Appellate Division Confirms State Law Mandating Landlord Participation in Section 8 is Unconstitutional

On March 5, 2026, Bond, Schoeneck & King secured a unanimous decision from the Appellate Division holding that the New York State Human Rights Law violates the Fourth Amendment to the extent it mandates landlord participation in Section 8. This marks the first time an appellate court has struck down a "source of income" statute, and the decision is likely to impact similar laws in at least 19 states and more than 130 municipalities across the country.

In 2019 New York State followed the lead of New York City in creating a new category of impermissible discrimination—source of income discrimination. Landlords in the state were barred from making decisions about which tenants to accept based on how the tenants proposed to pay their rent, and the law specifically defined Section 8 vouchers as a "lawful source of income." The effect of the law was to make it illegal for landlords to refuse to participate in the otherwise voluntary federal Housing Choice Voucher (Section 8) program. Landlords who refused could be, and were, prosecuted by the New York State Division of Human Rights and the Attorney General.

Before landlords can participate in Section 8, they must open their rental buildings for inspection by a Public Housing Authority (PHA). After inspections are complete, landlords are required to sign Housing Assistance Payment (HAP) contracts with PHAs. The HAP contracts, the contents of which are set by federal regulation, require landlords to agree to give PHAs and HUD access to the entirety of their rental buildings as well as all of their business records along with computers, equipment and facilities containing such records. That broad language exposes landlords' homes, phones and personal computers containing rental records to searches.

Ithaca Renting Company and its affiliates, concerned about their privacy, decided not to participate in Section 8. They were sued by the Attorney General who sought to impose monetary penalties, mandate future Section 8 participation and even require the landlords to set aside units in their buildings exclusively for Section 8 tenants. Ithaca Renting cited *Sokolov v. Village of Freeport*, 52 N.Y.2d 341 (1981) and argued that the government cannot compel landlords to waive their Fourth Amendment rights.

The Fourth Amendment protects citizens from unreasonable searches and seizures, including warrantless searches. The *Sokolov* court held that landlords could not be coerced into allowing village inspectors entry into apartments as a condition of renting them out and that a law imposing penalties on landlords who rented apartments without first having them inspected violated the Fourth Amendment because it coerced landlords into waiving rights protected by the Constitution. In a companion decision issued the same day, the Court of Appeals held that local inspection laws allowing landlords to refuse consent and containing a means by which inspectors can obtain a warrant permitting inspection pass constitutional muster. Section 8 regulations do not contain a means by which inspectors can obtain warrants.

In June 2023, in a case captioned *People v. Commons West, LLC,* 80 Misc. 3d 447 (Sup. Ct. Tompkins Cnty. 2023) Ithaca Renting successfully obtained dismissal of the Attorney General's enforcement action on Fourth Amendment grounds. The Attorney General sought to renew her argument, and in a December 2024 decision the Hon. Mark G. Masler confirmed that the Human Rights Law was facially unconstitutional. *People v. Commons West, LLC*, 85 Misc. 3d 1055 (Sup. Ct. Tompkins Cnty. 2024).

Undeterred by Justice Masler's decisions, the Division of Human Rights and housing advocacy groups like Housing Rights Initiative continued to bring new claims and find probable cause where landlords declined to participate in Section 8, even where they cited to *People v. Commons West* as a defense. They reasoned that a decision by a trial court is not binding outside of the specific case and carries no precedential weight. The Appellate Division's ruling applies state-wide, and the Division of Human Rights is currently considering the impact of the ruling on pending source-of-income cases.

The ACLU, NYCLU and several legal and housing advocates submitted amicus briefs to the Appellate Division in defense of the State's law. The Appellate Division acknowledged their arguments—which largely focused on public policy—but was not swayed, explaining that the goals of the law were "laudable," but good intentions could not overcome the constitutional infirmity.

A federal court in Missouri, presented with arguments developed by Ithaca Renting and its attorneys at Bond, Schoeneck & King, reached the same conclusion with regard to the constitutionality of source of income laws that compel participation in Section 8. *Jones v. City of Kansas City, Missouri*, 2025 U.S. Dist. LEXIS 121974 (W.D. Mi. Feb. 11, 2025). Before the Missouri case, which tested a Kansas City law, could progress, the State of Missouri passed a law preempting the city law and defining source-of-income to exclude Section 8 vouchers.

This matter is likely to be further appealed to the New York State Court of Appeals.

If you have any questions regarding this information memo, please contact Curtis A. Johnson, any attorney in Bond's litigation or real estate practice, or the attorney at the firm with whom you regularly communicate.