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No. 4-26-0444

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

BARBARA LEN COLE,	)	Appeal from the Circuit Court of the
	)	Tenth Judicial Circuit, Peoria County,
Plaintiff-Appellant,	)	Illinois
	)	
v.	)	No. 25-CH-25
	)	
TIMBERBROOK REALTY, LLC,	)	The Honorable
	)	JAMES A. MACK,
Defendant-Appellee.	)	Judge Presiding.

BRIEF OF *AMICI CURIAE* ILLINOIS ATTORNEY GENERAL AND ILLINOIS DEPARTMENT OF HUMAN RIGHTS IN SUPPORT OF PLAINTIFF-APPELLANT

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INTEREST OF *AMICI CURIAE*

The Illinois Human Rights Act ("Act"), 775 ILCS 5/1-101 *et seq.* (2024), prohibits, among other things, a landlord from discriminating against a tenant based on the tenant's "source of income" and from using "criteria or methods" with the "effect of subjecting" a tenant to such discrimination. 775 ILCS 5/3-102(A), (H) (2024). The Act defines "source of income" as "the lawful manner by which an individual supports himself or herself and his or her dependents." *Id.* § 1-103(O-5).

Plaintiff-Appellant Barbara Len Cole is a participant in the federal Housing Choice Voucher program — sometimes referred to as "Section 8"[1] — which helps low-income families and individuals obtain private housing. C9.[2] Cole rented an apartment from Defendant-Appellee Timberbrook Realty, LLC, but Timberbrook subsequently refused to sign a contract with a local public housing agency that was necessary for it to receive payments through the Housing Choice Voucher program. C9-11. Because Cole could not afford rent without her voucher, Timberbrook evicted her. C13. Accordingly, Cole filed this lawsuit contending that Timberbrook had violated the Act by discriminating against her based on the source of her rental payments — that is, the Housing Choice Voucher program. C9-14. The circuit court granted

[1] "Section 8" refers to the section of the federal Housing Act of 1937 that governs the voucher program. 24 C.F.R. § 982.2; *see* 42 U.S.C. § 1437f.

[2] The record on appeal consists of a one-volume common law record, cited as "C__," and a one-volume report of proceedings, cited as "R__."

Timberbrook judgment on the pleadings, reasoning that Timberbrook did not violate the Act because it was willing to accept Housing Choice Vouchers in theory, even if in practice it refused to take a step necessary for any voucher holder to use their voucher. C597-98.

The Illinois Attorney General and Illinois Department of Human Rights ("Department"), both of whom are charged by statute with enforcing the Act, share a substantial interest in the proper resolution of this appeal, which addresses the meaning of discrimination based on "source of income" under the Act. *See* 775 ILCS 5/1-103(O-5), 3-102 (2024). The Act tasks the Department with issuing, receiving, and investigating discrimination charges and with seeking relief on behalf of complainants before the Illinois Human Rights Commission in cases where the charge is supported by substantial evidence. *Id.* §§ 7-101, 7B-102, 8B-102. The Act also grants the Department authority to issue regulations interpreting and implementing the Act's provisions. *Id.* § 7-101(A). Since the Act began recognizing it as a protected trait in 2023, source of income has become the second most common basis for a housing discrimination charge. Nearly a third of all housing charges filed with the Department in the 2025 fiscal year alleged source-of-income discrimination. *See Annual Report, Fiscal Year 2025*, Ill. Dep't of Hum. Rts., at 13.[3]

[3] https://bit.ly/4wu0dxS.

As for the Attorney General, the Act authorizes the Attorney General to enforce its provisions in court when he has reasonable cause to believe that any person is engaged in a pattern and practice of discrimination prohibited by the Act, *id.* § 10-104(A)(1), and to intervene in individual cases of public importance, *id.* § 10-102(D). The Act also requires the Attorney General to bring certain enforcement actions on the Department's behalf in the circuit court after the Department has found substantial evidence of housing discrimination. *Id.* § 10-103(A).

The question presented in this appeal — whether the Act permits a landlord to adopt a policy of not signing third-party contracts to effectively turn away all voucher holders — concerns the proper interpretation of the Act's source-of-income provisions and may affect pending Department investigations and enforcement. It also implicates Department guidance interpreting the source-of-income provisions to forbid a landlord from declining to rent to an applicant with a housing subsidy based on a refusal to take a step necessary for the applicant to use that subsidy. The Attorney General and the Department have a substantial interest in ensuring that the statute the General Assembly passed to protect Housing Choice Voucher holders from discrimination based on their use of their voucher is interpreted correctly. This shared interest will be impaired should this court affirm the circuit court's decision and adopt its erroneous interpretation of the Act's source-of-income provisions.

For these reasons, the Attorney General and Department have a substantial interest in this case and can assist this court by presenting their shared perspective on the important issue it raises.

ARGUMENT

The Act forbids a landlord from discriminating against a tenant based on the tenant's source of income in making available a real estate transaction. It also forbids a landlord from using criteria or methods with the effect of subjecting tenants to such discrimination. Housing assistance payments under the federal Housing Choice Voucher program are a source of income, but the voucher holder cannot use that income unless the landlord signs a federally prescribed contract with a local public housing agency. A landlord's refusal to sign that contract thus makes the rental transaction unavailable to the tenant based on the tenant's source of income and violates the Act. The General Assembly anticipated that a landlord might prefer not to sign such contracts, and it deliberately drafted the Act's source-of-income provisions to forbid a landlord from invoking that preference to prevent a voucher holder from using their voucher income to pay rent. The Department has issued guidance spelling out more clearly that such conduct violates the Act.

Here, Cole alleged that Timberbrook refused to sign the contract necessary for it to receive housing assistance payments on Cole's behalf. If proven, that allegation would establish that Timberbrook made the rental property unavailable to Cole based on her source of income and imposed a criterion with the effect of subjecting Cole to discrimination based on her use of her voucher to pay rent. Cole thus stated a claim under the Act. Because the circuit court erred in concluding otherwise, and the circuit court did not address Timberbrook's alternative constitutional and preemption arguments, this court should reverse the judgment and remand for further proceedings.

I. The Act forbids landlords from discriminating against tenants based on their use of Housing Choice Vouchers to pay rent.

The Act has long forbidden landlords from discriminating against tenants in "making available" a "real estate transaction" based on certain protected traits like race, religion, disability, or familial status. 775 ILCS 5/3-102 (2024); *see id.* § 1-103(Q). A "real estate transaction" includes any rental or lease of real property as well as "any act that otherwise makes available such a transaction or alters a person's rights to real property." *Id.* § 3-101(B). The Act also prohibits the use of "criteria or methods that have the effect of subjecting individuals" to such discrimination unless they are "necessary to achieve a substantial, legitimate, non-discriminatory interest" that cannot be "served by another practice that has a less discriminatory effect." *Id.* § 3-102(H).

In 2023, the General Assembly added "source of income" to the list of protected traits in the Act's housing provisions. Pub. Act 102-896 (eff. Jan. 1, 2023). "Source of income" means "the lawful manner by which an individual supports himself or herself and his or her dependents." 775 ILCS 5/1-103(O-5) (2024). The General Assembly added the source-of-income provisions (the new definition of "source of income" at 775 ILCS 5/1-103(O-5) and the addition of "source of income" to the list of protected traits in 775 ILCS 5/3-102) because despite the Act's existing protections, some Illinois landlords were "deny[ing] housing to individuals" based on a refusal to accept "legal source[s] of income" like "rent subsid[ies]." 102d Ill. Gen. Assem., House Proceedings, Apr. 22, 2021 ("House Tr."), at 36[4]; *see, e.g.*, *Nesbitt v. Draper & Kramer, Inc.*, 1:08-cv-2684, 2008 WL 4542942, at *3 (N.D. Ill. May 23, 2008) (dismissing claim that landlord discriminated against tenant based on tenant's use of Housing Choice Voucher because Act did "not prohibit discrimination based on . . . source of income" and no other Illinois statute "explicitly require[d] landlords to accept § 8 vouchers"). Illinois thus joined 19 other States, the District of Columbia, and many localities nationwide in banning source-of-income discrimination in housing. House Tr. at 36, 45.

A. The federal Housing Choice Voucher program assists low-income families and individuals in paying rent.

Congress created the Housing Choice Voucher program to "aid[ ] low-income families in obtaining a decent place to live" and "promot[e] economically mixed housing." 42 U.S.C. § 1437f(a). To do this, the federal government issues funding to state and local public housing agencies ("PHAs"), who distribute it to eligible low-income families and individuals through "vouchers" to help them pay rent. *Id.* §§ 1437a(b)(6), 1437f(o)(1)(A). The participant generally pays 30% of their monthly income in rent, and the PHA subsidizes the rest. *Id.* § 1437f(o)(2)(A). The combined rent payment by the participant and PHA is capped at 90 to 110% of the fair market rent for

[4] https://bit.ly/4pOtCRw.

the area. *Id.* § 1437f(o)(1)(B). A participant generally may not use a voucher to rent a unit priced above that range. *See id.*[5] Once granted a voucher, the participant must search the private rental market for a landlord willing to rent them a unit at or below the program's payment standard that meets the minimum housing quality standards set by the United States Department of Housing and Urban Development ("HUD"). 24 C.F.R. § 982.1(a)(2).

HUD does not require landlords to reduce rent to make units eligible for the program. It also does not restrict landlords' freedom to set non-discriminatory tenant screening criteria and reject program participants who fail those criteria. *See id.* § 982.307(a)(2). For example, a landlord may reject a participant based on the participant's history regarding paying rent and utility bills, complying with their lease, caring for their unit, respecting other residents, or engaging in criminal conduct. *Id.* § 982.307(a)(3).

When the participant finds a landlord willing to rent to them, the participant must submit to the PHA a copy of the proposed lease and a request for tenancy approval. *Id.* § 982.302(b). The PHA then determines whether the unit is eligible, conducts an initial inspection of the unit for compliance with HUD's housing quality standards, confirms that the lease includes HUD's tenancy addendum, and assesses the reasonableness of the rent. *Id.*

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[5] A participant might rent a higher priced unit if, for example, the PHA has obtained federal approval to establish a payment standard up to 120% in the area, 42 U.S.C. § 1437f(o)(1)(D), or if the participant chooses to pay more of their monthly income in rent up to a strict maximum of 40%, *id.* § 1437f(o)(3).

§ 982.305(a); *see id.* § 5.703 (list of housing quality standards); *Housing Assistance Payments (HAP) Contract*, U.S. Dep't of Hous. & Urb. Dev., at 9-13 ("*HAP Contract*") (tenancy addendum).[6]

After the PHA approves the tenancy, it executes a housing assistance payments contract ("HAP contract") with the landlord, 24 C.F.R. § 982.305(c)(1), and the landlord signs a lease with the tenant, *id.* § 982.305(b)(1)(ii). The HAP contract confirms the lease term and rent, and it describes the logistics of how the PHA will pay the landlord. *HAP Contract* at 1-3, 5. It permits the PHA to conduct additional inspections of the premises for compliance with HUD's housing quality standards. *Id.* at 4. It further permits the PHA, HUD, and the federal Comptroller General to access the unit, premises, and "accounts and other records . . . relevant to the HAP contract." *Id.* at 7. The PHA cannot make housing assistance payments to the landlord until the HAP contract has been executed. 24 C.F.R. § 982.305(c)(2). Thus, the landlord's execution of the HAP contract is necessary to make the rental property available for a tenant who uses a Housing Choice Voucher.

B. The General Assembly intended the Act to forbid discrimination based on a tenant's use of a Housing Choice Voucher to pay rent.

The Housing Choice Voucher program and HAP contract were a key focus of the General Assembly's deliberation over the Act's source-of-income provisions. From the beginning, the General Assembly intended those

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[6] https://bit.ly/4pll3NQ (last visited Aug. 13, 2026).

provisions to protect voucher holders. The original version of the House bill that added them to the Act explicitly defined "source of income" to include "federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f)." 102d Ill. Gen. Assem., House Bill 2775, at 12 (as introduced Feb. 19, 2021).[7] Though the Senate's amendment to the bill removed the explicit reference to Housing Choice Vouchers, that was only because it condensed the definition from a long list of illustrative examples into a broadly phrased generic definition. *See* 102d Ill. Gen. Assem., Senate Comm. Am. No. 1 to House Bill 2775, at 8 (Mar. 22, 2022).[8] The Senate amendment did not remove voucher holders from the Act's protection.

On the contrary, the language the Senate used borrowed nearly verbatim the definition from a longstanding Chicago ordinance, Chi. Mun. Code §§ 6-10-020, 5-8-030 (2026), that this court had interpreted to cover "Section 8 vouchers," *Godinez v. Sullivan-Lackey*, 352 Ill. App. 3d 87, 91 (1st Dist. 2004). A plaintiff could plead a *prima facie* case of discrimination under that ordinance by alleging they were "precluded from applying" to rent a unit from the defendant based on the defendant's facially neutral policy that effectively excluded "all Section 8 voucher holders." *Hawkins v. Chi. Comm'n on Hum. Rels.*, 2020 IL App (1st) 191301, ¶ 23 (landlord's policy of signing only

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7 https://bit.ly/4bilO4q.

8 https://bit.ly/4fsa7uz.

9-month leases effectively excluded Housing Choice Voucher holders because voucher program requires at least 12-month lease).

The source-of-income definition in the Senate amendment also borrowed nearly verbatim language from a Cook County ordinance, Cook Cnty. Ordinance No. 42-31 (Feb. 24, 2022), that the County similarly interpreted as covering Housing Choice Vouchers, *Source of Income Protections Under Cook County Human Rights Ordinance*, Cook Cnty. Dep't of Hum. Rts. & Ethics (Feb. 3, 2022) ("Cook Cnty. Guidance").[9] The County's guidance explained that its ordinance forbade landlords from "[r]efus[ing] to process . . . a potential tenant's application . . . because of use of" a Housing Choice Voucher and from "[u]tiliz[ing] a screening, selection, or application tool that . . . in practice automatically excludes" a voucher holder. *Id*. The Senate amendment's author described the change to the source-of-income definition as "mirror[ing]" the definitions from these Chicago and Cook County ordinances. *See* 102d Ill. Gen. Assem., Senate Proceedings, Apr. 1, 2022 ("Senate Tr."), at 94.[10]

In the Senate, the bill's proponents and opponents agreed that the amended version of the bill would forbid a landlord from discriminating against a tenant based on the tenant's use of their Housing Choice Voucher. In a committee hearing on whether to favorably report the bill as amended, a

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9 https://bit.ly/4w4exh2.

10 https://bit.ly/4g0vKkv.

lobbyist for a landlords' association (and a landlord himself) testified that he frequently responded to inquiring tenants that he did not "participate" in the Housing Choice Voucher "program," and he explained he opposed the bill because he believed giving that response to a prospective tenant would now violate the Act. 102d Ill. Gen. Assem., Senate Exec. Comm. Proceedings, Mar. 30, 2022 ("Senate Exec. Comm. Hr'g"), at 50:15-52:23.[11] A lobbyist for a housing advocacy group, who supported the bill, likewise testified that "if the sole explicit reason why the landlord turned down the tenant was" the "section 8 voucher, that would be a violation" of the Act. *Id.* at 52:40-52:52. Thus, although the bill's proponents and opponents disputed whether this was wise policy, they agreed there would be liability in that scenario.

Both sides also agreed the bill, as amended, would require a landlord to sign a HAP contract if a voucher holder otherwise met the landlord's screening criteria (presuming those criteria were neutral as to source of income). As the landlords' lobbyist pointed out, "participation in the Section 8 program is entering into that contract." *Id.* at 58:51-59. He explained that his organization had requested a "statement within the definition of source of income" providing that the definition would "not be construed to require an owner to enter into a third-party contract, agreement, addendum, or lease." *Id.* at 46:48-47:00. But the bill's proponents refused to add that language

[11] Senate committee hearings are recorded but not transcribed. The recordings can be obtained from https://www.blueroomstream.com.

because it would "undermine[ ] the intent of the bill." *Id.* at 47:01-06; *see also id.* at 54:05-54:15 (housing advocacy lobbyist confirming that his organization refused that compromise). As a result, the Senate's "amendment" left "in place the only point in the original bill" that the landlords' association opposed, which was that a "landlord who is not willing to sign this contract" has violated the Act. *Id.* at 46:42-46:49, 58:25-58:38.

The debate played out the same way on the Senate floor. An objecting senator challenged the bill's Senate sponsor by asking him whether a "tenant" would have "the right to sue" a landlord under the "Human Rights Act" for telling them, "I won't rent to you solely because you receive Section 8 vouchers." Senate Tr. at 86. The sponsor replied, "absolutely," and argued "that's . . . what we should be doing." *Id.* Another objecting senator brought up the HAP contract, protesting that the amended version of the bill would impose liability on a landlord who did not want to "take Section 8" due to "the requirements that come with a government contract." *Id.* at 80. Again, the bill's proponents and opponents disputed whether there *should* be liability in that scenario but agreed that the language they were voting on *would* impose liability there. The bill nonetheless passed the Senate over these objections. *Id.* at 96.

The bill then returned to the House Housing Committee, where the bill's original author — like the Senate amendment's author — described the Senate amendment's change to the "source of income" definition as "mirror[ing] the source of income definition[s] adopted by Cook County and Chicago." 102d Ill. Gen. Assem., House Hous. Comm. Proceedings, Apr. 7, 2022 ("House Hous. Comm. Hr'g"), at 3:15-3:28.[12] Once again, an opponent brought up the HAP contract, objecting that the amended bill still required a "private owner" to "enter into an agreement in an effort to rent to somebody." *Id.* at 12:25-12:38. The committee nonetheless recommended concurring in the amendment over that objection, *see id.* at 18:45-20:10, and the House did so without further modification, 102d Ill. Gen. Assem., House Proceedings, Apr. 7, 2022 ("House Tr. II"), at 50.[13]

C. Department guidance clarifies that refusing to take a step necessary to enable a tenant to use their Housing Choice Voucher is source-of-income discrimination.

After the bill passed, the Department published guidance interpreting the source-of-income provisions, which it has consistently maintained and updated. *Source of Income Discrimination: Frequently Asked Questions*, Ill. Dep't of Hum. Rts ("IDHR FAQ").[14] The guidance notes that "Housing Choice Vouchers (also known as Section 8)" are "protected" under the Act. *Id.* The guidance clarifies — consistently with how all understood the source-of-income provisions in the legislative debates — that landlords "may not outright refuse

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[12] House committee hearings are recorded but not transcribed. The recordings can be obtained by contacting the House Clerk.

[13] https://bit.ly/4x4TcnW.

[14] https://bit.ly/454wr7n (last visited Aug. 13, 2026).

to rent or sell to applicants with housing subsidies that require the housing provider to take additional steps to utilize the subsidy." *Id.* Rather, a voucher holder "must be given a fair opportunity to use [that] source[ ] of income to pay for their housing," including by the landlord "making the property available to inspection and making any reasonable repairs necessary to comply with minimum quality standards." *Id.*

II. This court should reverse the circuit court's decision granting judgment on the pleadings for Timberbrook because the circuit court misinterpreted the Act's source-of-income provisions.

This court should reverse the circuit court's decision granting judgment on the pleadings for Timberbrook because Cole stated a claim for source-of-income discrimination under the Act. Judgment on the pleadings is proper when the pleadings present no genuine issues of material fact and the undisputed facts leave the moving party entitled to judgment as a matter of law. 735 ILCS 5/2-615(e) (2024); *Hess v. Est. of Klamm*, 2020 IL 124649, ¶ 14. This court reviews an order granting judgment on the pleadings *de novo*. *Id.*

The circuit court's decision hinged on the proper interpretation of the Act's source-of-income provisions. The "primary rule" of statutory interpretation is to ascertain and effectuate the General Assembly's intent, the best indication of which is the "language in the statute, which must be given its plain and ordinary meaning." *Mercado v. S&C Elec. Co.*, 2025 IL 129526, ¶ 20. Where the relevant statutory language is ambiguous, courts "turn to the legislative history to ascertain the legislature's intent." *BAC Home Loans*

Servicing, LP v. Mitchell, 2014 IL 116311, ¶ 38. Courts also give "substantial weight and deference" to an agency's reasonable interpretation of an ambiguous statute it administers, "given that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent." *Mercado*, 2025 IL 129526, ¶ 21 (cleaned up). Bare "policy considerations," however, cannot displace the meaning revealed by the statutory text and the legislative evidence. *See People v. Eppinger*, 2013 IL 114121, ¶¶ 29, 42.

A. Based on the Act's plain text, Cole's allegations stated a claim for source-of-income discrimination.

The circuit court erred by holding that it is not source-of-income discrimination for a landlord to refuse to accept a Housing Choice Voucher simply because it does not want to sign a HAP contract. The Act forbids a landlord from discriminating against a tenant in a real estate transaction based on their "source of income" or using "criteria or methods that have the effect of subjecting" a tenant to such discrimination unless those criteria or methods are "necessary to achieve a substantial, legitimate, non-discriminatory interest" that cannot be "served by another practice" with a "less discriminatory effect." 775 ILCS 5/3-102(A), (H) (2024). Here, Cole's allegations established that her voucher payments were a source of income and that Timberbrook's refusal to sign a HAP contract had the effect of making the real estate transaction unavailable to her, denying her any opportunity to use that income to pay rent. That is textbook discrimination under the Act.

First, Cole's voucher payments are a source of income. "Source of income" means the "lawful manner by which an individual supports himself or herself and his or her dependents." *Id.* § 1-103(O-5). As this court interpreted virtually identical text in Chicago's ordinance, "Section 8 vouchers" are "part of the lawful manner for one's support" and thus a "source of income." *Godinez*, 352 Ill. App. 3d at 91 (quoting Chi. Mun. Code § 5-8-040 (2003) (defining "source of income" as "the lawful manner by which an individual supports himself or herself and his or her dependents") (now Chi. Mun. Code § 6-10-020 (2026))). As explained above, the Housing Choice Voucher program was created by a federal law that provides for a PHA to subsidize part of a participant's rent. *Supra* § I.A. The payments a PHA makes toward Cole's rent through her Housing Choice Voucher thus constitute part of the lawful manner by which Cole supports herself.

Second, Timberbrook's refusal to sign HAP contracts is a "criteri[on] or method[ ]" with "the effect of subjecting" Cole to "discrimination based on" her use of her voucher to pay rent. *See* 775 ILCS 5/3-102(H) (2024). A tenant cannot use their voucher to pay rent unless the landlord signs the HAP contract, 24 C.F.R. § 982.305(c)(2), and the HAP contract's primary purpose is to enable the tenant to use their voucher to pay rent, *see HAP Contract* at 4. The Act specifies that discrimination in real estate transactions covers not only an outright refusal to engage in a rental transaction but also discrimination in any "act that otherwise makes available such a transaction".

See 775 ILCS 5/3-101(B) (2024). Timberbrook's refusal to sign HAP contracts thus has the "effect" of a policy against renting to voucher holders, thereby making rentals unavailable to tenants based on their source of income. *See* 775 ILCS 5/3-102(H) (2024). That is so regardless of whether Timberbrook implemented that policy for the express purpose of excluding voucher holders. *Cf. Hawkins*, 2020 IL App (1st) 191301, ¶ 23 (plaintiff pleaded "disparate impact on Section 8 voucher holders" under Chicago's source-of-income ordinance based defendant's policy of "requiring nine-month leases" because the Housing Choice Voucher program "requires leases of at least one year").

Cole's theory was not novel. Courts in other States have interpreted their own similarly phrased state and local source-of-income laws to forbid a landlord from refusing to rent to a Housing Choice Voucher holder based solely on a desire not to comply with the federal voucher program's requirements. *See, e.g.*, *Feemster v. BSA Ltd. P'ship*, 548 F.3d 1063, 1070-71 (D.C. Cir. 2008) ("Permitting [landlord] to refuse to accept Section 8 vouchers on the ground that it does not wish to comply with Section 8's requirements would vitiate [District of Columbia's source-of-income] definition and the legal safeguard it was intended to provide."); *Montgomery County v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.*, 936 A.2d 325, 340 (Md. 2007) (landlord could not justify refusal to rent to voucher holders in violation of county ordinance based on "complaint[s] about . . . features of the program"); *Comm'n on Hum. Rts. & Opportunities v. Sullivan Assocs.*, 739 A.2d 238, 255

(Conn. 1999) (state law "mandat[ing] that landlords may not reject tenants because their income included section 8 assistance" did not permit landlords to "avoid the statutory mandate by refusing to accede to a condition essential to its fulfillment").

Third, the pleadings did not establish as a matter of law that Timberbrook's refusal to sign HAP contracts was "necessary to achieve a substantial, legitimate, non-discriminatory interest" that could not have been achieved through another policy with a "less discriminatory effect." *See* 775 ILCS 5/3-102(H) (2024). If Timberbrook was to introduce evidence showing that its decision was "necessary to achieve a valid business interest," such evidence might at some subsequent point in the litigation "defeat [Cole's] discrimination claim." *Hawkins*, 2020 IL App (1st) 191301, ¶ 26. But any such argument would be an "affirmative defense" that Timberbrook would have to "plead and prove," not a matter the court could have intuited from the pleadings. *See id.* (reversing agency decision for invoking business necessity defense *sua sponte* in applying Chicago's source-of-income ordinance). Indeed, if Timberbrook were to affirmatively raise the business-necessity defense, Cole then would have an opportunity to show that Timberbrook's "concerns can be served by a reasonably available alternative system with less discriminatory effects." *Cf. id.* (cleaned up). But it was premature to enter judgment on the pleadings based solely on Timberbrook's statement in its answer that its motives for adopting the no-third-party-contract policy were "legitimate" and "non-discriminatory," *see* C173, where Cole had no "opportunity to make" a "showing" of "a less restrictive alternative" policy Timberbrook could have adopted, *cf. Hawkins*, 2020 IL App (1st) 191301, ¶¶ 33, 35 (defendant's statement in "answer" that its "decisions regarding plaintiff's housing were 'legitimate and non-discriminatory'" did not establish business necessity defense to source-of-income discrimination claim).

B. The relevant legislative evidence confirms the Attorney General's and Department's interpretation of the Act.

The "legislative history" of the Act's source-of-income provisions "confirms [their] plain and ordinary meaning." *See People v. Clark*, 2019 IL 122891, ¶ 38. The legislative evidence here shows the General Assembly considered the precise conduct alleged in Cole's complaint — a landlord's refusal to accept a tenant's voucher solely based on a desire not to sign the HAP contract — and then enacted language forbidding that conduct. Timberbrook's argument that "[n]othing in the [Act] requires a housing provider to sign a contract with a third party," *see* C371-72, thus echoed the losing side of a policy battle already fought in the legislature.

First, the Act's "source of income" definition was drafted to "mirror" the definition from a virtually identically phrased Chicago ordinance that this court had interpreted to forbid discrimination based on a tenant's use of a voucher to pay rent. Senate Tr. at 94; House Hous. Comm. Hr'g at 3:15-3:28; *see Godinez*, 352 Ill. App. 3d at 91. Even more to the point, this court interpreted that ordinance to permit liability based on a landlord's "policy" with the "impact" of excluding "all Section 8 voucher holders." *Hawkins*, 2020 IL App (1st) 191301, ¶ 23; *see also* Cook Cnty. Guidance (Cook County's similarly phrased ordinance forbids landlord from using method that "in practice automatically excludes [Housing Choice Voucher] holder").[15] The General Assembly is presumed to have acted with knowledge of judicial precedent interpreting identical text and to have intended the result of that interpretation. *Bd. of Educ. of City of Chi. v. Moore*, 2021 IL 125785, ¶ 29. By borrowing language from an ordinance that forbade landlord policies that have the effect of excluding all voucher holders, the General Assembly decided that the Act would forbid Timberbrook's policy against signing HAP contracts.

Moreover, the General Assembly explicitly considered and rejected adding language to the statute that would have yielded the opposite result. Opponents of the bill requested as a compromise that a "statement" be added to the "definition of source of income" providing that the definition would "not be construed to require an owner to enter into a third-party contract." Senate Exec. Comm. Hr'g at 46:48-47:00. Had they been successful, that language would have been consistent with Timberbrook's position that "[n]othing in the [Act] requires a housing provider to sign a contract with a third party." *See* C371-72. But the bill's proponents blocked the effort to add that limiting language because it would have "undermine[d] the intent of the bill." Senate Exec. Comm. Hr'g at 47:01-06. This court should not "depart" from the Act's

[15] https://bit.ly/4w4exh2.

"plain statutory language by reading into it" the "limitation[ ]" Timberbrook proposed, which "conflict[s] with the clear legislative intent." *See Mercado*, 2025 IL 129526, ¶ 20; *see also Sullivan*, 739 A.2d at 250 (refusing to create "exception" to Connecticut's source-of-income statute "for landlords who did not want to accept the lease terms of the section 8 program" where "bills . . . that explicitly would have added such an exception . . . failed"). Timberbrook may not use the courts to add limiting language to a statute whose opponents failed to convince the legislature to add that same language.

Finally, without that limiting language, the bill's proponents and opponents agreed the Act's source-of-income provisions required a landlord to sign a HAP contract that in turn required the landlord to accept rent payments on behalf of a voucher holder who met all the landlord's non-discriminatory source-of-income-neutral tenant screening criteria. Both sides debated whether the Act *should* require that of a landlord. *See* Senate Exec. Comm. Hr'g at 46:42-47:06, 52:40-52:52, 58:25-59:00; Senate Tr. at 80, 86; House Hous. Comm. Hr'g, at 12:25-12:38. But the debate was over policy, not what the statutory text meant. Throughout all of the debate, neither side suggested the source-of-income provisions would permit a landlord to refuse to sign a HAP contract when a tenant met all the landlord's other neutral criteria. The legislative record here thus reflects not "individual legislators talking past one another," *see People v. Hoffman*, 2025 IL 130344, ¶ 36, but rather mutual recognition of the "problem[ ]" the "General Assembly intended to target" and disagreement over whether the source-of-income provisions were a prudent way to target it, *see Eppinger*, 2013 IL 114121, ¶ 38.

C. To the extent the Act is ambiguous, this court should defer to the Department's reasonable interpretation.

If this court finds the Act's source-of-income provisions ambiguous, it should defer to the Department's reasonable interpretation of them. As this court has explained, "an agency's interpretation of a statute is given deference on *de novo* review unless it is erroneous, unreasonable, or conflicts with the statute." *Medponics Ill., LLC v. Dep't of Argic.*, 2021 IL 125443, ¶ 31; *accord Hadley v. Ill. Dep't of Corr.*, 224 Ill. 2d 365, 370 (2007) ("[W]here . . . an agency is charged with the administration and enforcement of the statute, courts will give deference to the agency's interpretation of any statutory ambiguities.").

Here, the Department has published guidance interpreting the Act's source-of-income provisions to protect voucher holders and to forbid landlords from "refus[ing] to rent or sell to applicants with housing subsidies that require the housing provider to take additional steps to utilize the subsidy." IDHR FAQ.[16] The Department also has clarified that giving a voucher holder "a fair opportunity to use [that] source[ ] of income to pay for their housing" may include "making the property available to inspection and making any reasonable repairs necessary to comply with minimum quality standards." *Id.* Because a landlord's execution of a HAP contract is an "additional step[ ]"

[16] https://bit.ly/454wr7n.

necessary for a voucher holder to "use [that] source[ ] of income to pay for their housing," the Department's guidance makes clear that Timberbrook's alleged refusal to take that step where Cole otherwise met all its source-of-income-neutral tenant screening criteria would violate the Act. *See id.*

The Department's published interpretation is neither erroneous nor unreasonable, and it does not conflict with the Act. *See Medponics*, 2021 IL 125443, ¶ 31. At minimum, it reasonably "harmonizes" with the Act's stated "purpose," *see id.* at ¶ 58, of "prevent[ing] discrimination based on . . . source of income in real estate transactions," *see* 775 ILCS 5/1-102(D) (2024). If the Act permits a landlord to categorically bar participants in a major Illinois housing subsidy program from using their subsidy simply by refusing to sign HAP contracts, or by invoking an alleged policy of "not enter[ing] into agreements with third parties," *see* C11, it would do little to prevent source-of-income discrimination in real estate transactions. Accordingly, to the extent this court finds the Act's source-of-income provisions ambiguous, it should defer to the Department's reasonable interpretation of them.

D. Mere policy considerations cannot support interpreting the Act contrary to its text and the legislative evidence.

The circuit court expressed concern that interpreting the Act in accordance with its plain text and the legislative history would unfairly advantage voucher holders, R19 ("The law is supposed to put everybody on the same page, not give special treatment to people who have a voucher."), and unduly burden landlords, *see* R18 ("They can do anything they want and make the landlord do it, and that's not right."). These "policy considerations" could not override the Act's plain text and the legislative evidence, *see Eppinger*, 2013 IL 114121, ¶¶ 29, 42, and at any rate, were overstated.

Because the Act's plain text and legislative history resolved the statutory interpretation question in Cole's favor, *see supra* §§ II.A-II.B, there was no need to resort to vague notions of what is "right" and what the Act is "supposed" to do, *see* R18-19. As this court has explained, "[l]anguage free from ambiguity and doubt will be given effect even if the consequences are harsh, absurd, or unwise." *Kloeppel v. Champaign Cnty. Bd.*, 2021 IL App (4th) 210091, ¶ 34 (cleaned up); *see also Arteman v. Clinton Cmty. Unit Sch. Dist. No. 15*, 198 Ill. 2d 475, 487-88 (2002) (explaining that although "[p]ublic policy considerations weigh[ed] strongly against" Court's interpretation, statute's "plain language" was "unambiguous" and Court "lack[ed] the power to restrict [statute's] protective scope"). The General Assembly considered adding limiting language to the Act that would have been consistent with the circuit court's reasoning, but it rejected that language as contrary to the Act's purpose. *See supra* § II.B. If the General Assembly later "determines that public policy would benefit" from narrowing the Act's source-of-income protections, "it has the power to implement that policy by adding express language to the statute." *See Lavery v. Dep't of Fin. & Pro. Regul.*, 2025 IL 130033, ¶ 67. But Timberbrook may not ask the judiciary to add it "under the guise of statutory interpretation." *See Kloeppel*, 2021 IL App (4th) 210091, ¶ 17 (cleaned up).

Moreover, the circuit court identified only the policy considerations that supported Timberbrook's position. Others pointed the opposite way. Some landlords have adopted policies that "indirectly deny voucher holders," such as "not sign[ing] contracts with . . . third parties," for the express purpose of circumventing state and local bans on source-of-income discrimination. Joanna Lucio & Seongkyung Cho, *Can I (Still) Refuse Housing Vouchers? Source of Income Protections and Landlord Strategies*, 48 J. of Urb. Affs. 2054, 2063 (2026). Though voucher holders successfully find housing at significantly higher rates in jurisdictions with source-of-income protections, "narrowing" constructions "by courts" that allow for such easy workarounds can reduce those success rates. *See* Tamica H. Daniel, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Fair Housing Act*, 98 Geo. L.J. 769, 779 (2010). And landlords' frequent refusals "to deal with the voucher program" make a "voucher user's housing search . . . much more difficult," resulting in "an uncertain system in which most vouchers are mainly used in low-income, low-opportunity areas, a practice that reinforces ethnic- and income-based segregation." Robert G. Schwemm, *Source-of-Income Discrimination and the Fair Housing Act*, 70 Case W. Rsrv. L. Rev. 573, 590-91 (2020).

Balancing the competing policy values of housing equity for tenants and reducing administrative burdens on landlords was a matter of legislative judgment for the General Assembly to resolve. The circuit court's task was merely to ascertain the balance the legislature struck. *See Kloeppel*, 2021 IL App (4th) 210091, ¶ 34 (court not required to "account for why the General Assembly" drafted statute in seemingly unintuitive way because courts "do not legislate" or "make policy decisions"). And as discussed above, the Act's text and the legislative record show clearly that the General Assembly intended to forbid the conduct Timberbrook was alleged to have engaged in here. *See supra* §§ II.A-II.B.

Even still, the circuit court's policy concerns were overstated. The Act's source-of-income provisions do not give "special treatment" to voucher holders. *See* R19. Landlords in Illinois remain free to reject a voucher holder — just as they can reject any other tenant — based on non-discriminatory criteria, such as a tenant's history of failing to pay rent, comply with a lease, care for their unit, respect other residents, or refrain from criminality. *See* 24 C.F.R. § 982.307(a)(3). Landlords also generally need not "lower their rent to accommodate" Housing Choice Voucher holders. IDHR FAQ.[17] The Act's source-of-income provisions forbid landlords only from rejecting a tenant "solely" based on the tenant's voucher. *See* Senate Tr. at 86.

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[17] https://bit.ly/454wr7n.

As for the circuit court's concern that "[t]hey could put anything they want" in the HAP contract, R18, the substance of the HAP contract is governed by HUD regulations that can be changed only through federal notice-and-comment rulemaking, *see* 24 C.F.R. §§ 982.403-06, 982.451-56. If HUD changes its regulations in a way that is arbitrary or capricious, *see, e.g.*, R18 ("They can say that the landlord's got to dress up in purple suits Wednesday and walk through the premises."), an objecting party may seek judicial review and have the offending regulation set aside, *see* 5 U.S.C. § 706(2)(A); *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 292-93 (2024). And if a regulatory change that survives both the notice-and-comment process and judicial review imposes a new requirement that would devastate a landlord's business, the Act would permit the landlord to prove that as an affirmative defense. *See* 775 ILCS 5/3-102(H) (2024) (landlord may show "criteria or methods" with "effect of subjecting individuals" to discrimination based on "source of income" are "necessary to achieve a substantial, legitimate, non-discriminatory interest" that cannot be "served by another practice" with "a less discriminatory effect").

III. This court should not affirm based on Timberbrook's alternative arguments that the circuit court did not address.

Because the circuit court's decision hinged on its erroneous statutory ruling and did not address Timberbrook's constitutional and preemption arguments, *see* C597-98; Ill. Sup. Ct. R. 18 (setting forth requirements for court to find statute unconstitutional), this court should reverse and remand for the circuit court to consider those arguments in the first instance, *see, e.g.*, *Moken Cmty. Park Dist. v. Romanek*, 2020 IL App (3d) 180336, ¶ 18 ("Because the circuit court did not rule on [party's] other grounds for dismissal, we decline to address those arguments and remand the case for further proceedings."); *Fuller v. Dep't of State Police*, 2019 IL App (1st) 173148, ¶ 22 ("We will not affirm a dismissal on this alternative basis before the circuit court has considered and ruled on these issues."); *Block v. Off. of the Ill. Sec'y of State*, 2013 IL App (5th) 120157, ¶ 16 ("remand[ing]" for "consideration and ruling on . . . alternative arguments for dismissal" where "circuit court, having [erroneously] found that it lacked jurisdiction over the cause, failed to reach those issues").

Though a reviewing court may affirm on any basis apparent from the record, it is appropriate to give the lower court the first pass at resolving constitutional and preemption issues when reversing the lower court on statutory grounds. *See Concerned Citizens & Prop. Owners v. Ill. Com. Comm'n*, 2026 IL 131026, ¶ 34 (reversing lower court's decision based on statutory interpretation error and declining to consider alternative constitutional arguments for affirming decision that lower court did not address). Accordingly, this court should reverse the circuit court's erroneous statutory ruling and remand the case for further proceedings.

CONCLUSION

For these reasons, this court should vacate the judgment and remand the case to the circuit court for further proceedings.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 30 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 13, 2026, I electronically filed the foregoing Brief of *Amici Curiae* Illinois Attorney General and Illinois Department of Human Rights with the Clerk of the Court for the Appellate Court of Illinois, Fourth Judicial District, by using the Odyssey eFileIL system.

I further certify that the following participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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