# Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Fair Housing Act

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Finding desirable, affordable housing in several areas of the United States is a formidable task for many people, but low-income individuals and families face even more difficulties finding housing that suits their needs. Congress has passed legislation to reduce the barriers to obtaining affordable housing for people with low incomes. It created the Housing Choice Voucher Program, formerly called the Section 8 Program, which subsidizes the cost of housing for low-income individuals in an effort to eliminate the monetary barriers such individuals face in the housing market. Congress has also enacted the Fair Housing Act, which prevents discrimination in housing on the basis of race, color, religion, sex, familial status, national origin, and disability. Although this act is not specifically geared towards individuals with low incomes, some classes that are directly protected by the Act are disproportionately represented in the low-income population. Therefore, the Fair Housing Act aids low-income individuals by eliminating non-monetary barriers to finding appropriate housing.

However, the policies of some landlords have created additional barriers for low-income individuals. Some landlords have refused to accept housing vouchers for rental payments. In the Forest Glen neighborhood of Chicago, a white female with one child approached a landlord about renting a one-bedroom apartment. Initially, the landlord was willing to rent the apartment to her. However, once the prospective tenant revealed that she would pay her monthly rent with a housing voucher, the landlord replied that two people could not live in the same apartment and she did not want to accept the voucher “because she

4. See id. at 20.
‘didn’t want trouble.’”5 In post-Katrina New Orleans where housing is already scarce, 82% of 100 landlords who were contacted about renting apartments to housing voucher holders refused to accept vouchers or created additional requirements for voucher holders such as higher security deposits or higher rent.6 A study in 2007 in New York City revealed that only 9% of 415 landlords contacted would accept vouchers.7

Landlords could be adopting these policies as a way to prevent members of protected classes from renting units in their building or they could be adopting them to avoid perceived burdens of enrolling in the voucher program. But for voucher holders, “no-voucher” policies reduce the availability of affordable housing. With affordable housing already in short supply, voucher holders are often forced into inadequate or less desirable housing in high-poverty neighborhoods, contravening the goals of the Housing Choice Voucher Program to provide safe, affordable housing and to encourage desegregation and de-concentration of poverty.8

Voucher discrimination has pushed some states and localities to adopt statutes and ordinances that prevent a landlord from discriminating against prospective tenants because of their source of income. These local laws have helped to improve the supply of housing in some areas. However, many localities have not enacted these laws and courts have severely limited their application where they are enacted.9

This Note argues that in order to further the goals of the Housing Choice Voucher Program and the Fair Housing Act, courts should recognize a cause of action for prospective tenants whose applications are rejected because they hold a voucher. Because voucher holders are disproportionately minorities, courts could allow disparate impact claims under the Fair Housing Act.10 Such claims could help prevent discrimination against voucher holders and ultimately provide more suitable housing options for individuals and families.

Part I of this Note provides background information about the Housing

10. See Colfax, supra note 3, at 21–23.
Choice Voucher Program, the Fair Housing Act, and voucher discrimination. Part II argues that the current city, county, and state laws that have been enacted to prevent voucher discrimination do not fully address the problem. Part III analyzes the case law on voucher discrimination and asserts that courts should allow voucher holders to bring disparate impact claims under the Fair Housing Act to help prevent voucher discrimination.

I. BACKGROUND

Multiple federal and local statutes guide housing policy in the United States. The Housing Choice Voucher Program provides vouchers to subsidize rental costs for low-income individuals. The Federal Fair Housing Act prevents discrimination in housing on the basis of race, color, national origin, sex, familial status, and disability. However, individuals who hold housing vouchers often face discrimination because they pay rent with a voucher. This additional form of discrimination has a disproportionate effect on classes of individuals protected by the Fair Housing Act, which in turn creates additional barriers to housing opportunities that must be eliminated. This Part will examine the creation and evolution of the voucher program, the non-discrimination principles of the Fair Housing Act, and the parallels between discrimination against families with children and the current problem of voucher discrimination.

A. HOUSING CHOICE VOUCHER PROGRAM/SECTION 8 PROGRAM

The Housing Choice Voucher Program, formerly known as the Section 8 Program, is a program of the United States Department of Housing and Urban Development (HUD) that aims to increase housing availability for low-income individuals and families. Although HUD runs the program, in each locality, vouchers are administered by a local Public Housing Authority (PHA). PHAs are local agencies that coordinate federal and local housing programs such as the voucher program. The program targets families whose incomes are at or below 50% of the median income for the area, but 75% of the vouchers issued by a PHA must go to eligible applicants whose incomes are at or below 30% of area median income. Through this program, low-income tenants pay 30% of their adjusted gross income to the owner for rent. The voucher allows the

12. See id. § 3604.
14. See id at 21.
17. Id.
18. Id.
19. Id.
apartment owner to receive a payment from the government, which amounts to the difference between the tenant’s contribution and the payment standard—the amount needed to rent a moderately priced unit in the area.20 If the rent is more than the payment standard, the tenant must pay such additional amount. In any case, the family cannot pay more than 40% of its adjusted monthly income for rent; additionally, families that are given vouchers are given a limited amount of time to find housing—sometimes as few as sixty days.21

The voucher has been heralded for its portability: a tenant can use the voucher to rent any apartment the voucher amount covers. But the program has not always existed in its present form. The first major federal initiative to provide affordable housing was the United States Housing Act of 1937.22 In the wake of the Great Depression, affordable housing became increasingly scarce. The United States Housing Act of 1937 was passed to address this issue by providing federal funding to state or local PHAs to construct and manage public housing.23 This program increased the supply of affordable housing, but Congress began to realize that it could further increase the supply by capitalizing on the resources of the private housing market.24

Congress began to push towards providing subsidies to the private market to increase the availability of affordable housing with the Housing and Urban Development Act of 1965.25 Under a program entitled Section 23, PHAs paid market-rate rents to apartment building owners in order to sublease apartments to low-income tenants.26 Based on their income, tenants paid a minimum rent to PHAs and the government gave the PHAs the difference between the minimum and market-rate rents.27

In 1974, Congress passed the Housing and Community Development Act,
which created a rental certificate program. 28 Instead of the tenant subleasing an apartment from the PHA, the tenant was able to lease directly from the building owner. 29 In the certificate program, the tenant paid 25% of his or her income directly to the landlord and the PHA would enter into a contract with the landlord to pay the difference between the fair market rent and the tenant’s contribution. 30 The Housing and Community Development Act of 1987 created a voucher program that ran simultaneously with the certificate program until 1998. 31 The voucher program did not place a limit on fair market rent or provide a maximum tenant contribution. 32 The Quality Housing and Work Responsibility Act of 1998 merged the certificate and voucher programs to create the current Housing Choice Voucher Program. 33 The merger adopted the cap on the percentage of income a tenant could pay from the certificate program, but allowed tenants to rent apartments with rental costs above the fair market value as in the old voucher program, thus creating the program that exists today. 34

The series of changes in affordable housing policy reflects the recognition that the private sector must be a partner in increasing the supply of affordable units. As previously noted, Congress recognized the limitations of a policy where only the federal government provides housing. In the purposes of the Quality Housing and Work Responsibility Act of 1998, Congress noted that the act would merge the certificate and voucher programs into a single market program in order to “mak[e] tenant-based rental assistance . . . more successful at helping low-income families obtain affordable housing and . . . increase housing choice for low-income families.” 35 Thus, Congress has expressed a need for private sector involvement to achieve important affordable housing goals.

B. THE FEDERAL FAIR HOUSING ACT

The Civil Rights Act of 1968 created legislation to prevent discrimination in the housing market. 36 The Fair Housing Act—Title VIII of the Civil Rights Act of 1968—initially prohibited discrimination in housing on the basis of race, color, religion, or national origin. 37 With a few exemptions for religious organizations, private clubs, and owners of only a few rental units, the law prohibits

29. See HUD Guidebook, supra note 22, at 1–2 to 1–3.
30. See id. at 1–3.
32. HUD Guidebook, supra note 22, at 1–4.
34. See HUD Guidebook, supra note 22, at 1–6 exhibit 1-1.
35. § 502(b)(6), 112 Stat. at 2521.
anyone from 1) refusing to sell or rent, 2) discriminating as to the terms, conditions, privileges, or provision of services of a sale or rental unit, and 3) claiming a unit is unavailable to someone because they belong to a class protected under the statute.38

Congress has added other protected classes to the Fair Housing Act. In 1974, sex became a protected class.39 In 1988, people with disabilities and families with children were also added to the Fair Housing Act.40 People with disabilities were added to issue “a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.”41 Congress noted that section 504 of the Rehabilitation Act of 1974 promoted the inclusion of people with disabilities into American society.42 The Fair Housing Act extends this inclusion to housing by requiring new buildings to be accessible and preventing discrimination based on other disabilities, for instance, an HIV-positive status.43

C. ADDRESSING DISCRIMINATION AGAINST FAMILIES WITH CHILDREN

States and localities began to recognize the problem of housing discrimination against families with children in the 1970s and early 1980s.44 They adopted laws in their state and local codes to prevent landlords from denying housing to families with children.45 Many jurisdictions added protections for families more than a decade before Congress amended the federal Fair Housing Act.46

In 1988, Congress amended the Fair Housing Act to add familial status to the list of protected classes. At the time the amendment was adopted, sixteen states had laws forbidding discrimination against families in housing with varying levels of protection.47 Congress recognized that families with children were being denied housing despite their ability to pay.48 In support of the amendment to the Fair Housing Act, Congress highlighted the results of a nation-wide survey. The survey revealed that 25% of all rental units did not allow children and 50% had policies that limited the ability of families with children to rent units.49 Another study surveyed families and displayed the difficulties they faced.

38. See id. §§ 3604, 3607.
42. See id.
43. See id. at 18 & n.25.
44. See Note, Why Johnny Can't Rent: An Examination of Laws Prohibiting Discrimination Against Families in Rental Housing, 94 HARV. L. REV. 1829, 1829 & n.4 (1981).
45. See id. at 1829 n.4.
46. See id.
48. See id. at 19, 20 & nn.39, 42 & 44–45.
49. See id. at 19 n.31.
faced in finding suitable dwellings. This discrimination created a barrier to achieving the federal government’s goal—set forth in previous legislation—“to provide a decent home and suitable living environment for every American family.”

Additionally, Congress noted the disparate impact that no-children policies have on minorities. It found that Hispanic and African-American families were more likely to have children than white families. Because of this difference, excluding families based on the presence of children created a racially discriminatory effect. At the time the amendment was being discussed, two federal courts of appeals had held that prospective tenants who were turned away from housing because of no-family policies had disparate impact claims under the Fair Housing Act. Congress also discussed how no-children policies perpetuate residential segregation. Landlords in predominantly white neighborhoods were more likely to have these policies than those in predominantly black neighborhoods, which resulted in black families being turned away from homes in white neighborhoods more frequently than in predominantly minority areas. Consequently, the House of Representatives encouraged the adoption of the Amendments to the Fair Housing Act to protect families with children.

D. AN INSUFFICIENTLY ADDRESSED PROBLEM: SOURCE OF INCOME AND VOUCHER DISCRIMINATION

Like discrimination based on familial status, there is another type of housing discrimination that Congress and the courts should address. Source-of-income discrimination occurs where landlords refuse to rent to individuals because their source of income is a form of public assistance. Income from public assistance can include social security benefits, disability benefits, Temporary Assistance to Needy Families (TANF), or housing vouchers. Some landlords have been particularly resistant to accepting tenants who hold housing vouchers and have subsequently adopted no-voucher policies that are reminiscent of past no-children policies.

As with other forms of discrimination, voucher discrimination creates barri-
ers to families finding affordable housing opportunities. Because the income of families who receive vouchers is at or below 50% of the area median income, these families already face financial obstacles to obtaining needed goods and services. Housing vouchers are supposed to enable these families to overcome financial obstacles to housing. However, voucher discrimination reestablishes some of these barriers. This discrimination could hinder the federal government’s pursuit of its goal to provide a suitable home for every American family. The federal government has asserted the need to use the private market to provide affordable housing opportunities in order to meet this goal.57 But discrimination distorts the market and prevents low-income families from using vouchers.58 Thus, discrimination against voucher holders harms low-income individuals’ ability to find housing and prevents the government from achieving its goal of ensuring that families live in decent homes.

II. LOCAL AND STATE SOURCE-OF-INCOME DISCRIMINATION LAWS

Some states, counties, and cities have recognized the problems stemming from discrimination based on payment of rent with federal assistance, and an increasing number of jurisdictions have adopted ordinances and statutes to forbid source-of-income discrimination.59 These laws serve a few different purposes. Montgomery County, Maryland, has an ordinance that prohibits discrimination based on source of income in the county’s local fair housing law.60 When it was adopted in 1991, the chair of the County Interagency Fair Housing Coordination Group stated that “the Bill emanated from a conference at which ‘the impact of landlord non-participation in the Section 8 program was raised.’ The result of such non-participation was that ‘about 40 percent of the people who get Section 8 certificates or vouchers are unsuccessful in finding housing.’”61

58. See U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEVELOPMENT AND RESEARCH, STUDY ON SECTION 8 VOUCHER SUCCESS RATES 3-17 (2001), available at http://www.huduser.org/publications/pubasst/sec8success.html [hereinafter SECTION 8 VOUCHER SUCCESS RATES] (stating that the success rate of using housing vouchers is higher on average in jurisdictions that have laws forbidding source of income discrimination than in those that do not have these laws).
59. See Poverty & Race Research Action Council (PRRAC), Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program, app. B (2009) [hereinafter PRRAC], available at http://prrac.org/pdf/source-of-income.pdf. The states that currently have source of income statutes include: California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, Wisconsin, and the District of Columbia. See id. Cities and counties with source of income laws include: Corte Madera, California; East Palo Alto, California; Los Angeles; San Francisco; Chicago; New York City; West Seneca, New York; Hamburg, New York; Montgomery County, Maryland; Prince George’s County, Maryland; Howard County, Maryland; Iowa City; King County, Washington; Multnomah County, Oregon; Portland; Seattle; Borough of State College, Pennsylvania; Champaign, Illinois; Dane County, Wisconsin; Philadelphia; St. Louis; Memphis; Ann Arbor, Michigan; Grand Rapids, Michigan; and Naperville, Illinois, Id.
61. Montgomery County v. Glenmont Hills Assocs., 936 A.2d 325, 334 n.6 (Md. 2007).
Ten years prior to Montgomery County’s adoption of its source-of-income discrimination ordinance, New Jersey adopted a similar state statute. At the signing of the bill, the Governor of New Jersey stated that the purpose of adding a source-of-income discrimination provision to its anti-discrimination law was “‘to protect from housing discrimination welfare recipients, spouses dependent on alimony and child support payments and tenants receiving governmental rental assistance.’”

In 2000, the Corte Madera, California Town Council adopted an ordinance to prevent landlords from discriminating against potential tenants because they hold housing vouchers. In the purpose section of the ordinance, the legislative body states that there was

a shortage of landlords participating in the Section 8 program [and] many tenants who qualified for Section 8 rental assistance [were] unable to benefit from it because of unavailability of participating landlords. Accordingly, the purpose of [the] ordinance [was] to encourage landlords to participate in the . . . Section 8 [program] and to establish a right of existing tenants to be free of certain discrimination based on their use of a rental subsidy.

To summarize, one of the reasons behind the Montgomery County ordinance was to increase the success rate of certificate and voucher holders. In New Jersey, the provision was adopted to prevent housing discrimination against low-income individuals. And in Corte Madera, the Town Council wanted to change the behavior of landlords and prevent discrimination against voucher holders. Therefore, these jurisdictions have generally adopted the laws in question to curb discrimination against individuals paying rent with non-traditional sources.

States and localities offer varying levels of protection from voucher discrimination. Some local laws exempt housing providers from the prohibition of voucher discrimination if they have a non-discriminatory reason—for example, an unwillingness to be subjected to the administrative requirements of the voucher program. Many jurisdictions’ source-of-income discrimination laws do not explicitly include housing vouchers, leaving courts to interpret whether vouchers are covered under the statute. Consequently, some courts have held

65. See Colfax, supra note 3, at 22. The District of Columbia’s statute explicitly states that vouchers are an example of source of income. See D.C. Code § 2-1402.21(e) (Supp. 2009). In New Jersey, the state Supreme Court interpreted the state source of income discrimination statute to include Section 8 vouchers. See Franklin Tower One, 725 A.2d at 1112. But other jurisdictions that have source of income discrimination statutes do not provide explicit protections for voucher holders as in the D.C.
that they are included and others have held that they are not. And without explicit protection for voucher holders, landlords continue to discriminate against them.

Local source-of-income discrimination statutes increase the availability of housing for low-income families. The United States Department of Housing and Urban Development conducted a study on success rates, or the rate at which voucher holders are able to find suitable housing that will accept their vouchers. The study revealed that success rates for voucher holders are significantly higher in places where there is a local or state law that protects against discrimination based on source of income. The jurisdictions that provided that protection have a success rate that is twelve percentage points higher than locations that offer no legal protection.

But despite the higher success rates, there are still occurrences of discrimination in jurisdictions that provide protection for voucher holders. Additionally, the narrowing of some state and local source-of-income discrimination laws by courts removes legal protection for voucher holders. Wisconsin has a statute intended to prevent source-of-income discrimination. The statute prohibits landlords from discriminating in housing based on lawful source of income. The statute states that source of income includes, but is not limited to “lawful compensation or lawful remuneration in exchange for goods or services provided, profit from financial investments, any negotiable draft, coupon, or voucher representing monetary value such as food stamps, social security, public assistance or unemployment compensation benefits.” Although the statute states that lawful source of income includes vouchers and other forms of public assistance, the Seventh Circuit affirmed a lower court determination that Section 8 vouchers should not be included. The court distinguished vouchers from other forms of support by stating that the money goes directly to the landlord instead of to the voucher holder. Reducing protection for housing voucher holders and the continuing existence of discrimination in jurisdictions where it is explicitly illegal suggests that enforcement mechanisms need to be increased.

III. VOUCHER DISCRIMINATION CLAIMS AND THE FEDERAL FAIR HOUSING ACT

Because of the inadequacy of state and local laws and their lack of uniformity, voucher holders would benefit greatly if they had available a cause of statute. In these areas, until courts decide that vouchers are included in the statute, landlords may continue to engage in voucher discrimination. See Colfax, supra note 3, at 22.

66. See Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272, 1282 (7th Cir. 1995); Colfax, supra note 3, at 22.
67. See Section 8 VOUCHER SUCCESS RATES, supra note 58, at 3–17.
68. Id.
69. See Colfax, supra note 3, at 22.
70. See Knapp, 54 F.3d at 1282.
71. Id.
72. Id.
73. See id.
action under the Federal Fair Housing Act for discrimination based on voucher status. The Fair Housing Act does not establish a textual claim for voucher holders. Consequently, these plaintiffs should be allowed to bring a disparate impact claim. These claims do not require the plaintiff to show the defendant's actions were motivated by discriminatory animus. Instead, plaintiffs must prove that the defendant's actions create a discriminatory effect on a class currently protected under the Act. Although recognizing such a claim would require some landlords to participate in the program and thus undercut the voluntary nature of the program, this voluntary nature is trumped by other goals of the program and the Fair Housing Act. Additionally, the strength of the reasoning in court decisions on this matter and policy considerations rest in favor of allowing a disparate impact claim for voucher holders. This Part discusses the addition of a textual claim to the Fair Housing Act for voucher holders. It relies on case law and policy to conclude that courts should allow plaintiffs who have encountered voucher discrimination to bring disparate impact claims.

A. A TEXTUAL CLAIM IN THE FAIR HOUSING ACT FOR VOUCHER HOLDERS

Under the current Fair Housing Act, there is no explicit protection for individuals who pay rent with a federal housing voucher. The Act prohibits discrimination based on race, color, religion, sex, familial status, national origin, and disability.74 The state and local laws that prohibit source-of-income discrimination have done so by making source of income a protected class under the local anti-discrimination law.75 But without a protected class in the Federal Fair Housing Act, there is currently no federal textual claim for voucher discrimination.

Additionally, the legislation behind the Housing Choice Voucher Program does not require landlords to accept all tenants that meet their eligibility requirements. As with the Fair Housing Act, there is no text that requires landlords to participate in the voucher program if a prospective tenant will pay a portion of the rent with a voucher.76 However, even landlords that do not have tenants who pay rent with a housing voucher are required to follow anti-discrimination statutes. Neither the legislation behind the voucher program nor the Fair Housing Act exempts non-participating landlords from following the command of the Fair Housing Act to not discriminate.

It could be argued that, because Congress has not yet amended the Fair Housing Act to prohibit voucher discrimination—as it did for families with children in 1988—the lack of congressional action demonstrates Congress’s

75. See, e.g., CHICAGO FAIR HOUSING ORDINANCE § 5-8-020 (2002); MONTGOMERY, COUNTY, MD., CODE §§ 27-12 & 27-11(b) to (g) (2008); East Palo Alto, Cal., Ordinance No. 248 (Nov. 6, 2000). See generally NATIONAL HOUSING LAW PROJECT, SOURCE OF INCOME PROTECTIONS IN THE U.S.: STATUTES, CASES, REFERENCE MATERIALS 1–5 (2005); Colfax, supra note 3, at 21–22; supra note 59 and accompanying text.
intent to keep the voucher program completely voluntary. To date, thirteen states and the District of Columbia have attempted to address source-of-income discrimination, but not all states explicitly prohibit voucher discrimination.77 The number of states that have adopted legislation to address source-of-income discrimination is close to the number of states that banned discrimination against families with children before Congress amended the Fair Housing Act; sixteen states had adopted protections for families with children when the Fair Housing Act Amendments were considered.78

However, many states and localities have begun to address voucher discrimination only recently. Oregon, California, Vermont, and the District of Columbia passed legislation to prevent source-of-income discrimination after 2002.79 And in 2008, New York City, which has the largest housing voucher program in the country, just created protections for tenants who hold housing vouchers.80 By contrast, some states and localities began to address the problem of housing discrimination against families with children more than a decade before Congress amended the federal Fair Housing Act.81 Thus, because some states have only recently begun to address voucher discrimination, Congress’s failure to amend the Fair Housing Act again does not necessarily reflect its intent to continue to allow voucher discrimination.

B. DISPARATE IMPACT CLAIMS UNDER THE FAIR HOUSING ACT, GENERALLY

Because housing voucher holders are not a protected class under the Fair Housing Act, an individual claim for voucher discrimination under the current Act must rest on a disparate impact theory. Essentially, no-voucher policies must have a discriminatory effect on another protected class such as race, familial status, or disability. Once a court has recognized a disparate impact claim, it must engage in a burden-shifting analysis.82 Courts have applied the analysis from Title VII, which prohibits discrimination in employment, to the Fair Housing Act.83 To assert a discrimination claim, plaintiffs must first make a prima facie showing that they have been victims of discrimination.84 In a disparate impact case, plaintiffs can make this showing by proving that the

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77. See PRRAC, supra note 59, at 3–37; Colfax, supra note 3, at 21–22.
79. See PRRAC, supra note 59, at 3, 5, 13, 16.
80. See id. at 23; Manny Fernandez, Law Enacted to Protect Tenants Using Vouchers, N.Y. TIMES, Mar. 27, 2008, at B3.
81. See Note, supra note 44, at 1829 n.4 (listing state laws from as early as 1974).
82. This burden-shifting analysis was initially recognized in McDonnell Douglas v. Green, 411 U.S. 792, 802–03 (1973).
practice has a substantial, adverse impact on a protected group. If a plaintiff successfully makes a prima facie showing of discrimination, then the burden shifts to the defendant to articulate some legitimate business reason for its policy. If the defendant shows the practice is justified by a business necessity, then the burden shifts back to the plaintiff to show that the reason was pretextual or that there is an alternative practice that would achieve the same business ends with less discriminatory impact.

The federal courts of appeals have all allowed claims under the Fair Housing Act based on a disparate impact theory. The Fair Housing Act, also known as Title VIII, was originally part of the Civil Rights Act of 1968. Title VII was originally part of the Civil Rights Act of 1964. But because the Fair Housing Act and Title VII share a goal of reducing discrimination, courts have interpreted the congressional intent behind the Fair Housing Act in the same manner as the intent behind Title VII. In the seminal case allowing a disparate impact claim under Title VII, Griggs v. Duke Power Co., the Court stated that the intent of Congress under Title VII was to “achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of . . . employees over other[s].” Therefore, the Court concluded, policies or practices that are neutral on their face but have a discriminatory impact fall within the ambit of the statute. With similar goals to prevent discrimination in housing, courts have held that Congress likewise intended to

85. See id.
86. See id.
88. See, e.g., Langlois, 207 F.3d at 49 (noting the consensus amongst the circuits of allowing a disparate impact theory); Gamble v. City of Escondido, 104 F.3d 300, 306–07 (9th Cir. 1997) (recognizing disparate impact claims under the Fair Housing Act); Larkin v. Mich. Dep’t of Soc. Servs., 89 F.3d 285, 289 (6th Cir. 1996) (recognizing that most courts allow disparate impact claims under the Fair Housing Act); Simms v. First Gibraltar Bank, 83 F.3d 1546, 1555 (5th Cir. 1996) (allowing disparate impact claims under the Fair Housing Act); Mountain Side Mobile, 56 F.3d at 1250–51 (allowing disparate impact claims under the Fair Housing Act); Jackson v. Okalooso County, 21 F.3d 1531, 1543 (11th Cir. 1994) (assuming appellants could bring a disparate impact claim under the Fair Housing Act while discussing ripeness); Huntington Branch NAACP v. Town of Huntington, 844 F.2d 926, 933 (2d Cir. 1988) (recognizing disparate impact claims under the Fair Housing Act); United States v. Starrett City Assocs., 840 F.2d 1096, 1100 (2d Cir. 1988) (same); Betsey v. Turtle Creek Assocs., 736 F.2d 983, 986 (4th Cir. 1984) (same); Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 146–48 (3d Cir. 1977) (distinguishing the Fair Housing Act from the Equal Protection Clause of the Fourteenth Amendment by noting that the former allows plaintiffs to bring disparate impact claims and the later requires a showing of discriminatory intent); United States v. City of Black Jack, 508 F.2d 1179, 1184 (8th Cir. 1974) (noting that a Fair Housing Act plaintiff only needs to show a discriminatory effect to bring a claim).
89. See, e.g., Smith v. Town of Clarkton, N.C., 682 F.2d 1055, 1065 (4th Cir. 1982) (adopting the same framework for disparate impact claims under the Fair Housing Act as is applied to similar claims under Title VII because the anti-discrimination goals in the Act parallel those in Title VII); Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1289–90 (7th Cir. 1977) (stating that Congress did not demonstrate an intent to allow disparate impact claims under Title VII but prohibit them under Title VIII).
allow plaintiffs to pursue disparate impact claims under the Fair Housing Act.91

But the statutory language and legislative history of the Fair Housing Act, specifically, also support a disparate impact claim. Although it has never held that plaintiffs can bring a disparate impact claim under the Fair Housing Act, the Supreme Court has stated that the text of the statute is broad and inclusive.92 While the Court was referring to a plaintiff’s standing under the Act, this expansive reading could apply to a disparate impact claim as well.93 The text of the Act states that its purpose is to “provide . . . for fair housing throughout the United States” to the extent allowed by the Constitution.94 This purpose is furthered by allowing disparate impact claims. The legislative history also supports these claims. The sponsor of an amendment that became part of the statute stated that the Fair Housing Act was intended to “replace the ghettos ‘by [creating] truly integrated and balanced living patterns.”95 Because some policies that are neutral on their face can create barriers to integrated living, the Act should be interpreted to include disparate impact claims.

C. DISPARATE IMPACT CLAIM UNDER THE FAIR HOUSING ACT FOR HOUSING VOUCHER HOLDERS

Courts should recognize a disparate impact claim under the Fair Housing Act for individuals when landlords refuse to rent units to them solely because they intend to pay for housing with a voucher. Recognizing this claim would advance the Act’s stated goal of preventing discrimination and the corollary goal of providing affordable housing under the Housing Choice Voucher Program. Some courts have suggested that the legislative history of the voucher program implies that Congress would reject a disparate impact claim. However, the context of the changes to the voucher program supports the addition of a disparate impact claim.

1. Disparate Impact Claims and Addressing Goals of Federal Legislation

Creating a Fair Housing Act claim for voucher discrimination supports, rather than hinders, the important goals of the Act and the Housing Choice Voucher Program. Discrimination against voucher recipients can conceal discrimination based on race, familial status or disability—that is, landlords can establish no-voucher policies as a pretext for discrimination against existing protected

91. See, e.g., Betsey v. Turtle Creek Assocs., 736 F.2d 983, 987 (4th Cir. 1984).
93. See Metro. Hous. Dev. Corp., 558 F.2d at 1289–90 (citing Trafficante and holding that a plaintiff can bring a disparate impact claim under the Fair Housing Act because the Act must be construed broadly to implement its goal of providing fair housing throughout the United States).
95. See Trafficante, 409 U.S. at 211 (quoting 114 Cong. Rec. 3422 (1968) (statement of Sen. Mondale)).
classes." Therefore, creating a disparate impact claim under the Fair Housing Act could advance the goal of reducing discrimination against the classes that the Act already aims to protect.

A disparate impact claim under the Fair Housing Act also advances the goals of the voucher program. Some of the goals of the program are to aid “low-income families in obtaining a decent place to live and . . . promot[e] economically mixed housing.”97 The law also emphasizes a goal of “remedy[ing] . . . the acute shortage of decent and safe dwellings for low-income families [and] . . . assist[ing] States and political subdivisions of States to address the shortage.”98 Therefore, prohibiting discrimination that directly affects the ability of low-income families to find suitable living advances a major goal of the legislation.99

Adding a disparate impact claim could help to de-concentrate poverty. Studies have demonstrated that high concentrations of poverty correlate with adverse effects on long-term chances of those who live in the neighborhood.100 Prohibiting landlords from discriminating against voucher holders because of their form of payment increases the number of buildings in which voucher holders can rent units. Not confining voucher holders to certain neighborhoods and/or buildings with no-voucher policies could help to de-concentrate poverty and promote desegregation.101 Many apartment buildings that were once closed to tenants would be open if landlords were not allowed to discriminate against voucher holders, permitting voucher holders to move to different apartment buildings and neighborhoods.

However, there is a risk that voucher holders will continue to limit their searches to landlords who have historically accepted vouchers, which can perpetuate race and income segregation. If federal courts or Congress recognize protection for voucher holders under federal law, there are additional safeguards that can be implemented to prevent continuing segregation. Local public housing authorities that administer vouchers should increase awareness among voucher holders and landlords of a federal prohibition on voucher discrimina-

96. See Lawyers’ Comm. for Better Hous., Inc., Locked Out: Barriers to Choice for Housing Voucher Holders: Report on Section 8 Housing Choice Voucher Discrimination 6, 8 (2002), available at http://lcbh.org/images/2008/10/housing-voucher-barriers.pdf. Some landlords told black testers with housing vouchers that an apartment was not available, but white testers with vouchers were told the same unit was available. See id. at 6.
101. See Florence W. Roisman, The Lessons of American Apartheid: The Necessity and Means of Promoting Residential Racial Integration, 81 Iowa L. Rev. 479, 517–18 (1995) (noting that vouchers and subsidies have yet to achieve racial desegregation or de-concentrate poverty because housing developments in predominantly white areas have refused to accept subsidies).
tion. Additionally, providing mobility counseling can ensure more voucher holders move to low-poverty and racially mixed neighborhoods. Thus, in conjunction with an awareness program, mobility counseling can help to ensure vouchers meet the goals of providing high-quality affordable housing for low-income residents, de-concentrating poverty, and promoting racial desegregation.

2. Disparate Impact Claims and the Legislative History of the Housing Choice Voucher Program

Opponents of claims for voucher holders argue that the legislative history of the Housing Choice Voucher Program forecloses disparate impact claims. Specifically, they state that the program is voluntary and changes to the law strongly support a congressional intent to keep it voluntary. The voucher program used to contain a provision that required owners who chose to participate in the program to take all voucher holders who wanted to rent a unit and would be eligible tenants. The “take-one, take-all” provision was repealed in 1998. Consequently, owners are not required to rent to all prospective tenants that are voucher holders if they participate in the program.

Congress’s repeal of the provision could be asserted as proof of a congressional intent to promote the voluntary nature of the program. But there is more support for the idea that the provision was repealed by Congress to further the goals of increasing the supply of affordable housing and ensuring that housing is safe and decent. A state court noted that the provision was not repealed to highlight the voluntary nature of the program, but to get more landlords to participate. The provision created a disincentive for landlords to participate in the program altogether; some landlords did not want to be required to rent many of the units in their buildings to voucher holders. Thus, the probable intent of repealing this provision was to increase the supply of housing, which is in line with the end result of a disparate impact claim for voucher discrimination.

Congress’s repeal of the “take-one, take-all” provision did not demonstrate an

106. See id.
107. See Franklin Tower, 725 A.2d at 1109.
108. See id.
explicit intent to make the program entirely voluntary. When repealing the
provision, Congress did not state that it was eliminating the provision because it
wanted to emphasize the voluntary nature of the program. A House Committee
report on a bill that would have repealed the provision advocated repeal because
a report by Abt Associates found that the provision created a disincentive for
landlords to participate in the voucher program. The Senate Committee
report submitted with the bill stated that the intent was “not to excuse discrimina-
tion against section 8 holders but to remove disincentives for owner participa-
tion and to expand the number of housing choices available to section 8 families.”
The same report also stated that it did “not anticipate that the
repeal . . . [would] adversely affect assisted households because protections will
be continued under . . . the Fair Housing Act.” Therefore, not only did
Congress fail to explicitly convey an intent to make the program entirely
voluntary, but rather, these reports suggest an intent to continue to protect
voucher holders from discrimination through the Fair Housing Act.

Also, the provision might have been repealed to prevent re-concentrating
poverty. Before it was repealed, the “take-one, take-all” provision was sus-
pended in 1996. A year prior to the suspension, a United States Congressman
requested a waiver from this provision for an apartment building in his jurisdic-
tion because it was facing financial difficulties, high crime rates, and drug
problems. With the “take one, take all” provision, the project had to decide
whether to convert to market-rate units or continue to house low-income tenants
who received housing subsidies, despite its problems. The Congressman was
concerned that the building would stop accepting vouchers altogether, thus
limiting the supply of housing for low-income families. Although Congress
did not grant this waiver, the request suggests that one of the considerations for
the subsequent suspension and repeal of the provision could have been to avoid
concentrating poverty and crime.

In upholding state and local statutes and ordinances to prevent discrimination
based on paying rent with a voucher, state courts have noted that these goals
and purposes of the federal voucher program are more important than voluntary
participation. The Maryland Court of Appeals stated that the defendant’s reliance
on the voluntary nature of the program to support the invalidity of
Montgomery County’s ordinance prohibiting voucher discrimination assumes
that the voluntary nature of the program is more important than the goal of increasing the supply of affordable housing for low-income families.\textsuperscript{116} The court refuted this argument by stating that nothing in the federal legislation supports the idea that the voluntary nature is important, much less more important than increasing the supply of affordable housing.\textsuperscript{117} The Supreme Judicial Court of Massachusetts also noted that voluntary participation is not at the heart of the voucher program.\textsuperscript{118}

Even if Congress intended to emphasize the voluntary nature of the voucher program, this nature is likely overridden by the anti-discrimination goals of the Fair Housing Act. The text of the Fair Housing Act demonstrates the importance of the goal of preventing housing discrimination. The Act requires “[a]ll executive departments and agencies [to] administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further the purposes of [the Fair Housing Act] and [to] cooperate with the Secretary to further such purposes.”\textsuperscript{119} Requiring all programs to ensure compliance with the Act could demonstrate the supremacy of the Fair Housing Act in guiding housing policy. This requirement suggests that when there is a conflict between different housing policies, federal housing programs should be run in a manner that will affirmatively further the anti-discrimination and desegregation goals of the Fair Housing Act. Therefore, because the goals of the voucher program and the Fair Housing Act would be furthered by a disparate impact claim, courts should recognize a disparate impact claim for voucher holders.

D. EXAMINATION OF COURT OPINIONS ON DISPARATE IMPACT CLAIMS FOR HOUSING VOUCHER HOLDERS

Courts are divided on allowing disparate impact claims under the Fair Housing Act for voucher discrimination. A few federal courts have allowed plaintiffs who were denied housing because of their vouchers to assert these claims. Other courts have limited or prohibited them. Overall, an analysis of federal courts’ reasoning weighs in favor of allowing plaintiffs to bring these claims.

1. Courts Upholding Disparate Impact Claims

The Southern District of New York has allowed disparate impact claims for housing voucher holders.\textsuperscript{120} In Bronson v. Crestwood Lake Section 1 Holding Corp., 746 F. Supp. 301 (S.D.N.Y. 1990) (the Fair Housing Act creates an enforceable right against landlords who participate in the voucher program but refuse to rent to some applicants because they are voucher holders); Bronson v. Crestwood Lake Section 1 Holding Corp., 746 F. Supp. 301 (S.D.N.Y. 1990) (the Fair Housing Act creates an enforceable right against landlords who participate in the voucher program but refuse to rent to some applicants because they are voucher holders).
Corp., the Crestwood Lake apartments had a policy of not renting to voucher holders. The plaintiffs, individuals who were denied rental housing because of their vouchers, claimed that the policy had an adverse and disproportionate impact on minority applicants as compared to white applicants. In determining whether to issue a preliminary injunction, the court allowed the plaintiffs to prove they had a prima facie case that the no-voucher policy created a disparate impact on minorities, thus violating the Fair Housing Act. The court used a disparate impact analysis from Title VII to decide that the plaintiffs had a prima facie case; that the defendant’s policy was not required to ensure tenants will pay their rent; and that because the defendants had previously participated in the Section 8 certificate program, the legitimacy of its business interest in not participating in the voucher program was undermined.

In a case against an apartment owner who stopped accepting housing vouchers, a federal district court allowed a plaintiff class of current Section 8 tenants and future applicants who hold vouchers to bring a disparate impact claim under the Fair Housing Act. Because withdrawing from the program would disproportionately affect black residents and apartment seekers, the court held that the plaintiffs could make out a prima facie case of disparate impact under the Fair Housing Act. The court added that landlords, but not the one in this case, might be able to prove a business necessity by showing that the administrative costs of enrolling in the program are too high.

2. Courts Rejecting Disparate Impact Claims

Some federal courts of appeals have ruled out or limited a cause of action under the Fair Housing Act for tenants against landlords who will not accept their housing vouchers. The Second Circuit does not allow disparate impact claims under the Fair Housing Act for voucher discrimination. Without discussing the competing goals and purposes of the Fair Housing Act and the Housing Choice Voucher Program, the court relied on the voluntary nature of the voucher program to create a per se ban on these disparate impact claims.

Other courts have engaged in more thorough discussions of these claims and have also prohibited them. In Knapp v. Eagle Property Management, the plaintiff claimed the landlord’s policy of not accepting new voucher holders as

Section 1 Holding Corp., 724 F. Supp. 148 (S.D.N.Y. 1989) (refusal to consider applications of any Section 8 voucher holders can result in a disparate impact under the Fair Housing Act).

122. Id. at 153–54.
123. Id. at 154–58.
125. Id. at *7.
126. Id.
128. Id.
tenants had a disproportionate impact on minorities. The Seventh Circuit reasoned that disparate impact claims are not appropriate in all contexts. The court assumed the owners’ non-participation in the voucher program was for legitimate reasons; thus, landlords cannot be held liable for racial discrimination under the disparate impact theory. Additionally, because owners who are not currently participating in the program have the same disparate impact on minorities as owners who withdraw from participation, neither should be held liable under the Fair Housing Act.

The Seventh Circuit’s analysis improperly analyzes the disparate impact claim under the Fair Housing Act. First, the court presumes that owners that do not participate in the voucher program have legitimate non-discriminatory reasons for doing so. This presumption creates an additional barrier for plaintiffs who attempt to bring a prima facie disparate impact claim, unfairly burdening them. The court also states that, because it assumes owners have a legitimate reason for not participating, they cannot be held liable for racial discrimination under a disparate impact theory. This decision mishandles the disparate impact claims under the Fair Housing Act. Disparate impact claims do not require a discriminatory motive or intent. If there were an intent requirement under the claim, the disparate impact claim would be identical to a discriminatory treatment claim. Instead, the Fair Housing Act recognizes that a neutral business practice of the landlord used to minimize any potential administrative burden that the voucher program might have can still negatively affect minorities who are seeking rental units. Thus, regardless of the landlord’s intent, a plaintiff can have a disparate impact claim under the Fair Housing Act.

The Seventh Circuit does recognize that landlords who withdraw from the program and those that choose not to participate altogether have a disparate impact on minorities. But it states that the voluntary nature of the voucher program is the reason that landlords cannot be held liable under the Fair Housing Act. This determination undermines the importance of the prohibitions in the Act. The Fair Housing Act was adopted to prevent discrimination that creates barriers to the sale or rental of housing, real estate-related transactions, and the provision of brokerage services. Policies that reduce housing opportunities disproportionately for one group but lack discriminatory intent still create barriers to fair housing. Therefore, the court’s recognition of the disparate impact that rental policies have on minorities is at odds with its

129. See 54 F.3d 1272, 1276 (7th Cir. 1995).
130. Id. at 1280.
131. Id.
132. Id.
134. See Knapp, 54 F.3d at 1280.
135. See id.
unwillingness to find a disparate impact claim in this category of cases.

The Sixth Circuit has restricted disparate impact claims for voucher discrimination under the Fair Housing Act to situations where a landlord withdraws from the voucher program.137 The Sixth Circuit has not allowed a cause of action against landlords who never participated in the program.138 The court distinguishes these situations by stating that withdrawal from the program affects an identifiable group of people, while nonparticipation affects a group of indeterminate size and composition.139 It has also determined that a landlord who never participates can claim that a legitimate business interest has discouraged his or her participation, but a landlord who withdraws from the program creates a stronger suspicion of discriminatory animus.140

The distinction is arbitrary and has potential to prevent the imposition of liability where it is needed most. While the Seventh Circuit ultimately decided against imposing liability on both non-participating and withdrawing landlords, it was correct in highlighting the lack of distinction between the two groups.141 Even though the exact number of people affected by a non-participating landlord is not immediately identifiable, the group that is affected by a withdrawing landlord is not as readily identifiable as the Sixth Circuit depicts. Although current tenants would be identifiable victims of a landlord’s withdrawal from the voucher program, the withdrawal also affects future prospective tenants who wish to rent a unit in the building. As with the non-participating landlord, it is difficult to identify all prospective tenants who will be turned away because of a no-voucher policy. The group of people who cannot rent an apartment in the building because of the new no-voucher policy could be much larger than the number of existing tenants who are affected by the withdrawal. Thus, the ability and value of identifying some people who are injured, which could ultimately be a small subset of the pool of victims, is exaggerated and creates a false distinction between the actions of the landlords.

Furthermore, the unwillingness to impose liability on landlords that never enrolled in the program could prevent the court from punishing actions that the Fair Housing Act is targeted to prevent the most. Landlords that decline participation may have non-discriminatory reasons, but some might refuse to accept vouchers because of their discriminatory animus against voucher holders and use administrative burden as a pretext for their lack of participation. This kind of discriminatory treatment, which drove the passage of the Fair Housing Act, clearly falls within the letter and spirit of the law.142 However, discrimina-

138. Id. at 377.
139. Id.
140. Id.
141. See Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272, 1280 (7th Cir. 1995).
tory treatment claims are not always easy for a plaintiff to prove. Thus, a prospective tenant’s only recourse against a landlord who possesses discriminatory animus could be a disparate impact claim under the Fair Housing Act. By categorically closing off this claim to plaintiffs when the landlord has actively chosen not to enroll in the voucher program, the court might be allowing the most egregious violations of the Fair Housing Act to go unpunished. Therefore, allowing a disparate impact claim against landlords who refuse to rent to voucher holders would at least allow courts to examine the plaintiff’s claim and discourage landlords from engaging in discrimination.

On the whole, the courts that do allow these claims more fairly balance the interests of the parties than courts who create a per se ban against them. If owners or landlords will be genuinely and significantly burdened by participating in the program, then they do not have to accept vouchers. But if landlords do not have a legitimate business interest that makes participation in the voucher program problematic, then the landlord should accept the voucher. At a minimum, allowing these claims gives courts the opportunity to consider the interests of both sides, whereas foreclosing them altogether does not acknowledge the voucher holders’ interest in not having their housing search unfairly constrained by no-voucher policies that do not further a legitimate interest of the landlord.

E. POLICY CONSIDERATIONS FOR A DISPARATE IMPACT CLAIM FOR VOUCHER HOLDERS

There may be additional reasons that weigh against creating a cause of action under the Fair Housing Act for voucher discrimination. If federal courts allow this cause of action, there is the potential for legislative and political backlash against the courts. If courts push the issue, the legislature might be more prone to override court decisions, creating much stronger barriers to a legislative solution to this issue. And even if an advocate seeks a legislative solution, legislation finding a claim in the Fair Housing Act could push the issue further than the will of political constituents. If this legislation is too far ahead of the political will, legislators could reduce the strength of the legislation or decrease the stringency of enforcement. Thus, proceeding incrementally by pushing for adding protections for voucher holders in local and state statutes for localities that suffer the most from this type of discrimination could be a better strategy.

But these arguments could be used to deter any judicial or legislative action. The original Fair Housing Act encountered resistance, but it was still adopted due to the importance of curtailing discrimination in the housing market. Racial discrimination continues today. Additionally, Congress has added protected

143. See Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977) (stating that evidence of discriminatory intent has become harder to find as overtly discriminatory behavior has become less socially acceptable).

classes to the Fair Housing Act when it has perceived discrimination in the housing market that creates barriers to finding suitable housing. This history demonstrates that adding a cause of action for voucher discrimination, either by legislative or judicial action, is politically feasible.

Opponents could argue that no other protected class under the Act requires landlords to enroll in a federal program to avoid discriminating against that class, and that the new requirements would make compliance more onerous. But enrolling in the program might not be more burdensome than other Fair Housing Act requirements. The Fair Housing Act requires landlords to make adjustments to terms and provisions of the lease or building policies in order to promote equal access to housing for people with and without disabilities. Similarly, creating a voucher discrimination claim would require landlords to eliminate their no-voucher policies in order to promote equal access to housing between people who pay rent with vouchers and those who pay with more traditional forms of income. Courts have not interpreted the Fair Housing Act to require accommodations to alleviate the economic hardships of the tenant. But voucher holders do not seek to lower the rent or change the landlord’s other criteria for tenant eligibility, such as a credit check. Instead, these potential tenants seek to pay the landlord the same amount as any other tenant, but through payments made directly to the landlord by the government. Thus, landlords will earn the same profit from renting units to voucher holders as non-voucher holding tenants. Therefore, requiring landlords to enroll in the program helps to provide more affordable housing, and simultaneously ensures landlords will retain the economic use of their land.

Even if accommodating voucher holders is more burdensome than compliance with other portions of the Fair Housing Act, overall, the reasons rest in favor of creating a claim for voucher discrimination. As previously discussed, preventing voucher discrimination can increase the availability of affordable housing.

148. See Hemisphere Bldg. Co. v. Vill. of Richton Park, 171 F.3d 437, 439–41 (7th Cir. 1999) (confining “reasonable accommodation” to rules or policies that affect people with disabilities and refusing to expand the duty to include financial hardships); Sutton v. Freedom Square Ltd., No. 07-14897, 2008 WL 4601372, at *4–5 (E.D. Mich. 2008) (refusing to require a landlord to change credit requirements for a prospective tenant with a disability because the accommodation was related to the plaintiff’s economic condition and not his disability); Means v. City of Dayton, 111 F. Supp. 2d 969, 978–79 (S.D. Ohio 2000) (noting that the Fair Housing Amendments Act does not override zoning ordinances simply because such ordinances make housing for people with disabilities more expensive); Schanz v. Vill. Apartments 998 F. Supp. 784, 792 (E.D. Mich. 1998) (holding that a landlord is not required to accept an agreement guaranteeing payment of rent by a third party for a prospective tenant with disabilities who had insufficient funds to pay rent and a negative credit history, because a landlord is not required to accommodate a tenant’s financial situation).
housing for low-income individuals and promote more mixed-income communities by increasing housing opportunities in neighborhoods with lower concentrations of poverty.\textsuperscript{149} If vouchers are to maintain their flexibility that has garnered political support, the market of available housing must not be artificially constrained by landlords who refuse to accept vouchers. Adding a claim for voucher holders can prevent landlords from enacting no-voucher policies as a pretext for discrimination against another protected class. If the private market as a whole is willing to accept the benefits of its involvement in the voucher program, it should also accept any alleged burdens of renting to eligible tenants who wish to pay with the voucher. Ultimately, the potential burdens experienced by the landlord are likely outweighed by those voucher holders face if this discrimination is allowed to continue.

**CONCLUSION**

Recognizing a right for low-income individuals who hold housing vouchers to bring a claim against landlords or owners for voucher discrimination is essential to furthering the goals of federal housing legislation. The Housing Choice Voucher Program asserts the importance of providing suitable, affordable housing options for low-income individuals.\textsuperscript{150} And the Fair Housing Act seeks to eliminate barriers to finding housing for individuals who have historically faced discrimination.\textsuperscript{151} But voucher holders, who are supposed to be given more housing opportunities through the voucher program, are being turned away by landlords and owners.\textsuperscript{152} They face discrimination similar to the discrimination families with children faced: landlords refused to rent to them, thereby reducing the quantity and quality of their housing options.\textsuperscript{153} Congress recognized that refusing to rent to families with children violated the Fair Housing Act and made familial status a protected class; voucher holders, now facing the same discrimination, should be afforded the same protections by Congress. Without more legal protection, voucher discrimination will continue, directly contravening the letter and the spirit of both the Housing Choice

\textsuperscript{149} See Roisman, supra note 101, at 517–18.

\textsuperscript{150} 42 U.S.C. § 1437f(a) (2006).


Additionally, increasing housing options for voucher holders by preventing voucher discrimination is important for ensuring low-income individuals have access to one of the most basic human needs. State, county, and city statutes and ordinances have reduced some voucher discrimination, but these protections are often inadequate to significantly reduce the occurrences of voucher holders being turned away from rental housing. Congress has begun to attack this problem for families with children and other classes by directly protecting them under the Fair Housing Act, but it has not begun to address this problem for voucher holders. If Congress amends the Fair Housing Act, or the courts allow voucher holders to bring disparate impact claims for voucher discrimination, they can support the goals and purposes of federal legislation and ultimately increase the quantity of options and quality of housing for low-income individuals and families.

154. See Colfax, supra note 3, at 20.