

APL-2026-00035

Supreme Court, Tompkins County Index No. EF2022-0558
Appellate Division, Third Department Case No. CV-23-1255

Court of Appeals
of the
State of New York

PEOPLE OF THE STATE OF NEW YORK,

Petitioner-Appellant,

– against –

COMMONS WEST, LLC; COLLEGETOWN PLAZA, LLC; CITYVIEW, LLC;
COLLEGETOWN CENTER, LLC; COLLEGETOWN COURT, LLC; FANE ENTERPRISES,
INC.; AND JASON H. FANE, individually and d/b/a Ithaca Renting Company; and as
the sole member of Commons West, LLC, Collegetown Plaza, LLC, Cityview,
LLC, Collegetown Center, LLC, and Collegetown Court, LLC; and as president,
director, and shareholder of Fane Enterprises, Inc.,

Respondents-Respondents.

**BRIEF OF PROPOSED AMICI CURIAE SAFE HORIZON, INC.
AND CONGREGATIONS LINKED IN URBAN STRATEGY TO
EFFECT RENEWAL, INC. IN SUPPORT OF APPELLANT**

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DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

Pursuant to Court of Appeals Rule 500.1(f):

Safe Horizon, Inc. states that it is a nonprofit corporation with no parent corporation or subsidiaries.

Congregations Linked in Urban Strategy to Effect Renewal, Inc. states that it is a nonprofit corporation with no parent corporation or subsidiaries.

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INTRODUCTION

Over 249,000 New York families depend on Housing Choice Vouchers (also known as Section 8 vouchers) to pay their rent and avoid homelessness. Section 296(5)(a)(1) of the New York State Human Rights Law (NYSHRL) forbids landlords from refusing to rent to tenants based on their lawful source of income, including Section 8 vouchers. However, numerous landlords and brokers still refuse Section 8, either explicitly or for pretextual reasons, seeking to avoid the Section 8 program's habitability requirements or rejecting voucher holders based on stereotyped views of low-income renters.

In the proceedings below, Respondents (the Landlords) sought to justify their refusal of Section 8 vouchers by alleging a fear of unconstitutional searches of their rental units and their rental records. However, they did not identify even one specific instance, in Ithaca or elsewhere, where a state actor compelled a landlord to permit a warrantless inspection or sought to penalize a landlord for failing to consent to a warrantless or otherwise unreasonable search under the Section 8 program. Simply put, the Landlords failed to demonstrate that the NYSHRL threatens any interests protected by the Fourth Amendment and Article I, Section 12 of the New York Constitution.¹ Their claims boil down to a speculative assertion that the government

¹ The Landlords do not allege that the New York Constitution imposes a different standard in this regard than the Fourth Amendment. This brief uses the shorthand "Fourth Amendment" to refer to both constitutional provisions.

will act unconstitutionally in the future. Disregarding the Supreme Court’s admonition not to “speculate about ‘hypothetical’ or ‘imaginary’ cases,”² the Appellate Division affirmed the trial court’s ruling that the NYSHRL’s source-of-income protections as to Section 8 vouchers are facially unconstitutional. The Appellate Division’s decision was grounded in a flawed understanding of the Section 8 program, facial constitutional challenges, and the Fourth Amendment, and this Court should reverse it.

Over half of the New Yorkers with Section 8 vouchers live in New York City. Amicus curiae Safe Horizon, Inc. (SafeHorizon) serves a particularly vulnerable subset of this population: homeless and unstably housed youth. Its clients rely on the NYSHRL and the New York City Human Rights Law (NYCHRL)’s analogous source-of-income protections to use their vouchers. Amicus curiae Congregations Linked in Urban Strategy to Effect Renewal, Inc. (CLUSTER) is one of the many organizations working with Section 8 participants who are protected by the NYSHRL in the rest of the state. In Westchester County, where CLUSTER operates, the Westchester County Human Rights Law also protects Section 8 participants. Even with these laws in place, landlords and brokers continue to refuse to rent to Section 8 participants. But the protections provide recourse to voucher holders, and they can assert their rights to obtain fair consideration of their rental applications and

² *Wash. State Grange v Wash. State Republican Party*, 552 US 442, 450 [2008].

compel acceptance of their vouchers. If this Court allows the Landlords’ speculative claims about Section 8 inspections to invalidate the NYSHRL’s protections, SafeHorizon’s and CLUSTER’s clients—and hundreds of thousands of other New Yorkers—will have far more difficulty using their vouchers before the vouchers expire. Many will lose their vouchers and remain homeless or unstably housed indefinitely.

This amicus brief focuses on three reasons (out of many) why this Court should reject the Landlords’ facial challenge to Section 296(5)(a)(1) and reverse the Appellate Division. First, Section 296(5)(a)(1) has clear constitutional applications. Second, the Section 8 Housing Assistance Payments (HAP) contract does not waive landlords’ Fourth Amendment rights. Because the HAP contract only permits reasonable inspections of a landlord’s property and records, requiring landlords to sign it does not violate the Fourth Amendment. Third, for the administrative searches that could conceivably occur under the Section 8 program, the HAP contract itself provides landlords participating in the Section 8 program with the required opportunity for “precompliance review” of any search demand.³

³ Amici also agree with the State’s argument that the New York rental housing market is a closely regulated industry, but this Court need not reach this issue.

STATEMENT OF INTEREST

Founded in 1978, SafeHorizon is a nonprofit organization that serves under-resourced and vulnerable New Yorkers, including those who are homeless, unsheltered, or unstably housed due to domestic violence, abuse, and other forms of violence. Through its Streetwork Project, SafeHorizon serves homeless, unsheltered, and unstably housed youth. Among other services, the Streetwork Project provides housing navigators who assist clients with locating housing opportunities and the housing application and move-in process. The Streetwork Project alone has served over 200 clients with Section 8 vouchers. Once clients are accepted by a landlord, housing navigators help their clients do the paperwork necessary to complete the rental and the subsidy approval process. When clients are rejected due to source-of-income discrimination, they stay homeless longer, and their vouchers may expire and be permanently lost.

SafeHorizon staff members frequently encounter source-of-income discrimination against clients with vouchers, including Section 8. Some brokers and landlords overtly refuse to rent to people with vouchers; others use pretexts to cloak their refusal to accept vouchers. SafeHorizon has found that source-of-income discrimination is often a cover or proxy for other types of discrimination, as the population of voucher holders overlaps considerably with the populations of other marginalized groups. While source-of-income discrimination remains a major issue,

the prohibitions on source-of-income discrimination have had significant and concrete benefits. For example, when SafeHorizon encounters source-of-income discrimination, it starts by attempting to educate the landlord, broker, or management company. It frequently shares pamphlets and factsheets prepared by the New York City Commission on Human Rights and other agencies. Often, this is enough to get the landlord, broker, or management company to reconsider. If its initial efforts are unsuccessful, SafeHorizon seeks legal advice, provides relevant court decisions to the landlord's attorney, and enlists a lawyer's assistance in contacting the landlord, broker, or property manager to explain their legal obligations. This more assertive invocation of source-of-income protections frequently works. And when SafeHorizon filed a lawsuit containing source-of-income discrimination claims under the NYCHRL and NYSHRL, the lawsuit⁴ resulted in the Section 8 voucher holder plaintiffs being approved for apartments and an agreement to connect other SafeHorizon clients with future available apartments.

CLUSTER's Housing Resource Center provides services to tenants to prevent evictions and improve housing conditions. For over twenty years, it has worked with low- and moderate-income Yonkers residents. Many of its clients are Section 8 participants who struggle to find safe and habitable apartments. Tenants facing

⁴ *Safe Horizon, Inc. et al. v 3823 Carpenter Ave LLC et al.*, Index No. 450373/2023 [Sup Ct, NY County].

eviction merely based upon lease expiration have difficulties securing alternative housing before their court-imposed eviction date; this difficulty is amplified for a household seeking to move with a voucher and facing source-of-income discrimination. Discrimination may result in the family permanently losing its voucher. Before Westchester County and the State amended their Human Rights Laws to protect Section 8 recipients, CLUSTER's clients had no recourse against such discrimination.

The continued prevalence of source-of-income discrimination in the face of protections in New York City (in place since 2008) and New York State (in place since 2019) suggests that, were source-of-income protections to be invalidated, many landlords would refuse to rent to Section 8 voucher holders, and Section 8 voucher holders would have significantly fewer housing options (*see, e.g., Council of the City of New York, Committee Report of the Governmental Affairs Division on Proposed Int. No. 61-A* at 6–7 [Mar. 26, 2008], available at <https://tinyurl.com/wkcr7rex> [last accessed August 12, 2026] [describing results of two tests asking landlords if they accepted Section 8 vouchers; in one, only 16 of 121 available apartments were available to Section 8 voucher holders]). Permitting discrimination against Section 8 voucher holders would not only result in New Yorkers like SafeHorizon's and CLUSTER's clients remaining homeless or unstably housed for longer (or permanently); it would also undermine the Section 8 program's

goals of aiding “low-income families in obtaining a decent place to live” and promoting “economically mixed housing” (42 USC § 1437f [a]).

ARGUMENT

The Appellate Division held that Section 296(5)(a)(1) of the NYSHRL is facially invalid under the Fourth Amendment (R.3114). This amicus brief discusses three reasons why this holding was wrong: (1) there are constitutional applications of Section 296(5)(a)(1); (2) the compelled signing of the HAP contract does not violate the Fourth Amendment; (3) and landlords participating in the Section 8 program have numerous avenues to obtain the required “precompliance review” of any search demand before facing a penalty for failing to comply, including through the process established by the HAP contract itself.

I. The Standard for a Facial Challenge

To prevail on a facial challenge, a party must establish that “in any degree and in every conceivable application, the law suffers wholesale constitutional impairment” (*Cuomo v N.Y. State Commn. on Ethics & Lobbying in Govt.*, 44 NY3d 141, 149 [2025], quoting *White v Cuomo*, 38 NY3d 209, 216 [2022]). The challenger must demonstrate beyond a reasonable doubt that “no set of circumstances exists under which the Act would be valid” (*Moran Towing Corp. v Urbach*, 99 NY2d 443, 448 [2003], quoting *United States v Salerno*, 481 US 739, 745 [1987]).

A facial challenge “requires the court to examine the words of the statute on a cold page and without reference to the defendant’s conduct” (*People v Stuart*, 100 NY2d 412, 421 [2003]). Put differently, a facial challenge must be based solely on the text of the challenged law itself (i.e., the question for the court is whether the law may ever be applied constitutionally), while an as-applied challenge alleges that the application of the law is unconstitutional under specific circumstances (i.e., the question for the court is whether some particular application of the law—a subset of its possible applications—is unconstitutional) (*see, e.g., Wash. State Grange*, 552 US at 449–50; *Salerno*, 481 US at 745). On a facial challenge, courts “look only to the bare facial requirements of the statute at issue and decline invitations to speculate about improbable imaginary cases” (*Hudson Shore Assocs. L.P. v New York*, 139 F4th 99, 107 [2d Cir 2025], quoting *Wash. State Grange*, 552 US at 450 [internal quotation marks omitted]). Fourth Amendment facial challenges are unlikely to succeed “when there is substantial ambiguity as to what conduct a statute authorizes” (*City of Los Angeles v Patel*, 576 US 409, 416 [2015], citing *Sibron v New York*, 392 US 40, 59, 61, n 20 [1968]).

II. The Fourth Amendment and Precompliance Review

The Fourth Amendment does not protect against all searches and seizures, only unreasonable ones (US Const amend IV; *see also* NY Const art I, § 12). When a subject seeks to preserve an area or sphere as private, and the expectation of

privacy is reasonable, “official intrusion into that private sphere generally qualifies as a search and requires a warrant” (*Carpenter v United States*, 585 US 296, 304 [2018]). If a subject does not have a reasonable expectation of privacy in a location or sphere, then there is no “search,” and no warrant is required (*see, e.g., Minnesota v Carter*, 525 US 83, 91 [1998]); *United States v Holland*, 755 F2d 253, 255 [2d Cir 1985]). In other circumstances, searches are deemed reasonable despite being conducted without a warrant. These include “searches pursuant to a regulatory scheme” that “need not adhere to the usual requirements where special governmental needs are present” (*Palmieri v Lynch*, 392 F3d 73, 79 [2d Cir 2004] [citation and internal quotation marks omitted]).

An administrative search—one that implicates special needs and is not intended to further a general interest in crime control—does not require a warrant to be reasonable, provided that other safeguards exist (*see Hudson Shore Assocs.*, 139 F4th at 108 [describing administrative search requirements]). Inspections and other searches under the Section 8 program are, at most, administrative searches.⁵ Their primary purpose is to ensure compliance with Housing Quality Standards (HQS) and other program requirements (*e.g.*, 24 CFR 5.703 [a]), and it would be impractical for

⁵ As will be discussed further below, the vast majority of Section 8 inspections are not searches because they do not intrude on any area or sphere where a landlord has a reasonable expectation of privacy.

a Public Housing Agency (PHA) administering thousands of vouchers to obtain a warrant every time it wished to conduct a search.

Warrantless administrative search schemes are permissible if the subject of a search has an opportunity, known as “precompliance review,” to have a neutral decisionmaker review the reasonableness of a search demand before facing penalties for failing to comply with it (*see Patel*, 576 US at 419, 421; *Hudson Shore Assocs.*, 139 F4th at 108). If precompliance review is available, there is no facial Fourth Amendment issue. *See Patel*, 576 US at 421.

The reason courts have invalidated some inspection ordinances is that the ordinances gave the subjects of the inspection no opportunity to exercise their Fourth Amendment rights. For example, in *Sokolov*, to obtain the permit needed to rent their units, the landlords had to allow an inspector (without a warrant) onto their private property (*Sokolov v Freeport*, 52 NY2d 341, 345 [1981]). The landlords’ consent was the only way that the inspection could occur and that penalties could be avoided (*id.*). They did not have an adequate opportunity to challenge the reasonableness of the search demand (*see Hudson Shore Assocs.*, 139 F4th at 109). Similarly, the ordinance in *Patel* required hotel owners to show police officers their registry on the spot or face criminal penalties (576 US at 421), while the ordinance in *Camara* required the tenant to immediately admit the inspector to his home or face a similar criminal consequence (*Camara v Mun. Ct. of San Francisco*, 387 US 523, 530

[1967]). In all of these cases, there was a direct, definite, and actual or imminent request for a search, and a direct, definite, and immediate punitive consequence if the subject did not consent to the search. On the other hand, when there is a pathway for a government entity to obtain a warrant or offer precompliance review, it can lawfully accomplish the search if the subject withholds consent (*see, e.g., Paschcow v Town of Babylon*, 53 NY2d 687, 688 [1981]; *Stender v Albany*, 188 AD2d 986, 987 [3d Dept 1992]; *see also Hudson Shore Assocs.*, 139 F4th at 109). When a municipality or agency can obtain a warrant or where a regulatory scheme provides precompliance review, there is an “escape valve” that avoids the rigid “consent or be penalized” paradigm that courts have found to be unconstitutional.

III. Section 296(5)(a)(1) has straightforward constitutional applications.

A law is facially valid if it has at least one valid application (*see Stuart*, 100 NY2d at 421–23). The Appellate Division correctly stated that a facial challenge inquiry focuses on the instances where a statute does “work,” not where it is irrelevant (R.3111, citing *Patel*, 576 US at 419). But it applied this standard incorrectly. Its analysis ignored, among other constitutional applications, numerous applications where Section 296(5)(a)(1) penalizes discrimination against Section 8 voucher holders in a manner that either has no connection to inspections or does not involve privacy interests protected by the Fourth Amendment (*cf. United States v Rahimi*, 602 US 680, 701 [2024] [reversing circuit court’s ruling on facial challenge

where, rather than considering the circumstances where a statute was most likely to be constitutional, it “instead focused on hypothetical scenarios where [the statute] might raise constitutional concerns”)).

First, Section 296(5)(a)(1) has a far broader sweep than the ordinances in *Camara*, *Sokolov*, and *Patel*: it prohibits any action by a landlord or its employee or agent that compels a Section 8 voucher holder to seek housing elsewhere because of their status as a Section 8 voucher holder (*see Tapia v Successful Mgt. Corp.*, 79 AD3d 422, 424 [1st Dept 2010] [applying the nearly identical NYCHRL]). The Appellate Division neglected to consider a whole universe of actions outside the inspection context where the statute applies and does “work” with no Fourth Amendment concerns.

For instance, a landlord’s refusal to comply with the administrative requirements of the Section 8 program has the same effect as an outright refusal to rent to a voucher holder and likewise violates Section 296(5)(a)(1) (*see, e.g., Rakhman v Alco Realty I, L.P.*, 81 AD3d 424, 425 [1st Dept 2011]; *Short v Manhattan Apts., Inc.*, 916 F Supp 2d 375, 398 [SD NY 2012]). Thus, a landlord that refuses to submit a Section 8 lead paint certification form violates the statute (*see Rakhman*, 81 AD3d at 425).

Moreover, landlords are liable under Section 296(5)(a)(1) for the discriminatory actions of their agents, including brokers (Executive Law § 296 [5]

[a]; *see Newson v Vivaldi Real Estate Ltd.*, 235 AD3d 147, 158 [1st Dept 2025]; *State Div. of Human Rights v Muia*, 176 AD2d 1142, 1144 [3d Dept 1991]].⁶ Therefore, even a landlord that ultimately rents a vacant unit to a Section 8 tenant faces liability if its agent first refused a different applicant because they sought to use a Section 8 voucher.

Second, even if the relevant scope of the facial challenge is inspections (and the related provisions of the HAP contract), Section 296(5)(a)(1) still does “work” that does not implicate any Fourth Amendment interests. It also prohibits a landlord from preventing a Section 8 inspection or refusing to sign a HAP contract where the landlord does not have a reasonable expectation of privacy in any sphere related to the Section 8 tenancy. These circumstances do not involve “work-arounds” (Respondents’ Brief 30–41): they are clear and direct applications of the statute.

For example, Section 296(5)(a)(1) would constitutionally penalize a landlord that prevents a voucher holder from using their voucher by impeding an inspection of a single-family home occupied by the voucher holder. The NYSHRL covers single-family residences (*see* Executive Law § 292 [10]), and a landlord has no

⁶ While acknowledging *Newson*, the Landlords miss the point that Section 296(5)(a)(1) is relevant to brokers because owners are vicariously liable for their agents’ discriminatory conduct (*see* Respondents’ Brief 29–30).

reasonable expectation of privacy, and therefore no Fourth Amendment interest, in a tenant's home (*Mangino v Inc. Vill. of Patchogue*, 739 F Supp 2d 205, 234 [ED NY 2010]). This constitutional application extends to the initial HQS inspection: a substantial percentage of Section 8 voucher holders use their vouchers to “lease in place,” meaning to rent the unit where they presently reside (*see Tapia*, 79 AD3d at 422).⁷

Building on this example, there are circumstances where Section 296(5)(a)(1) compels landlords to sign a HAP contract, but the landlord has no privacy interest that could conceivably be impacted by the contract. The simplest example involves a voucher holder who resides in a single-family home owned by a landlord who owns no other properties and only keeps a ledger regarding rents charged to that tenant.⁸

Section 296(5)(a)(1) would also constitutionally penalize a landlord that prevents an HQS inspection for a voucher holder-occupied unit in a multi-family building because the tenant has the authority to consent to the inspection (*see*

⁷ In 2023–24, The Legal Aid Society assisted nearly 200 Section 8 voucher holders with “leasing in place.”

⁸ As to larger landlords, landlords with rent-stabilized units do not have a privacy interest in their records concerning rents charged to other tenants, as they already report this information to the Division of Housing and Community Renewal (9 NYCRR 2528.3; *see Hotop v City of San Jose*, 982 F3d 710, 714–16 [9th Cir 2020]).

Mangino, 739 F Supp 2d at 234). The HQS inspection for the Housing Choice Voucher Program (HCVP) only covers “units occupied or to be occupied . . . and common areas and exterior areas which either service or are associated with such units” (24 CFR 5.705 [a]; *see also id.* § 5.703 [a]).⁹ In addition to the voucher holder’s unit, landlords have no expectation of privacy in any of the public areas that inspectors enter. Inspectors follow the HCVP inspection form, which does not require or even suggest that inspectors gain access to locked or private areas (*see Form HUD-52580-A*, available at <https://tinyurl.com/3tr823xy>). Inside the voucher holder’s unit, inspectors verify that building systems function properly by interviewing the tenant, observing whether a heater is adequate, and turning on a faucet to determine that the water heater is working (*e.g., id.* at ¶¶ 2.12, 3.11, 7.1). If inspectors cannot access the utility room, they should “check with the owner or manager to determine the date and outcome of the last [local public agency safety] inspection, or look for an inspection certificate posted on the heating system [or water heater]” (*id.* ¶¶ 7.2, 7.4). Outside the unit, inspectors only verify the physical condition of the exterior of the building and the common halls and stairs (*id.* ¶¶ 6, 8)—areas in which the landlord also lacks an expectation of privacy (*see Holland*, 755 F2d at 255–56).

⁹ These regulations specifically provide that the complete set of NSPIRE standards cited by the Landlords (Respondents’ Brief 40–41) does not apply to HCVP.

These examples illustrate that the Landlords’ challenge does not rest on “the words of the statute on a cold page” (*see Stuart*, 100 NY2d at 421). Rather, it “turns on the particular circumstances at hand” (*see Tineo v Attorney General*, 937 F3d 200, 210 [3d Cir 2019]), including Section 296(5)(a)(1)’s interaction with the Section 8 regulations and a series of “particular circumstances.” First, the Landlords’ particular circumstances—for example, that they own multiple multi-family properties.¹⁰ Second, the particular circumstances of the voucher holders whom the Landlords rejected—for example, that they were not already living in the units that they sought to use their vouchers to rent.¹¹ And third, the particular circumstances of Homes and Community Renewal (HCR), the Public Housing Authority that administers the complainants’ vouchers—for example, that HCR allegedly cannot seek or issue warrants.¹² The Landlords’ facial challenge fails.¹³

¹⁰ R.3108.

¹¹ *Id.*

¹² Respondents’ Brief 34.

¹³ The Landlords do not have a successful as-applied challenge, either. For starters, they have never accepted a Section 8 tenant, do not face an actual or imminent inspection, and have only advanced unsubstantiated, speculative claims about what a future search might look like (*see, e.g.,* Respondents’ Brief 13). Therefore, they do not have a justiciable Fourth Amendment claim (*see, e.g., 216 E 29th St. Trust v City of New York*, 2025 US Dist LEXIS 15267, *21–29 [SD NY Jan. 28, 2025]). Their claims also fail on the merits for multiple reasons, including those discussed in the State’s briefs and *infra*.

IV. The HAP contract does not waive Fourth Amendment rights.

Defendants’ facial Fourth Amendment claim fails not only because there are *some* clear constitutional applications of Section 296(5)(a)(1); in fact, the statute is constitutional in *virtually all* situations. One reason is because the HAP contract does not waive Fourth Amendment rights or provide “blanket consent to search” (R.3111).¹⁴ Rather, the scope of the “consent” given in the HAP contract is congruent with constitutional limits.

Open-ended contract terms like the HAP contract’s paragraphs 3(e) and 11, where consent to provide access is given in advance, permit only “reasonable searches as that term is defined under the Fourth Amendment” (*First Ala. Bank, N.A. v Donovan*, 692 F2d 714, 719–20 [11th Cir 1983]; *see United States v Harris Methodist Ft. Worth*, 970 F2d 94, 100–01 [5th Cir 1992] [“We reject the government’s assertion that Fourth Amendment reasonableness standards do not apply when an administrative search is conducted pursuant to consent.”]; *cf. Anobile v Pelligro*, 303 F3d 107, 112, 124 [2d Cir 2001] [rejecting effectiveness of a signed

¹⁴ Before the trial court, the State argued that the HAP contract did not waive Fourth Amendment rights, both because the HAP contract does not permit access to areas where the Landlords have a reasonable expectation of privacy and because the Landlords could raise a Fourth Amendment objection to the PHA’s search demand before a court (R.1274–76). In any case, the proper interpretation of the HAP contract is a legal issue, and the Landlords have the burden to show that Section 296(5)(a)(1) is unconstitutional beyond a reasonable doubt, so the HAP contract’s meaning is properly before this Court.

waiver of the “right to object to any search” with respect to a search of employees’ dormitory rooms on racetrack premises]). This rule flows from the Fourth Amendment and basic contract interpretation principles.

“The standard for determining the scope of [a subject’s] consent under the Fourth Amendment is that of ‘objective’ reasonableness—what would the typical reasonable person have understood . . . ?” (*Florida v Jimeno*, 500 US 248, 251 [1991]). Determining the validity and scope of consent to a search is a fact-intensive inquiry that requires an evaluation of the surrounding circumstances and the expressed object of the search (*see id.* at 250–51). At the time that a HAP contract is signed, it is unknown what form a future search demand might take. This distinguishes advance contractual consent from the inspection cases discussed above, where an officer or inspector made a direct and immediate search demand for a specific location and purpose. Because it is not reasonable or lawful to obtain blanket consent to any and all searches in advance¹⁵ (*see, e.g., Anobile*, 303 F3d at 124–25), logically, an open-ended contract must have a limiting principle, and the Fourth Amendment’s reasonableness standard provides one.

¹⁵ There is, therefore, a fundamental irony in the Landlords’ assertion that the HAP contract allows government agencies to gain access to sensitive areas such as an individual’s home, smartphone, and personal computer (Respondents’ Brief 23). The Landlords’ Fourth Amendment claim fails because their Fourth Amendment rights are not so easily waived.

Thus, in *Anobile*, while authorities did not need a warrant to search the racetrack premises because horse racing is a heavily regulated industry (303 F3d at 117–18), this rationale did not extend to employees’ dormitory rooms, where the employees’ privacy interests rendered a warrantless search unreasonable (*id.* at 119–21). The waiver provision in the employees’ license application did not alter this conclusion, as it did not serve as consent to a warrantless search of their dormitory rooms (*id.* at 112, 124–25). In other words, the license application provision (and the underlying regulation) did not permit unreasonable searches. If the specific waiver provision in *Anobile* did not preclude objections to a search, the general consent given in the HAP contract certainly does not place landlords who wish to object to a specific search in an “untenable position” (R.3111). Rather, Section 8 landlords retain their Fourth Amendment right to object to unreasonable searches (*see Harris Methodist Ft. Worth*, 970 F2d at 100–01 [permitting hospital to challenge reasonableness of search despite having given advance written consent]).

This approach to evaluating the scope of advance contractual consent is not only constitutionally sound—it is a basic application of contract doctrine. First, the HAP contract includes a reasonableness limitation: “[t]he owner must provide any information pertinent to the HAP contract that the PHA [Public Housing Agency] or HUD [Department of Housing and Urban Development] may reasonably require” (R.1721 at ¶ 11 [a]). Second, the “typical reasonable person” would not read

paragraphs 11(b) and (c) as providing blanket consent to searches of “individual landlords’ homes, offices and anywhere their business records are found,” as the Landlords claim (Respondents’ Brief 23; *cf. Brown Bros. Electrical Contractors, Inc. v Beam Constr. Corp.*, 41 NY2d 397, 400 [1977] [stating that contracts should be interpreted to permit the realization of the parties’ reasonable expectations]). Instead, a typical person would reasonably expect the Fourth Amendment to govern any Section 8 searches. In short, because paragraphs 3(e) and 11 of the HAP contract relate to possible searches, they incorporate the Fourth Amendment’s reasonableness requirements (*see, e.g., Primax Recoveries v Carey*, 242 F Supp 2d 337, 343 n 7 [SD NY 2022] [stating that contract terms are interpreted against the “background of common-sense understandings and legal principles that the parties may not have bothered to incorporate expressly but that operate as default rules to govern in the absence of a clear expression of the parties’ intent that they do not govern,” quoting *Wal-Mart Stores v Wells*, 213 F3d 398, 402 (7th Cir 2002)]).¹⁶

Reading the HAP contract to provide consent to only reasonable searches does not render paragraphs 3(e) and 11 superfluous. They still serve several important

¹⁶ Section 8 regulations and the HAP contract intentionally leave space for the operation of state and local law (*e.g., Barrientos v 1801–1825 Morton LLC*, 583 F3d 1197, 1213–14 [9th Cir 2009]; 42 USC § 1437 [a] [1] [C] [stating that it is the policy of the United States to generally vest in public housing agencies “the maximum amount of responsibility and flexibility in program administration”])—here, to meet the flexible standard for precompliance review (*see Patel*, 576 US at 421).

purposes. First, paragraphs 3(e) and 11 provide contractual rights to the PHA. Of course, if a landlord fails to respond to a subpoena seeking information about its compliance with program requirements, a PHA can move to enforce the subpoena (*e.g.*, CPLR 2308 [b]). And if a landlord impedes the execution of a search warrant for its records, the PHA can refer the landlord for prosecution for obstructing governmental administration (*see People v Coffaro*, 52 NY2d 932, 934 [1981]). But because these actions would breach paragraph 11, importantly, the PHA can also suspend or terminate payments to a landlord that stymies its efforts to investigate breaches of program rules (R.1720 at ¶ 10 [c]). In this way, the terms of the HAP contract have an effect even when they are interpreted harmoniously with the Fourth Amendment, and even when the PHA, HUD, or the Comptroller General obtains a search warrant or issues a subpoena.¹⁷ Second, paragraphs 3(e) and 11 help authorize a search warrant, subpoena, or other search demand (*see, e.g.*, 31 USC § 716 [c] [1] [“[T]he Comptroller General may [subpoena] a record . . . to which the Comptroller General has access by law or by agreement of that person A [subpoena] shall identify the record and the authority for the inspection.”])). The broad scope of paragraphs 3(e) and 11 ensure that PHAs, HUD, and the Comptroller General are not limited in the areas where they can conduct reasonable searches.

¹⁷ This is yet another reason why Section 296(5)(a)(1) is not facially unconstitutional—to borrow from *Patel*, the HAP contract does “work” even when a PHA conducts a reasonable search without consent.

Because the HAP contract only gives consent to reasonable searches, the “coerced consent” given in the contract (Respondents’ Brief 38) poses no Fourth Amendment issue (*see Jimeno*, 500 US at 250). Each search demand under the Section 8 program must be analyzed on its own merits. The Landlords may not simply speculate that the government will perform searches by unconstitutional means in the future (*cf. Clapper v Amnesty Intl.*, 568 US 398, 409–10 [2013]). Indeed, there are readily available, constitutional means to accomplish all the inspections and searches that the HAP contract and HUD regulations contemplate.

V. The HAP contract’s procedures offer precompliance review.

PHAs throughout New York have constitutional means¹⁸ to accomplish any search required by the Section 8 program, including through the HAP contract’s procedures. As the State explains, the HAP contract itself provides for precompliance review before the landlord experiences any consequence for its breach (Appellants’ Brief 29–33).

A landlord faces no statutory or regulatory penalties for failing to comply with paragraphs 3(e) or 11 of the HAP contract. And neither the HAP contract nor the

¹⁸ For example, in New York City, one PHA is the Department of Housing Preservation and Development (HPD) (US Dept. of Hous. & Urban Dev., *Housing Choice Voucher Data Dashboard*, available at <https://tinyurl.com/3jbzheaz> [last accessed August 12, 2026] [filter by Public Housing Authority, NY110] [stating that program has over 35,000 participants]). HPD has clear statutory authority to obtain administrative warrants (Charter of City of NY § 398; Administrative Code of City of NY § 27-2123 [a]).

Section 8 regulations authorizes a PHA to use force to access private areas (*see Matter of Super Smoke N Save LLC v N.Y. State Cannabis Control Bd.*, 2026 NY App Div LEXIS 3884, *9 [3d Dept June 11, 2026]). At most, a landlord’s failure to permit an inspection or search is a breach of the HAP contract (R.1720 at ¶ 10 [a] [1]). In the event of a breach, the PHA must notify the landlord of its determination that the breach has occurred, including a brief statement of its reasoning (R.1720 at ¶ 10 [b]). The PHA’s “rights and remedies” in the event of a landlord’s breach include the suspension, abatement, or termination of housing assistance payments or the termination of the HAP contract. (R.1720 at ¶ 10 [c]).

Thus, the worst-case scenario if a landlord refuses to permit a search or respond to a request for information is that the PHA provides notice that it has determined that a breach of the HAP contract has occurred and that it intends to stop making payments and/or terminate the HAP contract. A landlord can promptly obtain Article 78 review of the search demand. Indeed, because Article 78 review of a search’s reasonableness is available as soon as a search demand is made, a landlord may file an Article 78 proceeding before a PHA even generates a suspension or termination notice (*see Matter of Patchogue-Medford Congress of Teachers v Bd. of Educ.*, 70 NY2d 57, 63 [1987] [using Article 78 to obtain precompliance review of search demand]; *Hudson Shore Assocs.*, 139 F4th at 110; *see also* R.698 [stating that the Ithaca Housing Authority will give at least forty-eight hours’ notice before any

inspection except in the case of a life-threatening emergency]). Or, after providing its written determination that a breach has occurred, the PHA may file a lawsuit seeking specific performance or other injunctive relief (R.1720 at ¶ 10 [d]). Alternatively, after obtaining the PHA’s written determination, the landlord may file an Article 78 proceeding challenging it (*see Matter of Vuksan Realty, LLC v Olatoye*, 179 AD3d 465, 465 [1st Dept 2020]; *see also Abiele Contracting, Inc. v New York City Sch. Constr. Auth.*, 91 NY2d 1, 7–8 [1997]). The posture of the former would be analogous to a motion to enforce an administrative subpoena, while the posture of the latter would be analogous to a motion to quash an administrative subpoena (*see Hudson Shore Assocs.*, 139 F4th at 109 [“Article 78 provides precompliance review similar to that available from a motion to quash an administrative subpoena.”]).

In any case, the landlord would obtain judicial review of the reasonableness of the PHA’s search demand, which would be guided by the legal standards discussed above. Thus, if a Section 8 landlord objects to a search, it may obtain precompliance review via Article 78 before facing penalties for failing to comply, just like the landlords in *Hudson Shore Associates*. Even if a landlord waits to file the Article 78 proceeding until after receiving a suspension or termination notice, it may seek a stay of the suspension or termination while the proceeding is pending and obtain review before experiencing any negative consequence (*see CPLR 7805*;

Matter of Patchogue-Medford Congress of Teachers, 70 NY2d at 63). Further, only once a HAP contract is terminated for failing to permit a search could a landlord conceivably face penalties under the NYSHRL for compelling a voucher holder to seek housing elsewhere (*see Tapia*, 79 AD3d at 424). But because a landlord can obtain Article 78 review and obtain an order enjoining or reversing a termination predicated on an unreasonable search, this should never happen. Thus, there is no cause to “speculate about” improbable imaginary situations in which a landlord could be penalized before being able to obtain Article 78 review” (*Hudson Shore Assocs.*, 139 F4th at 111, quoting *Wash. State Grange*, 552 US at 450).¹⁹ The availability of Article 78 review is enough to defeat the Landlords’ facial challenge (*Hudson Shore Assocs.*, 139 F4th at 111; *see also Matter of Super Smoke N Save LLC*, 2026 NY App Div LEXIS 3894, *9 n 5).

In sum, the Landlords have not identified even one instance where a New York PHA, HUD, or the Comptroller General has performed an unreasonable Section 8 search, or where a landlord has faced a penalty for failing to consent to such a search. The Landlords’ speculation is not grounded in reality, as there are constitutional means to accomplish searches pursuant to the Section 8 program. Plus, Section 8 searches occur within a contractual framework that is markedly less

¹⁹ In *Matter of Vuksan Realty, LLC*, the New York City Housing Authority gave the landlord more than one month’s notice before suspending payments (179 AD3d at 465).

coercive than the criminal penalty scheme in *Patel* (see *Hudson Shore Assocs.*, 139 F4th at 111–12). For these reasons, and the reasons given in the State’s brief, the Landlords’ Fourth Amendment allegations fail.

CONCLUSION

Section 296(5)(a)(1)’s prohibition on discrimination against Section 8 voucher holders is not facially unconstitutional. The Landlords’ speculative claims and flimsy constitutional arguments provide no basis to invalidate this critical statewide protection and allow harmful discrimination against low-income voucher holders. This Court should reverse the Appellate Division’s decision.

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