrimination

(based on public assistance use). Ample evidence in the legislative record showed that housing voucher holders faced widespread discrimination in the Minneapolis rental market, that the discrimination significantly reduced the housing opportunities available to benefits recipients, and that these dynamics tended to concentrate voucher tenants in high-poverty neighborhoods. See Opinion at 5, 21-22 (noting survey results showing that only 23% of rental listings affordable to voucher holders would accept voucher holders, and "that the vast majority of properties accepting Section 8 vouchers were concentrated in high poverty zip codes in North Minneapolis."). [6]

The discrimination frustrated the City's policies around improving housing opportunities for low-income families and deconcentrating poverty. Improving and expanding rental housing opportunities for low-income families is certainly a legitimate public interest. See *Edwards v. Hopkins Plaza L.P.,* 783 N.W.2d 171, 179 (Minn. App. 2010) ("Increasing affordable housing availability is a valid goal that would be advanced if all property owners were willing to participate in

[6] These findings of the Minneapolis City Council are reinforced by the latest national study of Housing Choice Voucher discrimination – see Mary Cunningham et al, A Pilot Study of Landlord Acceptance of Housing Choice Vouchers (HUD Office of Policy Development and Research, 2018), available at https://www.urban.org/research/publication/pilot-study-landlord-acceptance-housing-choice-vouchers. Dozens of cities and counties around the country have reached the same conclusion in adopting source of income discrimination laws. See Alison Bell, et al, Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results, Center on Budget and Policy Priorities (October 2018), on-line at https://www.cbpp.org/sites/default/files/atoms/files/10-10-18hous.pdf.

Section 8 programs."). Prohibiting landlords from discriminating on the basis of public assistance (including voucher use) directly advances that goal. Therefore, Ordinance 2017-078 had a rational basis and should easily have survived the substantive due process challenge. See *State v. Rey,* 905 N.W.2d 490, 495 (Minn. 2018) ("Under rational-basis review, we will uphold a statute when it provides a 'reasonable means to a permissive objective' and is not 'arbitrary or capricious.'), quoting *State v. Bernard,* 859 N.W.2d 762, 773 (Minn. 2015).

The trial court even acknowledged that the City's interest in addressing the shortage of housing available to voucher households and the concentration of those tenants in high-poverty neighborhoods could justify requiring residential landlords to accept housing vouchers. See Opinion at 37-38 ("The fact that there is shortage of, and a concentration of, apartments available to Section 8 tenants certainly would make it rational to act directly on the problem, e.g., declare that the privilege of holding a rental housing license in the City of Minneapolis requires accepting Section 8 tenants."). Only the trial court's fundamental misunderstanding of the term "discrimination" to necessarily imply conduct motivated by animus led it to conclude the City's means—prohibiting discrimination against public assistance recipients—was arbitrary. See Opinion at 38 ("The assertions established by the City, then, while indisputable and important, do not resurrect the rationality of deeming all non-participating landlords, now and forever and with no chance for rebuttal, to be acting out of unfair discrimination and prejudice."). But to prohibit "discrimination" based on

voucher use means only to ensure that voucher holders are not turned down because of their voucher use alone—meaning a landlord could still deny a voucher tenant if some other valid reason for denial exists. A law directly requiring landlords to accept voucher tenants would have been much more far reaching.

Whether Minneapolis landlords discriminated against voucher holders out of animus or for other reasons was thus ultimately irrelevant, as the legislative prerogative to determine which forms of housing discrimination to prohibit is not limited to counteracting racial prejudice or other nefarious distinctions. Yet Ordinance 2017-078 does also advance the City's interests in deterring and preventing housing discrimination against members of traditional protected classes. Housing providers that refuse to accept tenants with rental vouchers or other forms of public assistance income diminish rental opportunities available to the low-income households who rely on those programs. When such policies are widespread in a community, such income-based discrimination can profoundly affect recipients' access to certain neighborhoods, schools, and other aspects of community participation. And because families receiving public assistance benefits are more likely to be female-headed, of color, and have members with disabilities, source of income discrimination can also play a significant role in shaping the demographic and socioeconomic contours of an area as well. See Kinara Flagg, "Mending The Safety Net through Source of Income Protections: The Nexus Between Antidiscrimination and Social Welfare Law," 20 Colum. J.

Gender & L. 201, 206 (2011). "[T]he effects of [source of income] discrimination go well beyond the geographical details of where they sleep at night. Where a child grows up is directly related to where he or she can go to school, and living in a low-income, racially segregated neighborhood with underfunded public schools can be a significant barrier to racial and economic integration for that family." *Flagg* at 208.

These dynamics give cities like Minneapolis a further legitimate interest in curbing discrimination based on public assistance participation. And this remains true no matter what reasons may cause housing providers to adopt policies of refusing vouchers or other public benefits. Income-based discrimination that fosters residential segregation and limits educational and economic opportunities for low-income families is just as harmful when driven by business reasons as when motivated by fear or animosity.

3. Minneapolis validly prohibited discrimination based on "the requirements of a public assistance program" to ensure that housing providers shoulder the ordinary requirements of such programs.

Like dozens of other cities and counties around the country,[7] the local legislative body in Minneapolis has reasonably balanced the needs to foster

[7] For a listing of the growing number of cities, counties, and states that have adopted source-of-income discrimination laws, see Poverty & Race Research Action Council, Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local, and Federal Laws Barring Source-of Income Discrimination," (2018), http://www.prrac.org/pdf/AppendixB.pdf; see also Alison Bell, et al, Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results,

inclusive communities and make affordable rental housing opportunities available to low-income persons against the inconvenience of accepting the additional administrative procedures related to a housing voucher tenancy. In prohibiting discrimination against voucher holders and other public assistance recipients, the Ordinance explicitly reflects a legislative determination that requiring landlords to shoulder the requirements of receiving those income sources is a reasonable and worthwhile imposition considering the policy objectives that requirement accomplishes.

Having done so, Minneapolis has made intentional discrimination against voucher families a freestanding violation of law, not subject to business-justification defenses. The ordinance does recognize an affirmative defense for a landlord who shows that participation would pose an "undue hardship." But prohibiting discrimination based on "the requirements of a public assistance program" was necessary to ensure that rental housing providers accept the ordinary obligations of such programs.[8]

Center on Budget and Policy Priorities (October 2018), https://www.cbpp.org/sites/default/files/atoms/files/10-10-18hous.pdf.

[8] Thus, the Minneapolis ordinance describes "*Discrimination in property rights*" to include "status with regard to a public assistance program, *or any requirement of a public assistance program is a motivating factor*." (emphasis added) M.C.O.§139.40(e).

Courts in Connecticut,[9] the District of Columbia,[10] Maryland,[11] and New Jersey,[12] have all upheld state and local laws prohibiting source of income discrimination in the face of challenges that the laws posed administrative "burdens" for landlords. These courts have held that permitting challenges based on the administrative requirements of various sources of income would thwart the intended purposes of the statute and would impermissibly read unstated exceptions into remedial statutes.

In *Edwards v. Hopkins Plaza Ltd. Partnership*, 783 N.W.2d 171 (Minn. Ct. App. 2010), the Court noted that the voucher program is voluntary as far as federal law goes, but that federal law explicitly does not preempt state or local laws prohibiting discrimination against voucher holders. *Id*. at 176, citing 24 C.F.R. § 982.53(d). The *Edwards* court concluded that no state law required owner participation in the voucher program and, contrary to the decisions cited above, that the Minnesota Human Rights Act did not make discriminatory a

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[9] *Commission on Human rights & Opportunities v. Sullivan Assocs*., 739 A.2d 238, 248, 250 (Conn. 1999)(permitting an exception based on program requirements would thwart purpose and constitute an unstated exception to a remedial statute).

[10] *Feemster v. BSA Ltd Partnership*, 548 F.3d 1063, 1070-71 (D.C. Cir. 2008)(permitting owner to refuse vouchers based on program requirements would vitiate intended legal safeguards).

[11] *Montgomery County v. Glenmont Hills Assocs*. 936 A.2d 325, 340-41 (Md. App. 2007)("Most of the courts that have addressed an administrative burden defense have rejected it.")

[12] *Franklin Tower One v. N.M*., 725 A.2d 1104, 1114 (N.J. S.C. 1997)(permitting a landlord to decline participation in the voucher program to avoid "bureaucracy" would leave no section 8 housing available.)

refusal to participate "for a legitimate business reason." In drawing that conclusion, the Court specifically distinguished the MHRA from the Massachusetts statute which makes discriminatory a refusal to rent because of the requirements of a public assistance program.[13] Contrary to Appellee's arguments below, the *Edwards* court did not conclude that owner participation was necessarily voluntary in Minnesota, but only that no then-current state laws operated to make participation mandatory.

The Massachusetts Supreme Judicial Court had ruled similarly with respect to that state's initial source of income discrimination law. Attorney General v. Brown, 511 N.E.2d 1103 (Mass. 1987). In reaction to the decision, the Legislature added language very similar to that adopted by Minneapolis, prohibiting discrimination "because of the requirements" of assistance programs.[14] In response to an owner's refusal to participate in a local voucher program because of requirements of the program, the state Supreme Judicial Court held that the Legislature had weighed program administrative burdens and struck a balance between them and the public interest in making housing affordable. *DiLiddo v. Oxford St. Realty, Inc*., 876 N.E.2d 421, 429 (Mass. 2007). The Minneapolis City council has similarly struck the same balance, recognized the compelling need for an ordinance which effectively prohibits source of income discrimination.

[13] Mass. General Laws, c. 151B, § 4(10).
[14] *Id*.

In *DiLiddo*, the defendant made an argument similar to that of the trial court here, asserting there was no discrimination because it was acting for business reasons rather than from "animus." The court rejected this argument holding that the statute contains no language requiring a showing of animus. *Id*.

B. Exempting certain duplex owners from Ordinance No. 2017-078 does not make an arbitrary classification contrary to the Minnesota Equal Protection Clause.

Article 1, Section 2 of the state Constitution provides that no member of the state shall be deprived of any of the rights or privileges secured to any citizen thereof. A three part test is used for analyzing claims that a law violates this constitutional provision; (1) distinctions must not be "manifestly arbitrary," but must be "genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs;" (2) classifications must be relevant to the purpose of the law; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve. *Gluba v. Bitzen & Ohren Masonry*, 735 N.W.2d 713, 721 (Minn. 2007).

The District Court held that the source of income ordinance failed the first test by excepting owners of owner-occupied duplexes from the prohibition against voucher discrimination. The Court erred in this regard for the same reason that it erred with respect to the substantive due process issue. The Court equated discrimination with animus and stated that the premise of the ordinance was that "landlords choosing not to participate in the section 8 program are doing

so as a pretext for prejudice against people in the program." Opinion at 42. The court concluded that there is no genuine distinction between duplex owners and larger owners using program requirements as a pretext and that there was no evidence that "duplex owners are less likely to engage in unfair and degrading discrimination than professionally managed building owners." *Id*.

As demonstrated above, anti-discrimination laws need not, and often do not, rely on the existence of animus or prejudice. The Court's error in this regard results in a distorted view of the distinctions made by the City.

The City's purpose in adopting the ordinance was to "increase stable housing opportunities for low income citizens without creating undue hardships for property owners." Opinion at 13. The City acted reasonably in exempting duplex owner-occupants from the prohibition because the burdens of voucher program participation may fall more heavily on small property owners than larger property management firms or absentee landlords and because the amount of rental housing these duplex owners supplied was insignificant.

The appropriate question in employing the state equal protection test is not whether there is a genuine and substantial difference in animus toward voucher holders between owners of owner-occupied duplexes and larger owners but rather whether there is a genuine and substantial difference in light of the City's purpose to facilitate use of Section 8 vouchers while minimizing undue hardships on owners. Owners of larger buildings hire professional management, equipped to address all sorts of regulatory and administrative details associated with

property ownership and the rental housing business. For them, any burdens associated with additional administrative requirements of the Section 8 program are minor. That is not necessarily the case for owners without professional management or rental experience. Owners of owner-occupied duplexes are likely not to be in the rental business at all, but rather simply seeking some additional income to cover their mortgage payments. Finally, duplexes are a relatively small part of the city's rental housing supply. Def. Summary Judgment Memorandum at 62.

The line the City has drawn in establishing an exemption for very small owner occupants is similar to that in the federal Fair Housing Act (FHA). The FHA exempts owner occupied residences with units for four or fewer families total, known as the so-called "Mrs. Murphy" exemption. 42 U.S.C. § 3603(b)(2). Minnesota courts are to defer to legislative bodies in "matters concerning the desirability of statutory classifications affecting the regulation of economic activity." *Gluba*, 735 N.W.2d at 723. Where there is no way to precisely draw a line, e.g. between small owners, the legislative body's decision "must be accepted unless we can say that is very wide of any reasonable mark" Id. at 725.

The District Court's analysis was fatally flawed by its misunderstanding of the nature of anti-discrimination laws and a proper application of the Minnesota equal protection analysis indicates that the Minneapolis ordinance passes constitutional muster.

CONCLUSION

For the reasons set forth above, the decision of the trial court should be reversed.

Dated November 9, 2018

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01. This brief is produced with a proportional 13-point font. The length of this brief is 4,847 words. This brief was prepared using Microsoft Word 2013 and saved as a pdf file with Adobe Acrobat.

Dated: November 9, 2018 By: /s/ John Cann

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