

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 16-2692

THEODORE HAYES AND AQEELA FOGLE,

Appellants,

v.

PHILLIP E. HARVEY,

Appellee.

AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS BY NATIONAL HOUSING LAW PROJECT, HOUSING JUSTICE CENTER, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, NATIONAL ALLIANCE OF HUD TENANTS, NATIONAL HOUSING TRUST, LEGAL AID SOCIETY - NEW YORK CITY, ACTION-HOUSING, INC., AND THE PHILADELPHIA HOUSING AUTHORITY

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CORPORATE DISCLOSURE STATEMENT

Pursuant Local Rule 26.1, the National Housing Law Project, the Housing Justice Center, the Sargent Shriver National Center on Poverty Law, the National Alliance of HUD Tenants, the National Housing Trust, the Legal Aid Society in New York City, and ACTION-Housing, Inc. make the following disclosure:

1) For non-governmental corporate parties please list all parent corporations:

None.

2) For non-governmental corporate parties please list all publicly held

companies that hold 10% or more of the party's stock: None.

CERTIFICATIONS OF COUNSEL

Counsel are members in good standing admitted to the Third Circuit Court of Appeals.

This document complies with Federal Rules of Appellate Procedure 29(b)(4) and 32(f) because, excluding the parts of the document exempted by Federal Rule 32(f) and Local Rule 29.1(b), this document contains 2560 words.

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STATEMENTS OF INTEREST

The National Housing Law Project (NHLP) is a nonprofit national housing and legal advocacy center established in 1968, whose mission is to advance housing justice for low-income people by increasing and preserving the supply of decent, affordable housing; minimizing involuntary displacement; and ensuring tenants' rights to fair treatment. NHLP partners with a host of individuals and organizations working in the affordable housing arena, including local and national advocates, tenant and advocacy networks, nonprofit developers, and allied housing organizations. NHLP also provides technical assistance to public housing authorities and other agencies and officials within local and state governments, and to federal policymakers who develop and implement the housing policies affecting our nation's most vulnerable residents. Through policy advocacy and litigation, NHLP has contributed to many critically important changes to federal housing policy and programs that have resulted in increased housing opportunities and improved housing conditions for low-income people, including tenants with Enhanced Vouchers and tenants in affordable housing subsidized by the United States Department of Housing and Urban Development (HUD).

The Housing Justice Center, formerly the Housing Preservation Project, is a non-profit public interest law firm working in Minnesota and nationally to preserve and expand the supply of affordable housing. Since 1999 HJC has worked

on the preservation of over three hundred low-income projects in Minnesota and nationally, providing technical assistance on preservation programs and financing and litigating a wide variety of issues related to the preservation of low-income housing. Since 1999, HJC has relied on Enhanced Vouchers to assure that low-income residents are not displaced from their homes when subsidized mortgages are pre-paid or project-based Section 8 contracts are terminated. Since 1999, HJC has repeatedly used the statutory right to remain to have project owners accept Enhanced Vouchers in a variety of circumstances in which the owners would otherwise have displaced low-income residents, and to require local agencies to administer the vouchers so as to assure continued affordable occupancy, as Congress clearly intended. The District Court decision and Majority Opinion here are at odds with 20 years of clear Congressional policy; with 20 years of HUD policy and adjudicative decisions; and with 20 years of court decisions. Rehearing is vitally important to many thousands of Enhanced Voucher tenants, and to the thousands of others who might experience conversion from project-based subsidy programs in future years.

The Sargent Shriver National Center on Poverty Law (“Shriver Center”) is a national non-profit legal and policy advocacy organization based in Chicago. The Shriver Center’s housing unit primarily focuses its work on the preservation of public housing and project-based Section 8 housing, fair housing, and the housing

rights of survivors of violence. Given the fact that there is no new public housing or project-based Section 8 contracts being issued by HUD, the Shriver Center advocates for the preservation of this finite stock of deeply subsidized housing so that this housing is available to low-income households for decades to come. This is a particularly serious problem in strong housing markets, which are higher income and predominately white, and thus provide an important supply of affordable housing in integrated neighborhoods. When the owner of a project-based Section 8 development chooses to opt-out of their contract, the Shriver Center represents tenants and tenant associations to ensure that tenants are informed of their right to remain at the property with an Enhanced Voucher. The Shriver Center also ensures that public housing authorities and property owners comply with the residents' right to remain at the property. Enhanced Vouchers allow for the stability of individual households in communities with quality education, medical care, jobs, and other services where these families may otherwise be unable to remain.

The **National Alliance of HUD Tenants** (NAHT) is a nonprofit national membership coalition of low-income tenant groups in privately-owned, HUD assisted multifamily housing. Tenants founded NAHT in 1992 to help protect low-income HUD multifamily housing at-risk from funding cuts and owner decisions to convert to market rents; to develop tenant self-empowerment; to promote tenant

ownership and control; and to make HUD accountable to its constituents: HUD tenants. Through NAHT, tenants have proven that united action can save and improve people's homes. Today, NAHT connects most of the organized HUD tenant groups across the country, including active local HUD tenant coalitions or organizing projects in 17 states. NAHT is governed by an all-tenant Board of Directors elected each year by voting member tenant groups that each meet HUD standards for legitimate tenant associations. Over the years, NAHT has spearheaded or joined successful advocacy campaigns to save and improve at-risk HUD multifamily housing and protect tenants' rights, including passage of the Enhanced Voucher program in the late 1990's. Since that time, NAHT has advocated for full funding of the Enhanced Voucher program each year, and for enforcement by HUD, public housing agencies and owners of tenants' right to remain in their homes absent good cause for eviction when HUD housing is converted to market rent and Enhanced Vouchers.

The **National Housing Trust** (NHT) is a nonprofit corporation based in the District of Columbia. NHT was a recipient in 2014 of the MacArthur Foundation Award for Creative and Effective Institutions. NHT protects and improves existing affordable rental homes so that low-income individuals and families can live in quality neighborhoods with access to opportunities. NHT's major activities include engaging with federal stakeholders, and providing financing and technical

assistance to preserve and improve affordable housing for low-income families in a wide variety of communities, including neighborhoods of greater economic, educational and social opportunity like the Society Hill neighborhood. Proper interpretation and application of federal laws, including the enhanced voucher statute, is vital to our work assuring that lower-income residents, can maintain their homes as neighborhoods around them improve and their access to better education, jobs, transit, and other services and amenities increases.

The **Legal Aid Society**, (“the Society”) located in New York City and founded in 1876, is the oldest and largest program in the nation providing direct legal services to the indigent. Last year, the Society’s Civil Practice provided free direct legal assistance in more than 47,000 individual cases involving all areas of civil legal services with over fifty two percent of those cases involving housing matters. New York City is a high rent, low vacancy rate city with rapidly gentrifying low-income neighborhoods. The Society represents tenants and tenants’ associations seeking to preserve affordable housing resources such as public housing, project-based Section 8, Section 8 vouchers and rent regulated housing. As New York City’s rental market has tightened, New York has lost tens of thousands of formerly federally subsidized housing developments. The Society has worked with tenants in developments across New York City to educate them on their rights and assist them in utilizing and keeping their Enhanced Vouchers.

The Society enforced New York City's Enhanced Vouchers holders' right to remain in their developments in *Jeanty v. Shore Terrace Realty Ass'n*, No. 03 Civ. 8669, 2004 WL 1794496 (S.D.N.Y. Aug. 10, 2004) and *Estevez v. Cosmopolitan Assocs. L.L.C.*, No. 05 CR 4318, 2005 WL 3164146 (E.D.N.Y. Nov. 28, 2005).

Because of rapidly changing market conditions, tenants in developments that were previously federally subsidized can only remain in their communities through Enhanced Vouchers and through remaining in their developments. Currently, in New York City, fifty percent of voucher holders need longer than six months to lease an apartment and twenty five percent of movers are losing their vouchers because of failed searches. Without the right to remain, thousands of New York City tenants risk homelessness and the loss of access to medical care, education and employment opportunities. A rehearing and reversal of the judgment below is essential for the seventy five hundred New York City Enhanced Voucher holders to remain in their communities and to remain housed.

ACTION-Housing, Inc. ("AHI") is a non-profit housing service and development organization founded in 1957 in Pittsburgh, Pennsylvania by corporate, charitable, and government leaders to promote the development of affordable housing and the preservation of neighborhoods in the region. Its mission is to provide affordable housing as a means for individuals and families to secure safer and more self-sufficient lives. AHI is a developer, manager, preservation

developer, and facilitator for developments that provide affordable housing, including a significant inventory of project-based Section 8 combined with HUD programs. From 1974 to 1983, AHI operated a significant technical assistance program that assisted local developers in building project-based Section 8 housing. AHI is now engaged in a City of Pittsburgh – Civic Venture that is monitoring and preserving the inventory of project-based Section 8 as a key component of the local inventory. AHI has been a purchaser of HUD project-based Section 8 units in the Pittsburgh market and is currently engaged in the process of purchasing units and transferring contract authority for the purpose of preserving that contract authority and providing high quality affordable housing to families in the Pittsburgh market. AHI is engaged as an owner in some 2,000 units of affordable housing some 1,600 of which have project-based Section 8 contracts. This Section 8 support enables families and individuals to build better lives. Accordingly, AHI strongly supports the Petition’s argument that the Enhanced Voucher statutes give tenants the right to remain in formerly subsidized, HUD multifamily properties after the owner opts out of the contract. Recognizing that tenancies can only be terminated for good cause will prevent the involuntary displacement of tenants from their housing and neighborhoods.

The **Philadelphia Housing Authority** (PHA) was established pursuant to the Housing Authorities Act of 1937 and is the nation’s fourth largest housing

authority. PHA's mission is to provide safe, decent and sanitary housing for persons of low and moderate income in the City of Philadelphia. PHA provides housing for nearly 80,000 low and moderate income residents through its public housing, project-based and tenant-based voucher programs. Central to PHA's mission is ensuring that federal, state and local housing regulations are effectively enforced to aid in the deconcentration of poverty in support of socially and economically diverse communities. As the primary provider of subsidized and affordable housing in the City of Philadelphia, and as the administrator of the Enhanced Vouchers at issue, PHA has an interest in Appellants' Petition for a Rehearing En Banc, in which Appellants challenge the Third Circuit's interpretation of the rights afforded to Enhanced Voucher holders. PHA recognizes that many Philadelphia neighborhoods are experiencing a drastic shift in the housing market, displacing families who become unable to afford housing in their own communities. Enhanced Vouchers provide a bulwark against this displacement by allowing families to remain in their housing of choice without fear of economic factors beyond their control. PHA supports the proposition, as presented in this brief and inherent in the legislative history and guidance from HUD, that Enhanced Voucher holders have the right to remain in their unit and are not subject to termination except for good cause. Granting the petition and reversal of the judgment below is necessary to effectuate the true purpose of Enhanced

Vouchers: to protect our most economically vulnerable citizens from displacement, and to support diverse and inclusive communities.

ARGUMENT

This appeal involves a question of exceptional importance: whether the tens of thousands¹ of low-income people nationwide who hold enhanced vouchers have a right to remain in their homes absent good cause to terminate them. The Majority Opinion is based upon an error of law: it conflates the enhanced vouchers at issue in this case with regular vouchers, a different program, with a different scheme governing tenants' right to remain in their homes. As a result, the Majority Opinion disregards the plain text of the Enhanced Voucher and good cause eviction statutes, the statutes' legislative history and context, HUD's consistent interpretations, and all prior federal court decisions regarding the issue. This misinterpretation threatens housing stability for all tenants with Enhanced Vouchers nationwide.

Amici Curiae, representing a constellation of non-profit groups, along with the nation's fourth largest public housing authority, therefore respectfully request that the petition for rehearing is granted, and that the District Court opinion is reversed.

¹ For the four fiscal years 2012 through 2015 alone, HUD provided funding to PHAs for approximately 30,000 enhanced vouchers after prepayments or project-based Section 8 terminations. *See* 81 Fed. Reg. 17479, 17485-87 (Mar. 29, 2016) (about 5000 total); 80 Fed. Reg. 27342, 27346-48 (May 13, 2015) (about 8,000 total); 78 Fed. Reg. 77144, 77149-50 (Dec. 20, 2013) (about 7,400 total); 78 Fed. Reg. 6334, 6338-39 (Jan. 30, 2013) (about 9,600 total).

I. Both the Text and History of the Unique Enhanced Voucher Protections Demonstrate Congress's Clear Intention to Permit Tenants to Remain in Their Homes, Absent Good Cause to Terminate

The Majority Opinion erroneously interpreted the Enhanced Voucher statute by conflating three distinct federal housing programs. First, there are the HUD subsidized mortgage insurance² and Section 8 project-based programs,³ which originally supported construction of thousands of properties like the Pine Street units here, providing subsidies to build affordable housing for low-income tenants. These project-based programs support affordable housing that provides stability for both low-income tenants and neighborhoods, by requiring longer-term commitments and good cause eviction protection for tenants.

Second is the regular tenant-based voucher program,⁴ which provides rental assistance to help individual tenants rent units on the private market, for properties generally built without a public subsidy. Those tenants' theoretical choice is often restricted to neighborhoods where landlords will accept vouchers and to units with lower rents—often lower quality units in poorer neighborhoods. Compounding

² See, e.g., Housing and Urban Development Act of 1968, Pub. L. No. 90-448, §§ 201(a), 236(a)-(g), 82 Stat. 476, 498-503 (1968).

³ Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. II, 88 Stat. 633, 653, 662 (1974) (establishing the Section 8 rental assistance programs).

⁴ 42 U.S.C. § 1437f(o).

these challenges, regular vouchers come with insecurity: landlords can choose not to renew leases at expiration without good cause.

Third is the Enhanced Voucher program at issue here, made available to tenants like the Hayes family who live in homes that were funded by project-based assistance, but where the project owner terminated his or her participation in the program. Several related Enhanced Voucher statutes enacted in the late 1990s clearly seek to advance a singular goal for that program—to prevent tenants in this unique situation from being involuntarily displaced.

The history begins with the 1997, 1998 and 1999 federal appropriations acts,⁵ where Congress established and provided funding for “enhanced” or “sticky vouchers.”⁶ Bearing an explicit tenant “election to remain,”⁷ these initial statutes reflected Congress’s intent that tenants would keep these vouchers while remaining in their homes, thus furthering Congress’s express objective: “prevent[ing] the involuntary displacement of low-income families, the elderly and the disabled because of the loss of affordable housing stock, expiration of subsidy contracts... or ... use restrictions”⁸ Meanwhile, in 1998, Congress amended another federal statute—one guaranteeing basic protections to tenants—to require that

⁵ See, e.g., Pub. L. No. 104-204, 110 Stat. 2874 (Sept. 26, 1996).

⁶ S. Rep. 106-161, at 32, 62 (Sept. 16, 1999); S. Hrg. No. 106-789, at 7 (Sen. Jeffords), 8 (Sen. Bond), 44 (House Fin. Servs. Maj. Staff), and 55 (Rep. Vento).

⁷ E.g., Pub. L. No. 104-204, 110 Stat. 2874, 2885 (Sept. 26, 1996).

⁸ *Supra* note 6, at 2882.

Enhanced Voucher recipients were protected from eviction absent good cause.⁹ Thus, across multiple laws, in quick succession, Congress sought to ensure that these tenants would not be involuntarily displaced absent good cause.¹⁰

Congress did not stop there. Next, it formally codified the Enhanced Voucher statute¹¹ for tenants like the Hayes family. This statute works, first, by providing that tenants may elect to remain in their homes with an Enhanced Voucher. Second, it provides market-rate assistance to subsidize the tenants' limited rent contribution, thereby enabling the tenants' election to remain at no cost to the owner. In enacting these related laws, Congress thus struck a careful balance: ensuring that tenants would avoid displacement from their homes and neighborhoods, while providing market-rate rents for owners of properties constructed with public subsidies.

The legislative history is especially instructive. In 1999, when codifying its annually-enacted protections, Congress simultaneously required HUD to provide Enhanced Vouchers to affected tenants.¹² Because the 1999 Enhanced Voucher

⁹ Pub. L. 105-276, § 599, 112 Stat. 2469, 2660 (Oct. 21, 1998) (codified at 12 U.S.C. § 1715z-1b). In these specified subsidized programs, Congress thus ensured that absent good cause to terminate a tenancy, families could continue to keep their homes, in contrast to its repeal in 1996 for regular voucher tenants.

¹⁰ Good cause simply prohibits the arbitrary termination of tenancies, permitting termination for such causes as violation of lease terms or criminal activity. *See, e.g.*, 24 C.F.R. § 247.3 (2017).

¹¹ 42 U.S.C. § 1437f(t).

¹² Pub. L. No. 106-74, §§ 531, 538, 113 Stat. 1047, 1113, 1122 (1999).

language required higher subsidy vouchers but was arguably ambiguous about a tenant's right to remain, Congress quickly amended the statute and alleviated any confusion. Specifically, Congress

[struck] “during any period that the assisted family continues residing in the same project in which the family was residing on the date of the eligibility event for the project, if” and insert[ed] “the assisted family *may elect to remain* in the same project in which the family was residing on the date of the eligibility event for the project, *and if, during any period the family makes such an election* and continues to so reside[.]”

Pub. L. 106-246, § 2801, 114 Stat. 511, 569 (July 13, 2000) (emphasis added).¹³

Here is where the Majority Opinion erred. It misread this amendment as simply requiring a higher subsidy to prevent *HUD* from displacing a family. But the prior 1999 language already did that very thing, and by inserting the phrase “the assisted family may elect to remain,” Congress removed any suggestion of the very interpretation that the Majority Opinion reached—that an Enhanced Voucher provides market-rate rents, but which landlords may reject. Courts must construe statutes to give effect to each provision, and construe amendments to have

¹³ H.R. Conf. Rep. No. 106-710, at 164 (2000), as reprinted in 2000 U.S.C.C.A.N. 435, 482 (“clarifying the intent of ... [the original Enhanced Voucher statute].”) This amendment’s treatment of the phrase “during any period” also demonstrates that the tenant’s unilateral choice to remain at *any* time includes lease expiration – consistent with the 1998 good cause eviction statute.

meaning.¹⁴ The Majority Opinion, however, rendered the change superfluous, erasing the very purpose of the statute.

The Majority Opinion's related concern about discouraging owner participation in the voucher program may indicate why it erred.¹⁵ Because Congress last authorized the construction of project-based Section 8 units in 1983,¹⁶ there are no owners who could possibly be discouraged from participating in the project-based program because of a tenant's right to remain. As explained above, there are a number of different housing programs, and Congress *was* concerned about the regular voucher program, where owners of unsubsidized rental properties are generally eligible to accept regular vouchers, but have no obligation to do so. Congress arguably needed to incentivize those owners to participate; thus, that program alone, as distinct from Enhanced Vouchers and all other federal programs, uniquely allows termination of tenancies at lease expiration without cause.¹⁷ In other words, the Majority Opinion was incorrectly using a concern about one program to discern congressional intent about another.

¹⁴ See *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247 (1992) (relying on “the canon of statutory construction requiring a change in language to be read, if possible, to have some effect”) (citations omitted); *Corley v. United States*, 556 U.S. 303, 314 (2009).

¹⁵ Maj. Op. at 18-19.

¹⁶ Housing and Urban-Rural Recovery Act, Pub. L. No. 98-181, § 209, 97 Stat. 1153, 1183 (1983) (codified at 42 U.S.C. 1437f (2017)).

¹⁷ Pub. L. No. 104-134, § 203(c)(2), 110 Stat. 1321, 1321–281 (1996).

Finally, the Majority Opinion improperly failed to accord any deference to the clear and consistent HUD guidance,¹⁸ contravening decades of Supreme Court precedent regarding administrative deference.¹⁹ In 2001, for example, HUD’s Section 8 Renewal Policy Guide stated that tenants may elect to remain and owners “must continually renew the lease of an enhanced voucher family,” absent good cause for eviction,²⁰ and also required all owners to certify to tenants that they will honor the right to remain, absent good cause for eviction.²¹ This guidance executes Congress’s specific directive to ensure good cause eviction for Enhanced Voucher tenants. This language, repeatedly issued for nearly 20 years,²² effectuates Enhanced Voucher law, and has received deference by all other federal court rulings.²³ The Majority Opinion’s failure to defer to HUD’s guidance only compounds its error.

¹⁸ Maj. Op. at 24.

¹⁹ See, e.g., *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

²⁰ HUD, *Section 8 Renewal Policy* (Jan. 2015), at ¶ 11-3. B 2 (JA 261).

²¹ *Id.* at ¶ 11-4 C 3, and App. 11-1 (required certification in form notice).

²² See Appellant’s Petition for Rehearing at 14.

²³ See *Park Village Apartments Tenants Ass’n. v. Mortimer Howard Trust*, 636 F.3d 1150 (9th Cir. 2011); *Barrientos v. 1801-1825 Morton, LLC*, No. 06-6437, 2007 WL 7213974 (C.D. Cal. Sept. 10, 2007), amended to clarify by, 2007 WL 7213972 (C.D. Cal. October 24, 2007), *aff’d on other grounds*, 583 F.3d 1197 (9th Cir. 2009); *Feemster v. BSA Ltd. P’ship*, 548 F.3d 1063 (D.C. Cir. 2008), *aff’g in relevant part*, 471 F. Supp. 2d 87 (D.D.C. 2007); *Estevez v. Cosmopolitan Assocs. LLC*, No. 05-4318, 2005 WL 3164146 (E.D.N.Y. 2005); and *Jeanty v. Shore Terrace Realty Ass’n*, No. 03-8669, 2004 WL 1794496 (S.D.N.Y. 2004).

II. Revoking the Right to Remain Will Make Families Poorer and Neighborhoods More Segregated

The Dissent and the Hayes family have ably demonstrated that with its decision, the Third Circuit stands alone. What has not fully been discussed is the impact this decision will have. That impact, however, is clear: families will become poorer, and neighborhoods will grow more segregated.

There is already effectively a “control group” that demonstrates the important benefits of Enhanced Vouchers: those tenants forced to leave project-based housing due to foreclosure or HUD termination of the contract. In these circumstances, tenants receive regular vouchers because the property no longer meets HUD standards and tenants must move out of the building—and often out of their neighborhoods. When attempting to utilize regular vouchers in the private market, tenants commonly face discrimination by landlords unwilling to rent to voucher holders, in addition to implicit bias and intentional discrimination based on race, familial status, disability, and/or other protected class status.²⁴

Research shows that of this control group, only 33% (in the case of foreclosure termination) or 38% (in the case of enforcement termination) of those

²⁴ See, e.g., J. Rosie Tighe, *et al.*, *Source of Income Discrimination and Fair Housing Policy*, 32 J. PLANNING LITERATURE 3 (2017).

families who were offered a regular voucher were even able to use the voucher.²⁵

Those tenants are not only displaced from their homes, but from their neighborhoods, with 56% of them moving to another census tract.²⁶ In addition, those low-income households who are not able to use their regular voucher forgo an average subsidy of \$430 per month, equivalent to about 40% of their income.²⁷ The Hayes family and tens of thousands of families nationwide now face a similar future of entrenched poverty in low-opportunity neighborhoods, subjected to a private housing market that often does not provide safe, affordable, stable housing for low-income families and which is in the middle of an affordable housing crisis characterized as “acute, growing, and deadly.”²⁸

²⁵ Vincent Reina & Ben Winter, *Safety Net? The Utility of Vouchers When a Place-Based Rental Subsidy Ends*, May 10, 2016, at Table 1, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2940015.

²⁶ *Id.* at 17.

²⁷ *Id.* at 6-7, 24.

²⁸ W. Paul Farmer, AM. PLANNING ASS’N, *Affordable Housing Crisis: The “Silent Killer”* (2004), available at <http://www.planning.org/affordablereader/domesticpolicy/apr04.htm>. In 2017, only 62 affordable units were available per 100 very low-income renters, and only 38 units were available per 100 extremely low-income renters. U.S. DEP’T. OF HOUS. & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, *Affordable Housing Needs: 2017 Report to Congress*, at xi, 15, 18 (May 2007), available at <https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs.pdf>. Moreover, rental units that are affordable are both rare and more likely to be occupied by higher income renters. *Id.* at 13, 15, 66.

It gets worse. “Much progress,” the Supreme Court recently held, “remains to be made in our Nation’s continuing struggle against racial isolation.”²⁹ Yet, increased segregation is likely to be another unfortunate consequence of the Majority Opinion. In the City of Philadelphia, for example, 84.99% of housing choice voucher tenants are African-American.³⁰ Those voucher holders must find housing in a market where a single reporter, with a few text searches on Craigslist, found “[h]undreds of properties . . . marked by realtors and landlords who don’t want Section 8 voucher holders,” and where the only section of the city to accept voucher holders without signs of discrimination was North Philadelphia.³¹ Such source of income discrimination means that African-American tenants, elderly tenants, and families with children are disproportionately unable to use their housing choice vouchers.³² Meanwhile, that “fashionable neighborhood in Philadelphia,”³³ subjected to “repeated intervention” by the federal courts to vindicate the Hayes family’s right to their home in the first place,³⁴ and where the

²⁹ *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).

³⁰ *Affirmatively Furthering Fair Housing Data and Mapping Tool*, U.S. DEP’T. OF HOUS. & URBAN DEV., <https://egis.hud.gov/affht/>.

³¹ Anna Orso, ‘No Section 8’: The Craigslist practice that could cost landlords big time, BILLYPENN (Nov. 18, 2015, 9:45am), <https://billypenn.com/2015/11/18/no-section-8-the-craigslist-practice-that-could-cost-landlords-big-time/>.

³² *Reina and Winter*, *supra* n. 25, at 19, 25, Table 2.

³³ *Soc’y Hill Civic Ass’n v. Harris*, 632 F.2d 1045, 1048 (3d Cir. 1980).

³⁴ Dissent at 28.

Hayes family will be forced from, continues to be largely high-income, and largely white. This stark reality is not limited to Philadelphia,³⁵ and not what Congress intended.

III. Conclusion

The Third Circuit stands alone. The plain language of the Enhanced Voucher statute and related enactments, HUD's consistent interpretation, and every appellate decision to date all support the position that an owner must honor the tenants' right to remain and continue to renew the lease of an Enhanced Voucher tenant, absent good cause to terminate the tenancy. Accordingly, the petition for rehearing should be granted and the judgment of the District Court reversed.

³⁵ See, e.g., Yanan Wang, *DC's Chinatown has only 300 Chinese Americans left, and they're fighting to stay*, THE WASHINGTON POST, July 18, 2015, https://www.washingtonpost.com/lifestyle/style/dcs-chinatown-has-only-300-chinese-americans-left--and-fighting-to-stay/2015/07/16/86d54e84-2191-11e5-bf41-c23f5d3face1_story.html?tid=ss_mail&utm_term=.8b0022dcaed7.

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CERTIFICATE OF SERVICE

I, Dan Urevick-Ackelsberg, certify that on November 21, 2017, in the matter of *Hayes v. Harvey*, No. 16-2692, I caused the foregoing to be filed electronically through the ECF System of the Clerk of the United States Court of Appeals for the Third Circuit, and that ECF will send an e-notice of the electronic filing to the following:

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