

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

The Inclusive Communities Project, Inc., *
Plaintiff, *

v. *

No. 3:17-cv-440-D

Governor Greg Abbott only in his *
official capacity as Governor of *
The State of Texas, and *
The City of Dallas, *
Defendants. *
*

PLAINTIFF'S SECOND AMENDED COMPLAINT

Summary

1. This complaint challenges the Texas statute outlawing municipal ordinances that prohibit discrimination against recipients of federal housing vouchers. Tex. Local Gov't Code § 250.007(a) (the "Statute"). The Statute defines the banned ordinances as those that prohibit a landlord from refusing to rent to a person whose "lawful source of income includes funding from a federal housing assistance program." Tex. Local Gov't Code § 250.007(a). The Statute does not affect home ownership related programs, only rental programs. The federal Housing Choice Voucher program is the federal housing assistance program affected by the Statute. There are over 30,000 voucher households in the Dallas metropolitan area. The Statute became effective September 1, 2015. The Statute violates the 14th Amendment to the United States Constitution and the Fair Housing Act sections 42 U.S.C. § 3604(a), and 42 U.S.C. § 3615. Tex. Local Gov't Code § 250.007(a) violates the Supremacy Clause of the U.S. Constitution Article VI by obstructing the purpose of Congress as enacted in the affirmatively further fair housing provision

of the Community Development Block Grant Act, 42 U.S.C. § 5304 (b)(2).¹ The Texas Statute conflicts with federal law and is preempted by 42 U.S.C. § 5304 (b)(2); 24 C.F.R. § 5.152, and 24 C.F.R. § 5.154(c).

2. This complaint challenges the City of Dallas ordinance that implements the Statute by protecting all groups with lawful sources of income except voucher program households. The City ordinance violates the 14th Amendment to the United States Constitution and the Fair Housing Act sections 42 U.S.C. § 3604(a), and 42 U.S.C. § 3615.

3. Dallas area voucher households are concentrated in minority areas of the City of Dallas. Most of the multifamily landlords with units that can be rented at voucher program rents in White non-Hispanic areas refuse to rent to voucher households. There is an unmet demand by voucher households for dwelling units in these areas. The multifamily landlords with units that can be rented at voucher program rents and that rent to voucher households are disproportionately located in predominantly minority areas.

4. Ordinances and laws prohibiting discrimination against voucher program participants lessen racial segregation and make more units available in White areas to Black families using vouchers. In 2015, the State of Texas passed the challenged Statute to outlaw these ordinances that make units available in White areas for voucher households. The Statute explicitly permits multifamily landlords to deny housing to voucher families who can pay the rent, satisfy the tenant selection criteria, and for whom there are no legitimate business reasons not to accept as tenants.

¹ (b) Any grant under section 5306 of this title shall be made only if the grantee certifies to the satisfaction of the Secretary that – (2) the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act and the grantee will affirmatively further fair housing; 42 U.S.C.A. § 5304(b)(2).

By permitting the multifamily landlords in White areas to discriminate solely on the basis of participation in the voucher program, the Statute excludes the predominantly Black voucher households from White areas. The Statute segregates those households in minority concentrated areas that are marked by conditions unequal to the conditions in the areas from which they are excluded. The Statute has the intent and the effect of perpetuating racial segregation.

5. The City of Dallas is implementing the State policy set out in the Statute by enacting a source of income ordinance that prohibits discrimination on the basis of any source of income except vouchers. The City knowingly chose not to include housing vouchers in the protected groups when it enacted its source of income ordinance. The City's implementation of the State policy in the Statute and the City policy in the City ordinance injure the Inclusive Communities Project, Inc. (ICP), ICP's clients, and other voucher households in the Dallas area by:

- singling out a racially identifiable group - voucher households - for exclusion from the protection of the source of income ordinance;
- perpetuating racial segregation; and
- singling out a disproportionately Black group for adverse treatment.

6. Plaintiff ICP helps Black voucher households gain access to housing in low poverty, non-minority concentrated locations in the Dallas metropolitan area. The Statute and the City's implementation of the Statute makes it more difficult and more expensive for ICP to obtain housing for its voucher clients in areas of low poverty and high opportunity.

Jurisdiction

7. The Court has jurisdiction pursuant to 42 U.S.C. § 3613(a)(1)(A) and 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

Plaintiff

8. Plaintiff ICP is a fair housing focused nonprofit organization working with households seeking access to housing in predominately non-minority locations in the Dallas area. As part of its mission, ICP provides counseling, financial assistance, and other services to Black or African American households participating in the Section 8 Housing Choice Voucher (HCV or voucher) Program administered by the Dallas Housing Authority (DHA).

9. Approximately 86% of the DHA voucher participants are Black or African American. ICP assists DHA voucher households who choose to lease dwelling units in non-minority areas with counseling and financial assistance. ICP also operates its sublease/guarantor program for its clients. ICP's office is located in the City of Dallas, Dallas County, Texas. ICP's clients are Black or African American. ICP's clients are predominantly families with children.

10. ICP is organized to work for the creation and maintenance of thriving racially and economically inclusive communities, the expansion of fair and affordable housing opportunities for low income families, and to secure redress for policies and practices that perpetuate the harmful effects of discrimination and segregation. ICP operates to create and obtain affordable housing in non-minority concentrated areas within the Dallas metropolitan area for persons eligible for low income housing including voucher households. This includes, among other means, providing the counseling and other forms of assistance to voucher households seeking to utilize their housing choice voucher to move into those areas in the City of Dallas and throughout the Dallas metropolitan area.

11. ICP focuses its housing mobility counseling and financial assistance resources on helping its clients find housing in higher opportunity areas with lower poverty rates, higher

median family income, and higher ranking public schools.

12. ICP's assistance to its DHA voucher clients is part of the remedy in the *Walker v. HUD* public housing desegregation case. The U.S. Court of Appeals for the Fifth Circuit recommended a desegregation plan to remedy the intentional segregation of public housing and Section 8 vouchers by the Federal government, the City of Dallas, and the Dallas Housing Authority. The plan included a housing voucher mobility program. The Fifth Circuit held that this remedy should include more vouchers and a vigorous mobility program that served the Black voucher households wishing to move out of the segregated areas. *Walker v. City of Mesquite*, 169 F.3d 973, 985, 987-988 (5th Cir. 1999), *cert. denied*, 528 U.S. 1131 (2000). The United States District Court adopted the housing mobility program as part of the remedy. ICP has been providing housing mobility services to its DHA voucher clients since 2005.

13. The housing mobility assistance given by ICP to all DHA voucher participants begins with providing mobility counseling information to the voucher participants as they attend DHA's mandatory voucher briefings. After the briefings, ICP provides additional mobility assistance as requested by the households who want to make and sustain a move to a high opportunity area. This help includes pre-move mobility counseling and related financial assistance. The housing mobility assistance also includes negotiating with landlords as necessary to obtain units in the eligible areas at rents that are affordable by the voucher households and eligible for the voucher subsidy. The financial assistance ICP provides to these households may include the payment of application fees and security deposits to assist households moving into housing that provides opportunities in non-predominantly minority, non-poverty concentrated areas. ICP can also make landlord incentive bonus payments to landlords in areas that provide housing opportunities in

non-predominantly minority, non-poverty concentrated areas who agree to participate in DHA's voucher program. ICP makes these payments when it determines that such incentives are necessary to secure housing for the voucher households. For example, ICP may provide a reasonable bonus payment to a landlord if it is necessary to obtain a rent concession in order for a unit to be eligible for voucher assistance at a rent affordable to the family or if the bonus payment is necessary to convince a landlord to participate in DHA's voucher program.

14. ICP also offers landlords in high opportunity areas the option of contracting with ICP to serve either as a guarantor for DHA voucher households or as the sublessor for DHA voucher households. Each of these contractual alternatives may include a landlord incentive bonus paid by ICP.

15. ICP obtained a change in the Fair Market Rents in the Dallas area as a result of litigation against HUD. For the last six years, HUD has set voucher rents by Zip Code in the Dallas area. These changes increased the number of multifamily units that were available at market rents to voucher holders in White non-Hispanic Zip Codes. The higher Zip Code rents eliminated one of the reasons that has been asserted by multifamily landlords for their policy of refusing to rent to voucher households.

16. A City of Dallas ordinance prohibiting discrimination against voucher households would make more units in majority White non-Hispanic areas available for ICP's clients. The increased number of units would reduce the ICP financial costs and the ICP's counselors' time spent on a per client basis to obtain units in those areas. The increased number of units would reduce the ICP resources expended on unsuccessful attempts by ICP's clients to obtain voucher units outside of racially concentrated areas of high poverty. However, the City of Dallas

ordinance passed on October 26, 2016, does not prohibit discrimination against voucher households.

17. ICP has a close, essentially representative relationship with its clients. It acts as their agent in locating integrated rental housing and negotiating housing terms. ICP acts as the clients' representative in advocacy involving individual matters with the housing authority. It also acts as the clients' representatives in advocacy involving institutional issues such as the amount of the fair market rent that can be paid in the Housing Choice Voucher Program. ICP is an integral part of its clients' exercise of their housing-related protections under the civil rights laws. ICP's actions assisting its clients in obtaining racially integrated housing is within the zone of interests of the Fair Housing Act.

18. ICP meets the Fair Housing Act definition of an aggrieved person. 42 U.S.C. § 3602(i). ICP has been injured by Defendants' discriminatory housing practices.

19. ICP's mission is directly connected to the provision of racially integrated housing opportunities and the elimination of racial segregation. The creation of racially integrated housing opportunities and the elimination of racial segregation are purposes of the Fair Housing Act, 42 U.S.C. § 3601.

20. But for the Statute, the City of Dallas could have legally passed an ordinance prohibiting discrimination against renting to voucher households.

Defendants

21. Defendant Governor Greg Abbott is sued in his official capacity as Governor of the State of Texas. Governor Abbott is the chief executive officer of the State of Texas and whose official duties under the Texas Constitution include causing the laws to be faithfully executed.

22. Defendant City of Dallas is a home rule municipality in the State of Texas with the legal authority to pass ordinances except as prohibited by state law. The City of Dallas is a municipal government for the geographic area described by the city limits.

Chronology of events leading up to the enactment of the Statute and the City ordinance.

23. The City of Dallas was required to formally consider enactment of an ordinance prohibiting voucher discrimination. The City was required to do so because of its Voluntary Compliance Agreement with the U.S. Department of Housing and Urban Development (HUD). The Voluntary Compliance Agreement was signed to resolve HUD finding that the City of Dallas had violated Title VI of the Civil Rights Act of 1964 by, in part, allowing private developers to prohibit the use of vouchers at City assisted projects. HUD, Findings, pages 7 - 14, 19 - 20. As part of the remedy for this finding, the Voluntary Compliance Agreement states, in part:

2. The City Manager and City Attorney will formally introduce to the Dallas city council for a public meeting and adoption an ordinance prohibiting source of income discrimination, including discrimination against Housing Choice Voucher holders. The proposed ordinance shall provide for administrative enforcement with damages and penalties for noncompliance if permitted by Texas law. The parties agree that Settlement Action 2 shall be complete when the Dallas city council formally convenes to publicly consider adoption of such an ordinance. In order to verify such completion to HUD, the City shall submit to Gary Sweeney a copy of the public record reflecting the city council's consideration and action on such an ordinance.

24. The Voluntary Compliance Agreement was signed on November 5, 2014. The legislation that resulted in the Statute was filed the next month on December 19, 2014.

25. When the City of Dallas passed an amendment to its Fair Housing Ordinance on October 26, 2016, it took the Statute into account and specifically deferred to the Statute's limitations on voucher discrimination. The City Ordinance does not prohibit voucher

discrimination. City of Dallas Code Sec. 20A- 3 (21).

26. The City of Austin amended its Fair Housing Ordinance to protect voucher holders from discrimination in the rental of housing on December 11, 2014. The stated purpose was to provide a remedy for the concentration of voucher households in only a few parts of the City. The unwillingness of landlords to rent to voucher holders was cited as a cause of the concentration. When the Austin City Council directed its City Manager to prepare the ordinance, it specifically did so as part of the City's federal obligation to affirmatively further fair housing. The Austin Ordinance amended the City's fair housing code to prohibit landlords from refusing to rent to prospective tenants on the basis of "source of income," which was defined to include "housing vouchers and other subsidies provided by government or non-governmental entities." Thus, under Austin's ordinance, if a person was otherwise qualified to rent a property, the landlord could not reject that person because part of that person's rent would be paid with a Housing Choice Voucher. The Austin Apartment Association filed a lawsuit challenging the Austin ordinance on December 12, 2014. A week later, S.B. 267, the bill that became Tex. Local Gov't Code § 250.007, was filed for consideration in the January 2015 Texas legislative session.

27. The Statute states, in part:

Except as provided by this section, a municipality or county may not adopt or enforce an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program. Tex. Local Gov't Code § 250.007.

28. The legislative record contains statements by State legislators explicitly taking the City of Dallas obligation to consider a voucher discrimination ordinance and the City of Austin

enactment of such an ordinance into consideration as factors supporting the enactment of the Statute.

29. After the Statute was enacted, the City of Dallas drafted and considered an ordinance prohibiting voucher discrimination. The City of Dallas City Council simultaneously considered two versions of the ordinance. One version prohibited voucher discrimination. The second version did not. The City Council members acknowledged that the Statute controlled as a matter of law and prohibited enactment of an ordinance prohibiting voucher discrimination. The version prohibiting voucher discrimination was not adopted by the City of Dallas.

30. The ordinance enacted by the City of Dallas prohibits housing discrimination based on all sources of income “except as prohibited” by the Statute. City of Dallas Ordinance 30246, 10/19/16.

SOURCE OF INCOME means lawful, regular, and verifiable income from whatever source derived (including housing vouchers and other subsidies provided by government or non-governmental entities, child support, or spousal maintenance), except as prohibited by Texas Local Government Code, Section 250.007, as amended. City of Dallas Code Sec. 20A- 3 (21).

“SEC. 20A-4. DISCRIMINATORY HOUSING PRACTICES.

(a) A person commits an offense if he, because of race, color, sex, religion, handicap, familial status, [or] national origin, or source of income:

(1) refuses to negotiate with a person for the sale or rental of a housing accommodation or otherwise denies or makes unavailable a housing accommodation to a person;

(2) refuses to sell or rent, or otherwise makes unavailable, a housing accommodation to another person after the other person makes an offer to buy or rent the accommodation; or

(3) discriminates against a person in the terms, conditions, or privileges of, or in providing a service or facility in connection with, the sale or rental of a housing accommodation. City of Dallas Code Sec. 20A- 4 (a).

31. The Statute prohibits protection only for persons whose lawful source of income to

pay rent includes funding from a federal housing assistance program. Tex. Local Gov't Code § 250.007.

32. Ordinances and laws prohibiting discrimination against voucher participants lessen racial segregation and make more units available in White non-Hispanic areas to Black families using vouchers. If the City of Dallas passed the proposed voucher protection ordinance that was prohibited by the Statute, landlord compliance with that ordinance would make available more units that can be rented at voucher program rents in majority White non-Hispanic areas.

33. In addition to the City of Dallas, other municipalities and counties in the Dallas area are subject to the federal Community Development Block Grant statutory duty to affirmatively further fair housing. If any of these jurisdictions enacted voucher protection ordinances, landlord compliance with such ordinances would make available more units that can be rented at voucher program rents in majority White non-Hispanic locations in the Dallas area.

The State legislators debating the Statute had before them the evidence of the racial and ethnic minority composition of the voucher population in urban areas of the State of Texas and the racial segregation of the vouchers.

34. The evidence of the racial and ethnic minority composition of the voucher population in urban areas and the racial segregation of the vouchers was presented in the legislative hearings on the Statute.

35. The Texas legislators were made fully aware of the race of the voucher holders and of the racially segregated locations of the housing during the hearings for the Senate and House bills that became Tex. Gov't Code § 250.007. These were the public hearings on Senate Bill 267 and House Bill 2909. There was specific testimony and other evidence that the large majority of voucher holders in Dallas, Austin, Houston and the State were predominantly African-American

and secondarily Hispanic. The testimony also pointed out the lack of choice of housing outside of racially segregated, high poverty areas was caused by landlords' discrimination against voucher households.

36. During the March 10, 2015, public hearing on Senate Bill 267 at the Senate Business & Commerce Committee, Demetria McCain testified on behalf of the Inclusive Communities Project, Inc. She referred to ICP's extensive work with voucher holders in the Dallas area and how the lack of landlords who accept vouchers steers low income persons of color into predominantly minority areas in the City of Dallas. Ms. McCain informed the legislators that the City of Dallas was under the obligation to consider a voucher discrimination ordinance because of an agreement reached in the HUD investigation and findings of the City's civil rights violations.

37. Charlie Duncan of Texans for Housing Choice also testified at the March 10, 2015, public hearing on Senate Bill 267 and showed the Committee maps depicting the racially concentrated locations of voucher tenants in the City of Austin. He stated that the vouchers are concentrated in low income, predominantly minority areas with lack of access to amenities and with high crime and lack of access to good schools. Mr. Duncan also provided written testimony that included these maps. His testimony showed that the majority of voucher tenants in Austin were predominantly African American.

38. John Henneberger of Texans for Housing Choice testified at the March 10, 2015, public hearing on Senate Bill 267 about the exclusion of low income people of color from large parts of the City of Austin where 91% of the landlords do not accept vouchers. Mr. Henneberger also submitted written evidence.

39. Chrishelle Palay of Texans for Housing Choice (Houston) testified at the March 10, 2015, public hearing on Senate Bill 267 that the cities in Texas with legacies of racial segregation such as Houston and Austin have extreme segregation of voucher holders. Ms. Palay informed the Committee that the majority of voucher holders are overwhelmingly African-American and that without a source of income voucher protection law that voucher holders will have little choice but to live in blighted low income neighborhoods.

40. Tom McCasland, CEO for Harris County Housing Authority, testified at the March 10, 2015, public hearing on Senate Bill 267 that cities and counties have the obligation to affirmatively further fair housing and promote diverse and inclusive communities. Mr. McCasland stated that a majority of voucher holders are protected racial and ethnic class members under the Fair Housing Act.

41. Similar oral and written testimony was provided to the House Urban Affairs Committee during the public hearing on House Bill 2909 on April 14, 2015. Charlie Duncan of Texans for Housing Choice testified that housing voucher holders in Austin are concentrated in minority areas of the city with high poverty and low-performing schools. He presented maps showing that the majority of voucher tenants in Austin were located in racially segregated areas. John Henneberger of Texans for Housing Choice testified about the harm to families that results from segregating voucher tenants in low income areas with poor schools and high crime.

The public record plainly states the racial and ethnic minority composition of the voucher population and the racial segregation of those vouchers in the urban areas of Austin, Dallas, Fort Worth, and Houston.

42. Landlords in the Dallas area with rental units available in non-minority locations at voucher program rents consistently refuse to rent to voucher families. The refusal steers those

families into rental units whose owners will rent to voucher households. These units with willing landlords are disproportionately located in minority areas, as shown by the concentration of vouchers in the racially segregated, high poverty census tracts in the City of Dallas. Exhibit 1 attached to this Amended Complaint shows the concentration of vouchers by race of census tract in the City of Dallas. Exhibit 2 attached to this Amended Complaint shows the concentration of vouchers by race of census tract in Collin, Dallas, and Denton counties. These maps are based on the HUD Picture of Subsidized Housing for 2015 for the HCV data by census tract.

43. Dallas' voucher population is 94% minority with 87% Black, Non-Hispanic tenants and 5% Hispanic tenants. The average percent minority census tract that a Dallas voucher tenant resides in is 88% minority. The data is from the HUD Picture of Subsidized Housing for 2015 for the HCV data by City.

44. Fort Worth's voucher population is 85% minority with 75% Black, Non-Hispanic tenants and 9% Hispanic tenants. The average percent minority census tract that a Fort. Worth voucher tenant resides in is 70% minority. The data is from the HUD Picture of Subsidized Housing for 2015 for the HCV data by City.

45. Houston's voucher population is 95% minority with 87% Black, Non-Hispanic tenants and 6% Hispanic tenants. The average percent minority census tract that a Houston voucher tenant resides in is 90% minority. The data is from the HUD Picture of Subsidized Housing for 2015 for the HCV data by City.

46. Austin's voucher population is 83% minority with 52% Black, Non-Hispanic tenants and 17% Hispanic tenants. The average percent minority census tract that an Austin voucher tenant resides in is 74% minority. The data is from the HUD Picture of Subsidized Housing for

2015 for the HCV data by City.

The public record plainly states the racial and ethnic minority composition of the State's voucher population and the racial segregation of those vouchers.

47. The State of Texas voucher population is 86% minority with 55% Black, Non-Hispanic tenants and 30% Hispanic tenants.² The average percent minority census tract that a Texas voucher tenant resides in is 73% minority. The data is from the HUD Picture of Subsidized Housing for 2015 for the HCV data by State.

Governor Abbott's power to enforce compliance with the Statute includes making or withholding grants to local governments.

48. Tex. Gov't Code § 250.007 does not contain a specific provision for gubernatorial enforcement. The Governor can generally enforce this provision and other state laws or federal laws in his execution of the power to make and withhold grants to local governments.

49. The Texas Governor has the specific duty to cause the laws to be faithfully executed in his funding, budget, and regulatory authority over several programs that focus on local government.

50. Governor Abbott uses the power to cause the laws to be faithfully executed in his conditioning the expenditure of all Criminal Justice Division (CJD) grant money from his office on the provision of the local county or city commitment to enforce federal immigration law. Governor Abbott specifically threatened to enforce the condition by disqualifying Travis County from receiving over \$1 million in Governor controlled CJD funds. Governor Gregg Abbott, January 23, 2017 letter to Travis County Sheriff Sally Hernandez, pages 2 - 3. The CJD grants are substantial amounts.

² The State's renter households are only 19% Black. U.S. Census, 2015 ACS 5-Yr Estimates, table B25003 for the State of Texas.

51. The following chart lists the 2015 Criminal Justice and Victim Services Grants by Region in the Dallas Fort Worth area.

Grantee	Project	Amount
Collin County	Teen Court -Substance Abuse and Mental Health Evaluation and Treatment	\$22,900
Collin County	Crime Victim Advocacy Program	\$68,250
Collin County	Crime Victim Assistance	\$69,978
Dallas County	Drug Court Intervention	\$190,226
Dallas County	Mental Health Diversion Court	\$51,200
Dallas County	Dallas County DWI Misdemeanor DIVERT Court	\$145,015
Dallas County	Felony DWI Felony DIVERT Court	\$74,692
Dallas County	Felony Female Offender Program STAR Court	\$155,500
Dallas County	Dallas County Veterans Court	\$80,134
Dallas County	Successful Treatment of Addiction through Collaboration STAC Court	\$231,557
Dallas County	Mental Health Court	\$72,184
Dallas County	Family Violence Intervention Program	\$83,986
Dallas County	Evening Reporting Center	\$69,214
Dallas County	Female Offender P.R.I.D.E. Court	\$140,285
Dallas County	Comprehensive Victim Advocacy Project	\$235,944
Dallas County	DSO Mental Health Equipment	\$78,040
Dallas County	Technology Restoration	\$12,888
Dallas, City of	Victim Services -PD	\$62,359
Dallas, City of	City of Dallas -NIBIN Program Emphasizing Violent Crimes	\$80,000
Dallas, City of	State of Texas Internet Crimes Against Children	\$324,139
Denton County	Denton County Veterans Treatment Court Program	\$159,000
Denton County	Tower Project	\$80,000
Denton County	Denton County DWI Treatment Court	\$138,760
Fort Worth, City of	Jail Surveillance Equipment Enhancement	\$62,911
Frisco, City of	Victim Assistance and Outreach Program	\$70,368
Rockwall County	Counseling for Abused and Neglected Children	\$43,333
Rowlett, City	P25 Portable Radio Project 2016	\$80,000
Tarrant County	Sheriff's Office Victim Assistance Program	\$56,481
Tarrant County	Mental Health Diversion Court Program	\$125,000

Tarrant County	Family Drug Court	\$49,276
Tarrant County	Veterans Court Project	\$307,350
Tarrant County	Bilingual Victim Assistance Coordinator	\$133,756
Tarrant County	LifeSkills Training	\$80,000
Tarrant County	First Offender Program	\$100,000

52. There is no specific provision of either the statute or the regulation providing for the eligibility requirements for CJD grants that requires recipients to enforce federal immigration law. Tex. Gov't Code § 772.006; 1 TAC Chapter 3. The only source cited by the Governor is his duty to cause the laws to be faithfully executed. Abbott, January 23, 2017 page 2. The Governor can use the same authority to limit eligibility for CJD grants on compliance with any state or federal law including the Statute. The CJD grants subject to the authority of the Governor include a variety of criminal justice related programs. CJD Fund Source Descriptions.

53. The Governor of Texas also faithfully executes the laws as the Chief Planner for the State and the office holder in charge of coordinating local jurisdictions' applications for federal financial assistance. Tex. Gov't Code § 772.002; Tex. Gov't Code § 742.003. These specific duties provide the general authority and legal framework for the Governor of Texas to withhold funds or take other adverse actions against a city or county that passed an ordinance in violation of the Statute, Tex. Gov't Code 250.007.

54. Each of the jurisdictions receiving CJD grants would be subject to enforcement by the Governor withholding funds in the event the jurisdiction attempted to prohibit discrimination against voucher households.

55. Five cities in the Dallas- Fort Worth area define source of income discrimination as a fair housing problem. The Statute outlaws any attempt by these jurisdictions to regulate landlord discrimination against voucher households.

56. The City of Dallas found source of income discrimination affecting tenants who were

surveyed in the City's 2015 Analysis of Impediments to Fair Housing Choice. The City's Analysis of Impediments points to the City of Dallas VCA with HUD as a requirement for the City to consider the source of income ordinance.

57. The City of Fort Worth 2013 Analysis of Impediments to Fair Housing Choice identifies the lack of protection for source of income as an impediment to fair housing choice and recommends the City of Fort.Worth consider a source of income ordinance. The Analysis of Impediments finds the use of Section 8 vouchers as a perceived basis for discrimination in rental housing and that vouchers are concentrated in certain areas of Fort. Worth.

58. The City of Frisco includes source of income as a fair housing protected characteristic under the City's Analysis of Impediments to Fair Housing Choice 2014.

59. The City of Arlington includes source of income as a fair housing protected characteristic under the City's February 10, 2015, Analysis of Impediments to Fair Housing Choice.

60. The City of Garland Analysis of Impediments to Fair Housing Choice September 2015 found that there had been an increase in discrimination complaints related to source of income. Landlords are opting not to accept Section 8 vouchers which imposes an impediment to many renters.

61. The HUD Affirmatively Furthering Fair Housing Assessment of Fair Housing Tool lists discrimination based on source of income, including Housing Choice Vouchers as a barrier faced by voucher households when attempting to move to a neighborhood or area of their choice, especially integrated areas and areas of opportunity. The same guidance lists discrimination against voucher households as a factor that significantly creates, contributes to, perpetuates, or increases the severity of segregation. The cities of Dallas, Fort Worth, Denton, Allen, Arlington,

Carrollton, DeSoto, Frisco, Garland, Grand Prairie, Irving, Lewisville, McKinney, Mesquite, Plano, Rowlett, and the Town of Flower Mound and the counties of Dallas and Tarrant are required to follow this Assessment of Fair Housing analysis. The requirement applies because these entities are recipients of HUD Community Development Block Grant funding.

62. HUD has informed its grantees that racial discrimination is often perpetrated through denials of housing opportunities to Section 8 voucher holders.

63. The Statute has already prevented the City of Dallas from prohibiting voucher discrimination as source of income discrimination. The Statute and the possible enforcement of the Statute will prevent any other City from prohibiting voucher discrimination as source of income discrimination.

There are numerous sources of income for rent that involve disadvantages to landlords and that are and can be protected from discrimination.

64. There are numerous sources of income that tenants use to pay rent. Several of these sources may be unreliable and uncertain of receipt such as alimony or student allowances or grants. For some tenants, all of the sources combined may not be enough to pay the rent. Many tenants use wages to pay the rent until they are laid off or fired. Each of these sources of income poses risks to landlords of non-payment or delayed payment of rent. Some of these same tenants may also pose other risks for a landlord. Some tenants have bad credit histories. Some tenants have bad rental records with evictions or nonpayment of rent. Landlords may have to enter into third party guarantor agreements or charge higher deposits to mitigate these risks. Yet the only source of income singled out by the Statute and by the City for purposes of protecting landlord interests includes that of a racially identifiable Black group, federal voucher households. Municipalities remain free to protect these other sources of income and other groups from

discrimination in the rental of housing no matter what disadvantages landlords may incur.

65. There are 11 states and numerous cities that have passed laws and ordinances protecting tenants from discrimination based on their source of income including the receipt of federal housing voucher program assistance. The states are Connecticut, District of Columbia, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, and Vermont. The cities include Chicago, San Francisco, Ann Arbor, Grand Rapids, Saint Louis, Buffalo, New York City, Philadelphia, Memphis, and Seattle.

66. Texas is the only state that outlaws local ordinances prohibiting discrimination against voucher households. Indiana prohibits local ordinances that would require a landlord to participate in the Section 8 program. Indiana Code 36-1-3-8.5.

The Statute violates the disparate treatment standard under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution by intentionally singling out a racially identifiable Black or African American group for unequal treatment.

67. The State's singling out a racially identifiable Black group - voucher holders - for injury was done with racially discriminatory intent. The intent is proven by the circumstances giving rise to the Statute and the stark pattern of the consequences of the Statute.

68. The Statute singles out only one group's source of income for denial of the protection of the law - those whose "source of income to pay rent includes funding from a federal housing assistance program." Tex. Loc. Gov't Code § 250.007. The principal federal rental housing assistance program that is covered by the Statute is the federal Housing Choice Voucher program. The group singled out by the Statute for disadvantage, voucher holders, is, in the City of Dallas, 87% Black or African American and only 6% White non-Hispanic. 81% of the voucher holders in the Dallas metropolitan area are Black or African American and only 10% are White non-Hispanic. The singling out of the voucher participants is unexplainable on grounds

other than race of the voucher tenants, Black or African-American.

69. The voucher program in the Dallas area is publicly known to be predominantly Black. The households participating in the voucher program are subjected to various negative racial stereotypes. One example of the stereotyped perception is the 2015 incident involving Black guests at a McKinney neighborhood pool. White residents taunted the Blacks as being “Section 8” and told them to leave the pool and the neighborhood and go back to their “Section 8” homes.

70. The group singled out by the Statute for disadvantage, voucher holders, is, in the Dallas area, segregated into predominantly minority, low income, high poverty census tracts, with low ranking schools, and marked by conditions of slum and blight and located in the City of Dallas. One group singled out by the Statute for advantage is landlords of multifamily complexes in predominantly White non-Hispanic areas who will continue to rent to a disproportionately large percentage of White tenants and a disproportionately small percentage of Black renters. The Statute makes housing unavailable because of race. The other groups singled out by the Statute for advantageous treatment are the non-racially identifiable groups with the sources of income that are protected from discrimination.

71. The record upon which the Statute was enacted contained objective evidence that the voucher households in the state were predominantly Black and secondarily Hispanic.

72. The record upon which the Statute was enacted contained objective evidence that the voucher holders in the State were concentrated in racially segregated, predominantly minority areas.

73. The Statute outlaws municipal protection for only one group and that group - voucher holders - in the Dallas area is predominantly Black. The Statute does not prohibit the municipal protection for various groups that are not racially identifiable. Texas cities have passed

ordinances that include other protections not found in the Fair Housing Act. For example, the City of Austin prohibits landlords from discriminating on the basis of student status, marital status, sexual orientation, gender identity, and age.³ The City of Dallas prohibits housing discrimination based on “sexual orientation or gender identity and expression.”⁴ Groups classified by student status, marital status, sexual orientation, gender identity, and age are not disproportionately of any race.

74. The only group of voucher holders that the Statute allows municipalities to protect are military veterans. Tex. Local Gov’t Code § 250.007 (b). This group is substantially more White non-Hispanic than the general population of vouchers. Military veterans in the State of Texas and in the Dallas metropolitan area are predominantly White non-Hispanic. 67% of the veterans in the State are White non-Hispanic, 13% are Black. 70% of the veterans in the Dallas metropolitan area White non-Hispanic, 18% are Black. The Dallas Housing Authority vouchers specifically set aside for military veterans are used by a 22% White non-Hispanic population. This is over three times the percentage of all vouchers used by White non-Hispanic DHA voucher holders, 6%.

75. There are a minimal number of vouchers dedicated solely to veterans in the Dallas area compared to the total vouchers in the area. There are over 30,000 vouchers in the Dallas metropolitan area.

The evidence proves disparate treatment, the presence of intent to perpetuate racial segregation, and the presence of intent to disadvantage a predominantly Black group in violation of 42 U.S.C. § 3604(a) and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

³ Austin City Code, § 5-1-51 - DISCRIMINATION IN SALE OR RENTAL OF HOUSING.

⁴ Dallas City Code § 46-7

76. The circumstances of the enactment and the consequences of the Statute considered with the additional circumstantial evidence prove racial purpose to perpetuate racial segregation and to disadvantage a predominantly Black group. *Village of Arlington Heights v. Metropolitan Housing Development Corp.* 429 U.S. 252, 266-268 (1977) articulates the framework for the inquiry into discriminatory intent that is relevant to this case. The facts pleaded are consistent with this framework and with the disparate treatment proof framework.

The Statute has the effect of perpetuating racial segregation and singling out a disproportionately Black group for adverse treatment.

77. The voucher households in the City of Dallas are concentrated in census tracts that are, on average, 88% minority. The voucher households in the Dallas metropolitan area are concentrated in census tracts that are, on average, 74% minority. The voucher households are racially segregated into census tracts that are also low income and high poverty areas marked by conditions of slum and blight. The voucher holders in the City of Dallas and the Dallas area are predominantly Black or African-American.

78. Ordinances and laws prohibiting discrimination against voucher participants lessen racial segregation and make more units available in White non-Hispanic areas to Black families using vouchers. This result is caused by the racially segregated location of rental units operated by landlords that do not discriminate against voucher households because of their status as participants in the voucher program. The multifamily landlords with units that can be rented at voucher program rents and that do rent to voucher households are disproportionately located in predominantly minority areas. The multifamily landlords with units that can be rented at voucher program rents but that discriminate against voucher households because of their status as voucher participants are disproportionately located in majority White non-Hispanic areas. If the City of

Dallas passed a voucher protection law and there was landlord compliance with such a law, there would be more units available in majority White non-Hispanic areas that could be rented by voucher households. If additional municipalities and counties in the Dallas area passed a voucher protection law, additional units would be made available assuming landlord compliance with such a law.

79. The State of Texas passed the challenged Statute to outlaw ordinances protecting voucher households from discrimination. The Statute permits multifamily landlords to deny housing to voucher tenants who can pay the rent, satisfy the tenant selection criteria, and for whom there are no legitimate business reasons to reject. By permitting the multifamily landlords in White non-Hispanic areas to discriminate solely on the basis of participation in the voucher program, the Statute permits the exclusion of the predominantly Black voucher households from White Non-Hispanic areas and causes the resulting perpetuation of racial segregation.

80. Another discriminatory effect of the Statute is the singling out a disproportionately Black group - voucher households - for adverse treatment. Voucher holders in the City of Dallas are 87% Black or African American. The group is 6% White non-Hispanic in the City of Dallas. 81% of the voucher holders in the Dallas metropolitan area are Black or African American. 10% of the voucher holders in the Dallas metropolitan area are White non-Hispanic. This group and this group alone are denied municipal protection from housing discrimination based on membership in the group. Municipal governments are not forbidden to pass laws protecting students and other non-racially identifiable groups.

The sequence of events leading to the decision reveals evidence of disparate treatment.

81. The beginning of the sequence of events leading up to the enactment of the Statute

was the City of Dallas and the City of Austin attempting to prohibit housing discrimination against voucher households. Both cities were acting at least in part to prevent housing discrimination with racially discriminatory effects. The suspect sequence is evidence of disparate treatment.

82. The City of Dallas signed a Voluntary Compliance Agreement with HUD on November 5, 2014. The agreement required the City to consider enacting an ordinance protecting voucher households from housing discrimination as part of the remedy for the City's violation of Title VI of the 1964 Civil Rights Act. The specific violation to be remedied was the City allowing private developers to prohibit the use of vouchers at City assisted projects. HUD, November 22, 2013 Letter of Findings of Non Compliance with Title VI, pages 19 - 21. The legislation that resulted in the Statute was filed the next month on December 19, 2014.

83. The City of Austin amended its Fair Housing Ordinance to protect voucher holders from discrimination in the rental or sale of housing on December 11, 2014. The stated purpose was to provide a remedy for the concentration of voucher households in only a few parts of the City. The unwillingness of landlords to rent to voucher holders was cited as a cause of the concentration. With the voucher protection ordinance, Austin intended to comply with its federal statutory obligation to affirmatively further fair housing in its housing programs. The Austin Apartment Association filed a lawsuit challenging the ordinance on December 12, 2014. A week later, S.B. 267, the bill that became Tex. Local Gov't Code § 250.007, was filed for consideration in the January 2015 Texas legislative session.

84. The City of Dallas had prohibited housing discrimination on the grounds of sexual orientation on May 8, 2002. The Texas legislature took no action to outlaw this change.

85. The City of Austin had previously amended its municipal fair housing ordinances to

include protections for non-racially identifiable characteristics including student status, marital status, sexual orientation, gender identity, and age. These changes took place from 1982 through 2004. The Texas legislature took no action to outlaw these changes.

86. The State took no action to prohibit any municipality amending its fair housing ordinance to add protected groups so long as those groups were not racially identifiable. The State took immediate action to do so upon the enactment of the Austin ordinance and the City of Dallas assuming the obligation to consider such an ordinance protecting a racially identifiable group.

87. The sequence is evidence of disparate treatment on the basis of race.

The standards requiring the State to avoid actions that perpetuate racial segregation and to take meaningful action to eliminate segregation would have been expected to leave the municipal authority to ban voucher discrimination intact.

88. The departures from substantive standards that would have been expected to lead to a decision contrary to the one reached - banning municipal protection from discrimination against voucher households - are evidence of intentional segregation and discrimination.

89. The State of Texas has the constitutional obligation to avoid deliberate, willful, and purposeful actions that perpetuate racial segregation. Part of this obligation is to determine whether its actions do perpetuate racial segregation and, if so, avoid those actions.

90. The State of Texas has accepted millions of dollars in federal Community Development Block Grant funding from the U.S. Department of Housing and Urban Development. In order to receive these funds, State officials certify that the State will affirmatively further fair housing in its housing and urban development related activities. The obligation requires the State to, at a minimum, have an institutionalized method to determine whether its housing and urban development related actions are perpetuating racial segregation. If

inquiry shows that the State is perpetuating racial segregation, Texas would be expected to avoid the discriminatory action and take meaningful action to overcome the racial segregation in the voucher program in order to affirmatively further fair housing.

91. The State's Analysis of Impediments to Fair Housing documents the existing racial segregation of housing vouchers in urban areas of the State. The Analysis of Impediments states that private landlord discrimination is a causal factor for the concentration of vouchers in minority areas.

92. In 2013 the State of Texas identified "barriers to mobility and free housing choice for protected classes" in the State's Phase 2 Analysis of Impediments to Fair Housing Choice, Impediment Number 6." The evidence for this impediment relies on data concerning the Section 8 voucher program. In particular, the State of Texas found that "Housing Market shows that voucher holders are disproportionately likely to be African-American." Section VIII, pages 14-15.

93. The State of Texas stakeholder participants identified source of income discrimination against persons on publicly assisted housing as a fair housing problem in the State's Phase 2 Analysis of Impediments to Fair Housing Choice.

94. The State did not take either the constitutional obligation to avoid perpetuation of racial segregation or the Fair Housing Act obligation to avoid perpetuation of racial segregation into account when it enacted the Statute.

95. The State had previously applied the substantive affirmatively further fair housing standard to arrive at the conclusion that it would forbid landlord discrimination against voucher households. The State did so in 2010 when, in order to continue to receive federal funding for disaster recovery, it imposed the obligation to accept vouchers on all owners of affordable

multifamily rental housing units and owners of 20 or more single family or duplex private rental housing units receiving federal assistance under the Hurricane Relief Program. The purpose of the requirement was to affirmatively further fair housing pursuant to a compliance agreement between the State and HUD.

96. When enacting the Statute, the State failed to follow the federally required substantive standard in affirmatively furthering fair housing in its housing and urban development related activities. Had it done so, the substantive standard would have resulted in the Statute not being enacted. The State failed to follow its interest in complying with its constitutional duty to avoid involvement in perpetuation of racial segregation. Had the State been following these substantive standards, the State would not have interfered with the City of Dallas' implementation of the remedy for the City's Title VI of the 1964 Civil Rights Act violations.

The facts prove a prima facie case of disparate treatment on the basis of race.

97. ICP's voucher clients are predominantly Black. The City of Dallas became subject to a civil rights compliance agreement requiring the City to consider passing an ordinance making voucher discrimination illegal. The agreement was signed on November 5, 2014. ICP and its clients would have benefitted from the enactment of a City ordinance making voucher discrimination illegal because of the additional housing units that would have become available in majority White non-Hispanic areas.

98. The legislation introducing the Statute was submitted on December 19, 2014 and became effective September 1, 2015.

99. The Statute singles out a predominantly Black group - voucher households - for adverse treatment. The Statute has no effect on non-racially identifiable, non-Fair Housing Act protected characteristics that are protected from housing discrimination by municipal ordinances.

100. The Statute perpetuates racial segregation by outlawing municipal laws prohibiting voucher discrimination. These laws lessen racial segregation and make more units available in White Non-Hispanic areas to Black households using vouchers. The Statute prevents the operation of these laws and leaves the existing racial segregation in place.

101. The Statute created a legal and a practical impediment to the enactment of the proposed City of Dallas ordinance to include voucher assistance as a source of income protected from landlord discrimination.

102. The Statute prevents the City of Dallas from enacting the ordinance making voucher discrimination illegal which denies ICP and its clients the benefit of the units that such an ordinance would have made available to voucher participants.

103. The legal authority of the City of Dallas to prohibit housing discrimination on other non-racially identifiable grounds remained in effect. The City of Dallas passed an ordinance prohibiting housing discrimination on the grounds of gender identity and expression on November 15, 2015. The City of Dallas had prohibited housing discrimination on the grounds of sexual orientation on May 8, 2002.

The two interests cited by the legislature for the enactment of the Statute are pretexts for racial discrimination.

104. Instead of considering its interests in complying with its federal constitutional and statutory obligations, the State cited two irrelevant interests. Each was a pretext for perpetuating racial segregation.

105. The first interest was described as the need to clarify whether Section 214.903 of the Texas Local Government Code prohibited cities from passing ordinances expanding fair housing protected classes. There was no objective need for the clarification and the Statute does not

provide any such clarification. The second interest was described as the need to ensure that municipalities would not be able to require landlords to participate in a federal program which did not itself contain a mandatory participation requirement. The protection against discrimination on the basis of voucher status is not the same as an obligation to participate in the voucher program. There is no discrimination on the basis of voucher status if the voucher holder is refused as a tenant because she cannot pay the rent or cannot satisfy the tenant selection criteria or poses more risk of non-payment or delay in payment than a non-voucher tenant.

106. With respect to the first State interest, there was nothing to clarify. Texas cities have previously passed and continue to pass ordinances expanding the classes protected by their fair housing ordinances. There is no reported Texas or federal case opinion interpreting the State law providing for municipal fair housing ordinances as setting limits on the classes to be protected.⁵ *Austin Apartment Ass'n v. City of Austin*, 89 F. Supp. 3d 886, 892–94 (W.D. Tex. 2015), appeal dismissed (Aug. 6, 2015). The bill sponsor’s statement of the purpose of the bill that became the Statute at issue was that the law had “been interpreted to prohibit cities from passing ordinances expanding fair housing protected classes.” This statement had no support in cases or other authority.

107. The Statute does nothing to clarify the general issue whether municipal governments may add groups to be protected from housing discrimination under the provision of Tex. Local Gov’t Code § 214.903 which authorizes municipal fair housing ordinances and remains unchanged by and is not mentioned in Tex. Local Gov’t Code § 250.007. The status of any of the groups other than voucher families that were in municipal fair housing ordinances before the

⁵ Tex. Gov’t Code § 214.903.

Statute was passed is unchanged and un-clarified as to consistence with Tex. Local Gov't Code § 214.903.

108. The second interest asserted for the Statute is based on the fact that the federal government does not make participation in the voucher program mandatory. This fact does not support the Statute. HUD is the federal agency in charge of administering and interpreting the federal housing voucher program. 42 U.S.C. § 1437f(o). HUD enacted a regulation that expressly provides that nothing in the voucher program regulatory scheme was intended “to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder.” 24 C.F.R. § 982.53(d).

109. The asserted interest does not establish a connection between voluntary participation in the voucher program and an ordinance prohibiting discrimination against a voucher household solely because of being a voucher participant. There is no nexus. The prohibition against voucher discrimination does not prevent a landlord from:

- refusing to rent to a voucher household because the voucher program does not meet the contract rent for the unit;
- refusing to rent to a voucher household because the household does not satisfy the landlord’s tenant selection criteria; or
- refusing to rent to a voucher holder because of other legitimate business reasons.

110. Testimony presented to the Legislature at the hearings on the bills that became the Statute made it clear that ordinances prohibiting discrimination against voucher holders did not make landlord participation in the voucher program mandatory. The testimony stated that if a voucher holder did not meet the landlord’s rent or the landlord’s rental criteria or the refusal to rent to a voucher holder was based on a legitimate business reason then the landlord would not be required to accept the voucher tenant.

111. Any limitation on a landlord’s decision whether or not to discriminate on the basis of

group characteristics is a limitation on the landlord's voluntary decision whether or not to rent to that group. For example, the federal Fair Housing Act provisions limit the landlord's voluntary decisions whether or not to rent to Blacks, Hispanics, women, families with children, Muslims, or the handicapped. 42 U.S.C. § 3604(a), (f). The municipal restrictions on landlords' right to avoid renting to persons with a variety of other characteristics such as student status, gender identity, and age limit the landlord's voluntary choices about whether or not to participate in a lease with those persons.

112. The interest, if any, in maintaining a voluntary participation accommodation for landlords is a landlord interest, not a legitimate government interest. The State cannot show a interest in maintaining landlords' ability to discriminate on the basis of voucher status even in the absence of legitimate business reasons to refuse to rent to a voucher household and even when the refusal to rent will perpetuate racial segregation. The existence of any such government interest is contradicted by the State's constitutional obligation to avoid purposeful segregation and the State's legal obligation to affirmatively further fair housing by avoiding actions that perpetuate racial segregation.

113. Any other State interests that are asserted after the initiation of this litigation as reasons for the Statute are pretexts for discrimination.

The State policy in the Statute violates the 42 U.S.C. § 3604 disparate impact standard.

114. The challenged policy is the State policy that cities and counties shall not adopt or enforce an ordinance or other regulation that prohibits discrimination against voucher households. Tex. Local Gov't Code § 250.007. The policy is a restriction that unfairly excludes minorities from certain neighborhoods without sufficient justification. The policy causes the

exclusion by preventing cities and counties from using a legal process that would make existing units in non-minority neighborhoods available to voucher households. The legal process is the imposition of fines or other municipal code sanctions if, without any legitimate business reason, a landlord refuses to lease an available unit because the tenant will use a federal housing voucher to help pay the rent. This legal process makes units available to voucher households by eliminating arbitrary, artificial, and unnecessary reasons and requiring that the decision not to rent to a voucher household is justified only by legitimate business reasons.

115. There are multifamily landlords with units in majority White non-Hispanic Dallas area census tracts that rent for amounts less than the maximum rents under the voucher program.

116. There are Black voucher households, including ICP clients, with vouchers that can pay the rent for these units in majority White non-Hispanic census tracts in the Dallas area.

117. There are Black voucher households, including ICP clients, that meet the standard tenant selection criteria used by multifamily landlords in the Dallas area.

118. There are Black voucher households, including ICP clients that meet the standard tenant selection criteria and who want to rent units in majority White non-Hispanic Dallas area census tracts but who cannot find a landlord willing to rent to voucher households.

119. When ICP asks the landlords operating these units in majority White non Hispanic census tracts in the Dallas area whether they will accept voucher households as tenants, the answer is disproportionately that they will not accept voucher households.

120. These landlords in majority White non Hispanic census tracts in the Dallas area advertise on the internet that they will not accept voucher households under any circumstances.

121. When ICP asks the landlords operating these units in majority White non Hispanic census tracts in the Dallas area to negotiate with ICP about the terms upon which these landlords

will rent to voucher households, they refuse to answer the request and refuse to negotiate.

122. After the City of Dallas enacted its ordinance prohibiting landlord discrimination against military veterans, the local landlord association advised its members that “As of January 2017, all multifamily and residential properties in the City of Dallas must accept the VASH vouchers”⁶ The association is advising its members to comply with the law.

123. Mr. Mike Clark, then President of the Texas Apartment Association, testified in *Austin Apartment Ass'n v. City of Austin* that the Austin voucher protection ordinance would change the geographical distribution of voucher units if there were units available within the rent ranges for vouchers.

124. At least some landlords of multifamily units in majority White non-Hispanic Dallas area census tracts will comply with a city ordinance prohibiting discrimination against voucher households.

125. The landlords complying with a city ordinance prohibiting discrimination against voucher holders will include landlords with multifamily units in majority White non-Hispanic Dallas area census tracts that are available within the voucher rent range and on terms that voucher households can meet. There are voucher households, including ICP clients, who will rent these units.

126. The policy set out in the Statute causes two discriminatory effects. The policy perpetuates racial segregation by permitting landlords to discriminate against voucher

⁶ The Apartment Association interprets its obligation not to discriminate against military veterans to apply only to veterans holding a Veteran Affairs Supportive Housing (VASH) voucher and asserts there are only 100 of these vouchers. The Statute exempts all military veterans holding vouchers. Tex. Gov't Code § 250.007(b). There are over 30,000 non-veteran vouchers in the Dallas metropolitan area.

households. The policy causes adverse effects on a disproportionately Black group, voucher households. Voucher holders in the City of Dallas are 87% Black or African American. The voucher households in the City of Dallas are 6% White non-Hispanic. 81% of the voucher holders in the Dallas metropolitan area are Black or African American. 10% of the voucher holders in the Dallas metropolitan area are White non-Hispanic.

127. The predominantly Black voucher households in the City of Dallas are concentrated in census tracts that are, on average, 88% minority. The predominantly Black voucher households in the Dallas metropolitan area are concentrated in census tracts that are, on average, 74% minority. The voucher households are racially segregated into census tracts that are also low income and high poverty areas marked by conditions of slum and blight. The multifamily landlords with units available at voucher program rents and that do rent to voucher households are disproportionately located in predominantly minority areas. Most of the multifamily landlords with units that can be rented at voucher program rents in White non-Hispanic areas refuse to rent to voucher households. The Statute permits this discrimination even when there is no legitimate business interest served. There is an unmet demand by voucher households for dwelling units in these areas. The Statute makes housing unavailable because of race.

128. Ordinances and laws prohibiting discrimination against voucher participants lessen racial segregation and make more units available in White non-Hispanic areas to Black families using vouchers. The State of Texas passed the challenged Statute to prohibit these ordinances. The Statute permits multifamily landlords to deny housing to voucher families who can pay the rent, satisfy the tenant selection criteria, and for whom there are no legitimate business reasons not to accept as tenants. By permitting the multifamily landlords in White non-Hispanic areas to discriminate solely on the basis of participation in the voucher program, the Statute permits the

exclusion of the predominantly Black voucher households from White non-Hispanic areas and the resulting perpetuation of racial segregation.

129. The Statute singles out and disadvantages a predominantly Black group. 87% of the voucher holders in the City of Dallas are Black or African American and 6% are White non-Hispanic. 81% of the voucher holders in the Dallas metropolitan area are Black or African American and 10% are White non-Hispanic.

130. To be eligible for the voucher program, a household's income may not exceed 50% of the area median family income for the county or metropolitan area in which the family chooses to live. In addition, a public housing authority administering a voucher program must provide 75% of its vouchers to applicants whose incomes do not exceed 30% of the area median income. 24 C.F.R. § 982.201(B).

131. The 2015 HUD Picture of Subsidized Household data for the Dallas-Plano-Irving, TX Metropolitan Division reports that the average voucher household income per year is \$13,703 or 23% of local median household income. 94% of voucher holders are very low income (<=50%) and 73% are extremely low income (<=30%). 81% of the voucher households in the Dallas Metro Division are Black, 10% are non-minority.

132. The population eligible for a voucher because their incomes are less than 50% and 30% of area median family income is predominantly Black.

133. The American Community Survey 2013 5-year Estimates data shows the following for the Dallas-Plano-Irving, TX Metropolitan Division renter households:

- 47% of Black renter households have incomes below 50% of area median family income.
- 27% of White non-Hispanic renter households have incomes below 50% of area median

family income.

- 29% of Black renter households have incomes below 30% of area median family

income.

- 14% of White non-Hispanic renter households have incomes below 30% of area median family income.

134. The Statute makes multifamily units unavailable to a population that is disproportionately Black or African-American households based on the percent of the Black or African American renter households that are income eligible for vouchers compared to the percent of the White population that is income eligible for vouchers.

135. The population that the Statute permits to be excluded is the voucher population whose income is less than 30% of area median family income. With the assistance of a housing voucher, the household, can afford the same market rents that the non-voucher population whose income is 80% or greater of area median family income can afford. The voucher population can afford the rents because of the combination of their income and the rent subsidy from the voucher. The 80% or greater area median family income population can afford the rents because of their higher income. The voucher population excluded by the policy is 81% Black and 10% White non-Hispanic. The non-voucher, 80% or greater of area median family income population is 19% Black and 53% White non-Hispanic. The policy permitting discrimination against voucher households excludes a disproportionately Black population and selects a disproportionately White non-Hispanic population.

136. The Statute does not prevent municipalities from expanding protection against housing discrimination for groups that are not distinctly Black. Existing ordinances will continue to prohibit discrimination on the basis of student status, marital status, sexual orientation or

gender identity and expression, and age. These characteristics are not shared disproportionately by any race.

137. The causal connection between the policy and the discriminatory effects is robust. The policy permits multifamily landlords in White Non-Hispanic areas to discriminate against voucher households who can pay the rent, satisfy the tenant selection criteria, and for whom there are no legitimate business reasons not to accept as tenants. Voucher discrimination is the common practice by landlords with multi-family units in White Non-Hispanic areas. Voucher discrimination by landlords renting units in non-White areas does not have the same effect.

138. The policy in the Statute is an artificial, arbitrary and unnecessary barrier to integrated housing that is not necessary to achieve any legitimate government interests.

139. The legislative history of the Statute cites two interests that were asserted to be achieved by the policy. The facts set out in paragraphs 104 through 113 prove that the interests asserted were pretexts and not legitimate State interests. The policy does not achieve the State's legitimate interests in compliance with the U.S. Constitution and the Fair Housing Act.

140. Any substantial, legitimate, nondiscriminatory interests supporting the challenged policy could be served by other practices that have a less discriminatory effect. If there is an interest in not burdening landlords with only a single rental unit or only a small number of rental units, the State can require municipal voucher protection ordinances to exclude such landlords from coverage.

141. If there is a State interest in not subjecting landlords to the costs of delayed payments in excess of those costs that are caused by renting to non-voucher tenants, there are several less discriminatory alternatives to serve that interest. ICP and the Dallas Housing Authority make available and pay landlord incentive or bonus payments in the amount of one

month's rent. This bonus or incentive payment may cover all or part of any additional costs incurred renting to voucher tenants.

142. ICP offers its sublease/guarantor program to Dallas area landlords. In 2014 ICP presented the Apartment Association of Greater Dallas (AAGD) with a proposal to negotiate with ICP for agreement on a sublease/guarantor model designed to eliminate the stated business reasons for refusing to negotiate with or rent to voucher households. The sublease/guarantor proposal included both financial incentives and favorable lease concessions for the Association's members to make units available for voucher families in White non-Hispanic areas. ICP negotiated with the leadership of the AAGD on the terms of the sublease/guarantor proposal. The President of the Association during the negotiations, Mr. Michael Clark, said the sublease/guarantor proposal has merit. Ms. Kathy Carlton, Director of Government Affairs for AAGD has encouraged AAGD members to look at the ICP sublease/guarantor proposal. Ms. Carlton stated the AAGD had worked with ICP to identify roadblocks to participation in the voucher program and that ICP had done a good job addressing those roadblocks. AAGD, Rooflines, April 2016, page 20.

143. There are other less discriminatory alternatives to outlawing ordinances or other laws that prohibit voucher discrimination. The State of Oregon permits municipal ordinances that prohibit voucher discrimination while providing landlords with a dedicated fund from which reimbursements can be paid for voucher related landlord costs. As of July 1, 2014, the State of Oregon expanded its source of income protections in state fair housing law to include income from Housing Choice Vouchers (HCV) or Section 8, or other local, state or federal programs. With this expansion, Oregon created the Housing Choice Landlord Guarantee Program to mitigate losses that landlords might experience from unpaid rent or other costs, if any, caused by

participation in the HCV program. Through the program landlords are entitled to up to \$5,000 in reimbursement of such costs. As of March 31, 2015, seven claims have been paid for a total of approximately \$31,000. This is a less discriminatory alternative that serves an interest in protecting landlords from financial losses, if any, caused by participation in the voucher program. The State of Texas could require municipal prohibition against voucher discrimination to include such a program funded by the municipality.

144. Marin County, California passed a similar Landlord Partnership Program before it passed its prohibition on discrimination against voucher families. The program provides coverage for potential financial risks that may be associated with the Section 8 program by providing compensation for a range of costs, including an increased or double security deposit, a loss mitigation pool, and vacancy loss coverage that would provide a month's rent payment during vacancy. This is a less discriminatory alternative that serves an interest in protecting landlords from financial losses, if any, caused by participation in the voucher program. The State of Texas could require municipal prohibition against voucher discrimination to include such a program funded by the municipality.

145. Other cities and states have laws that prohibit voucher discrimination. See ¶ 65.

The Statute violates 42 U.S.C. § 3615.

146. The Statute requires or permits a discriminatory housing practice in violation of the Fair Housing Act. As set out above, the Statute violates 42 U.S.C. § 3604(a).

147. The Statute requires municipalities to single out for adverse treatment only one group - voucher households. Voucher households are predominantly Black or African American in the City of Dallas and in the Dallas area.

148. The Statute requires municipalities to allow landlords to discriminate against

voucher tenants even though such discrimination perpetuates racial segregation.

149. The Statute is a discriminatory housing practice that perpetuates racial segregation by making units unavailable because of race and violates 42 U.S.C. § 3604(a).

150. The Statute is invalid pursuant to 42 U.S.C. § 3615.

The Statute is not supported by a rational relation to a legitimate State interest.

151. The Statute singles out the status as a voucher participant for unequal treatment under municipal housing discrimination laws. The Statute prohibits protection for that status alone while all other characteristics may be the subject of municipal legal protection. The discrimination does not constitute a rational relationship with the two stated legislative ends - clarification of Section 214.903 of the Texas Local Government Code and preserving landlords' federal law status as voluntary participants in the voucher program.

152. The Statute does nothing to clarify the general issue whether municipal governments may add groups to be protected from housing discrimination under the provision of Tex. Local Gov't Code § 214.903. That provision remains unchanged and is not mentioned in the Statute. The § 214.903 status of any of the groups other than voucher families that were in municipal fair housing ordinances before the Statute was passed is unchanged and un-clarified.

153. The second interest is based on the fact that the federal government does not make participation in the voucher program mandatory. This fact does not support the Statute. HUD is the federal agency in charge of administering and interpreting the federal housing voucher program. 42 U.S.C. § 1437f(o). HUD enacted a regulation that expressly provides that nothing in the voucher program regulatory scheme was intended "to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder." 24 C.F.R. § 982.53(d).

154. There is no connection between any legitimate state interest served by the Statute and protecting landlords' interests in voluntary participation in the voucher program.

155. If a landlord has legitimate business reasons for not renting to a voucher household, then any reasonable prohibition against discrimination against voucher households will not affect the landlord's voluntary participation. If the voucher rent is not high enough to pay the contract rent, the landlord is not discriminating by refusing to rent to the voucher household. If the voucher household does not meet the landlord's legitimate, nondiscriminatory tenant selection criteria, the landlord is not discriminating by refusing to rent to the voucher household. If the housing authority's administration of the voucher is likely to cause delays that increase the landlord's uncompensated costs, the landlord is not discriminating by refusing to rent to the voucher household. If the landlord has legitimate business reasons for not entering into the specific contract and lease terms set out by the voucher program, the landlord is not discriminating by refusing to rent to the voucher household.

156. There are modifications to the voucher program and available third party provided resources that can serve legitimate business interests and obtain the dwelling unit for a voucher household. These modifications and resources are available in the Dallas area and are described in paragraphs 141 and 143 of this complaint. If any extra costs or risks to the landlord are eliminated, there is no legitimate interest in not renting to the voucher household. In these situations, the Statute has no rational relation to any legitimate State interests and does not comply with the rational basis required by equal protection.

The City of Dallas, by complying with the Statute, is perpetuating racial segregation and singling out a disproportionately Black group for adverse treatment in violation of the 14th Amendment to the U.S. Constitution and the disparate treatment standard of 42 U.S.C. § 3604(a).

157. The City of Dallas is implementing the Statute by refusing to pass a city ordinance protecting voucher holders from rental discrimination based on the classification of the voucher as a source of income. The City does protect other classes and groups from rental discrimination based on the source of income unless that source of income is federal housing assistance from the voucher program.

158. The City considered passing an ordinance that did prohibit rental discrimination based on source of income including voucher assistance on October 26, 2016. The City considered passing the ordinance because it was required to do so under the Title VI of the Civil Rights Act Voluntary Compliance Agreement between the City and HUD. The relevant part of the proposed ordinance stated

(20) SOURCE OF INCOME means lawful, regular, and verifiable income from whatever source derived (including housing vouchers and other subsidies provided by government or non-governmental entities, child support, or spousal maintenance).”

...

SEC. 20A-4. DISCRIMINATORY HOUSING PRACTICES.

(a) A person commits an offense if he, because of race, color, sex, religion, handicap, familial status, [or] national origin, or source of income:

(1) refuses to negotiate with a person for the sale or rental of a housing accommodation or otherwise denies or makes unavailable a housing accommodation to a person;

(2) refuses to sell or rent, or otherwise makes unavailable, a housing accommodation to another person after the other person makes an offer to buy or rent the accommodation; or

(3) discriminates against a person in the terms, conditions, or privileges of, or in providing a service or facility in connection with, the sale or rental of a housing accommodation.

(b) A person commits an offense if he, because of race, color, sex, religion, handicap, familial status, [or] national origin, or source of income:

(1) represents to a person that a housing accommodation is not available for inspection, sale, or rental if the accommodation is available;

(2) discriminates against a prospective buyer or renter in connection with the showing of a housing accommodation; or

(3) with respect to a multiple listing service, real estate brokers' organization, or other business relating to selling or renting housing accommodations:

- (A) denies a person access to or membership in the business; or
- (B) discriminates against a person in the terms or conditions of access to or membership in the business.
- (c) A person commits an offense if he:
 - (1) for profit, induces or attempts to induce another person to sell or rent a housing accommodation by a representation that a person of a particular race, color, sex, religion, handicap, familial status, [or] national origin, or source of income is in proximity to, is present in, or may enter into the neighborhood in which the housing accommodation is located;
 - (2) makes an oral or written statement indicating a policy of the respondent or a person represented by the respondent to discriminate on the basis of race, color, sex, religion, handicap, familial status, [or] national origin, or source of income in the selling or renting of a housing accommodation; or
 - (3) prints or publicizes or causes to be printed or publicized an advertisement that expresses a preference or policy of discrimination based on race, color, sex, religion, handicap, familial status, [or] national origin, or source of income in the selling or renting of a housing accommodation.
- (d) A person who engages in a residential real estate-related transaction commits an offense if he, because of race, color, sex, religion, handicap, familial status, [or] national origin, or source of income, discriminates against a person:
 - (1) in making a residential real estate-related transaction available; or
 - (2) in the terms or conditions of a residential real estate-related transaction.

159. The City Attorney's statement on the City Council agenda stated that this version in paragraph 158 would violate the Statute but another version of the proposed ordinance would not violate the Statute.

After the City entered into the VCA, the Texas Legislature enacted a law that prohibits municipalities from adopting source of income ordinances related to federal housing assistance (except as to military veterans and voluntary programs). In light of the change to state law, the Housing Committee recommended an ordinance that would prohibit source of income discrimination, except as barred by state law.

160. During the City Council deliberation of this version of the proposed ordinance set out in paragraph 158, the issue of whether the proposed ordinance violated state law was explicitly discussed. No council member denied that the version of the proposed ordinance being discussed was prohibited by the Statute.

161. When considering the two source of income ordinances, the City of Dallas and the

City Council knew the race of the voucher holders at the Dallas Housing Authority and knew of the racially segregated location of those voucher tenants in the City of Dallas.

162. In HUD's November 2013 Letter of Findings of Non-Compliance with Title VI of the Civil Rights Act to the City of Dallas, HUD found that the Dallas Housing Authority's vouchers were overwhelmingly minority, 86% African-American and 6% Hispanic.

163. The briefing for the City Council for its deliberation of a source of income ordinance states the purpose of the source of income ordinance as follows:

- Increase housing choice for low income households in higher opportunity areas
- Helps address concentrated poverty
- Ordinance is one possible method for City to affirmatively further fair housing, as required by HUD

As of November 2015, DHA reported that

- greater than 90% of voucher households are headed by a racial minority
- 25% of voucher households are headed by a disabled individual.

164. The version of the City ordinance that included source of income protection for voucher holders (the ordinance in paragraph 158) did not receive a majority vote by the Dallas City Council.

165. The version that was enacted into law specifically included the language that source of income was a protected category except as prohibited by the Statute.

(21) SOURCE OF INCOME means lawful, regular, and verifiable income from whatever source derived (including housing vouchers and other subsidies provided by government or non-governmental entities, child support, or spousal maintenance), **except as prohibited by Texas Local Government Code, Section 250.007, as amended.** (emphasis added) City of Dallas Ordinance 30246, 10/19/16.

166. The only source of income not protected by the City of Dallas fair housing ordinance is that prohibited by the Statute - funding from a federal housing assistance program. The City chose to exclude a predominantly Black group, voucher households, from the protection against discrimination afforded to non-racially identifiable groups.

167. The City of Dallas, through the ordinance, is implementing, complying with, and enforcing the Statute. The City of Dallas, by complying with the Statute, is causing the effect of perpetuating racial segregation and singling out a disproportionately Black group, voucher households, for adverse treatment.

168. The City's adopted source of income ordinance with the exclusion of voucher holders (except for the minimal amount of vouchers for veterans) perpetuates racial segregation of the voucher program in the City of Dallas and the Dallas area.

169. The City's adopted source of income ordinance excluding voucher holders makes housing unavailable for Black voucher holders in low poverty, high opportunity, predominantly white areas of the City of Dallas.

170. The City of Dallas' action excluding voucher holders from protection from discrimination was taken pursuant to official municipal policy when the Dallas City Council passed Ordinance No. 30246, enacted on October 26, 2016. This action causes ICP injury by perpetuating racial segregation of the voucher program in the City of Dallas and the Dallas area and by making housing units unavailable for its clients in non-minority concentrated areas of the City of Dallas.

171. ICP's clients are predominantly Black voucher holders. The City was required to consider an ordinance making voucher discrimination illegal. Rather than enact an ordinance prohibiting discrimination against voucher holders, the City enacted an ordinance prohibiting

discrimination based on source of income for non-racially identifiable groups but did not prohibit discrimination on source of income for voucher households. Voucher households in the City of Dallas are predominantly Black. The additional units that would have become available from landlords complying with an ordinance prohibiting voucher discrimination would have been available for ICP's clients and other voucher households. This would have reduced ICP's time and resources spent on locating available units in majority White areas for its clients wanting to live in those areas.

172. The City's only stated interest in excluding voucher households from the protection of the ordinance was to comply with the Statute. The Statute violates the U.S. Constitution, 42 U.S.C. § 3604(a), and 42 U.S.C. § 3615. Because the Statute is discriminatory, the City's interest is not a legitimate interest that justifies the discrimination against the racially identifiable voucher households. The City's interest is a pretext for discrimination.

173. The City of Dallas is implementing the State policy in the Statute which violates the Fourteenth Amendment to the U.S. Constitution, 42 U.S.C. § 3604, and 42 U.S.C. § 3615. The City's enacted ordinance also violates the Fourteenth Amendment to the U.S. Constitution, 42 U.S.C. § 3604, and 42 U.S.C. § 3615.

The City's implementation of the Statute subjects voucher holders to unequal treatment compared to other groups protected from discrimination without a rational relation to a legitimate government interest in violation of the 14th Amendment to the U.S. Constitution.

174. The City protects tenants from discrimination based on the receipt of any type of income except federal housing assistance including housing vouchers. This discrimination is not supported by a rational relation to a legitimate government interest.

175. The City of Dallas did not state any rational relation to a legitimate government

interest in its consideration of the source of income ordinance. The City stated that its interest was to comply with the Statute. The Statute is discriminatory and invalid. Compliance with the Statute cannot be a legitimate government interest.

176. The City's obligation to affirmatively further fair housing should have compelled the City to enact an ordinance that included voucher households in the groups protected against landlord discrimination. The inclusion of voucher households in the groups protected against landlord discrimination would have made units available in majority White census tracts for the voucher holders, including ICP's clients, seeking to rent in those areas.

The City ordinance implementing the State policy in the Statute is also a City policy that violates the 42 U.S.C. § 3604 disparate impact standard.

177. The City of Dallas is implementing the State policy in the Statute by enacting a source of income protection ordinance that does not prohibit discrimination against voucher holders. The City ordinance is a City policy that perpetuates racial segregation and causes an adverse impact on a disproportionate minority group.

178. The City policy causes the same discriminatory effects and impacts caused by the State policy in the Statute as set out in paragraphs 4, 16, 32, 33, 70, 73, 77 - 80, 99, 100, 103, 114, 128, 166, 171.

179. The City's interest served by its policy in the ordinance is following the mandate in the Statute. This is not a legitimate government interest because the Statute violates the Fourteenth Amendment to the U.S. Constitution, 42 U.S.C. § 3604, and 42 U.S.C. § 3615.

180. The less discriminatory alternative to the City's policy is to remove the phrase "except as prohibited by Texas Local Government Code, Section 250.007, as amended" from the definition of Source of Income in the City Fair Housing ordinance. The elimination of the phrase

implements the source of income protection for regular voucher households.

181. The City of Dallas is implementing the State policy in the Statute which violates the disparate impact standard of 42 U.S.C. § 3604. The City's policy in the ordinance violates the disparate impact standard of 42 U.S.C. § 3604.

The City ordinance implementing the State policy in the Statute is also a City policy that violates 42 U.S.C. § 3615 by permitting actions that are discriminatory housing practices.

182. As set out above, the Statute is invalid and is a discriminatory housing practice. The City's policy implementing the Statute violates 42 U.S.C. § 3615.

183. The City's ordinance violates 42 U.S.C. § 3615 by permitting the discriminatory housing practice of landlords perpetuating racial segregation by refusing to rent to voucher households in the absence of legitimate business reasons for the refusal.

The Statute is preempted by federal law.

184. The enactment and enforcement of local ordinances prohibiting landlord discrimination against voucher households is an integral element of the federal statutory framework for ending racial segregation and other forms of racial discrimination in housing. The federal statute and the corresponding regulations establishing these elements of federal law are 42 U.S.C. § 5304 (b)(2); 24 C.F.R. § 5.152, and 24 C.F.R. § 5.154(c).

185. The State of Texas, acting through its legislators and its executive officers, has nullified specific federal law and regulations designed to remedy current racial segregation in a federally supported housing program. The federal housing program is the housing choice voucher program established for the purpose of aiding low income persons in obtaining a decent place to live and in promoting economically mixed housing. 42 U.S.C. § 1437f(a). HUD's administration of the voucher program requires de-concentration of housing vouchers outside areas of minority

and low income concentrations. 24 C.F.R. 982.54(d)(5), § 982.301(a) § 982.301(b)(4), § 982.301(b)(12), § 982.54(a)(5).

186. The U.S. Congress requires recipients of Community Development Block Grant (CDBG) funds to affirmatively further fair housing by taking meaningful action to eliminate racial segregation. The State of Texas and the City of Dallas have applied for and received CDBG funding on an annual basis. In order to receive the funding, the State and the City must agree and certify to the satisfaction of the Secretary of the Department of Housing and Urban Development (HUD) that each government will affirmatively further fair housing. 42 U.S.C. § 5304 (b)(2).⁷ HUD set out in regulations the actions that will affirmatively further fair housing. The regulations relevant to the obligation to protect federal voucher housing program participants from landlords refusing to negotiate with or rent to voucher participants are 24 C.F.R. § 5.152 and 24 C.F.R. § 5.154(c). HUD's Assessment of Fair Housing Tool for Local Governments (LG2015) OMB Control Number: 2529 - 0054 and HUD's AFH Rule Guidebook⁸, Version 1, December 31, 2015 set out HUD's administrative guidance for the municipal implementation of 42 U.S.C. § 5304 (b)(2) and the HUD regulations 24 C.F.R. § 5.152 and 24 C.F.R. § 5.154(c).

187. The CDBG statute and regulations apply to the CDBG program that provides federal funding to state and local governments. The federal statute directly accomplishes both the general objective and a specific objective of the CDBG program.

⁷ The grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and the grantee will affirmatively further fair housing; . . . 42 U.S.C.A. § 5304(b)(2).

⁸ AFFH Rule Guidebook, Version 1, December 31, 2015, the U.S. Department of Housing and Urban Development. Available from HUD website at <https://www.hudexchange.info/resource/4866/affh-rule-guidebook/> .

188. The primary objective for providing the federal funding to the community development program of each grantee under the CDBG statute is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. 42 U.S.C. § 5301(c). The specific objective of CDBG program that is obstructed and defeated by the Statute is:

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods; . . . 42 U.S.C. § 5301(c)(6).

189. Both the general objective - viable urban communities - and the specific objective - spatial de-concentration of housing opportunities for low income persons - of the CDBG program are directly supported by the anti-discrimination and affirmatively furthering fair housing elements of the federal statutes. Both objectives are obstructed and defeated by the Statute.

190. HUD's implementation of 42 U.S.C. § 5304 (b)(2) requires the City to assess whether private landlords refusal to rent to voucher households is a factor that contributes to racial discrimination in housing by creating, contributing to, perpetuating or increasing the severity of housing discrimination and preventing voucher families from moving to neighborhoods of their choice including integrated neighborhoods. 24 C.F.R. § 5.154(c); HUD, Assessment of Fair Housing Tool for Local Governments (LG2015) OMB Control Number: 2529 - 0054" *Id.* at pdf pages 10, 39, 47. HUD has further determined that a local law prohibiting landlord discrimination against voucher households "increases housing choice and access to opportunity" for voucher holders. *Id.* at pdf page; 47; HUD Assessment of Fair Housing Tool for Public Housing Agencies (PHA2017) OMB Control Number: 2529-0055, pdf page 80.

191. HUD's, AFH Rule Guidebook⁹, Version 1, December 31, 2015, the U.S. Department of Housing and Urban Development, provides HUD's administrative guidance on it affirmatively furthering fair housing regulation interpreting and applying 42 U.S.C. § 5309. In the Guidebook, HUD specifically recommends ordinances that prohibit discrimination against voucher holders as an action that affirmatively further fair housing.

Discussion: The assessment revealed that rental property owners in areas with low concentrations of racial or ethnic minorities often refuse to accept Housing Choice Vouchers contributing to the fair housing issues of segregation, R/ECAPs¹⁰, and disparities in access to opportunity. Many rental property owners also refuse to accept renters whose primary source of income is Social Security Disability Insurance, Supplemental Security Income, and Veterans benefits. Local fair housing organizations commented during public participation that they have a hard time finding landlords willing to accept voucher-holders, even including some LIHTC properties, which are prohibited by law from discriminating against voucher-holders.

To address the fair housing issue of segregation, within one year, the City will pass an ordinance prohibiting discrimination based on source of income. The City will also coordinate with the State to improve enforcement against LIHTC properties violating the prohibition on discrimination against voucher-holders. *Id.* at 120.

...

Strategies and actions should be designed to achieve the goals set forth in the AFH. However, to achieve fair housing outcomes, strategies and actions can be tailored to also be consistent with local and regional markets. Consider the following examples:

...

Where the rental stock is already affordable at current HCV payment standards, then effective strategies might include mobility counseling and source of income protections. *Id.* at 133.

There are other such references at Guidebook at pages 167, 190, 209, 218.

⁹ AFFH Rule Guidebook, Version 1, December 31, 2015, the U.S. Department of Housing and Urban Development. Available from HUD website at <https://www.hudexchange.info/resource/4866/affh-rule-guidebook/>.

¹⁰ R/ECAP is the abbreviation for Racially/Ethnicly Concentrated Areas of Poverty. 24 C.F.R. § 5.152.

192. The State of Texas has specific experience with HUD's implementation of the affirmatively furthering fair housing obligation to require the prohibition of landlord discrimination against voucher households. While engaged in the enforcement of the Fair Housing Act and 42 U.S.C. § 5309 against the State of Texas agency the Texas Department of Housing and Community Affairs (TDHCA), HUD obtained the following provision in the Compliance Agreement entered into by TDHCA.

TDHCA shall require all owners of affordable multifamily rental housing units and owners of 20 or more single family or duplex private rental housing units receiving assistance under this Program to accept Housing Choice Voucher holders under the same substantive provisions as those in place in the Texas Low Income Housing Tax Credit program established by Internal Revenue Code §42, Texas Government Code, Chapter 2306, and rules and guidelines promulgated by TDHCA relating thereto. Conciliation Agreement, May 25, 2010, United States Department of Housing and Urban Development, Case No. 06-10-0410-8 (Title VIII) Case No. 06-10-0410-9 (Section 109) Page 15.

193. HUD used the obligation to pass a local government ordinance prohibiting discrimination against voucher discrimination in the 2016 voluntary compliance agreement it obtained with Baltimore County, Maryland.¹¹

194. HUD has also obtained judicial relief for racial discrimination by its grantees that included the requirement for local legislation that prohibits landlords from refusing to rent to a tenant because that tenant's income comes from Social Security benefits or from state or federal

¹¹ Conciliation Agreement and Voluntary Compliance Agreement Between the U.S. Department of Housing and Urban Development and Myesha Allender-Hardison, Latanya Genius, Rhonda Myers, Baltimore County Branch of the NAACP, and Baltimore Neighborhoods, Inc. (Complainants) and Baltimore County, Maryland (Respondent) Case Numbers: 03-12-0027-8,03-12-0031-8,03-12-0032-8, 03-12-0036-8, 03-12-0037-8 (Title VIII) 03-12-0036-6,03-12-0031-6,03-12-0027-6, 03-12-0032-6 03-12-0037-6 (Title VI) 03-12-0036-4,03-12-0027-4,03-12-0037-4 (Section 504) 03-12-0036-9,03-12-0031-9,03-12-0027-9, 03-12-0032-9, 03-12-0037-9 (Section 109) 03-12-0036-d, 03-12-0027-d, 03-12-0037-d (ADA), pages 10 - 11.

public assistance programs, such as housing vouchers. *Cty. of Westchester v. U.S. Dep't of Hous. & Urban Dev.*, 802 F.3d 413, 419–20 (2d Cir. 2015).

195. At least one purpose for the State legislative and executive officers involvement enacting the Statute into effect was to prevent the City of Dallas from considering the adoption of a local law prohibiting landlord discrimination voucher households. This purpose was specifically raised, debated and endorsed by legislators and landlord representatives during the legislative hearings on the Statute.

196. At least one purpose for the State legislative and executive officers involvement enacting the Statute into effect was to prevent the City of Austin from enforcing its ordinance prohibiting landlord discrimination against voucher households. Paragraph 26 is incorporated by reference. This purpose was specifically raised, debated and endorsed by legislators and landlord representatives during the legislative hearings on the Statute.

197. The Texas legislators were made fully aware of the race of the voucher holders and of the racially segregated locations of the housing during the hearings for the Senate and House bills that became Tex. Gov't Code § 250.007. These were the public hearings on Senate Bill 267 and House Bill 2909. There was specific testimony and other evidence that the large majority of voucher holders in Dallas, Austin, Houston and the State were predominantly African-American and secondarily Hispanic. The testimony also pointed out the lack of choice of housing outside of racially segregated, high poverty areas was caused by landlords' discrimination against voucher households. There was no evidence introduced into the legislative record to contradict these facts.

Claims for relief against Defendant Abbott.

198. The Statute violates the disparate treatment standard under the Equal Protection

Clause of the 14th Amendment to the United States Constitution and 42 U.S.C. § 3604(a) by intentionally singling out a racially identifiable Black or African American group for unequal treatment that makes housing unavailable because of race and by intentionally perpetuating racial segregation.

199. The Statute violates the disparate treatment standard under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution by intentionally singling out a racially identifiable Black or African American group for unequal treatment and by intentionally perpetuating racial segregation. This claim is brought under 42 U.S.C. § 1983.

200. The Statute violates the disparate impact standard under 42 U.S.C. § 3604(a) by causing adverse effects that disproportionately and adversely affects a Black or African American group by perpetuating racial segregation which makes housing unavailable because of race. The Statute is an artificial, arbitrary and unnecessary barrier to integrated housing that is not necessary to serve any legitimate interests. There are less discriminatory alternatives to the State policy in the Statute.

201. The Statute violates the disparate impact standard under 42 U.S.C. § 3604(a) by perpetuating racial segregation. The Statute is an artificial, arbitrary and unnecessary barrier to integrated housing that is not necessary to serve any legitimate interests. There are less discriminatory alternatives to the State policy set out in the Statute.

202. The Statute violates 42 U.S.C. § 3615 as it is a State law that requires or permits actions that are a discriminatory housing practice under 42 U.S.C. § 3604(a) and is a discriminatory housing practice that perpetuates racial segregation in violation of 42 U.S.C. § 3604(a).

203. The Statute singles out the status as a voucher participant for unequal treatment

under municipal housing discrimination laws. The Statute prohibits protection for that status alone while all other characteristics may be the subject of municipal legal protection. The discrimination does not constitute a rational relationship with any legitimate State interest and violates the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

204. The Statute directly nullifies HUD's 42 U.S.C. § 5304(b)(2) statutory authority to implement a specific remedy for racial segregation. Texas cities are prohibited by the Statute from making a good faith determination whether to comply with 42 U.S.C. § 5304 (b)(2) by enacting an ordinance prohibiting voucher discrimination. The only choice the cities have under the Statute is to reject the enactment of any such ordinance. This is in direct conflict with the Congressional direction that in those cities receiving CDBG funds, the city will affirmatively further fair housing. 42 U.S.C. § 5304 (b). The Statute violates the Supremacy Clause of the United States Constitution, Article VI and is preempted by 42 U.S.C. § 5304 (b). The Court has the equitable power to enjoin unlawful actions by public officers. The enforcement of the Statute is such an unlawful action. Governor Abbott has the specific duty enforce the laws of the State of Texas including the Statute. Paragraphs 48 through 63 of this Complaint are incorporated by reference. As required by the Statute, the City of Dallas is currently implementing the Statute. Paragraphs 5, and 157 through 173 of this complaint are incorporated by reference.

205. The State, acting through its legislators and executive officials, enacted the Statute in violation of the Supremacy Clause of the United States Constitution, Article VI, and for the purpose of denying equal protection of the laws because of race and color. Paragraphs 76 through 113 and 185 through 197 of this complaint are incorporated by reference. There is no compelling governmental purpose or legitimate reason for a statute that is preempted under the Supremacy clause. The Statute violates the 14th Amendment to the United States Constitution. The Court has

the equitable power to enjoin unlawful actions by public officers. The enforcement of the Statute is such an unlawful action. Governor Abbott has the specific duty enforce the laws of the State of Texas including the Statute. Paragraphs 48 through 63 of this Complaint are incorporated by reference. As required by the Statute, the City of Dallas is currently implementing the Statute. Paragraphs 5, and 157 through 173 of this complaint are incorporated by reference. ICP has a cause of action pursuant to 42 U.S.C. § 1983 to enforce the 14th Amendment to the U.S. Constitution against the implementation of the Statute.

Claims for Relief against Defendant City of Dallas

206. The City of Dallas with the enactment of City ordinance 30246 that excludes housing vouchers as a source of income protected from discrimination is implementing the State policy set out in the Statute which causes the perpetuation of racial segregation and singles out a predominantly African-American population for adverse treatment. The City's implementation of the Statute violates the 14th Amendment to the U.S. Constitution and 42 U.S.C. § 3604, and 42 U.S.C. § 3615. This implementation of the Statute is direct City of Dallas action taken pursuant to official municipal policy and has caused injury to ICP in violation of 42 U.S.C. § 1983.

207. The City's implementation of the State policy in the Statute violates the disparate impact standard under 42 U.S.C. § 3604(a) by perpetuating racial segregation and by causing a disproportionate adverse effect on a predominantly Black group, voucher households. The City's ordinance implementing the State policy in the Statute is an artificial, arbitrary and unnecessary barrier to integrated housing that is not necessary to serve any legitimate government interests. There are less discriminatory alternatives to the State policy in the Statute and to the City's ordinance adopting the State policy.

208. The City of Dallas implementation of the State policy set out in the Statute violates

42 U.S.C. § 3615 because the Statute and City ordinance implementing the Statute permit actions that are discriminatory housing practices that make housing units unavailable in violation of 42 U.S.C. § 3604(a) and perpetuate racial segregation in violation of 42 U.S.C. § 3604(a). The City of Dallas ordinance also violates 42 U.S.C. § 3615 by permitting landlords to engage in discriminatory housing practices through refusing to rent to voucher households even though there are no legitimate business reasons for the decision.

209. The Statute directly nullifies HUD's 42 U.S.C. § 5304(b)(2) statutory authority to implement a specific remedy for racial segregation. Texas cities are prohibited by the Statute from making a good faith determination whether to comply with 42 U.S.C. § 5304 (b)(2) by enacting an ordinance prohibiting voucher discrimination. The only choice the cities have under the Statute is to reject the enactment of any such ordinance. This is in direct conflict with the Congressional direction that in those cities receiving CDBG funds, the city will affirmatively further fair housing. 42 U.S.C. § 5304 (b). The Statute violates the Supremacy Clause of the United States Constitution, Article VI and is preempted by 42 U.S.C. § 5304 (b). The Court has the equitable power to enjoin unlawful actions by public officers. The enforcement of the Statute is such an unlawful action. As required by the Statute, the City of Dallas is currently implementing the Statute. Paragraphs 5, and 157 - 173 of this complaint are incorporated by reference.

210. The State, acting through its legislators and executive officials, enacted the Statute in violation of the Supremacy Clause of the United States Constitution, Article VI, and for the purpose of denying equal protection of the laws because of race and color. Paragraphs 76 through 113 are incorporated by reference. There is no compelling governmental purpose or legitimate reason for a statute that is preempted under the Supremacy clause. The Statute violates the 14th

Amendment to the United States Constitution. The Court has the equitable power to enjoin unlawful actions by public officers. The enforcement of the Statute is such an unlawful action. As required by the Statute, the City of Dallas is currently implementing the Statute. Paragraphs 5, and 157 - 173 of this complaint are incorporated by reference. ICP has a cause of action pursuant to 42 U.S.C. § 1983 to enforce the 14th Amendment to the U.S. Constitution against the implementation of the Statute.

Prayer for relief

211. Plaintiff seeks the following relief including such other affirmative action as may be appropriate under 42 U.S.C. § 3613(c)(1):

- a) a declaratory judgment that the Statute violates 42 U.S.C. § 3604(a) and the Equal Protection Clause of the 14th Amendment;
- b) a declaratory judgment that the Statute violates 42 U.S.C. § 3604(a) and is to that extent invalid under 42 U.S.C. § 3615;
- c) a declaratory judgment that the Statute is preempted by 42 U.S.C. § 5304 (b)(2) and violates the Supremacy Clause of the United States Constitution, Article VI and that the City ordinance implementing the Statute is preempted by 42 U.S.C. § 5304 (b)(2) and violates the Supremacy Clause of the United States Constitution, Article VI;
- d) an injunction requiring the City of Dallas to delete the phrase “except as prohibited by Texas Local Government Code, Section 250.007, as amended.” from the definition of Source of Income in the City of Dallas Fair Housing Ordinance;
- e) any other appropriate affirmative injunctive relief against the City of Dallas
- f) an award of attorney fees, litigation expenses, and court costs; and
- g) any other relief appropriate under the facts and law.

Respectfully Submitted,

/s/ Michael M. Daniel
Michael M. Daniel
State Bar No. 05360500
DANIEL & BESHARA, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9230
Fax 214-741-3596
E-mail: daniel.michael@att.net
Attorney for Plaintiff

Laura B. Beshara
State Bar No. 02261750
DANIEL & BESHARA, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9230
Fax 214-741-3596
E-mail: laurabeshara@swbell.net
Attorney for Plaintiff

Certificate of service

I hereby certify that on October 10, 2017, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system will send a “Notice of Electronic Filing” to the following individual who has consented in writing to accept this Notice as service of this document by electronic means: Adam Bitter; Benjamin L. Dower; Charles Estee; Justin Henry Roy.

s/ Michael M. Daniel