A Source of Hope: Looking to Massachusetts’s Fair Housing Law as a Guide for Rhode Island’s Proposed Legislation to Protect Public Assistance Recipients from Housing Discrimination

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Recommended Citation
Available at: https://docs.rwu.edu/rwu_LR/vol25/iss3/7

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INTRODUCTION

In a recent study investigating Rhode Island housing, SouthCoast Fair Housing (SCFH) analyzed online rental advertisements and uncovered a startling statistic: about 9,300 households rely on the [Housing Choice Voucher] program to afford quality rental housing, and participating renters should be able to afford more than a third of statewide listings. Yet the same tenants will ultimately be shut out of approximately 93% of units,
regardless of their individual qualifications.” The Housing Choice Voucher (HCV) program is a federal program that is supposed to allow low income renters to rent privately owned apartments by providing rental assistance based on family size and the cost of renting a moderately priced unit in the local market. As evidenced by SCFH’s study, however, the program is ineffective when landlords can freely discriminate against voucher holders.

The federal government does not currently include source of income as a class protected by civil rights laws; therefore, cities and states must enact their own protections under their own fair housing laws. As of March 2020, fourteen states and the District of Columbia have laws that protect housing voucher recipients from discrimination. Rhode Island has not joined these states, but for several years the Rhode Island General Assembly has introduced bills to add lawful source of income as a protected class. Most recently, in February 2020, the Rhode Island Senate recommended a bill to the House that would add “lawful source of income” to the “Rhode Island Fair Housing Practices Act,” and the House has yet to act on the proposed bill.

1. CLAUDIA WACK, “IT’S ABOUT THE VOUCHER”: SOURCE OF INCOME DISCRIMINATION IN RHODE ISLAND 4 (2019). SCFH is a non-profit that provides education and resources to promote fair housing. Id. at 2.


3. See WACK, supra note 1, at 4.

4. For a list of those that have done so, see POVERTY & RACE RESEARCH ACTION COUNCIL, EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM app. B (Mar. 2020) [hereinafter Appendix B].

5. Id. at 2. The states with source of income laws are California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Washington. Id.


Rhode Island might have greater success in passing a bill to protect voucher holders if it adopts Massachusetts’s statutory language and process for adjudicating claims of public assistance discrimination. Because Massachusetts was the first state to revise its fair housing statute to include protection of public assistance recipients in 1971, the state has had significant time to develop its law. Massachusetts’s fair housing laws use the term “public assistance”9 rather than lawful source of income, narrowing the protected class to include only people who derive their income from reliable government programs rather than all people who derive their income from any lawful source.10 “Lawful source of income” may include many different sources of income, such as alimony and child support,11 which might be unreliable if the individual obligor for some reason stops making payments. On the other hand, “public assistance” is limited to federal, state, and local funding that government agencies consistently distribute every month.12 By narrowing the language to “public assistance,” Rhode Island legislators who have been hesitant to support a bill protecting people who have any lawful source of income may be more apt to support a bill that protects a smaller, more clearly defined class.

In addition to narrowing the scope of the bill, supporters may promote its passage by addressing landlords’ concerns. Although landlords will not be able to base their decisions on whether a potential tenant receives a housing voucher, they can still base their decisions on other factors, like rental history or credit score, and they can still remove troublesome tenants who destroy property or fail to pay rent through eviction proceedings. Fair housing laws that prohibit discrimination limit the right of landlords to make decisions about tenants, but using the narrower language of the Massachusetts statute may help bring about a

10. See id.
11. R.I. S. 2134.
compromise with landlords who do not support the broad “lawful source of income” language proposed in Rhode Island.

If Rhode Island passes legislation similar to Massachusetts’s, it can limit the burden on courts by adjudicating claims similarly to how Massachusetts handles discrimination complaints. In Massachusetts, housing discrimination laws are enforced by the Massachusetts Commission Against Discrimination (MCAD)\(^\text{13}\) and its counterpart in Rhode Island, the Rhode Island Commission for Human Rights (RICHR)\(^\text{14}\) can serve a similar function of avoiding overburdening the judicial system by adding public assistance discrimination to the cases it investigates and decides.

Accordingly, Rhode Island should adopt Massachusetts’s model for protecting recipients of public assistance by narrowing the language of the proposed bill from “lawful source of income” to “public assistance” because the narrower language of the Massachusetts statute balances the rights of housing voucher recipients with the rights of landlords. Rhode Island should also adopt a system similar to Massachusetts’s system of first adjudicating claims of discrimination based on public assistance out of court; the Rhode Island Commission for Human Rights is already equipped to accomplish this task.

This Comment will address how implementing a law akin to the fair housing law of Massachusetts that protects recipients of public assistance from discrimination will benefit the citizens of Rhode Island. Part I will explain how the HCV program is designed to assist low-income individuals and how discrimination makes the program less effective both nationally and in Rhode Island. Part II will discuss how Massachusetts’s law protecting against discrimination based on public assistance can serve as a model for Rhode Island’s law and how the language of a future Rhode Island bill may be revised to increase the likelihood that the Rhode Island General Assembly will pass it by addressing the issues that have been identified. Part III will discuss landlords’ criticisms of source-of-income discrimination laws and how the benefits to the


community would outweigh the burdens these laws would place on landlords. Part IV will explain how this law could be enforced by the Rhode Island Commission for Human Rights, similar to the Massachusetts Commission Against Discrimination, and how this will help to ease the burden that increased litigation could have on the court system.

I. SOURCE OF INCOME DISCRIMINATION UNDERMINES THE HOUSING CHOICE VOUCHER PROGRAM

Although the federal housing voucher program was created in 1937 to increase housing options for low income individuals, the federal government has never protected voucher holders from discrimination, allowing landlords to turn away people who receive this form of public assistance. Several states have put laws in place to prevent discrimination on the basis of public assistance, but Rhode Island currently offers no such protection, leaving voucher holders susceptible to frequent discrimination.

A. The Housing Choice Voucher Program

The United States Department of Housing and Urban Development (HUD) created the HCV program “so eligible families can afford decent, safe, and sanitary housing.” The HCV program is designed to afford low-income individuals greater mobility in their housing choices by providing vouchers used to pay rent in private properties. HUD gives funding for these housing vouchers to local Public Housing Agencies (PHAs), and the PHAs use those funds to pay a portion of the program-participants’ rent to the landlords. The individuals receiving the subsidy must then

19. Id.
pay the remaining portion of the rent that is not covered by the voucher.\textsuperscript{20}

Eligibility for the program is calculated based on household size and income and “[b]y law, a PHA must provide 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income.”\textsuperscript{21} Landlords who rent to voucher recipients are obligated “to provide decent, safe, and sanitary housing to a tenant at a reasonable rent. The dwelling unit must pass the program’s housing quality standards and be maintained up to those standards as long as the owner receives housing assistance payments.”\textsuperscript{22} In return, the voucher holder “is expected to comply with the lease and the program requirements, pay its share of rent on time, maintain the unit in good condition and notify the PHA of any changes in income or family composition.”\textsuperscript{23} Overall, the voucher program is meant to promote social mobility by giving low-income individuals a choice that goes beyond merely subsidized housing projects.

B. The Fair Housing Act of 1968

The Fair Housing Act of 1968 was enacted to prohibit discriminatory practices in the sale and rental of housing.\textsuperscript{24} The statute only protects against discrimination based on “race, color, religion, sex, handicap, familial status, or national origin.”\textsuperscript{25} Although the federal government funds housing subsidy programs, it has not added recipients of the federal housing voucher program to the list of protected classes.

In January 2019, Democratic Congresswoman Nydia Velazquez of New York sponsored a bill in the House of Representatives to amend the Fair Housing Act to protect HCV recipients.\textsuperscript{26} The Landlord Accountability Act would add “holder of a housing voucher” to the list of protected classes enumerated in

\textsuperscript{20} Id.  
\textsuperscript{21} Id.  
\textsuperscript{22} Id.  
\textsuperscript{23} Id.  
\textsuperscript{25} § 3604.  
\textsuperscript{26} See H.R. 232, 116th Cong. (2019).
the Fair Housing Act. However, even if this bill passes the Democrat-controlled House, it is unlikely to pass the Republican-controlled Senate. The Fair Housing Act has not been amended to add another protected class since 1988, when disability was added to the list, demonstrating that changes to the statute are very rare. Furthermore, since only fourteen states currently protect housing voucher recipients from discrimination, the Landlord Accountability Act is unlikely to garner enough congressional support to be passed in the near future. Consequently, it seems likely that for the time being, states will be the focus of advocacy for fair housing reform.

C. Source of Income Discrimination

Federal fair housing laws do not protect voucher holders from discrimination; therefore, unless a city or state imposes its own anti-discrimination laws, landlords can freely discriminate against renters who use housing vouchers. In 2018, HUD conducted a study in five different locations to evaluate how difficult it is for tenants with housing vouchers to find a landlord willing to accept housing voucher recipients as tenants. The researchers conducted tests over the phone, with participants calling landlords and asking whether they would accept a housing voucher. The researchers concluded that:

[r]esults from the voucher acceptance tests show clear evidence of outright denial of vouchers in each of the five sites, although denial rates varied widely. Denial rates were highest in Fort Worth and Los Angeles (78 and 76 percent, respectively) and somewhat lower but still high in Philadelphia (67 percent). Rates were substantially lower in Newark (31 percent) and Washington, D.C. (15 percent).

27. Id.
29. See Wack, supra note 1, at 1–2.
31. Id. at 30. It is worth noting that of these five sites, two locations with the lowest percentage of voucher rejections were in jurisdictions where there are laws prohibiting source of income discrimination (New Jersey and the District of Columbia). Id.
Overall, landlords were more likely to accept vouchers in high poverty areas than in low poverty areas, limiting where voucher recipients may use their vouchers.\textsuperscript{32} The next step that the researchers took after the telephone audit was sending people to meet with landlords to view apartments.\textsuperscript{33} The researchers conducted in-person tests by sending one person who claimed to be a voucher recipient and one person who was not a voucher recipient to view the same apartments and record the landlords’ responses.\textsuperscript{34} Based on these in-person tests, the researchers found that landlords were more likely to stand-up people with vouchers and that they were less likely to tell voucher holders about the number of units that were available.\textsuperscript{35}

D. \textit{State Laws Protecting Housing Voucher Recipients}

Fourteen states have enacted their own legislation to combat source-of-income discrimination.\textsuperscript{36} Thus far, jurisdictions have adopted two different phrases in their source of income statutes. Connecticut, Delaware, the District of Columbia, New Jersey, New York, Oklahoma, Oregon, Utah, and Washington all use some version of “source of income” in the language of their statutes.\textsuperscript{37} On the other hand, Maine, Massachusetts, Minnesota, North Dakota, and Vermont use the term “public assistance” in their statutes.\textsuperscript{38} The states that use the “source of income” phrasing tend to grant

\textsuperscript{32} Id. at 32.
\textsuperscript{33} Id. at 45.
\textsuperscript{34} Id.
\textsuperscript{35} Id. at 50–51.
\textsuperscript{36} See Wack, \textit{supra} note 1, at 2.
\textsuperscript{37} \textit{CONN. GEN. STAT. ANN.} § 46a–64c. (West 2019); \textit{DEL. CODE ANN.} tit. 25, § 5116 (West 2009); \textit{D.C. CODE ANN.} § 2-1402.21 (West 2009); \textit{N.J. STAT. ANN.} § 10:5–4 (West 2019); \textit{N.Y. EXEC. LAW} § 296 (McKinney 2019); \textit{OKLA. STAT. ANN.} tit. 25, § 1452 (West 2013); \textit{OR. REV. STAT.} § 659A.421 (West 2019); \textit{UTAH CODE ANN.} § 57-21-5 (West 2019); \textit{WASH. REV. CODE ANN.} § 59.18.255 (West 2018).
\textsuperscript{38} \textit{ME. REV. STAT. ANN.} tit. 5, § 4581–A (2019); \textit{MASS. GEN. LAWS ANN.} ch. 151B, § 4 (West 2018); \textit{MINN. STAT. ANN.} § 363A.09 (West 2019); \textit{N.D. CENT. CODE ANN.} § 14-02.4-02 (West 2019); \textit{VT. STAT. ANN.} tit. 9, § 4503 (West 2019).
broader protections against housing discrimination than do those using “public assistance.”

For example, Delaware defines source of income as “any lawful source of money paid directly, indirectly, or on behalf of a renter or buyer of housing including: . . . [i]ncome derived from any lawful profession or occupation; . . . [i]ncome or rental payments derived from any government or private assistance, grant, or loan program.” This extends protection to individuals who make rent payments with any form of income that has been legally obtained, going well beyond just protecting people who participate in government-run housing assistance programs.

In contrast, Maine limits its protection to “any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual’s status as recipient.” This formulation, used by Maine and other states, such as Massachusetts, limits the protection to recipients of public assistance and promotes effective implementation of government housing subsidies without forcing landlords to completely ignore any lawful source of income in deciding on their tenants. This public assistance language strikes a balance between the need to assist low income individuals in finding safe housing and landlords’ desire to choose tenants who will be able to reliably make rent payments. This way, the voucher recipients are given a fair opportunity to apply for housing and use their government subsidy, while landlords can expect a reliable monthly payment directly from the government.

E. Rhode Island’s Source of Income Discrimination Problem

Without a law that protects against discrimination based on lawful source of income or receipt of public assistance, it is extremely difficult for housing voucher recipients to find suitable housing that will accept payment through the voucher program. To further understand this issue, SCFH gathered data on the effects

40. DEL. CODE ANN. tit. 6, § 4602(25).
41. See id.
42. ME. REV. STAT. ANN. tit. 5, § 4581–A(4).
43. See id.
of discrimination against voucher recipients by analyzing online advertisements and contacting landlords by phone.\textsuperscript{44}

The researchers began their study by examining several internet platforms where landlords can advertise properties and found that

\begin{quote}[only 34\% of the approximately 3,070 listings posted during that time period were affordable for a Rhode Islander with a voucher. Within that pool, 6.4\% explicitly discouraged voucher holders from applying with statements such as “no Section 8.” Another 15\% required all prospective tenants to earn two or three-times the rent in gross monthly income, effectively disqualifying the same low-income renters. Taking these factors into account, only 27\% of online listings were plausibly accessible to a tenant with a voucher.\textsuperscript{45}]
\end{quote}

This study uncovered only a small percentage of listings for which a person with a housing voucher would be eligible.\textsuperscript{46} The researchers attempted to capture what a real voucher recipient would experience by searching online during a two-week period in November 2018 and checking each of the five sites that they surveyed at the same time daily.\textsuperscript{47} Realistically, voucher recipients may not be able to do such an exhaustive search and would likely be discouraged to find that the HCV, which is supposed to give them more housing options, does not really give them much of a choice in Rhode Island.

The SCFH researchers proceeded to contact landlords by phone, responding to advertisements that would be affordable with a voucher and did not explicitly reject housing vouchers.\textsuperscript{48} SCFH testers spoke with landlords and real estate agents who posted a total of 105 advertisements for rental units.\textsuperscript{49} From these conversations, SCFH testers found that “63\% of these providers would not consider a tenant with a voucher, though it covered the rent in full. An additional 11\% gave unclear or equivocal responses;
only 26% affirmatively agreed to consider an HCV tenant."50 In
addition, the phone audit revealed that urban housing providers
were more likely to accept a voucher than suburban or rural
housing providers, limiting mobility for voucher holders within the
state.51

II. RECOMMENDED REVISIONS TO RHODE ISLAND’S SOURCE OF INCOME
DISCRIMINATION BILL

A. Rhode Island’s Current Fair Housing Laws

Rhode Island’s Fair Housing Practices Act is designed to create
safe, desegregated neighborhoods.52 The statute recognizes the
following protected classes:

  race, color, religion, sex, sexual orientation, gender identity
  or expression, marital status, military status as a veteran
  with an honorable discharge or an honorable or general
  administrative discharge, servicemember in the armed
  forces, country of ancestral origin, disability, age, familial
  status, or regardless of the fact that a tenant or applicant
  or a member of the household is, or has been, or is
  threatened with being the victim of domestic abuse, or that
  the tenant or applicant has obtained, or sought, or is
  seeking, relief from any court in the form of a restraining
  order for protection from domestic abuse.53

Rhode Island’s statute enumerates several protected classes that
are not federally recognized in the Fair Housing Act, demonstrating
that Rhode Island legislators have been more amenable to changing
the state’s fair housing laws than the federal government is to
changing federal fair housing laws; therefore, state legislators
should be open to adding public assistance recipients to the
statute’s list of protected classes.54

50. Id. at 12. Testers are individuals employed by or volunteering for the
agency posing as people searching for housing using fictional identities. See
id. at 6.
51. Id. at 16.
52. See 34 R.I. GEN. LAWS § 34–37–1(a).
53. § 34–37–2.
B. Proposed Bills to Add Source of Income to Rhode Island’s Fair Housing Statutes

For years, the Rhode Island General Assembly has tried and failed to pass legislation that would ban discrimination against housing voucher recipients. In 2007 and 2009, the Rhode Island House of Representatives rejected bills that proposed to add “source of income” to the Fair Housing Practices Act. From 2016 through 2019, bills including the language “lawful source of income” have also failed to pass. The Senate has passed the bills for the past three years, but they have died in the House each time. The House Judiciary Committee has previously debated concerns over landlords feeling as though such bills force them to do business with the government, subject them to greater government oversight, and result in landlords raising housing prices to make their apartments impossible to afford with a voucher. Proponents in the House have countered that landlords still have the right to choose tenants who meet their standards and can afford the units, landlords are already required to keep their units up to codes imposed by the government, and competition in the housing market will likely prevent landlords from raising their prices to keep voucher recipients from renting their units. The fact that the House has refused to pass the source of income discrimination bill year after year suggests that changes to the bill are necessary. Despite the repeated failure of past bills, a new bill proposed in the Rhode


59. Id.
Island Senate in 2020 continues to use the same “lawful source of income” phrasing. \(^60\)

The Rhode Island bills have defined the term “lawful source of income” broadly. In the 2020 Senate bill, lawful source of income includes:

- any income, benefit, or subsidy derived from child support; alimony; Social Security; Supplemental Security Income;
- any other federal, state, or local public assistance program, including, but not limited to, medical or veterans assistance; any federal, state, or local rental assistance or housing subsidy program, including Section 8 Housing Choice Vouchers as authorized by 42 U.S.C. § 1437; and any requirement associated with such public assistance, rental assistance, or housing subsidy program. \(^61\)

One of the impediments facing Rhode Island’s source of income discrimination bills is the perception that they would overly broaden protections under the umbrella of lawful sources of income. \(^62\) Accordingly, narrower language may be necessary to gain enough support for a bill protecting HCV recipients to pass.

C. Adopting the Language of Massachusetts’s Statute in Rhode Island’s Bill

The Massachusetts antidiscrimination statute, enacted in 1971, was the first state statute to protect voucher recipients from discrimination. \(^63\) Massachusetts General Laws Chapter 151B, Section 4 makes it unlawful to discriminate against public assistance recipients in the housing context. \(^64\) Under subsection 10, it is unlawful:

[f]or any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance including medical assistance, or who is a tenant receiving


\(^{61}\) See id.

\(^{62}\) See 3-12-19 House Committee on Judiciary, supra note 58.

\(^{63}\) An Act Relative to Eliminating Discrimination in Credit, Services or Rental Accommodations to Certain Recipients of Public Assistance, ch. 726, 1971 Mass. Acts 600 (codified at MASS. GEN. LAWS ch. 151B, § 4(10)).

\(^{64}\) MASS. GEN. LAWS ch. 151B, § 4(10) (2019).
federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.  

Massachusetts has limited its protection specifically to recipients of public assistance and does not extend its protection to all other lawful sources of income, as past Rhode Island bills have sought to do. The Massachusetts statute does not protect any and all lawful sources of income; instead, the statute protects recipients of federal, state, or local housing subsidies only, but provides broad protections to people who fall into that category.  

A 1987 case led state legislators to amend the Massachusetts statute to better protect housing voucher recipients from discrimination. In Attorney General v. Brown, the Massachusetts Attorney General sued a landlord for discriminating against housing voucher recipients by refusing to process applications from voucher holders. At the time the case was litigated, the statute stated that a landlord could not discriminate “solely” on the basis of receipt of public assistance. The landlord argued that he was not discriminating solely on that basis, claiming instead that he refused to accept applications from voucher recipients for business reasons. Because the landlord was able to articulate business reasons for rejecting all voucher recipients, it was unclear whether the landlord based his decision “solely” on receipt of public assistance, so the Massachusetts Supreme Judicial Court reversed the lower court’s decision to grant summary judgment in favor of the Attorney General. In response to Attorney General v. Brown, the statute was amended in 1989 to remove the word “solely” and added that landlords could not reject voucher recipients “because of any requirement of such public assistance, rental assistance, or

65. Id.  
67. § 4(10).  
69. Id. at 1107.  
70. Id. at 1108.  
71. Id.  
72. Id. at 1109–10.
housing subsidy program." The change in the statutory language now precludes landlords from arguing that they can reject voucher recipients because the requirements of the voucher program are too economically costly and burdensome.

The Massachusetts statute currently provides most of the protections that supporters of Rhode Island’s lawful source of income bill would like to enact, although it is more specific about who is protected under the statute. In the 2020 Rhode Island proposal, the statute would be amended to make it unlawful to discriminate based on receipt of any lawful source of income; receipt of federal, state, or local subsidies; or based on the requirements of those government subsidies. If this proposed legislation tracked Massachusetts’s law, the only change to the proposed legislation would be to remove the portion of the bill that says that any lawful source of income is protected.

Because Massachusetts has developed its public assistance recipient protections using narrow language that also strongly protects public assistance recipients, Rhode Island legislators should model future bills after the language of the Massachusetts statute. The “public assistance” phrase in the Massachusetts statute would create a compromise between supporters of greater protection for voucher recipients and those who are concerned about the expanded protections that the law would create which could lead to passage of the bill.

Rhode Island’s 2020 bill, which

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74. DiLiddo v. Oxford St. Realty, Inc., 876 N.E.2d 421, 428–29 (Mass. 2007). In this case, the facts were similar to those in Attorney General v. Brown; a landlord refused to use the lease form required for the alternative housing voucher program (a voucher program used by disabled persons), because he believed provisions in the form were unreasonable. Id. at 428–29. The court ruled that the defendants could not reject requirements of a housing voucher program by asserting a “legitimate, non-discriminatory reason” for refusing to comply with the program. Id. at 429. The statute does not have any requirement of animus; landlords simply cannot discriminate against public assistance recipients because of program requirements. Id.
76. R.I. S. 2134.
77. See id.
78. See MASS. GEN. LAWS ch. 151B, § 4(10).
includes alimony and child support under the umbrella of “lawful source of income” might seem too broad to wary landlords who cannot be sure that the individual making those payments will continuously be willing or able to make the payments.79 If the bill is limited to only protect participants in federal, state, or local rental assistance and housing subsidy programs, there will be less concern that the source of the payments will refuse to pay or run out of funding.

During the Rhode Island Senate Judiciary Hearing on the 2020 Rhode Island source of income discrimination bill, Senator William Bell argued that the Rhode Island bill should track the Massachusetts bill.80 However, Senator Bell argued that the language should be changed to only include public assistance so that landlords could show a preference for voucher holders in their advertising and in their decision to accept tenants.81 The committee disagreed with Senator Bell’s argument, because of a concern that allowing landlords to articulate a preference for voucher holders could raise an equal protection issue by unfairly favoring voucher holders over prospective tenants who do not qualify for such assistance.82 The committee focused on the problem of granting a preference for voucher holders, but the language of the Massachusetts statute does not actually create the preference that Senator Bell proposed and does not produce an equal protection issue. The Massachusetts statute simply limits the protected class to public assistance recipients and does not allow landlords to prefer voucher holders over other potential tenants.83

79. R.I. S. 2134.
81. Id. at 1:17:30.
82. Id. at 1:27:30.
III. ADDRESSING LANDLORDS’ CONCERNS WILL HELP NEW LEGISLATION PASS

A. Balancing Landlords’ Rights and Housing Voucher Recipients’ Rights

Even with language limiting Rhode Island’s statute to only protect public assistance recipients, landlords still have their misgivings about renting to HCV recipients. During the Rhode Island Senate Judiciary Committee Hearing discussing the 2019 proposed source of income discrimination bill, many people spoke in support of the bill, but at least one landlord expressed concern. He discussed speaking to other landlords about accepting tenants who participated in the HCV program and reported that many landlords told him “I’m never doing that again” after having a bad experience with voucher-recipient tenants. This landlord recommended that the state reach out to landlords who had a negative experience with the program and decided to stop accepting HCV recipients as a result of their past experiences. This raises an important point on the issue of protecting housing voucher recipients: there must be a dialogue between landlords, tenants, and legislators in order to pass this legislation. The rights of HCV recipients are important, but the rights of landlords must be protected as well.

B. Understanding Landlords’ Rights Under the Proposed Legislation

Some Rhode Island landlords might believe that the amendment to the fair housing statute takes away their right to choose whom they accept as tenants, but that is not the case. One article written in opposition to Delaware’s source of income discrimination statute argues that the law prevents landlords from making informed decisions about tenants and calculating the risk

85. Id. at 1:04:55
86. Id. at 1:05:30
of nonpayment.\textsuperscript{87} It is true that landlords will have one less criterion upon which to decide whether to accept a tenant; however the author acknowledged that landlords may base their decisions on other factors like “credit score or worthiness, previous rental history, employment history, [and] criminal history.”\textsuperscript{88} It should go without saying that individuals who receive housing vouchers are not automatically bad tenants and individuals who do not depend on vouchers are not always good tenants. Source of income discrimination legislation simply asks landlords to look past the voucher and wholly consider the potential tenant’s qualifications.

The Rhode Island 2020 bill does not demand that landlords accept any potential tenant who holds a housing voucher; it simply asks them not to turn down potential tenants without even considering their qualifications.\textsuperscript{89} Additionally, the proposed legislation builds in some protections for landlords. The 2020 Rhode Island bill would give landlords the right “to confirm the source, amount and expected duration of the lawful source of income of the prospective purchaser or tenant to determine whether the prospective purchaser or tenant meets the nondiscriminatory standards and preferences or terms, conditions, limitations or specifications.”\textsuperscript{90} The statute would not prevent landlords from making any inquiry on a potential tenant’s source of income; they would retain the right to evaluate whether the tenant can meet the requirements for renting.\textsuperscript{91}

The proposed legislation would also allow owners of rental properties with three units or less who live on the property to refuse to rent to a potential tenant based on their source of income.\textsuperscript{92} This exemption would allow landlords of small, owner-occupied properties to reject tenants based on lawful source of income, protecting them from dealing with government forms and any costly modifications that may be required to comply with a voucher program, while owners of larger properties that are not occupied by

\begin{itemize}
\item \textsuperscript{88} \textit{Id.} at 842.
\item \textsuperscript{90} \textit{Id.}
\item \textsuperscript{91} \textit{See id.}
\item \textsuperscript{92} \textit{Id.}
\end{itemize}
the owner, who are likely to be more business savvy when it comes to rental agreements and running a larger business, might be able to absorb the costs of complying with the voucher programs more easily.93

C. Landlords’ Concerns: Burdensome Requirements and Loss of Rights

Landlords who do not fall under the exemption carved-out for owner-occupied properties with three or fewer units might still be concerned about the burdens that the new source-of-income legislation could create. Landlords have argued that they rejected applicants with vouchers because it was too burdensome to comply with the requirements of the program, but if courts allow landlords to avoid compliance, it would undermine the effectiveness of the HCV program.94 In McFadden v. Moll, a Massachusetts landlord refused to rent to a family with young children that held a housing voucher.95 The landlord informed the family and testers from the Fair Housing Center of Greater Boston that he would not rent to people with vouchers or families with children because the apartment contained lead.96 The court issued a preliminary injunction requiring the landlord to comply with the lead paint laws and offer the apartment to the family again with the same terms and conditions that were offered to other tenants,97 because “[t]he defendant’s statements to the plaintiff, the housing advocate, and the two testers were quite clear that his renting decisions were being driven by his desire not to take on a family on public assistance or a lead paint abatement project.”98 McFadden demonstrates why it is necessary to protect recipients of public assistance; without the Massachusetts statute in place, the landlord could have successfully argued that he refused the family on the basis of their voucher, when he was really discriminating...

93. See id.
95. Id. at *1.
96. Id. at *3–4. The landlord’s refusal of vouchers stemmed from the fact that the voucher program would require inspections of the apartment and he would be required to remove the lead. See id.
97. Id. at *10.
98. Id. at *6–7.
against families with young children to avoid having to comply with lead paint laws.99

Both the Massachusetts statute and the 2020 Rhode Island bill require landlords to comply with the requirements of public assistance programs.100 A landlord who accepts a tenant receiving a housing voucher will be subject to inspections where the inspector will examine the conditions of the apartment for electrical hazards, lead paint, and other safety or health problems.101 Complying with the requirements might mean that landlords must undertake major repairs and renovations. Although the process may be more costly for landlords, requiring landlords to create safe housing raises the standard of living for tenants, so Rhode Island could also consider providing assistance to landlords who want to bring their units into compliance with HUD’s standards. SCFH’s study, “It’s About the Voucher”: Source of Income Discrimination in Rhode Island, recommends “additional funding for both (1) lead remediation and (2) outreach and education programs” as a way of addressing landlords’ concerns if legislation protecting public assistance recipients is enacted.102 Landlords may be more open to cooperating with housing voucher recipients if Rhode Island makes resources available to assist with the burdens that the HCV program creates.

IV. MANAGING AN INFLUX OF NEW DISCRIMINATION CLAIMS THROUGH ADMINISTRATIVE RATHER THAN JUDICIAL PROCEDURE

A. The Massachusetts Commission Against Discrimination Prosecutes Public Assistance Discrimination Through Administrative Procedure

MCAD was established to “investigate and prosecute [c]omplaints of [d]iscrimination in employment, housing, credit and mortgage lending, public places, and when seeking access to

99. See id.
102. Wack, supra note 1, at 17.
educational institutions.” A person who would like to make a claim of discrimination in Massachusetts must file a complaint with the MCAD before removing the case to court. Individuals may file complaints with the MCAD themselves or through their attorneys, but an individual is not required to hire an attorney during the course of an MCAD investigation. Once a complaint has been filed, MCAD mails a copy of the complaint to the named respondents, who are then given the opportunity to reply to the allegations in a position statement. The respondent sends a copy of the position statement to the complainant, who may then submit a written rebuttal. MCAD then conducts an investigation with the documentation provided by the complainant and continues to “gather information by interviewing witnesses, obtaining relevant documents, site visits, and additional methods as necessary.” The Investigating Commissioner uses the evidence to make a probable cause finding regarding whether it is more likely than not that the alleged discrimination occurred. If there is a probable cause determination, the case goes forward to conciliation but, if conciliation fails, the case will be decided at a public hearing by an MCAD Commissioner.

There are several reasons why the MCAD investigation process prevents discrimination cases from overburdening the courts. A case may only be removed to superior, probate, or housing court “at the expiration of ninety days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but not later than three years after the alleged unlawful practice occurred.” The average MCAD investigation occurs over the

104. See ch. 151B, § 9.
105. § 5.
107. Id.
108. Id.
109. Id.
110. Id.
111. MASS. GEN. LAWS ch. 151B, § 9 (2019).
course of eighteen to twenty-two months,\textsuperscript{112} which is likely much shorter than the length of a civil suit, and by the time the ninety-day waiting period has passed, complainants might decide whether removing to court is worth the extra time and money.\textsuperscript{113} Additionally, if a complainant’s case reaches a public hearing, he or she may choose to proceed \textit{pro se}, and an MCAD attorney will be assigned to prosecute the case on behalf of the Commonwealth.\textsuperscript{114} Although, the MCAD attorney does not represent the complainant individually, the attorney represents the interests of all Massachusetts citizens against a respondent accused of violating the law.\textsuperscript{115} In contrast, if the individual brought the case as a \textit{pro se} litigant in court, he or she would have to argue the case without the benefit of the presence of the Commission’s attorney. If a complainant is successful in a public hearing for a housing discrimination claim, he or she may be awarded damages such as “the expense incurred by the petitioner for obtaining alternative housing or space, for storage of goods and effects, for moving and for other costs actually incurred by him as a result of such unlawful practice or violation.”\textsuperscript{116} The ability to collect damages within less than two years after filing a complaint without needing to pay for an attorney provides an incentive for individuals to pursue their case in MCAD, rather than seeking to remove it to court.

B. \textit{Like MCAD, the Rhode Island Commission for Human Rights Can Manage Public Assistance Discrimination Claims out of Court}

RICHR, the Rhode Island counterpart to MCAD, is tasked with “enforc[ing] the Rhode Island antidiscrimination laws in the areas of employment, housing, public accommodations, credit and delivery of services.”\textsuperscript{117} RICHR undertakes a procedure similar to MCAD: it accepts complaints, performs investigations, offers settlement opportunities, makes probable cause determinations, uses administrative hearings to make final determinations on the

\begin{footnotes}
\footnotetext[113]{\S 9.}
\footnotetext[114]{Guide to the MCAD Complaint Process, supra note 13.}
\footnotetext[115]{Id.}
\footnotetext[116]{\S 5.}
\footnotetext[117]{About Us, supra note 14.}
\end{footnotes}
merits, and, when there is a finding of discrimination, awards damages.\textsuperscript{118}

Like MCAD, RICHR creates incentives for individuals to keep their disputes in RICHR rather than removing to court. RICHR has a waiting period, requiring that the complainant wait one hundred and twenty days after filing with RICHR before requesting the right to remove to state court.\textsuperscript{119} RICHR allows a party to choose to hire an attorney or bring the case \textit{pro se}, but when directed to do so, Commission counsel may represent a party.\textsuperscript{120} Because RICHR already has procedures in place to investigate complaints and compensate individuals who have experienced discrimination without needing to go to court, extending housing discrimination protection to public assistance recipients would not be overly burdensome.

With the addition of public assistance to the list of protected classes in Rhode Island, RICHR could follow the practices used by MCAD to decide public assistance discrimination cases. The disposition from the MCAD decision, \textit{White v. Cosmopolitan Real Estate}, demonstrates how MCAD adjudicates this type of case.\textsuperscript{121} In \textit{White}, the complainant filed a complaint against a brokerage firm that employed a property owner as an independent contractor.\textsuperscript{122} The property owner allegedly offered the complainant discriminatory terms and conditions in his rental application because he was a recipient of the HCV program.\textsuperscript{123} The MCAD commissioner based her findings of law on the prima facie

\textsuperscript{118} \textit{Id.}
\textsuperscript{119} 515 R.I. CODE R. § 10-00-2.7 (2019). The Code of Rhode Island Rules states:
\begin{itemize}
  \item A. General Right to Sue. A complainant may ask for a right to sue in state court provided that:
  \begin{itemize}
    \item 1. not less than one hundred and twenty (120) days and not more than two (2) years have elapsed from the date of filing of a charge;
    \item 2. the Commission has been unable to secure a settlement agreement or conciliation agreement; and
    \item 3. the Commission has not commenced hearing on a complaint.
  \end{itemize}
\end{itemize}
\textit{Id.}
\textsuperscript{120} § 10-00-2.14.
\textsuperscript{122} \textit{Id.} at 1–3.
\textsuperscript{123} \textit{Id.} at 1.
elements of public assistance housing discrimination under Massachusetts General Laws Chapter 151B Section 4(10), which requires the complainant to show “that he (1) was a member of a protected class; (2) sought to rent housing; (3) was objectively qualified to rent housing; and (4) was deterred from renting and/or refused tenancy because of his protected class.” The commissioner found that all of the requirements were met because the complainant was a member of a protected class (a recipient of public assistance), he wanted to rent an apartment from the respondent and was qualified to do so, and the complainant alleged that the respondent deterred him from renting by creating different terms and conditions for HCV recipients. The commissioner then weighed the respondent’s argument of a legitimate, non-discriminatory reason for the alleged actions and the complainant’s argument that the respondent’s non-discriminatory reasons were pretextual.

Based on the evidence each party presented, the commissioner determined that the property owner had discouraged potential tenants with housing vouchers from applying, so she then identified the complainant’s remedy. The complainant did not suffer any monetary losses as a result of his inability to rent the apartment, but he attempted to obtain damages for emotional distress. The commissioner found that the complainant failed to demonstrate evidence of emotional distress and awarded only $200 in damages. As discussed above, RICHR already follows a very similar format in its hearing dispositions for other types of housing discrimination cases, so the agency should be able to easily adapt the practice to adjudicate public assistance discrimination claims.

124. Id. at 7–8 (citing Wheelock Coll. v. MCAD, 371 Mass. 130, 136 (1976); Ortega v. Papalia, 35 MDLR 110 (2013)).
125. Id. at 8.
126. Id. at 8–9.
127. Id. at 10–11.
128. Id. at 11.
129. Id. at 12. In her decision on damages, the commissioner took into account the fact that the complainant was “evasive and unpersuasive in a number of respects” and the respondent’s “agents are properly trained in the fair housing laws and that it adopted practices and policies that conform to the fair housing laws.” Id.
130. See generally Pellerano v. Kuznetsov, No. H10 HAO 617, (RICHR May 24, 2012). This RICHR case involved housing discrimination based on
CONCLUSION

Without any protections in place to prevent discrimination against voucher holders, Rhode Island residents struggle to find affordable housing where they can use the vouchers that are supposed to provide mobility.131 Landlords, tenants, and the Rhode Island government need to work together to develop an effective program that balances the rights of landlords with the rights of tenants who rely on public assistance. The repeated failure to amend Rhode Island’s fair housing statute to include lawful source of income demonstrates that the language of the source of income discrimination bill requires revision before the Rhode Island General Assembly will pass it.132 Adopting the public assistance language of Massachusetts’s antidiscrimination law may be the compromise necessary to finally pass legislation to protect voucher holders.133 The limited language may make landlords less hesitant about passage of the bill, but it is also necessary to allow landlords the opportunity to voice their concerns and understand their rights under the law to counter the concerns that landlords may have about accepting vouchers. Furthermore, by requiring people to file with RICHR first, passage of the bill would not significantly overburden Rhode Island courts, but instead, it would significantly help low-income individuals who are searching for housing.134 Protection for public assistance recipients in Rhode Island will open new opportunities for thousands of Rhode Island residents to find affordable, decent, safe, and sanitary housing as intended by the HVC program. Therefore, legislators should continue to work toward passing a law to protect people from the persistent, widespread discrimination that Rhode Island voucher recipients continuously face.135