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Dear Committee on Housing, Neighborhood Development, and the Homeless:

My name is Sari Bernstein and I am a staff attorney at the Public Interest Law Center. Thank you for allowing me to testify today about voucher discrimination, a pervasive issue in Philadelphia that prevents low-income renters of color from obtaining safe, quality and affordable housing in neighborhoods of their choice.

Philadelphia has an affordable housing crisis. 54% of Philadelphia’s renters are cost-burdened, meaning they pay at least 30% of their income on housing costs.¹ This problem is most acute for renters with incomes below \$30,000 per year, 88% of whom are cost-burdened (and 68% are severely cost-burdened, meaning they spend at least 50% of their incomes on rent).² The real impact of these unfortunate statistics is housing and economic instability for too many Philadelphians, including traumatic evictions and all the downstream consequences that flow. But Philadelphia is not without laws to combat these trends; the Fair Practices Ordinance (the “Ordinance”) prohibits discrimination in housing on the basis of source of income, defined broadly as “any lawful source of income... included but not limited to... all forms of public assistance, including Temporary Assistance for Needy Families; and housing assistance programs.”³ Consistent with the language of the Ordinance, the Philadelphia Commission on Human Relations (the “Commission”)—the city agency charged with enforcing the Fair Practices Ordinance—interprets this protection to include “any lawful income, subsidy, or benefit with which an individual supports themselves and their dependents. This includes but is not limited to... any federal, state, or local public assistance, medical assistance, or rental assistance program.”⁴

In practice, the largest rental assistance program in Philadelphia is the Housing Choice Voucher program (“HCV” or “Voucher Program”), commonly referred to as “Section 8”, which is funded by the United States Department of Housing and Urban Development and administered locally by the

¹ Larry Eichel & Octavia Howell, *How Philadelphia Can Address Its Affordable Housing Shortage*, Pew (2020), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/10/26/how-philadelphia-can-address-its-affordable-housing-shortage>.

² The State of Housing Affordability in Philadelphia, Pew (2020), available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/09/the-state-of-housing-affordability-in-philadelphia>. This crisis is compounded by the fact that about 1,700 of the remaining project-based Section 8 units are set to lose their affordability restrictions in the next five years. Ryan Briggs & Aaron Moselle, *1,700 units of housing are set to vanish in the next 5 years. There’s little Philly officials can do*, Phillytrib.com, WHYY, https://www.phillytrib.com/news/local_news/1-700-units-of-housing-are-set-to-vanish-in-the-next-5-years-there/article_7d62197d-f3e7-502a-9154-a4d9abdbf244.html (last visited Mar. 22, 2022).

³ Phila Code. § 9-1102(cc).

⁴ Philadelphia Commission on Human Relations, File a complaint about housing or property discrimination, <https://www.phila.gov/services/crime-law-justice/report-a-crime-or-concern/discrimination-and-unfair-practices/file-a-complaint-about-housing-or-property-discrimination/> (last accessed Mar. 2, 2023).

Philadelphia Housing Authority. One of the goals of the HCV program is to help households integrate in “opportunity-rich neighborhoods,” which studies show result in long-term improvements in education and economic outcomes.⁵ There are about 19,350 HCV holders in Philadelphia, 84% of whom are Black and 70% of whom earn less than \$20,000 per year.⁶ Without the subsidy, these Philadelphians are effectively locked out of the rental housing market.

Although this law has been on the books for over forty years, a 2018 Urban Institute study found that 67% of Philadelphia landlords refuse to rent to voucher holders, and the refusal rate goes up to 83% in low-poverty neighborhoods.⁷ More recently in the City’s 2022 Draft Assessment of Fair Housing, nearly 50% of the respondents cite source of income as the reason they were treated differently when looking for housing, the second highest response after race.⁸ Not only did surveyed individuals routinely raise source of income discrimination, representatives from both fair housing organizations cited increased reports of source of income discrimination. Moreover, HCV holders in Philadelphia are largely located in low-income, racially concentrated neighborhoods and not in integrated “opportunity-rich neighborhoods” as envisioned by the HCV program. 43% of HCV households live in neighborhoods that are over 80% Black whereas only 1% of HCV households live in neighborhoods that are over 80% white.⁹

In other words, despite their subsidy, these Philadelphians are actually locked out of the rental housing market in large swaths of the city. Statistics bear this out. Of the 863 Emergency Housing Vouchers administered to Philadelphia in 2021, 322 of those vouchers, or nearly 40% of the vouchers issued under program, are unused today.¹⁰

The City must take urgent steps to ensure that Philadelphia landlords follow this vital tenant protection. Fair housing laws only realize their objectives with a parallel commitment to enforcement. Studies show that in jurisdictions with source of income discrimination protections, voucher utilization goes up.¹¹ Because source of income discrimination complaints require administrative exhaustion at the

⁵ Daniel Teles & Yipeng Su, Urban Institute, *Source of Income Protections and Access to Low-Poverty Neighborhoods* (2022), available at <https://www.urban.org/sites/default/files/2022-10/Source%20of%20Income%20Protections%20and%20Access%20to%20Low-Poverty%20Neighborhoods.pdf>.

⁶ See HUD Office of Policy Development and Research Database, Dataset: Picture of Subsidized Housing, <https://www.huduser.gov/portal/datasets/assthsg.html> (last accessed Mar. 2, 2023).

⁷ See Mary Cunningham, et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*, Urban Institute (Sept. 2018) <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html>; see also Julia Teruso, *In Philly, Two-Thirds of Landlords Won’t Take Affordable Housing Vouchers – Even When The Renter Can Afford the Place*, Phila. Inquirer, (Aug. 27, 2018), <https://www.inquirer.com/philly/news/housing-vouchers-section-8-affordable-urban-institute-study-20180827.html>.

⁸ See City of Philadelphia & Philadelphia Housing Authority, *Draft Assessment of Fair Housing* (2022), pg. 9, 32 available at <https://www.phila.gov/media/20220527124813/Philadelphia-Assessment-of-Fair-Housing-Draft-5-27-22.pdf>.

⁹ See *id.*

¹⁰ See Emergency Housing Voucher Data Dashboard, *PHAs by Cumulative Reported Issuances and Households Served in EHV Program*, available at https://www.hud.gov/program_offices/public_indian_housing/ehv/dashboard (last accessed Mar. 13, 2023).

¹¹ Lance Freeman, *The Impact of Source of Income Laws on Voucher Utilization*, HOUSING POLICY DEBATE, Vol. 22, No. 2, March 2012, pgs 297-319.

Commission, meaning complainants must first file their allegations of discrimination with the Commission before proceeding to court, the Commission plays a key role in efforts to enforce the law and reduce source of income discrimination.

The Law Center's recent experience representing both individuals and the Housing Equality Center of Pennsylvania, a fair housing organization, in source of income discrimination complaints at the Commission provides insight into targeted steps the City and in particular the Commission can take to counteract this form of discrimination. Our experience also shows that enforcement works—a recent settlement with a large Philadelphia landlord resulted in the landlord agreeing to encourage and accept voucher applicants in all 77 of their properties. The following recommendations come with an appreciation that the Commission's resources and budget are currently too limited to accomplish its laudable goals. We therefore call on the City Council to increase funding and other resources to the Commission so that it may realize its Charter-mandated duties.

These recommendations reflect the Commission's primary mandate: to educate, to investigate and to enforce.

First, the Commission must educate the public—housing providers and tenants alike—through advertisements, targeted social media, print and other means, that source of income is a protected class under the Ordinance. Voucher holders are turned away from rental opportunities solely because of their voucher status *so often*, and *so flagrantly*, that they are reasonably shocked to learn that this behavior is a violation of the law. This education should be broad, visible, and undertaken in conjunction with fair housing organizations, community-based organizations and Office of Homeless Services contract providers to reach the most impacted communities.

Second, the Commission must be both proactive and responsive in its duty to investigate violations of the Ordinance. Voucher holders experiencing housing instability cannot be solely responsible for ferreting out, reporting and confronting discriminatory behavior. The Commission should also proactively engage with fair housing organizations and other local agencies to root out discriminatory conduct. When voucher holders do come forward with allegations of discrimination, the Commission must timely respond to and investigate those complaints in a manner accessible to unrepresented individuals.¹² By way of example, for three complaints our office filed in August 2019, the Commission took between eleven months and two years to complete its investigations.¹³ This is too long; the Ordinance calls for an investigation period of 100 days unless impracticable, and to provide notice when the investigation period does exceed 100 days. Then, once the investigation does conclude, the Commission cannot shy away from issues of fact. For example, on one occasion, despite written proof that discrimination occurred, the Commission apparently dismissed the claim simply because the

¹² The housing discrimination intake form should be short, clear and available to those without access to a computer. Once a complaint is filed, there should be transparency around the process.

¹³ This matters because amongst other things, tenants have a limited amount of time in which to use or lose a HCV—the quicker the investigation, the more likely a meaningful outcome for the tenant.

landlord denied it. And on another occasion, despite collaborating proof that discrimination occurred, the Commission dismissed the claim.

Third, the Commission's obligation to enforce the source of income protection is tied to the administrative exhaustion requirement in the Ordinance. The Commission has one full year of exclusive jurisdiction while it investigates or otherwise contemplates the complaint. City Council should consider amending the Fair Practices Ordinance to bring this requirement in line with other jurisdictions and areas of the law. For example, City Council could provide that a person may file a complaint with the Commission *or* has a private right of action in the Philadelphia Court of Common Pleas. Or, City Council could follow a model akin to the EEOC. That is, a person must first file a complaint with the Commission, after which the Commission has 100 days to investigate. Before the 100 days expires, a person may request and receive a Notice of Right to Sue if the Commission will be unable to complete the investigation within 100 days. After 100 days expires, a person may request and must receive a Notice of Right to Sue if the investigation is not complete. Finally, transparency is paramount to fair housing enforcement; the Commission must publicize settlement agreements and public hearing decisions that further the purpose of the Fair Practices Ordinance and the Fair Housing Act.¹⁴

The Commission's commitment to achieving fair housing in Philadelphia is commendable, and it is in a unique position to put teeth into this often-ignored provision of the Fair Practices Ordinance. The scope of the problem is too large to go unattended; Philadelphia must ensure that housing providers abide by its source of income discrimination protection. We are glad to engage and work through solutions with the Commission and all relevant partners. Thank you for holding this important hearing.

Respectfully,

/s/

Sara (Sari) Bernstein, Esq.

¹⁴ The Fair Practices Ordinance requires that conciliation agreements be made public under these circumstances. *See* at Phila. Code § 9-1116(2).