No. 26-01442

IN THE

United States Court of Appeals for the Fourth Circuit

LUCINDA LC, et al.,

Plaintiffs-Appellants,

v.

JAY JONES, et al.,

Defendants-Appellees.

On Interlocutory Appeal of Order Denying Preliminary Injunction by the United States District Court for the Eastern District of Virginia, No. 1:26-cv-00252, Hon. Michael S. Nachmanoff

BRIEF OF *AMICI CURIAE* POVERTY & RACE RESEARCH ACTION COUNCIL, NATIONAL HOUSING LAW PROJECT, NATIONAL HOMELESSNESS LAW CENTER, NATIONAL FAIR HOUSING ALLIANCE, AARP AND AARP FOUNDATION, AND HOUSING OPPORTUNITIES MADE EQUAL OF VIRGINIA IN SUPPORT OF DEFENDANTS-APPELLEES

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July 22, 2026

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, undersigned counsel certify that *amici curiae* Poverty & Race Research Action Council, National Housing Law Project, National Homelessness Law Center, National Fair Housing Alliance, AARP and AARP Foundation, and Housing Opportunities Made Equal of Virginia are not publicly held corporations. Undersigned counsel further certify that none of the *amici curiae* has a parent corporation or any publicly held member, and that no publicly held corporation or other public held entity owns 10% or more of the stock of any *amici* or any of its members.

DATED: July 22, 2026

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STATEMENTS OF INTEREST OF AMICI CURIAE[1]

Housing Opportunities Made Equal of Virginia ("HOME") is Virginia's only dedicated fair housing nonprofit. It furthers fair housing by investigating and combating discriminatory practices; educating housing seekers, housing providers, and the public about fair housing and housing equity across Virginia; and advancing public policy and research that furthers fair housing goals. HOME counselors work directly with tenants seeking to move to higher opportunity neighborhoods using their vouchers.

The Poverty & Race Research Action Council ("PRRAC") promotes research-based advocacy strategies to address structural inequality and change systems that disadvantage low-income people of color. With the support of the Housing Choice Voucher program, PRRAC has helped more than 17,000 families move to higher-opportunity neighborhoods. *See* Mobility Works, *Our Impact*, https://perma.cc/37HQ-SWBJ.

AARP and AARP Foundation empower Americans 50 and older to choose how they live as they age. Both entities advocate for equitable and nondiscriminatory access to housing for older adults, particularly those who rent and use vouchers, through direct litigation and as amicus curae in state and federal courts.

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

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

National Fair Housing Alliance ("NFHA") is a national 501(c)(3) non-profit organization dedicated to ending discrimination and ensuring equal opportunity in housing, including for voucher holders. NFHA undertakes enforcement efforts in cities and states nationwide and regularly participates as amicus curiae to further its goal of achieving equal housing opportunities for all. *See, e.g.*, *West Virginia v. B.P.J.*, 609 U.S. __ (2026); *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 91 F.4th 270 (4th Cir. 2024); *Gilead Cmty. Servs., Inc. v. Town of Cromwell*, 112 F.4th 93 (2d Cir. 2024).

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

INTRODUCTION AND SUMMARY OF ARGUMENT

Housing should be, at bottom, about stability—a stable place to live, a stable foundation on which to build a life. Too often, however, families lack that basic resource. This case involves a challenge to a statute designed to create the stability families need to thrive. This Court should rebuff Plaintiffs' attempt to weaken Virginia's support of affordable housing and affirm the district court's decision.

For decades, Congress and state legislatures have worked to make stable, affordable housing a reality for those who need it most. Congress enacted the Fair Housing Act to tear down the walls of discrimination. Congress created the Housing Choice Voucher Program to give low-income families a fighting chance in the private rental market. And when landlords began turning away voucher holders en masse, Virginia—along with eighteen other states and over 130 localities—amended its fair housing law to ban source-of-income discrimination, ensuring that vouchers are not just pieces of paper, but keys to homes.

The source-of-income discrimination that prompted Virginia's action is well-documented. Many landlords refuse to rent to voucher recipients based on unfounded stereotypes and have sought to circumvent other anti-discrimination protections once enacted. Virginia responded to this crisis in 2020 by amending its fair housing law to prohibit landlords from discriminating against prospective tenants based on their "source of funds," including any governmental assistance, benefit, or subsidy program. Va. Code Ann. § 36-96.1:1. The law does not compel landlords to accept every voucher applicant. It simply prohibits them from rejecting applicants because they intend to pay some or all of their rent with a housing voucher.

The landlord Plaintiffs ask this Court to upend that carefully constructed system. The district court correctly rejected that invitation when it denied Plaintiffs' request for a preliminary injunction, and this Court should do the same. The inspection requirements Plaintiffs are potentially subject to when accepting voucher holders are modest and routine. Once a local housing authority confirms that the unit meets basic health and safety standards—through the same kinds of checks any prospective tenant might perform—and that the proposed rent is reasonable relative to comparable units, landlords are asked to sign an agreement delineating the requirements for accepting the government-backed vouchers. Importantly, however, those agreements impose only three modest administrative obligations on landlords, all of which are actually invoked only in unusual circumstances: provide pertinent information, allow access for audits, and grant access to electronic records. Moreover, nothing in the contracts forecloses a precompliance challenge in a particular case should these requirements actually be invoked, and the consequences for noncompliance are not criminal. Plaintiffs have not identified a single instance in which a landlord requested precompliance review of an attempt to invoke these contractual requirements but was denied it.

Crucially, the public interest overwhelmingly favors affirmance and the continued enforcement of Virginia's source-of-income law. Virginia faces a severe housing shortage, with nearly 300,000 fewer affordable rental units than needed. Over 100,000 people in nearly 45,000 Virginia households rely on vouchers, many of whom waited years on a waitlist just to obtain one. Enjoining Virginia's source-of-income law would seriously threaten voucher holders who have only sixty days before their voucher expires by stripping them of the much-needed protection that makes their vouchers usable, and leave them exposed to the very discrimination that drove enactment of the statute. Meanwhile, Plaintiffs offer nothing but speculation about their potential harm. No warrantless inspection has occurred without consent; no landlord has been denied the opportunity to challenge an inspection. Where the public interest weighs so heavily in favor of denying relief, this Court may affirm on that basis.

All told, Virginia's source-of-income law and the federal voucher program it supports represent decades of legislative effort to make housing accessible to those who need it most. Enjoining the law would deprive families of the protection that makes their vouchers usable. The district court recognized that. This Court should affirm.

ARGUMENT

I. CONGRESS AND THE GENERAL ASSEMBLY HAVE LONG ACTED TO IMPROVE ACCESS TO SAFE, AFFORDABLE HOUSING.

A. The Federal Fair Housing Act and Its State Analogs Were Enacted to Address Housing Insecurity Among Marginalized Families.

The FHA did not emerge in a vacuum. In 1967, in his famous "The Other America" speech, Martin Luther King, Jr. implored the nation to take action to combat housing inequality: "There is a need for fair housing laws all over our country. And the only way this problem will be solved is by the nation taking a strong stand, and by state governments taking a strong stand against housing segregation and against discrimination." Veterans of the Civil Rights Movement, *The Other America* (Martin Luther King, Jr. 1967), https://perma.cc/FQZ9-DV8S.

Following that speech, concerns about the plight of Black Americans (including their often deplorable housing conditions) seized the national consciousness and caused President Johnson to assemble the Kerner Commission, a presidential task force charged with examining the root of civil unrest erupting across the country. *See* Paul A. Jargowsky, Lei Ding, & Natasha Fletcher, *The Fair Housing Act at 50: Successes, Failures, and Future Directions*, 29 Hous. Pol'y Debate 694 (2019). And at the end of their investigation, the Commission delivered a now-famous warning: the nation was "moving toward two societies, one black, one white—separate and unequal." Report of the National Advisory Commission on

Civil Disorders at 1 (1968). Echoing King, the report identified poor housing and entrenched residential segregation as root causes of the divide and recommended that Congress adopt an open housing law governing the sale and rental of homes. *Id* ¶ 5-6. In a period of intensified unrest following King's assassination, Congress acted on that recommendation and passed the Fair Housing Act. *See* Jargowsky et al., 29 Hous. Pol'y Debate, *supra*, ¶ 6; 42 U.S.C. § 3601 (the "FHA"). At a high level, the FHA makes it unlawful to refuse to sell or rent, or otherwise to discriminate in the terms or conditions of housing, on the basis of race, color, religion, sex, national origin, familial status, or disability. *See* 42 U.S.C. § 3604.

Beginning even before Congress passed the FHA, nearly every state and the District of Columbia enacted their own fair housing law analogs to build upon federal protections and to provide an additional barrier against discrimination. *See* Justia, *Fair Housing Laws: 50-State Survey*. For its part, Virginia enacted an analogous fair housing law in 1972, making it among the first states in the South to do so. As originally written, it specifically prohibited discriminatory practices with respect to residential housing on the basis of race, color, national origin, and religion, with subsequent modifications to bar discrimination on the basis of sex, disability, and age. *See* Va. Code Ann. § 36-88; 1973, c. 358; 1978, c. 138; 1984, c. 685; 1985, c. 344; 1989, c. 88; 1991, c. 557; Helen Hardiman, *Monumental Changes to the*

Virginia Fair Housing Law: Five New Protected Classes, Va. Law. (Va. State Bar), https://perma.cc/45B2-DTS9.

B. The Section 8 Housing Choice Voucher Program Was Created to Aid Families Seeking Housing Through the Private Rental Market.

Fair housing laws, federal and state, attacked discrimination—but they did not, by themselves, make housing affordable to the many families priced out of the private market. Although the Federal Housing Administration helped make federal housing programs that subsidized building and operating housing in fixed, specific locations more equitable, thereby helping to address the challenge of creating affordable housing opportunities, it was not designed to address the needs of renters, and interventions like the public housing program did not specifically promote mobility or neighborhood choice. *See* Rachel Bogardus Drew & Fehintola Abioye, *Housing Voucher Analysis and Literature Review* (Enterprise Community Partners Mar. 2024), https://perma.cc/2BGA-AGTC. Congress filled that need in 1974 by amending the United States Housing Act of 1937 to create Section 8, which facilitates rental aid by offering federal subsidies to low-income households for low-cost rental housing in the private market. *See* National Housing Law Project, *Section 8 Housing Choice Vouchers*, https://perma.cc/XWE6-482F; Congressional Research Service, *Housing Choice Vouchers: An Overview* (2024), https://perma.cc/GT4M-3GRX.

Through the voucher program, Congress authorized assistance payments "[f]or the purpose of aid[ing] low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. § 1437f(a). By design, vouchers go to families who are most in need. With funding disbursed to state and local public housing authorities by the Department of Housing and Urban Development ("HUD"), the voucher program helps veterans, low-income families, individuals with disabilities, and older adults find affordable housing in the private market. *See* U.S. Department of Housing & Urban Development, *Housing Choice Voucher Tenants*, https://perma.cc/J49T-6YM2. Indeed, the vast majority of families in the voucher program qualify as either "very low-income" or "extremely low-income." *See id.* Very low-income families have an income less than half that of the area median family income ("AMI") for the metropolitan area or rural county in which they reside. *See* 42 U.S.C. § 1437a(b)(2)(B). Extremely low-income families earn less than 30 percent of their surrounding AMI. *Id.* § 1437a(b)(2)(C). And when a family qualifies and gets to the top of the waiting list, the program provides participants with Housing Choice Vouchers to help them pay for privately-owned units, such that participants pay a portion (approximately 30%) of their housing costs through their income, and the remaining portion through a voucher. For example, if a household's adjusted monthly income is $1,000, and the unit's monthly rent is $1,000, the tenant would be responsible for paying $300 (30% of $1,000) towards rent and utilities, with the voucher covering the outstanding portion of rent due ($700). *See* Center on Budget & Policy Priorities, *The Housing Choice Voucher Program*, https://perma.cc/ZA8U-DDKE; 24 C.F.R. § 982.1(b)(2).

The collaboration between state and federal governments to provide vouchers changed (and continues to change) lives. As of March 2026, the federal Housing Choice Voucher program—as administered in conjunction with state and local partners—has served approximately 2.3 million households nationwide annually. *See* U.S. Department of Housing and Urban Development, *Housing Choice Voucher (HCV) Data Dashboard*, https://perma.cc/DTW5-AEB8.

Vouchers work—when families can find landlords who accept them. Indeed, as one study found, families with children were more likely to be living on the street, in shelters, or with friends if they did not have a voucher (compared to those families who did have a voucher). *See* Center on Budget & Policy Priorities, *Housing Choice Vouchers Sharply Reduce Families' Housing Instability*, https://perma.cc/6U25-BQH8. In addition to reducing housing instability, vouchers also help reduce extreme poverty: rental assistance raised 3 million people above the federal poverty line in 2018, including nearly one million children. Vouchers also have demonstrated benefits for promoting childhood wellness across education, development, and health outcomes, and improving adults' psychological well-being. *See* Center on Budget & Policy Priorities, *Research Shows Rental Assistance Reduces Hardship* *and Provides Platform to Expand Opportunity*, https://perma.cc/LGM6-7KGE (discussing the emotional and physical health benefits, educational resources, and opportunities for upward mobility associated with voucher usage).

Vouchers are also a vital tool not just for children and families, but for older Americans as well. An estimated nineteen million older adults lack the income required to cover basic living costs. *See Addressing the Nation's Retirement Crisis: The 80%*, Nat'l Council on Aging (Oct. 7, 2025), https://perma.cc/FG54-JJBG. As a result, older adults have become the fastest-growing segment of the unhoused population across the country, with the number expected to triple by 2030. *See* Dennis Culhane et al., *The Emerging Crisis of Aged Homelessness*, https://perma.cc/G2L2-96NE. Given the financial stressors older adults face, and their increasing need for housing assistance, protecting access to affordable housing through legislation like Virginia's is paramount.

C. Source-of-Income Discrimination Bans Enacted to Combat Landlord Resistance to Families That Use Housing Vouchers.

1. Source-of-income discrimination against voucher-holding applicants made the promise of a housing voucher illusory.

Despite federal and state laws providing for voucher use—and ample evidence showing how beneficial they can be for low-income populations—landlords routinely discriminate against voucher recipients who apply for rental units. Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing*

Choice Vouchers: Executive Summary (U.S. Dep't of Hous. & Urban Dev., Office of Policy Dev. & Research Aug. 2018), https://perma.cc/VQ78-QVWM (hereinafter "A Pilot Study").

There are several major reasons why this discrimination persists.[2] Landlords often hold inaccurate and incomplete prejudices towards voucher recipients. One study found that up to 70% of landlord respondents were concerned about property damage caused by tenants with vouchers. *See* Jessica Lasky-Fink & Elizabeth Linos, *Barriers to Landlord Engagement in the Housing Choice Voucher Program* (People Lab at Harvard Kennedy Sch. Dec. 2023), https://perma.cc/2L66-CJTM.

Accurately or not, landlords also feel they have no legal responsibility to rent to voucher holders, and they may veil other forms of prejudice in what they believe is an "acceptable" form of discrimination. In the same study of landlords, only 30% believed they had a responsibility to rent to voucher holders. *Id.* Another study sampled over 3,000 posts from landlords across U.S.-based landlord forums and

[2] Some landlords' refusal to rent to voucher holders may be linked to real—but modest—administrative inconveniences associated with participating in the program, including profit losses associated with additional time that units remain vacant due to inspection. Although landlords' concerns about these burdens are not inherently illegitimate, the Virginia General Assembly's passage of the statute at issue in this case reflects a reasoned policy judgment that any possible burdens on landlords pale in comparison to the societal importance of ensuring that voucher holders can actually use their assistance. Moreover, Appellants in this case have not argued that their refusal to accept vouchers is motivated by any desire to avoid administrative burdens.

found that many posts asked for or searched for strategies to circumvent source-of-income discrimination laws in order to not rent to voucher holders, such as inquiring about methods for indirectly refusing voucher holders, ignoring information requests from voucher holders, or otherwise putting up hurdles to the use of the voucher program. *See* Joanna Lucio & Seongkyung Cho, *Can I (still) refuse housing vouchers? Source of income protections and landlord strategies*, 48 J. of Urb. Affs. 6, 2054–69 (2026); National Low Income Housing Coalition, *Analysis of Posts from Landlord Internet Forums Shows that Stronger Enforcement Mechanisms Are Needed to Protect Voucher Holders from Source of Income Discrimination* (Aug. 11, 2025), https://perma.cc/TZQ3-9D5X. Another nationwide study scraped data from Craigslist rental listings to find discrimination in advertisements that expressly note that voucher holders need not apply. *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.

Source-of-income protections—like the one at issue in this case—directly address this conduct. Put simply, such laws prohibit landlords from refusing to rent to, or otherwise discriminating against, a prospective tenant because of the lawful source of the funds the tenant will use to pay rent, including a Housing Choice Voucher. *See* Antonia K. Fasanelli & Philip Tegeler, *Combatting Source of Income*

Discrimination in Housing, American Bar Association (May/June 2021), https://perma.cc/2TNK-4XQV.

2. To address voucher discrimination, states banned landlords from denying applicants solely on their voucher status.

This persistent discrimination against voucher holders led Virginia—along with eighteen other states, the District of Columbia, Guam, and over 130 localities[3]—to revise its state-level analog to the Fair Housing Act to specifically prevent landlords from discriminating against renters due to their "source of funds," including any governmental or non-governmental assistance, benefit, or subsidy program that they may use to help pay rent. Va. Code Ann. § 36-96.1:1 (2020).

Like many other legislatures, the Virginia General Assembly's purpose in amending the statute to prohibit source-of-income discrimination was clear: protect prospective renters from being turned away because they want to partially pay for housing through vouchers. Indeed, chief patron and Delegate Jeffrey Bourne noted how the source-of-income discrimination ban would, "as originally contemplated for vouchers, . . . allow people to be mobile and live in communities that they choose to versus being confined in certain areas." H.B. 6, 2020 Gen. Assembly, House Floor Debate (Va. Feb. 4, 2020). Crucially, however, as Bourne described, the law does

[3] States with source-of-income discrimination laws include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington.

not *require* landlords to accept any applicant who has a voucher. *See* H.B. 6, 2020 Gen. Assembly, House Floor Debate (Va. Jan. 30, 2020). Instead, the ban merely attempts to address the longstanding and nationwide threats to the voucher program by prohibiting landlords from using an applicant's voucher status as the end-all-be-all. *See* Philip M. E. Garboden, Eva Rosen, Isaiah Fleming-Klink, *Landlords and Housing Vouchers: 50 Years of Feedback*, 26 Cityscape: A Journal of Policy Development and Research (2024).

Those efforts worked. One study evaluating testers in five U.S. cities found varied voucher denial rates, but one trend was clear: voucher denial rates were consistently lower in jurisdictions that had source-of-income discrimination bans in place. *See* A Pilot Study.

Still, even with these protections in place, too many landlords continue to resist voucher holders. And without the prohibition on source-of-income discrimination at the heart of this case, there will be even more.

II. ENTERING INTO A HAP CONTRACT AS A RESULT OF RENTING TO VOUCHER HOLDERS IMPOSES MODEST BURDENS ON LANDLORDS.

While HUD oversees the voucher program federally, the program, in large part, is implemented on the ground through state and local housing authorities that contract with HUD. *See* 42 U.S.C. § 1437f; 89 Fed. Reg. 96096; U.S. Office of Policy Dev. & Rsch., *Picture of Subsidized Households*, https://perma.cc/9CUU-

2ATS. But vouchers are not a blank check. They first require local housing authorities to enter into Housing Assistance Payment ("HAP") contracts with private landlords, where housing authorities agree to make housing assistance payments to the owner on behalf of a vetted family. Each HAP contract concerns a specific rental unit. *See id.* It commits the local housing authority to making payments to the landlord that will partially cover the rental expenses of the individual or family who will lease that unit. *See* U.S. Dep't of Hous. & Urb. Dev., *Housing Choice Voucher Program Guidebook*, *Housing Assistance Payments (HAP) Contracts* 2 (July 2021), https://perma.cc/G2YL-PMRG.

Before the landlord is asked to sign the HAP contract, the local housing authority must inspect the specific unit for which the voucher will be used. *See* 24 C.F.R. § 982.305. But that inspection is narrowly focused on two aspects of the rental agreement. The first is the condition of the apartment, which any prospective tenant could similarly assess before agreeing to rent an apartment. The housing authority confirms that the unit meets health and safety standards by checking such basics as heating, plumbing, and electricity. *See* Va. Dep't of Behav. Health & Dev. Servs., *Housing Quality Standards (HQS) Overview*, https://perma.cc/GA7R-W52W; 24 C.F.R. § 5.703(a).

The second part of the inspection concerns the price. Before approving the dispersal of federal funds, the housing authority is also required to confirm that the proposed rent is "reasonable"—that is, whether the rent the landlord seeks to charge the voucher-holder is in line with the rents for comparable units in the landlord's portfolio. *See* 24 C.F.R. § 982.507(b), (d). In other words, the only financial inquiry is whether the landlord is overcharging relative to the market and his or her own units. This price comparison, too, is something landlords have come to expect from all potential tenants, including those who do not have a voucher. Only after the unit passes the health and safety inspection, and the rent is found reasonable, does the local housing authority approve the tenancy and present the HAP contract for signing. *See* 24 C.F.R. § 982.305(a)-(c).

Notably, the HAP contract places a modest burden on landlords. In fact, it lists only three obligations in exchange for the federal government's consistent rental payments on behalf of their tenant, all of which are rarely invoked. *First*, the "owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require." *See* U.S. Dep't of Hous. & Urb. Dev., *Housing Assistance Payments Contract (HAP), Section 8 Tenant-Based Assistance Housing Choice Voucher Program* § 11(a), https://perma.cc/N78P-ESYN ("HAP Contract Section 8") (§ 11(a)); 24 C.F.R. § 983.208(a). *Second*, the local housing authority, HUD, and the Comptroller General of the United States "shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies." HAP Contract Section 8, § 11(b). *Third*, the owner must "grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records." *Id.* § 11(c).

None of these requirements are self-executing, and when they are imposed, it is typically when HUD or a PHA believes there is wrongdoing and decides to investigate. This makes the Housing Choice Voucher program unlike other federal programs—take the federal grant awards scheme, which obligates its recipients to undergo an audit and site visits from the federal grantor agency every year. *See Grant Reporting: Understanding the Reporting and Oversight Process*, https://perma.cc/2NMA-EN5M.

Nor does anything in the HAP contract—or, for that matter, in the Virginia law at issue here—prevent landlords from insisting on a precompliance review of a requested inspection before it occurs. A precompliance review allows the subject of an administrative search to challenge the search's reasonableness before a neutral decision-maker prior to facing any penalties for noncompliance. *See City of Los Angeles v. Patel*, 576 U.S. 409, 420–21 (2015). Such review is available for analogous administrative searches, and nothing in the HAP contract states that access must be provided without first affording the landlord that opportunity. *See* HAP Contract Section 8, *supra*, § 10(b).

Moreover, the HAP contract attaches no criminal penalty to a landlord's refusal to provide access. Rather, it provides that the local housing authority may abate, reduce, or terminate housing assistance payments, or terminate the HAP contract itself. *See id.* § 10(c). That, of course, is a far cry from the arrest, prosecution, and fines that drove the Court's concern in *Patel*. *See* 576 U.S. at 421. And the Virginia law actually at issue here is entirely silent on required inspections. Here, the landlord Plaintiffs have not shown that precompliance review is unavailable to them. Nor could they: they have not offered a single instance of a landlord requesting and being denied one.[4]

III. AFFIRMANCE IS IN THE PUBLIC INTEREST.

Affordable, low-income housing is a dwindling resource. In March 2026, the National Low Income Housing Coalition estimated that only 35 affordable and

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[4] Even assuming voucher inspections might be unconstitutional in some circumstances (and they are not), Plaintiffs' request to invalidate the Virginia Fair Housing Law wholesale is overbroad and inconsistent with settled remedial principles. The Supreme Court has recognized a presumption in favor of severability, explaining that "any unconstitutional provision in a law is severable from the remainder of the law or statute." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 625 (2020). At best, Plaintiffs could establish only that the Virginia law cannot be applied in a way that requires a landlord to enter into a contract authorizing a particular inspection—not that the entire statute is unconstitutional in all its applications. The appropriate remedy would be to require valid contemporaneous consent or an administrative warrant before conducting any search pursuant to the HAP contract. Courts routinely adopt such restrained remedies rather than striking down entire statutory frameworks. *See, e.g.*, *Carpenter v. United States*, 585 U.S. 296, 317 (2018). This approach also accords with the doctrine of constitutional avoidance. *See NFIB v. Sebelius*, 567 U.S. 519, 563 (2012).

available rental homes exist for every 100 of the country's lowest-income renters. *See* Dan Emmanuel, Raquel Harati et al., *The Gap: A Shortage of Affordable Homes*, Nat'l Low Income Hous. Coalition (March 2026), https://perma.cc/AY9J-CYF5. The report also found that not a *single* state has an adequate supply of affordable and available homes for extremely low-income renters. *Id.*

While access to housing remains a nationwide problem, low-income tenants in Virginia are particularly vulnerable. Housing production in the state has lagged behind population growth for almost two decades, driving up demand for existing homes. *See* HB854 Statewide Housing Study: Current Efforts, Future Needs, New Strategies 158 (Jan. 2022), https://perma.cc/49GN-P95N (hereinafter "HB854 Statewide Housing Study"). Simultaneously, the inventory of starter homes available to low-income renters in Virginia has decreased in all but one part of the state, resulting in an overall shortage of 300,000 affordable rental homes. *Id.* at 185. As a result, approximately one in three Virginia renters is cost-burdened, meaning that they allocate more than 30 percent of their income to housing costs. *2025 Virginia Housing Landscape*, Virginia Housing Alliance, https://perma.cc/A53R-UJC5. One in seven are severely cost-burdened, spending more than half their income on rent. *Id.*

The strain on low-income renters is not hard to see, nor are the consequences of their housing instability. In its 2016 report, before Virginia's source-of-income discrimination ban was enacted, the Eviction Lab—which researches and compiles eviction data from states and municipalities—listed *five* Virginia cities among the top ten evicting large cities nationwide. *See Top Evicting Large Cities in the United States*, Eviction Lab (listing Richmond, Hampton, Newport News, Norfolk, and Chesapeake), https://perma.cc/F2JR-2ZZV. Almost a decade later, evictions continue to be a significant issue, with Virginia still exhibiting the highest overall eviction filing rate of any state. *See Eviction Filings for All Sites*, Eviction Lab, https://perma.cc/K7EN-SDVR.

Housing vouchers help alleviate these pressures by aiding cost-burdened tenants and, in turn, helping them stay in safe, affordable homes. Nearly 45,000 households in Virginia used vouchers in 2025, representing more than 100,000 people. *See Picture of Subsidized Households*, Dep't of Hous. & Urb. Dev. Off. of Pol'y Dev. and Rsch., https://perma.cc/9CUU-2ATS. The Housing Choice Voucher program particularly serves Black households who are too often low-income: seventy-four percent of Virginia individuals and families using vouchers are Black. *Id.* An overwhelming majority—eighty-two percent—are headed by women. *Id.* The program helps some of Virginia's most vulnerable residents: almost a quarter of assisted people have a disability, and seventeen percent are seniors. *See Virginia Federal Rental Assistance Fact Sheet,* Center on Budget and Policy Priorities, https://perma.cc/7GMF-X64P. These households have an average income of just

$20,421 per year—an amount that falls below the federal poverty level for any household of larger than one person and makes market-rate housing unattainable without assistance. *See Picture of Subsidized Households*, Dep't of Hous. & Urb. Dev. Off. of Pol'y Dev. and Rsch., https://perma.cc/9CUU-2ATS.

Indeed, as a testament to their enduring worth, vouchers are highly sought after. Tens of thousands of low-income Virginians are on waiting lists set up by local housing authorities, and may stay on those lists for years until they are able to obtain a voucher. *See* HB854 Statewide Housing Study at 195. Sometimes, these waitlists close and may remain so for years. *Id.* at 335. But when low-income individuals and families *do* obtain vouchers, those vouchers open the door to opportunity, allowing voucher recipients to live in neighborhoods "in which they may thrive educationally, socially, economically, and health wise." *See* Housing Opportunities Made Equal of Virginia, Inc., *Choice Constrained: Limited Housing Options for Households Utilizing Housing Choice Vouchers* (May 14, 2019), https://perma.cc/7UR6-9K5Y.

Vouchers only work when they can be used, and, too often, landlords and property managers discriminate against voucher recipients and deny them access to housing. *See* Section I, *supra*, at 11-14. Empirical research consistently shows that source-of-income protections are essential in reducing that discrimination. 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." *See* Martha Galvez & Brian Knudsen, *Discrimination Against Voucher Holders and the Laws to Prevent It: Reviewing the Evidence on Source of Income Discrimination*, Cityscape vol. 26, No. 2. at 149 (2024). Not only are landlords more likely to *accept* vouchers in states with anti-discrimination laws; recent studies using HUD administrative data show that voucher recipients are more likely to find—and actually *rent*—eligible units in states with source-of-income protections relative to those without them. *Id.* at 152-53. 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). Alison Bell, Barbara Sard & Becky Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results* 7, Center on Budget and Policy Priorities (Dec. 20, 2018). Like many policy proposals, it takes time for source-of-income protections to make an impact, with some research suggesting it can take up to five years for statistically significant impacts to be observed. Galvez & Knudsen at 152.

Enjoining enforcement of Virginia's source-of-income law now would cause immediate and irreparable harm to thousands of low-income Virginians, just as they are beginning to feel the law's positive impact. Without continued protection, landlords' blatant discrimination against vouchers could revert to pre-2020 levels.

See supra, at pp. 11.[5] This will devastate the individuals and families who may have waited years to obtain a voucher, only to be turned away by a discriminatory landlord as this litigation unfolds—and with no recourse. When voucher recipients get off a local housing authority's waitlist, they have no way to unilaterally "pause" the sixty calendar days that the federal regulations provide them to find eligible housing before the voucher expires. *See* 24 C.F.R. § 982.303(a). Nor are local housing authorities under any general federal obligation to extend the time allotted to voucher recipients to find housing, as voucher expiration policies are left to local housing authorities to decide. *See HUD Housing Choice Voucher Program Guidebook: Housing Search and Leasing—Section 6.4, Voucher Term Expiration* (June 2025), https://perma.cc/M3PY-Y7VU. In short, if this law is enjoined, Virginians who finally secured the federal assistance they waited years for will likely lose the state-law protection that made that assistance usable.

On the other hand, Plaintiffs face no risk of imminent harm, let alone the kind of harm that would justify overturning the district court's denial of a preliminary injunction as an abuse of discretion. *See Roe v. Dep't of Def.*, 947 F.3d 207, 219 (4th

[5] That would be bad: two studies examining voucher uptake among apartment complexes in Richmond, Virginia before the state passed its source-of-income discrimination ban found that only 18.75% and 26.6% of sampled properties accepted vouchers. *See* Housing Opportunities Made Equal of Virginia, Inc., *Choice Constrained: Limited Housing Options for Households Utilizing Housing Choice Vouchers* (May 14, 2019), https://perma.cc/7UR6-9K5Y.

Cir. 2020). The speculative theories of harm that Plaintiffs offer cannot support the finding of *likely* irreparable harm that a preliminary injunction requires. *See Henderson for Nat'l Labor Relations Bd. v. Bluefield Hosp. Co.*, 902 F.3d 432, 440 (4th Cir. 2018). Below, the landlord challengers vaguely gestured at effects like "landlord consolidation, decreased vacancy rates, unit reduction, and corporatization of Section 8," but offer no evidence that any of these harms have occurred or are likely to occur. *See Lucinda. v. Jones*, Plaintiffs' Motion for Preliminary Injunction and Memorandum in Support at 23, No. 1:26-cv-00252 (E.D. Va. Mar. 9, 2026). Such speculation falls far short of the concrete, imminent harm necessary to warrant preliminary injunctive relief. Nor have the landlords shown a likelihood that they will actually face the actions they claim are unconstitutional. Local housing authorities do not conduct warrantless inspections without consent, nor have Plaintiffs identified any instances where one occurred. *See supra*, at pp. 19. The inspections at issue are basic health and safety checks that are no more intrusive than any landlord might face when renting on the private market. *See supra*, at pp. 16. And when a party offers no concrete evidence of irreparable harm, the Court need not deploy the "heavy artillery" of a preliminary injunction when it is not "readily apparent to the court that such relief is actually necessary to prevent a harm from occurring." *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 530 (4th Cir. 2003). Moreover, as Defendants explain, Plaintiffs still have a forum in their ongoing state proceedings to raise their constitutional claims. Denying them a preliminary injunction of this law does not irreparably harm that ability in the slightest.

All told, the challenged law serves a critical role in increasing safe, affordable housing to thousands of Virginians; and any burdens on landlords—who, at the end of the day, receive government-backed rent payments that are more certain than rent paid from individual income—are modest. And where, as here, the Virginia legislature voted to enshrine protections based on source of funds into state law, any "hardship worked on" the landlords "by the statutory scheme does not outweigh the damage done to the State by the injunction[.]" *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). Affirmance is therefore in the public interest, and the equities overwhelmingly favor denying the preliminary injunction.

CONCLUSION

For the reasons stated above and those in Defendants' brief, *amici* urge this Court to affirm.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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