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COOK COUNTY PREVENTS SOURCE OF INCOME DISCRIMINATION FROM BEGETTING UNLAWFUL RACE DISCRIMINATION AND SO SHOULD ILLINOIS

by JONATHAN SHEFFIELD

In May 2013, Cook County amended its human rights ordinance to prohibit discrimination against Housing Choice Voucher holders.¹ Specifically, the amended ordinance prohibits landlords from denying housing applications on the basis that an applicant pays rent with a Housing Choice Voucher (HCV).² This prohibition will have positive implications for all HCV holders, particularly HCV holders who are people of color,³ because landlords in Cook

County may have been using lawful discrimination against HCV holders as a proxy for unlawful race discrimination.⁴ Moreover, source of income (SOI) discrimination disparately impacts people of color.⁵ Therefore, in order to promote fair housing choice, Illinois should prohibit SOI discrimination, without exception, in all Illinois municipalities, most of which have a legal obligation to promote fair housing choice under the federal Fair Housing Act and Department of Housing and Urban Development regulations.

SOURCE OF INCOME DISCRIMINATION AND ITS EFFECTS ON HCV HOLDERS

When landlords refuse to screen HCV holders on the same basis as non-HCV holders, they discriminate based on SOI.⁶ In jurisdictions with complete SOI protection, landlords may not refuse to process an application simply because the applicant pays rent with an HCV.⁷ That being said, HCV holders must still meet the landlord's legitimate criteria in order to be eligible to rent a particular unit.⁸ For instance, even in jurisdictions with SOI protection, HCV holders must meet a landlord's credit and criminal background standards.⁹

SOI discrimination limits housing choice for HCV holders—people whose low-income already narrows their housing options—and relegates HCV holders to disadvantaged neighborhoods.¹⁰ HCV holders who want to leave high-poverty, distressed neighborhoods are prevented from doing so when landlords in higher opportunity neighborhoods¹¹ categorically refuse to rent to HCV holders.¹² Landlords who do rent to HCV holders often steer HCV holders away from opportunity neighborhoods.¹³ There are significant negative effects associated with forcing people to stay in high-poverty neighborhoods with failing schools, distressed housing, high crime and no work.¹⁴ People living in disadvantaged neighborhoods with high levels of poverty generally have poorer health outcomes, lower levels of academic achievement, fewer employment opportunities, heightened vulnerability to gang recruitment, and greater exposure to violence relative to otherwise-comparable people living in more advantaged neighborhoods.¹⁵ Hence, in the absence of true revitalization efforts for high-poverty neighborhoods, housing mobility for HCV holders is crucial for their well-being.¹⁶

Although SOI discrimination is often difficult to detect,¹⁷ municipal ordinances which ban SOI discrimination make it harder for landlords to discriminate based on SOI.¹⁸ Fair housing advocacy organizations in Cook County,

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which include Metropolitan Tenants Organization, Open Communities, and Chicago Lawyers' Committee for Civil Rights Under Law, monitor Cook County landlords for SOI discrimination and help HCV holders file complaints against landlords who discriminate based on SOI.¹⁹

ILLINOIS SHOULD FORBID SOI DISCRIMINATION BECAUSE SOI DISCRIMINATION IS OFTEN USED AS A PROXY FOR RACIAL DISCRIMINATION

Housing advocates suspect many landlords refuse HCV applications as a proxy for intentional race discrimination.²⁰ Advocates believe many landlords categorically refuse HCV holders in order to prevent African Americans from moving into their building, community or municipality.²¹ But even if landlords refuse to rent to HCV for non-discriminatory reasons, the effect of many landlords categorically refusing to rent to HCV holders has a disparate impact on minorities.²² Moreover, housing advocates believe Illinois and its municipalities have effectively allowed SOI discrimination to act as a proxy for race discrimination by permitting SOI discrimination to occur.²³ Hence, outlawing SOI discrimination throughout all of Illinois may be necessary to effectively outlaw and prevent race discrimination in specific Illinois municipalities.

For instance, Glenview, a Cook County suburb, has attempted to nullify the County's recently amended ordinance by adopting its own ordinance.²⁴ Glenview's ordinance repeals protection for HCV holders.²⁵ Glenview claims this is necessary to restore choice for landlords who may not want to rent to HCV holders because it would require the landlord to participate in the HCV program.²⁶ However, the premise of Glenview's retaliatory ordinance may be paradoxical, since discrimination against HCV holders restricts housing choice for people trying to leave high poverty areas, often resulting in poorer outcomes in the areas of health, employment and education, to name a few.²⁷

Toni Preckwinkle, President of Cook County's Board of Commissioners, contends that Glenview's move is not supported by Illinois law.²⁸ She notes that Glenview purports to be exercising its home rule authority, but she claims the Illinois Human Rights Act has explicitly prohibited Glenview from enacting an ordinance that limits housing choice.²⁹ If it remains in effect, Glenview's ordinance would allow Glenview landlords—those who intend to discriminate—to continue preventing African Americans from moving into Glenview, which is currently only one percent black.³⁰

In order to prevent race discrimination by way of HCV discrimination, Illinois should adopt SOI protection statewide. Although Chicago and Cook County have taken steps to prevent landlords from engaging in by-proxy race discrimination, SOI discrimination is likely just as prevalent in other counties in Illinois as well.³¹ Furthermore, Illinois has considered adopting SOI protection state-wide, but the bill remains indefinitely stalled in the Illinois House.³²

Illinois should adopt SOI protection in order to promote fair housing for African Americans.³³ Jurisdictions that receive funding from the Department of Housing and Urban Development (HUD) have a responsibility to affirmatively further fair housing for classes of people who are protected under the Fair Housing Act (FHA).³⁴ African Americans are part of a protected class under the FHA.³⁵ Furthermore, Illinois and many of its municipalities receive HUD funding.³⁶ In furtherance of this duty, HUD has required some HUD funded municipalities to adopt SOI protection where SOI discrimination has impeded fair housing choice for FHA protected classes in that municipality.³⁷ Furthermore, when HUD finds a municipality noncompliant with this duty, HUD may cut-off funding to that municipality.³⁸

Hence, to promote fair housing for racial minorities, and to prevent unnecessary but justifiable HUD intervention, Illinois should adopt SOI protection. If Illinois were to follow Cook County's lead—prohibiting SOI discrimination without exceptions—Illinois would deter unlawful racial discrimination statewide and thereby aid many municipalities in meeting their fair housing obligations.

NOTES

1 *Cook County, Illinois Adds Voucher Holders as Protected Class*, NAT. LOW INCOME HOUS. COAL. (May 17, 2013) <http://nlihc.org/article/cook-county-illinois-adds-voucher-holders-protected-class>. Cook County, which already prohibited landlords from discriminating against housing applicants with government subsidies, repealed its one exception to that general rule. The exception allowed landlords to openly discriminate against people paying with Housing Choice Vouchers. Housing Choice Vouchers, formerly known as Section 8 tenant-based assistance, are tenant-based portable rent subsidies that families with low income can use in seeking private rental housing. See James A. Riccio, *Subsidized Housing and Employment: Building Evidence About What Works to Improve Self-Sufficiency* 3 n.5 (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-6, 2007), available at <http://www.jchs.harvard.edu/research/publications/subsidized-housing-and-employment-building-evidence-about-what-works-improve> (explaining Section 8 program is now called Housing Choice Voucher program).

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2 See Fact Sheets, Chi. Area Fair Hous. Alliance, Cook County: New Rights for Housing Choice Voucher Holders (2013), <http://www.cicchicago.com/wp-content/uploads/2013/06/Sec-8-Fact-Sheets-Eff-August-8-2013.pdf> [hereinafter Fair Housing Alliance Fact Sheet] (explaining that since 1993 Cook County's Source of Income Protection excluded Housing Choice Vouchers).

3 See *infra* notes 20–22 and accompanying text.

4 See *infra* note 23 and accompanying text.

5 See *infra* note 22 and accompanying text.

6 Fair Housing Alliance Fact Sheet, *supra* note 2.

7 *Id.* Specifically, SOI protection means individuals may not, because of a person's source of income: refuse to sell or rent, negotiate for sale or rental, or otherwise make unavailable or deny a dwelling; impose different terms, conditions, privileges, or services; make discriminatory statements or publish discriminatory communications with respect to the sale or rental of a dwelling; lie about the availability of a dwelling; or steer (show units in an area on the basis of source of income).

8 *Id.*

9 *Id.*

10 Jessica Luna & Josh Leopold, *Landlord discrimination restricts the use of rental vouchers*, URBAN INST. METRO TRENDS BLOG (Jul 22, 2013), <http://blog.metrotrends.org/2013/07/landlord-discrimination-restricts-rental-vouchers/>; see also LOCKED OUT: BARRIERS TO CHOICE FOR HOUSING VOUCHER HOLDERS, LAWYERS' COMM. FOR BETTER HOUS. 3 (2002), <http://lcbh.org/images/2008/10/housing-voucher-barriers.pdf> [hereinafter LCBH Report] (finding the pool of rental housing available for voucher holders in the Chicago area is drastically reduced by systemic and illegal discrimination).

11 Generally recognized as neighborhoods with above average schools, employment rates and housing conditions and below the city's average rates for crime and property vacancy (both residential and commercial). See, e.g., *Mobility Counseling Program*, CHI HOUS. AUTH., http://www.thecha.org/pages/mobility_counseling/2639.php (last visited Apr 27, 2014) ("A CHA Opportunity Area is a census tract with less than 20% of its individuals with income below the poverty level and a low concentration of subsidized housing. Some census tracts with low poverty, moderate subsidized housing, and improving community economic characteristics are also designated as Opportunity Areas.").

12 See, e.g., *Woman alleges housing voucher discrimination in pricey Chicago buildings*, CHI. PUB. MEDIA (Apr. 14, 2014) <http://www.wbez.org/news/woman-alleges-housing-voucher-discrimination-pricey-chicago-buildings-110023> (reporting story about African-American mother with two small children who was trying to move to a higher opportunity Chicago neighborhood but was turned away by landlords on account of her HCV).

13 See FAIR HOUSING TESTING AND SURVEY PROJECT, CHI. LAWYERS' COMM. FOR CIVIL RIGHTS UNDER LAW 18 (2014), available at <http://cafha.net/wp-content/uploads/2014/02/CLCCRUL-CHA-testing-report.pdf> [hereinafter CHI. LAWYERS' COMM. REPORT] (finding rental agents, using several methods, tended to steer HCV holders to more diverse neighborhoods and away from more affluent and less diverse neighborhoods).

14 George C. Galster et al, *The Social costs of Concentrated Poverty: Externalities to Neighboring Households and Property Owners and the Dynamics of Decline* 3 (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-4, 2007), available at <http://www.jchs.harvard.edu/research/publications/social-costs-concentrated-poverty-externalities-neighboring-households-and>; see also MARY CUNNINGHAM ET AL, *Improving Neighborhood Location Outcomes in the Housing Choice Voucher Program: A Scan of Mobility Assistance Programs, What Works Collaborative* 1 (2010), available at <http://www.urban.org/publications/412230.html> ("neighborhoods

matter for families. Research shows that helping families leave high-crime, dangerous neighborhoods translates into immediate and significant improvements in their lives. Personal safety is a key factor, as is an improvement in mental health . . . Neighborhood location influences where children go to school, access to employment for adults . . . and proximity to such amenities as supermarkets, parks, and open spaces. Further, neighborhood location also affects exposure to environmental hazards and access to clean air and water, particularly for low-income households.” (internal citations omitted); Stuart Rosenthal, *Where Poor Renters Live in Our Cities 2* (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-2, 2007), available at <http://www.jchs.harvard.edu/research/publications/where-poor-renters-live-our-cities> (concentrating people who have low income into low-income neighborhoods reduces access to middle-income amenities such as schools and job networks).

15 CUNNINGHAM, *supra* note 14, at 1.

16 See generally Rosenthal, *supra* note 14, at 1 (discussing different housing policies designed to improve rental opportunities for people with low-income, one focusing on place-based construction programs and the other on tenant-based voucher programs); see also George C. Galster et al, *The Social costs of Concentrated Poverty: Externalities to Neighboring Households and Property Owners and the Dynamics of Decline* 43 (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-4, 2007), available at <http://www.jchs.harvard.edu/research/publications/social-costs-concentrated-poverty-externalities-neighboring-households-and> (demonstrating that “major gains in net social well-being would ensue were we to enact programs that fought exclusionary zoning, concentrations of subsidized housing, and “NIMBY” responses to proposed developments of assisted housing (Galster et al., 2003), and instead promoted inclusionary zoning, mixed-income developments, and mobility counseling for recipients of rental vouchers.”). Notably, existing place-based federal housing programs to improve neighborhoods—such as HUD’s Choice Neighborhoods Initiative and the U.S. Department of Education’s Promise Neighborhoods program—are designed to remedy conditions that make housing mobility necessary, but these programs are newly developed and not funded for realistically revitalizing all disadvantaged neighborhoods nation-wide. See ROBIN SMITH, HOW TO EVALUATE CHOICE AND PROMISE NEIGHBORHOODS, URBAN INST. 1 (2011), available at <http://www.urban.org/UploadedPDF/412317-Evaluate-Choice-and-Promise-Neighborhoods.pdf> (“Both programs are place-based initiatives intended to transform neighborhoods by coordinating improvements across multiple sectors, such as housing, education, employment, transformation, and health.”).

17 SOI discrimination, although pervasive, can be difficult to detect. See generally LCBH Report, *supra* note 9 (discussing unexpected prevalence of SOI discrimination throughout Chicago). SOI discrimination is easier to detect when landlords tell tenants they will not rent to Housing Choice Voucher holders; post signs that say “Section 8 not accepted;” or decide not to renew an HCV holder’s lease because the landlord does not want to “deal with section 8 inspections anymore.” Covert SOI discrimination is more difficult to detect, hence much of it may go unreported. See Manny Fernandez, *Bias Is Seen as Landlords Bar Vouchers*, N.Y. TIMES (Oct. 30, 2007), <http://www.nytimes.com/2007/10/30/nyregion/30section.html?pagewanted=all> (reporting statement by then-councilman, now-mayor de Blasio who said that much of SOI discrimination goes unreported); see also LCBH Report, *supra* note 9 at 6 (“Discrimination based on the voucher, though known anecdotally to housing agencies, has not previously been studied.”).

18 See *Questions (and answers) about new Cook County Section 8 guidelines*, Ill. Assoc. of Realtors, <http://www.illinoisrealtor.org/legal/issues/section8> (last visited Apr. 19, 2014) (explaining the rental application processing criteria and methods landlords may or may not use without violating SOI protection).

19 See *Tenants’ Rights Hotline*, Metro. Tenants Org., <http://www.tenants-rights.org/programs/citywide-tenants-rights-hotline/> (last visited Apr. 20, 2014) (advertising MTO hotline volun-

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teers answer questions on a range of tenants' rights issues); *Fair Housing*, Open Communities, http://www.open-communities.org/Programs/Fair_Housing/ (last visited Apr. 20, 2014) (offering education about fair housing laws, claim investigation, assistance in filing a fair housing complaint and referral services); *Fair Housing & Lending Project*, Chi. Lawyers' Comm. For Civil Rights Under Law, <http://www.clccrul.org/fair-housing> (last visited Apr. 20, 2014) (announcing the Committee's Fair Housing Project offers education, advocacy, investigation, referral and representation services aimed at eliminating housing discrimination based on source of income, among other forms of discrimination).

20 Interview with John Bartlett, Exec. Dir., Metro. Tenants Org., MTO Office (Feb. 26, 2014) ("HCV discrimination is also tied to race. People of color use Government subsidies. Landlords use HCV as a race discrimination proxy to prevent minorities from moving into predominantly white communities."); see also Fernandez, *supra* note 17 (reporting statement by Bertha Lewis, executive director of New York community organizing group Acorn, who said, "this is really about gentrifying neighborhoods and the fact that this is a way for landlords to do race and gender discrimination"); Rebecca Tracy Rotem, *Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program*, 78 *Fordham L. Rev.* 1971, 1981 (2010) ("Discrimination against Section 8 voucher holders can be used as a proxy for racial discrimination because many recipients are minorities. Discrimination against the poor and discrimination against minorities are intertwined: Because most urban poor are African American, and because the vast majority of African Americans live in residential ghettos, this economic bias transforms itself into racial attitudes. Race thus becomes a proxy, such that being a Black equates with being a poor tenant or poor neighbor. And neighborhoods must keep these poor (black) individuals out, lest their neighborhoods become 'ghetto-like' too. Class-based discrimination and race-based discrimination have become combined. This is one reason that Section 8 discrimination can be a proxy for race discrimination.") (internal citations and quotations omitted).

21 See Gail Schechter, Exec. Dir., Open Communities, letter to Cook County President Toni Preckwinkle (2013), available at <http://glenview.patch.com/groups/politics-and-elections/p/north-shore-nonprofit-challenges-glenviews-landlord-ordinance> [hereinafter Open Communities Letter] ("Given that voucher holder discrimination is often used as a cover for discrimination against race [sic] (primarily Black) . . . and Glenview is only one percent Black, Glenview's new ordinance is a barrier to open, integrated housing in the Village.").

22 Rotem, *supra* note 20, at 1981 n.70; Toni Preckwinkle, President, Cook County Board of Commissioners, letter to Ms. Schechter regarding Cook County's Efforts to Affirmatively Further Fair Housing (Sept. 19, 2013), <http://www.tenants-rights.org/cook-county-responds-to-glenview-landlord-ordinance-concerns/> [hereinafter Toni Preckwinkle Letter] ("Studies have repeatedly found that source of income is used as a proxy for other forms of illegal discrimination based on race, familial status, disability, and age; while withdrawing from the program may appear to be a neutral act, it disproportionately affects a protected class[.]"); see also Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 *Harv. C.R.-C.L. L. Rev.* 155, 159 (1996) ("The Section 8 program's minimal success in promoting integration is attributable to the wide-spread discrimination against prospective Section 8 tenants by private landlords, [which] . . . can create large concentrations of Section 8 recipients, often resulting in slum conditions and community resentment."); LCBH Report, *supra* note 9, at 11 (finding voucher holders of color more likely to be discriminated against than white HCV holders); Laura Bacon, *Godinez v. Sullivan-Lackey: Creating A Meaningful Choice for Housing Choice Voucher Holders*, 55 *DePaul L. Rev.* 1273, 1280 (2006) (citing the LCBH report and noting increased discrimination against Black and Latino HCV holders reduces the number of housing

units available to Black and Latino voucher-holders to a larger extent than for white HCV holders).

23 See Betsy Shuman-Moore, *End Discrimination Against Housing Choice Vouchers* (May 4, 2012), <http://clccrul.raceandpoverty.org/node/32548> (finding Cook County's HCV exemption from SOI protection to be damaging because landlords often refuse to rent to voucher holders as a pretext for other types of illegal discrimination, such as race).

24 Alexandra Chachkevitch, *Advocates complain to county about Glenview housing measure*, *Chi Tribune* (Aug. 28, 2013), http://articles.chicagotribune.com/2013-08-28/news/ct-met-glenview-housing-complaint-20130829_1_glenview-officials-lynn-stiefel-fair-housing-act.

25 *Id.*

26 *Id.*

27 See *supra* notes 10–13 and accompanying text (discussing the effect of SOI discrimination on HCV holders).

28 Toni Preckwinkle Letter, *supra* note 22.

29 See Illinois Human Rights Act, 775 ILL. COMP. STAT. 5/7-108 (2012), available at <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2266&ChapterID=64> (authorizing any municipality or county to prohibit broader or different categories of discrimination than the Illinois act, and stating that any ordinance, resolution, rule or regulation which prohibits, restricts, narrows or limits the housing choice of any person shall be void and unenforceable).

30 Open Communities Letter, *supra* note 21.

31 See *infra* notes 21–22 and accompanying text (explaining conditions under which SOI discrimination acts as proxy for race discrimination, none of which are particular to Chicago).

32 See *Bill Status of HB1551 (Human Rights-Source of Income)*, ILL. GEN. ASSEMBLY (Jan. 8, 2013), <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1551&GAID=11&DocTypeID=HB&SessionID=84&GA=97>. The bill was referred to the House Rules Committee in 2011, and on January 8, 2013 the House adjourned discussion on the proposed amendment without setting a date for finishing the discussion. *Id.*

33 See CHI. LAWYERS' COMM. REPORT, *supra* note 9, at 3 (“Widespread refusal to rent to HCV holders [in Chicago], particularly African-American HCV holders, and steering them away from opportunity areas, are serious obstacles to fair housing and integration.”).

34 This responsibility of HUD funded jurisdictions—almost all municipal governments—extends from HUD's own duty under the Fair Housing Act. 42 U.S.C. § 3608(e)(5) (2011).

35 42 U.S.C. § 3604 protects African Americans from discrimination based on race. 42 U.S.C. § 3604 (2011).

36 See Kate brown et al, *State of Illinois Analysis of Fair Housing Impediments*, UNIV. OF ILL. AT URBANA-CHAMPAIGN, App. 6-1 (2009), http://www.ihda.org/government/documents/2009/afhifinal_000.pdf (listing Illinois municipalities that received HUD funding in fiscal year 2008).

37 See e.g., *Program Review, Affirmatively Furthering Fair Housing at HUD: A First Term Report Card*, POVERTY & RACE RESEARCH ACTION COUNCIL, Part II, 3-5 (2013), <http://www.prrac.org/pdf/HUDFirstTermReportCardPartII.pdf> (discussing HUD and Westchester settlement that requires Westchester County to adopt source of income protection).

38 See MOLLY SCOTT ET AL, *EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM*, URBAN INST. 82–83 (2013), available at <http://www.urban.org/UploadedPDF/412745-Expanding-Choice.pdf> (“HUD has already begun to make important reforms, but you can encourage it to do more by taking steps within its statutory authority to use its fair housing enforcement authority to investigate discrimination against voucher holders in jurisdictions where it is banned, and in areas where such discrimination has an obvious discriminatory racial impact”).