

KATRINA HARE,

Petitioner,

v.

DAVID S. BROWN ENTERPRISES,
LTD.

Respondent.

* IN THE

* SUPREME COURT

* OF MARYLAND

* September Term, 2024

* Petition Docket No. SCM-PET-0250-
2024

* * * * *

**BRIEF OF THE ATTORNEY GENERAL OF MARYLAND AS AMICUS
CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

INTEREST OF AMICUS CURIAE

The Attorney General of Maryland is the chief legal officer for the State of Maryland and is authorized to “investigate, prosecute, and remediate . . . any conduct that constitutes a civil rights violation on behalf of the residents of the State.” Md. Code Ann., State Gov’t § 20-1041(a) (LexisNexis 2023 Supp.). A “civil rights violation” includes housing discrimination based on an applicant’s source of income, which the Housing Opportunities Made Equal (“HOME”) Act prohibits. *Id.* § 20-705(1).

The State of Maryland and the Attorney General have a substantial interest in ensuring that the HOME Act is interpreted to protect low-income Marylanders from illegal housing discrimination. The Attorney General therefore supports the petition for a writ of certiorari, as the decision below would undermine that goal. If the petition is granted, the Attorney General intends to file an amicus brief on the issues before the Court.

ARGUMENT

Maryland enacted the HOME Act in 2020, joining 22 states and over 40 municipalities in banning housing discrimination based on source of income. HOME Act, 2020 Md. Laws ch. 117 (codified at State Gov't § 20-705(1)). The principal evil addressed by the HOME Act was pervasive housing discrimination against participants in the federal Housing Choice Voucher program. Discrimination against such participants disproportionately affects people of color, families with children, and people with disabilities. *Id.*, pmbl. Such discrimination also reinforces decades of housing segregation in Maryland. *Id.*

The petition seeks review of a decision of the Circuit Court of Baltimore County that effectively negates the HOME Act's remedial purpose. The circuit court granted summary judgment to the landlord because petitioner Katrina Hare, a Housing Choice Voucher participant and prospective tenant, purportedly did not satisfy a policy requiring a 2.5-to-1 income-to-rent ratio. Yet Ms. Hare's voucher would have covered \$1,464 of the \$1,590 monthly rent that the landlord requested, leaving her responsible for only \$126—and Ms. Hare's monthly Supplemental Security Income of \$841 was far more than 2.5 times that amount. The circuit court held that the landlord's rejection of Ms. Hare's application was permissible because of the HOME Act's narrow exception allowing a landlord to determine a renter's ability to pay rent through "verifying in a commercially reasonable and non-discriminatory manner the source and amount of [the renter's] income."

The circuit court’s sweeping construction of that exception, if allowed to stand, would relegate the 48,200 low-income Maryland families who rely on Housing Choice Voucher assistance to an array of discriminatory artifices and would further entrench racial housing segregation in Maryland. *See* Center on Budget and Policy Priorities, *Maryland Federal Rental Assistance Fact Sheet* (Jan. 19, 2022), <https://www.cbpp.org/research/federal-rental-assistance-fact-sheets#MD>. This Court should grant review to effectuate the General Assembly’s intent and secure the fair housing rights of low-income Marylanders without delay.

I. THE GENERAL ASSEMBLY PASSED THE HOME ACT TO INCREASE HOUSING OPPORTUNITIES FOR HOUSING CHOICE VOUCHER PARTICIPANTS AND PROTECT THEM FROM HOUSING DISCRIMINATION.

The HOME Act added “source of income” as a status protected by Maryland’s Fair Housing Act, with “income” defined to include vouchers issued under the United States Housing Act of 1937. State Gov’t §§ 20-701(j)(1)(ii), 20-705(1). Before the HOME Act’s passage, a Maryland landlord could reject Housing Choice Voucher participants simply because of their use of vouchers. This practice greatly limited housing choices for families using vouchers and contributed to racial segregation and the concentration of poverty over generations. Dep’t of Legislative Servs., Fiscal and Policy Note, S.B. 530, at 7 (2020) (“S.B. 530 Fiscal and Policy Note”), https://mgaleg.maryland.gov/2020RS/fnotes/bil_0000/sb0530.pdf. Indeed, in introducing the legislation, Senator William Smith recognized that discrimination against Housing Choice Voucher participants was frequently a proxy for impermissible discrimination because of race, familial status, disability, and other classifications. Hearing on S.B. 530 Before S. Jud. Proc. Comm. (Feb. 4, 2020)

https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jpr&ys=2020RS&clip=JPR_2_4_2020_meeting_1&billNumber=sb0530; *see also* 2020 Md. Laws ch. 117, pmbl. (“Discrimination in housing based on a person's source of income primarily affects . . . families with children, people of color, and people with disabilities.”).

By prohibiting discrimination based on source of income, the HOME Act sought to expand housing opportunities for voucher recipients. *See* 2020 Md. Laws ch. 117, pmbl. (explaining that the legislation’s purpose is to “deconcentrate poverty by providing additional opportunities for tenants utilizing public subsidies”). Underscoring that goal, both the House and the Senate rejected amendments that would have exempted certain properties from the Act. *See* House Floor Proceeding No. 44 (Mar. 10, 2020), <https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-44-?year=2020RS.>; Senate Floor Proceeding No. 31 (Feb. 19, 2020), <https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-31-?year=2020RS.>

More housing opportunities for low-income families would also advance their economic mobility. Where no legislation protects potential renters against source-of-income discrimination, landlords deny as many as 70% of all Housing Choice Voucher participants. HUD Office of Policy and Development, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* 30 (2018) (“*Pilot Study*”), <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>. Denial of housing based on source of income causes participants to be segregated into areas of high poverty with significant adverse health, educational, employment, and financial consequences. S.B. 530 Fiscal and Policy Note 7. By contrast,

in jurisdictions where potential renters are protected against discrimination based on source of income, denial rates for Housing Choice Voucher participants drop to 30%. *Pilot Study* 30. Source-of-income legislation provides additional opportunities for families to move out of racially segregated high-poverty areas. *Id.* Children whose families move to low-poverty areas, in turn, experience improved educational, employment, and health outcomes. *See generally* Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from Moving to Opportunity Experiment*, 106 Am. Econ. Rev. 855 (2016).

II. THE GENERAL ASSEMBLY UNDERSTOOD THE HOUSING CHOICE VOUCHER PROGRAM’S PAYMENT MECHANISMS.

The Housing Choice Voucher program subsidizes rents for low-income families through a well-established mechanism. The program is federally funded but administered by local public housing authorities. 42 U.S.C. § 1437f(b)(1). A public housing authority issues vouchers to eligible low-income families, who then select housing. *Id.* § 1437f(o)(2), (3). Families receiving assistance pay 30% of their income toward rent and utilities, with the public housing authority assuming liability for the remaining rent in contracts with landlords. *Id.*

The fiscal and policy note for the HOME Act explained these payment mechanisms to the General Assembly. *See* S.B. 530 Fiscal and Policy Note 5-6. Thus, when the General Assembly enacted the narrow exception at issue here, it acted with knowledge of the limited rental liability of voucher participants and the correspondingly limited risk to landlords. In allowing landlords to “determin[e] the ability of a potential . . . renter to . . .

pay rent by verifying in a commercially reasonable and non-discriminatory manner the source and amount of income or creditworthiness of the potential . . . renter,” State Gov’t § 20-704(d)(1), the General Assembly was aware that the “rent” that a Housing Choice Voucher participant must have the “ability” to pay is only a fraction of the entire monthly rent sought by the landlord.

III. THE GENERAL ASSEMBLY DID NOT INTEND THE CONSTRUCTION OF THE HOME ACT ADOPTED BY THE CIRCUIT COURT.

In light of the foregoing, the circuit court erred in concluding that State Government § 20-704(d)(1) permits a landlord to insist on a particular income-to-rent ratio without taking into account the effect of a Housing Choice Voucher on the rent that the potential tenant will owe. Interpretation of a statute begins with the text. *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 644 (2024). Here, the plain language of State Government § 20-704(d)(1) allows a landlord to “determin[e] the ability of a potential . . . renter . . . to pay rent . . . in a commercially reasonable and non-discriminatory manner.” The Supreme Court of Maryland has defined “rent” as “the fixed, periodic payments a *tenant* owes for use or occupancy of a rented premises.” *Westminster Mgmt.*, 486 Md. at 649 (emphasis added). And as explained above, the General Assembly understood that a Housing Choice Voucher participant’s rental liability was limited to only a portion of the landlord’s requested monthly rent. In this instance, Ms. Hare’s monthly rental liability was \$126, which is the amount the landlord may determine, in a “commercially reasonable and non-discriminatory manner,” whether she has the ability to pay.

Nonetheless, the circuit court interpreted the statute to allow the landlord to require Ms. Hare to demonstrate an ability to pay a monthly rent of \$1,590. The result was that Ms. Hare had to prove a monthly income of 31.5 times the \$126 rent that she would owe. This is not a commercially reasonable manner of determining her ability to pay. More importantly, it is discriminatory for a landlord to require Housing Choice Voucher participants to demonstrate income many times the rent they will owe, while requiring all other applicants to demonstrate an income of only 2.5 times the rent they will owe. *See Commission on Human Rels. & Opportunities v. Sullivan*, 250 Conn. 763, 784-790 (1999) (holding that an “insufficient income” exception to Connecticut’s source-of-income antidiscrimination statute applied only to the portion of rent for which a Housing Choice Voucher participant would be responsible).

Additional principles of statutory interpretation confirm that result. First, “[a] court's primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny.” *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 423-24 (2016) (citations omitted). Second, courts must liberally construe a remedial statute to “effectuate [its] broad remedial purpose,” with any exemption to be narrowly construed. *Id.* at 424 (citation omitted; brackets in original). Here, construing “rent” to mean the amount the landlord seeks, rather than the amount the tenant herself must pay, would contravene the HOME Act’s remedial purpose of expanding housing opportunity for voucher recipients and broaden the limited exception that the statute provides.

As explained above, the General Assembly intended the HOME Act to expand housing opportunities for low-income Housing Choice Voucher participants by prohibiting housing discrimination based on source of income. The circuit court's overly broad construction of § 20-704(d)(1) frustrates the Act's remedial purpose by allowing landlords to disqualify a broad swath of Housing Choice Voucher participants for "lack of income" when, in fact, the voucher enables them to afford the housing in question. By federal regulation, three-quarters of all voucher holders are families with income below 30% of the area median. 24 C.F.R. § 982.201(b)(2). For a household of two people in Baltimore County, that 30% figure is \$2,445 per month. Maryland Dep't of Housing and Community Development, *2024 Income Limits* (July 1, 2024), <https://dhcd.maryland.gov/HousingDevelopment/Documents/prhp/2024-MD-Income-Limits.pdf>. Even with voucher assistance counted as part of its income, such a household could never qualify for the unit at issue in this case.¹ Rejecting applicants for "lack of income" that is unrelated to their actual rental liability discriminates against the very low-income families the Housing Choice Voucher program is intended to assist.

The circuit court's decision creates a gaping hole in the HOME Act and sanctions discrimination against Housing Choice Voucher participants. It is desirable and in the public interest for the Supreme Court to grant the petition for certiorari and ensure that

¹ The calculation is as follows: A family making \$2,445 a month receiving Housing Choice Voucher assistance must pay 30% of their income, or \$733.50, toward rent. Of the landlord's requested rent of \$1,590, the public housing authority would assume responsibility for the remaining \$856.50. Adding the PHA's portion of \$856.50 to the family's other income of \$2,445 results in a total figure of \$3,301.50, which is still less than 2.5 times the requested rent.

low-income Marylanders receive the fair housing opportunity guaranteed by the HOME Act.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ANTHONY G. BROWN
Attorney General of Maryland

DAVID A. PRATER
Assistant Attorney General
Attorney No. 1212120396
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
dprater@oag.state.md.us
(410) 576-7906

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CERTIFICATE OF SERVICE

I certify that, on this 4th day of September, 2024, the foregoing was filed and served electronically by the MDEC system on all persons entitled to service, and that two copies will be served on the following by first-class mail on the next business day:

Eric Matthew Rigatuso, Esq.
Eccleston and Wolf PC
7240 Parkway Drive
Fourth Floor
Hanover, Maryland 21076
rigatuso@ewmd.com

James M. Ray, II
Ray Legal Group
8720 Georgia Ave.
Suite 904
Silver Spring, MD 20910
Jim.ray@raylegalgroup.com

/s/ David A. Prater

David A. Prater