UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

LUCINDA LC and JUNE WHEATLEY, *Plaintiffs* v. JAY JONES, in his official capacity as Attorney General of Virginia, and KEMPER FUNKHOUSER, CAVELLE MOLLINEAUX, JEREMY DALPIAZ, AEKTA CHAWLA, RENE FONSECA, PIERI BURTON, BERNICE TRAVERS, RAJESH PATEL, and KIT HALE, in their official capacities as Members of the Virginia Real Estate Board, and BARRY MOORE, BRIAN REAGAN, MORTON MARKS III, AMANDA BUYALOS, ANGELA WEST, STANLEY REID, SHION FENTY, STUART GILCHRIST, JAY SOM, STEVEN RIVERA, JOHN SCOTT and ANGELO PHILLOS, in their official capacities as Members of the Virginia Fair Housing Board, and ANIKA COLEMAN, in her official capacity as Executive Director of both the Virginia Fair Housing Board (VFHB) and the Virginia Real Estate Board (VREB), *Defendants*.	Civil Action No. 1:26-cv-252

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
AND
MEMORANDUM IN SUPPORT

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Plaintiffs respectfully move this Court for a preliminary injunction against Defendants, enjoining them from enforcing directly or indirectly the "source of funds" provisions in the Virginia Fair Housing Law, Va. Code §§ 36-96.1; 36-96.3, as applied to claims arising out of the non-acceptance of Section 8 vouchers, against both Plaintiffs and the class to be certified under the concurrently filed motion for class certification. For the following reasons, these provisions violate Plaintiffs' and the class's rights under the Fourth Amendment to the United States Constitution and the Constitution's Supremacy Clause.[1]

INTRODUCTION

Plaintiff June Wheatley, a dedicated Virginia-licensed real estate salesperson and manager of her family's nine-unit rental property—owned by Plaintiff Lucinda LC for the benefit of her aging father—has long strived to provide safe, affordable homes for hardworking tenants. But last summer, a "tester" from an activist organization posed as a prospective renter to see if Plaintiffs would rent to tenants paying with federally-funded, locally-administered "Section 8" housing vouchers. When Wheatley politely said no—because Section 8 comes with substantial compliance costs and invasive search requirements—Plaintiffs found themselves named in a state-level discrimination complaint, which alleged Wheatley's response violated Virginia's Fair Housing Law (VFHL). At stake are both Plaintiffs' finances, the viability of continuing to rent property without surrendering rights against unreasonable searches, and Wheatley's real estate license and professional reputation.

Landlord participation in the Section 8 housing program—which enables low-income families to rent in the private housing market—is strictly voluntary. But the 2020 amendment to the VFHL, by barring discrimination based on the "source of funds" from tenants, turns this principle upside-down. This is because "source of funds" includes any "assistance, benefit, or

[1] Plaintiffs' counsel and Defendants' counsel met and conferred regarding this motion, but were unable to narrow the scope of disagreement. *See* Declaration of Adam Schulman in Support of Motions for Preliminary Injunction, Class Certification, and Appointment of Counsel ¶ 19.

subsidy … administered by a governmental [] entity" within the definition, so Virginia landlords cannot turn away Section 8 vouchers without violating the Commonwealth's law. Va. Code § 36-96.1:1 (defining "source of funds"); § 36-96.3 (prohibiting housing practices that discriminate based on source of funds). Accepting Section 8 vouchers in turn requires landlords to sign a standardized, Department of Housing and Urban Development (HUD)-issued Housing Assistance Payment (HAP) contract with their local Public Housing Authority (PHA). These HAP contracts give both the PHA and HUD access to the landlord's property, equipment, and business records without a warrant, and without pre-compliance review or seemingly any reasonable notice.

Thus, the VFHL's "source of funds" language causes two constitutional harms to Virginia landlords who don't accept Section 8 vouchers: *First*, it violates their Fourth Amendment rights, by forcing them to accept Section 8 vouchers, sign a HAP contract and waive search rights for company property, including business records. *See, e.g., Jones v. City of Kansas City*, No. 4:24-cv-00649-RK, 2025 WL 4236642, 2025 U.S. Dist. LEXIS 121974 (W.D. Mo. Feb. 11, 2025) (enjoining enforcement of equivalent Kansas City ordinance for violating the Fourth Amendment). *Second*, it violates the Supremacy Clause of the United States Constitution, as the VFHL makes Section 8 enrollment mandatory for Virginia landlords when that federal program is designed to be voluntary.

To protect themselves from the Commonwealth's unconstitutional application of the "source of funds" law and the penalties associated with it, and to preserve their Fourth Amendment rights, Plaintiffs now bring this suit against Defendants—the enforcement apparatus for the VFHL—and seek declaratory and injunctive relief. They do so on behalf of all Virginia landlords, managers, and real estate licensees similarly situated. Because the VFHL's "source of funds" language as applied to Section 8 vouchers violates both the Fourth Amendment and the Supremacy Clause, this Court should preliminarily enjoin enforcement of these provisions by Defendants against the Plaintiffs and putative class.

STATEMENT OF FACTS

Plaintiff Lucinda LC is a Virginia manager-managed LLC, with Plaintiff June Wheatley appointed as the sole manager of the company. Dkt.1 ("Compl.") ¶¶ 8-10. Wheatley is a licensed Virginia real estate salesperson and has "exclusive charge and control" of Lucinda, which owns and administers a nine-unit rental property located at 2012 South Sixth Street, Arlington, Virginia 22204 on behalf of the Ventura Marital Trust, of which Wheatley's father is the trustee. Compl. ¶¶ 8-9. Because they own and manage more than four rental units in Virginia, Plaintiffs fall under the scope of the VFHL. Compl. ¶ 2; Va. Code 36-96.1(I).

Plaintiffs have historically made the property accessible to a variety of tenants, including those with government and third-party funding sources, but they do not rent to tenants using Section 8 vouchers. Compl. ¶ 24. Section 8 is a federally-funded, locally-administered housing program which funds housing in the private market for primarily low-income families. Compl. ¶ 2. The Arlington Public Housing Authority (PHA) administers the Section 8 program where Plaintiffs' property is located, known as the Arlington "Housing Choice Voucher" (HCV) program. Compl. ¶ 17. By federal regulation, any landlord that accepts Section 8 vouchers *must* sign a Housing Assistance Payment (HAP) contract with the local PHA, matching the form (Form 52641) dictated by the federal Department of Housing and Urban Development (HUD). Compl. ¶¶ 3, 17; 24 C.F.R. § 982.451 ("must be in the form required by HUD").

The primary reason Plaintiffs decline to rent to Section 8 tenants is that the HAP contract imposes burdens, including requiring them to waive Fourth Amendment rights and provide the Arlington PHA access to their property, equipment, and records that it wouldn't otherwise have without a warrant. Compl. ¶¶ 2-4, 24. For example, the current HUD Form 52641 requires that:

- "The PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies." HUD Form 52641, Part B, ¶ 11(b);

- "The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records." HUD Form 52641, Part B, ¶ 11(c);
- "The PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the HQS [housing quality standards]." HUD Form 52641, Part B, ¶ 3(e);
- "The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract." HUD Form 52641, Part B, ¶ 9(b);
- "The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require." HUD Form 52641, Part B, ¶ 11(a); and,
- "The owner must give the PHA any information requested by the PHA on the rents charged by the owner for other units in the premises or elsewhere." HUD Form 52641, Part B, ¶ 6(d);

Compl. ¶ 3. There is no pre-compliance review for these searches and seemingly no notice requirement, either. Compl. ¶ 3. In addition to the above Fourth Amendment waivers, Section 8 also burdens small landlords like Lucinda with substantial compliance costs and requires them to waive certain landlord rights they have under Virginia's Residential Landlord and Tenant Act (VRLTA). Compl. ¶ 4. Lucinda has no present intention to accept Section 8 vouchers or sign a HAP contract with the Arlington PHA. Compl. ¶ 30.

Lucinda's decision to decline Section 8 vouchers was previously a non-issue: The federal Section 8 program is voluntary, and landlords need not participate should they not wish to. Compl. ¶ 2. But Virginia passed the VFHL in 2020, which barred discrimination against tenants based on the "source of funds" for rent. Compl. ¶ 2. "Source of funds" includes any "assistance, benefit, or subsidy … administered by a governmental [] entity," so now Virginia landlords cannot turn away Section 8 vouchers without violating the Commonwealth's law. Va. Code § 36-96.1:1.

On June 10, 2025, a "tester" associated with the Housing Rights Initiative (HRI) named Kenyon Cavendar responded to a Zillow advertisement of Plaintiffs' property and contacted Wheatley by phone. Compl. ¶¶ 6, 18. HRI has activists pose as prospective renters and call available properties to see if their management/rental teams will accept a renter based on certain legally protected characteristics. Compl. ¶ 18. Cavendar had no desire to rent the property, but did not disclose this and instead misrepresented his own identity before asking if Plaintiffs would accept Section 8 vouchers as rental payment. Compl. ¶¶ 18-19. While Plaintiffs' rental properties would be entirely paid for by Section 8 because they fall below the Arlington PHA's rates for the HCV program and are otherwise eligible for the program, Compl. ¶ 20, Wheatley politely responded to Cavendar's question by noting Plaintiffs did not accept Section 8 vouchers as payment. Compl. ¶ 19.

Two months later, HRI filed a complaint with Virginia's enforcement officials through its counsel, alleging that Plaintiffs discriminated based on "source of funds" by declining to rent to a Section 8 tenant, in violation of the VFHL. Compl. ¶¶ 21-23. HRI claimed as its injury that it had to "divert resources to investigate the extent of the discriminatory practices" it uncovered. Compl. ¶ 23. The day after HRI filed its complaint, a state investigator reached out to put Plaintiffs on notice of the charges and to invite them to file a response. Compl. ¶ 25. The investigator also invited both HRI and Plaintiffs to engage in state-sponsored alternative dispute resolution, known as conciliation, to try and settle the complaint themselves. Compl. ¶ 27. Plaintiffs responded to the complaint and denied the allegations of discrimination. Compl. ¶ 26.

Both HRI and Plaintiffs accepted the government's invitation to participate in conciliation regarding the discrimination complaint. Conciliation is entirely voluntary, and that process has been ongoing. Compl. ¶ 27-28. Even if the parties settle, the Commonwealth still must approve any agreement. Compl. ¶ 27; Va. Code § 36-96.13. Nevertheless, HRI has not yet agreed to a resolution that would not waive Plaintiffs' constitutional and statutory rights; and Plaintiffs will not agree to sign a HAP contract, accept Section 8 vouchers, or otherwise waive tenant rights under the VRLTA. Compl. ¶¶ 28-30. Plaintiffs remain at risk of civil enforcement for HRI's

discrimination charge by the Virginia Fair Housing Board (for general complaints), the Virginia Real Estate Board (for real estate-license related complaints pertaining to Wheatley), and the Attorney General; Plaintiffs also remain at risk of private suit by HRI so long as the VFHL's "source of funds" provisions are applied to Section 8 vouchers. Compl. ¶ 29; *see also* Va. Code §§ 36-96.8; 36-96:14; 36-96:16; 36-96.18; 36-96.20 (enumerating enforcement powers for VFHL violations). Accordingly, Plaintiffs name as Defendants the lead VFHL enforcement officers at the Virginia Fair Housing Board (VFHB) and the Virginia Real Estate Board (VREB), in their official capacities, as well as the Attorney General of Virginia, in his official capacity. Compl. ¶¶ 11-13.

SUMMARY OF ARGUMENT

Because Plaintiffs are facing impending investigation and enforcement proceedings, they have Article III standing to bring this suit against the Defendants. *See* Section I. With standing established, this Court can consider the merits of Plaintiffs' Motion for preliminary injunctive relief. The Fourth Circuit employs the Supreme Court's *Winter* test to determine whether such relief should be granted, and that test has four parts: Plaintiffs must show (1) that they are likely to succeed on the merits of their claim; (2) that they suffer irreparable harm; and, (3) that the public interest and (4) balance of the equities favors such relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Because Plaintiffs bring constitutional claims, demonstrating a likelihood of success is the most important element, and the remaining three naturally flow from the constitutional violation. *See* Section II. Plaintiffs satisfy all four elements.

To start, Plaintiffs can show a likelihood of success on the merits based on two independent constitutional violations. *See* Section III. *First*, the VFHL "source of funds" provisions violate the Fourth Amendment because they coerce Plaintiffs into accepting Section 8 tenants, which requires signing a HAP contract with the Arlington PHA that gives the PHA and HUD warrantless, no-notice access to Plaintiffs' business records, equipment, and property. *See* Section III.A; *Jones*, No. 4:24-cv-00649-RK, 2025 WL 4236642, 2025 U.S. Dist. LEXIS 121974 (W.D. Mo. Feb. 11,

2025). *Second*, the VFHL is also unconstitutional because it frustrates Section 8's central purpose to mirror the private housing market. The voluntary nature of Section 8 is a "statutory right" of landlords, *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 298, 300 (2d Cir. 1998); states cannot override this congressional scheme—even if they're doing so, like Congress, to increase access for low-income families. What is more, these contrary "source of funds" non-discrimination provisions are likely counterproductive to the ends they seek to achieve. *See* Section III.B.

The remaining elements derive from these constitutional violations: Because their Fourth Amendment rights are threatened, Plaintiffs suffer irreparable harm. *See* Section IV. And it's always in the public interest to protect constitutional rights. *See* Section V. The equities weigh in favor of Plaintiffs, the only ones who have suffered harm here. Courts and states alike should respect congressional judgment on how to address complex, national issues involving federal programs like Section 8 housing.

Accordingly, this Court should grant Plaintiffs' motion for preliminary injunction.

ARGUMENT

I. Plaintiffs have Article III standing to bring this suit against Defendants.

As a threshold matter, Article III courts can only adjudicate claims if a plaintiff has standing. This requires Plaintiffs to show that they are (at least) under threat of suffering a concrete and actual injury; (2) that the injury is traceable to Defendants; and (3) that the requested injunctive and declaratory relief redresses the harm alleged. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). All three elements are met here.

Both Plaintiffs face a state investigation based on HRI's discrimination complaint. Compl. ¶¶ 21-22. Where the plaintiff is an "object of [enforcement] action ... there is ordinarily little question" that there is concrete and particularized injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561-62 (1992). Landlords need not wait for their Fourth Amendment rights to be trampled; an "attempt to enforce the source-of-income discrimination law against [them]" and the "range of

consequences for refusing to comply with it" supplies the "credible threat" necessary for standing. *People v. Commons W., LLC*, No. cv-23-1255, 2026 NY Slip. Op. 01253, 2026 NY App. Div. LEXIS 1351, at *7 (N.Y. App. Div. 3rd Dept. Mar. 5, 2026) (citing, *inter alia*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014)). That the attempt here was initiated by HRI, rather than through an organic impulse of the Defendants, is immaterial to Plaintiffs' injury. "[P]ublic policy [] encourage[s] a person aggrieved by laws he considers unconstitutional" to sue "the arm of the state entrusted with the state's enforcement power," even before the state elects to initiate enforcement proceedings. *Mobil Oil Corp. v. Att'y Gen. of Com. of Va.*, 940 F.2d 73, 75 (4th Cir. 1991); *cf. also Free Speech Coal., Inc. v. Att'y Gen. United States*, 825 F.3d 149, 166 (3d Cir. 2016) ("despite the lack of an existing inspection regime to implement § 75.5, Plaintiffs are suffering real costs as a condition of compliance with a regulation that they urge is unconstitutional"). That Plaintiffs might also have claims against private enforcers "is irrelevant." *Mobil Oil*, 940 F.2d at 76. And because Lucinda and Wheatley are separately named in HRI's complaint and now fall under Virginia's investigatory crosshairs, they *both* suffer valid injuries here for Article III standing purposes.

While HRI initiated the injury, it is properly traced to the Defendants because they give the VFHL "teeth" through their enforcement powers under the law. *Id.* at 75. HRI's complaint leaves Plaintiffs vulnerable to state approval of any agreement made in conciliation, and also invites a subsequent state investigation—and potential follow-on injunctive relief and fines—based on its findings. Compl. ¶¶ 27, 29. Relatedly, redress is satisfied because an injunction barring Defendants from enforcing the "source of funds" provision of the VFHL as it pertains to Section 8 voucher non-acceptance would make HRI's complaint a meaningless piece of paper and cure Plaintiffs' injury. It would also forestall any other enforcement actions that they risk. Accordingly, Plaintiffs have Article III standing to proceed.

II. Because Plaintiffs bring constitutional claims, the most important factor for winning a preliminary injunction is that they show a likelihood of success on the merits.

Winter provides the relevant test for this Court to determine whether a preliminary injunction is justified. It requires that the plaintiff show (1) that they are "likely to succeed on the merits," (2) that they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in his favor," and (4) that the injunction is "in the public interest." 555 U.S. at 20.

Under *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, likelihood of success is the most important *Winter* factor when constitutional claims are at issue. 2 F.4th 330 (4th Cir. 2021) (*en banc*) (reversing the denial of plaintiff's motion for preliminary injunction). After a robust and holistic analysis of the plaintiff's Fourth Amendment claims, *id.* at 340-46, *Leaders* held the defendants' program "enables police to deduce from the whole of individuals' movements … that accessing its data is a search, and its warrantless operation violates the Fourth Amendment." *Id.* at 346. The remaining three *Winter* elements flowed from this finding. This is because where "there is a likely constitutional violation, the irreparable harm factor is satisfied … Likewise, the balance of the equities favors preliminary relief … [and] … it is well-established that the public interest favors protecting constitutional rights." *Id.*

As demonstrated below, Plaintiffs raise two discrete constitutional claims, and can independently show likelihood of success on both. From this, Plaintiffs also demonstrate irreparable harm, and that the balance of the equities and public interest factors favor them. Accordingly, Plaintiffs satisfy the *Winter*/*Leaders* test.

III. Plaintiffs are likely to succeed on the merits of their claims because the VFHL's "source of funds" language, as it applies to non-acceptance of Section 8 vouchers, violates the Fourth Amendment and the Supremacy Clause.

A. The VFHL's "source of funds" language violates the Fourth Amendment because it impermissibly coerces Plaintiffs to sign a HAP contract with the Arlington PHA which gives the PHA and HUD warrantless access to Plaintiffs' property, equipment, and records.

The Fourth Amendment of the United States Constitution provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." Its protections extend to commercial property, business records, and personal documents, and it applies to administrative inspections in addition to criminal investigations. *See City of Los Angeles v. Patel*, 576 U.S. 409, 419-21 (2015); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 311-13 (1978); *See v. City of Seattle*, 387 U.S. 541, 543-45 (1967); *Camara v. Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 528 (1967). "[T]he Fourth Amendment requires adherence to judicial processes … searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject to only a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967).

While one can consent to warrantless searches and waive Fourth Amendment rights, consent is only valid if it is given freely and voluntarily under the totality of the circumstances. *Schneckloth v. Bustamante*, 412 U.S. 218, 227 (1973) (noting "the equally important requirement of assuring the absence of coercion" in analyzing consent). Here, Plaintiffs cannot comply with the VFHL's prohibitions on "source of funds" discrimination without accepting Section 8 payments. Compl. ¶¶ 2-5. To accept these vouchers, Plaintiffs must sign a HAP contract with the Arlington PHA, which is a standardized "take-it-or-leave-it" form that gives the PHA and HUD permission to search their property, equipment, and business records (without pre-compliance review). Compl. ¶ 3. If Plaintiffs do not accept Section 8 vouchers and sign the HAP contract, the VFHL threatens civil penalties against Plaintiffs for non-compliance. Va. Code §§ 36-96.16-17

(AG enforcement penalties); 36-96.18 (private enforcement penalties); 36-96.20 (real estate licensee-specific penalties).

Plaintiffs either must comply with the VFHL's "source of funds" laws (which they do not want to do) or face the Commonwealth's enforcement powers under the VFHL. This is classic coercion using legal penalties, a Hobson's choice which courts routinely find unlawful in the Fourth Amendment context. *See Jones*, 2025 WL 4236642, at *8 ("consent to the warrantless searches under the Section 8 HAP contract is coerced, making such consent invalid"); *see generally Schneckloth*, 412 U.S. at 228; *Patel*, 576 U.S. at 412-13, 419-21; *Camara*, 387 U.S. at 525-27. It makes no difference that the Plaintiffs face civil, rather than criminal, penalties. *See Columbia Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791, 798 (9th Cir. 2001) (City's "enforcement … may impermissibly threaten the landlords with a deprivation of property and civil penalties if they are unwilling to violate the Fourth Amendment rights of their tenants"); *Jones*, 2025 WL 4236642, at *5 n.8 (citing cases supporting the proposition that criminal and civil penalties alike may coerce consent). When consent is the product of coercion, then it is "no more than a pretext for the unjustified [government] intrusion against which the Fourth Amendment is directed." *Schneckloth*, 412 U.S. at 228. Therefore, the "source of funds" provisions in the VFHL coercing participation in the Section 8 program precludes Plaintiffs from giving valid consent to any searches authorized by the HAP contract.

With free consent impossible, forced compliance with the VFHL's "source of funds" provisions via a signed HAP agreement would give the government unfettered access to Lucinda's property, equipment, and records. For example, the HAP contract requires Lucinda to (1) give "PHA, HUD and the Comptroller General of the United States [] full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies"; (2) "grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and [] provide any information or assistance needed to access the records"; (3) let the PHA "inspect the contract unit and premises at such times as the PHA

determines necessary"; (4) "cooperate with the PHA and HUD in conducting equal opportunity compliance reviews"; (5) "provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require"; and, (6) "give the PHA any information [] on the rents charged by the owner for other units in the premises." HUD Form 52641. Furthermore, the governing federal statutes and regulations impose additional burdens including inspections of the premises and related equipment administered by the local PHA prior to occupancy and not less than biennially during the term of the tenancy (see 42 U.S.C. §1437f (o)(8)(A),(D), 24 CFR §982.405). Business records associated with the premises must also be made accessible for review (24 CFR §982.507).

Just as these searches cannot be justified by Plaintiffs' consent, they likewise cannot be justified by the exception for emergency circumstances. *See generally Camara*, 387 U.S. at 539 ("nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations"). Exigent circumstances require a showing "compelling need for official action and no time to secure a warrant." *Mitchell v. Wisconsin*, 588 U.S. 840, 849 (2019). But the Section 8 authorizations listed above go far beyond such circumstances.

This intrusion constitutes a Fourth Amendment violation. Businesses have a reasonable expectation of privacy under the Fourth Amendment for their business records and the equipment associated with storing and processing them. *Donovan v. Dewey*, 452 U.S. 594, 598 (1981) ("[P]rior cases have established that the Fourth Amendment's prohibition … applies to administrative inspections of [] commercial property"); *Patel*, 576 U.S. at 421-23. Government searches of records, equipment, and property for the purposes of enforcing a regulatory scheme are administrative searches, which means they don't require a warrant *per se*. *Id.* at 420; *but see Camara*, 387 U.S. at 531-39 (holding that a warrant is necessary for an administrative search, albeit under a more lenient standard for probable cause); *Marshall*, 436 U.S. at 320-24 (similar). However, "absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional [without a warrant], the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *Patel*, 576 U.S. at 420.

In *Patel*, the city passed an ordinance requiring hotel operators to produce guest logs to the police department without any pre-compliance review, *id.* at 412, just like a HAP agreement would do to Plaintiffs with the Arlington PHA. Failure to do so came with penalties and fines. *Id.* at 413. *Patel* centered its analysis on Fourth Amendment exceptions for administrative searches and searches of closely regulated entities. *Id.* at 418-424. It rejected the administrative-search exception because there was no pre-compliance review, just as in this case with the HAP contract. *Id.* at 421-23. And it rejected hotels as a "closely regulated" industry open to warrantless searches like mining, liquor, and firearms sales, because "nothing inherent in the operation of hotels poses a clear and significant risk to the public welfare." *Id.* at 424. That same logic applies to private rental properties as a matter of both common sense and persuasive precedent. *See Jones*, 2025 WL 4236642, at *7-*8 (finding "no caselaw…that extends [the closely regulated] exception to the rental housing industry"); *MS Rentals v. Detroit*, 362 F. Supp. 3d 404, 416 (E.D. Mich. 2019) (applying *Patel* to rental properties).

The facts here mirror *Jones v. Kansas City*, where the city passed a local ordinance that barred discrimination based on source of funds and a landlord sued because he did not want to accept Section 8 housing vouchers and enter HAP contracts waiving his constitutional rights. *Jones*, 2025 WL 4236642 (granting an injunction and finding a Fourth Amendment violation). The *Jones* court issued an injunction based on *Patel*'s Fourth Amendment analysis, finding "Section 8 requires landlords to permit inspections of various business records. By being forced to choose between complying with the Ordinance or facing penalties for engaging in an unlawful housing practice," Plaintiffs "are being coerced to consent to inspection of their business records [and

related equipment] in which they have a reasonable expectation of privacy."[2] 2025 WL 4236642, at *7.

An almost identical question was considered by the Appellate Division of the New York Supreme Court which found a similar "source of income" nondiscrimination law invalid under the Fourth Amendment. *People v. Commons W., LLC*, No. cv-23-1255, 2026 NY Slip. Op. 01253, 2026 NY App. Div. LEXIS 1351, at *16 (N.Y. App. Div. 3rd Dept. Mar. 5, 2026), *aff'g* 80 Misc. 3d 447 (N.Y. Sup. Ct. 2023). As here, landlords argued that they were forced to surrender Fourth Amendment protections against government searches of their apartments and business records due to their involuntary participation in the Section 8 program and the applicable statues and regulations, as well as HAP contracts. *Id*. at *4-*5. The court found that the law was "unconstitutional on its face." *Id*. at *2.

Finally, even if HUD and/or the PHA anticipated reasonable notice before accessing Lucinda's property, equipment, and records—which both the HUD regulations and HUD Form 52641 do *not* seem to do, Compl. ¶ 3—that *still* would not preserve the VFHL's constitutionality. This is because notice is not an adequate substitute for pre-compliance review, which provides Plaintiffs the invitation and forum to challenge administrative searches in front of a neutral adjudicator. *Contrast Rebekah C. Benjamin Tr. v. Stemple*, 915 F.3d 1066, 1069 (6th Cir. 2019) (finding no Fourth Amendment violation because "government [gave] the owner an opportunity to obtain precompliance review before a neutral decisionmaker"); *see also Garner Props. & Mgmt. v. Charter Twp. of Redford*, 2017 WL 3412080, at *11 n.7 (E.D. Mich. 2017) (rejecting government's argument that because "inspections are initiated by the occupant and scheduled for

[2] The HAP agreement's clauses that let the PHA and HUD "inspect the contract unit and premises at such times as the PHA determines necessary" and get "full and free access to the contract unit and the premises" also violate the Fourth Amendment, even though *Jones* avoided this question by limiting its analysis to business records. Defendants cannot force Plaintiffs to give them such unlimited access to the properties themselves without at least pre-compliance review; this is a distinct Fourth Amendment violation under the HAP contract. *See, e.g.*, *Dearmore v. City of Garland*, 400 F. Supp. 2d 894, 902-03 (N.D. Tex. 2005); *Pund v. City of Bedford*, 339 F. Supp. 3d 701, 711-16 (N.D. Ohio 2018).

a date roughly two weeks in the future, [] its inspections satisfy the requirement for pre-compliance review"). Any kind of general review procedure would be pragmatically "toothless" because the HAP contract "expressly consent[s] to all searches before any opportunity to challenge a search would arise. *Commons W.*, 2026 N.Y. App. Div. LEXIS 1351, at *10. And even if PHA or HUD unilaterally provided prior notice and sufficient time to object, "the landlord would be left in the untenable position of attempting to challenge in court a search to which he or she had already consented in writing." *Id.* at *11. Finally, the administrative search exception only exists because it allows the subject of a search to get notice *and* neutral review, *Patel*, 576 U.S. 420-21. The latter is likewise missing from the HUD regulations for Section 8 and the HAP contract itself.

For these reasons, Plaintiffs' Fourth Amendment claim is likely to succeed on the merits.

B. The VFHL's "source of funds" provisions violate the Supremacy Clause because it frustrates the purpose of the federal Section 8 scheme.

Preemption by federal law of the Commonwealth's "historic police powers" only occurs if "that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). "The purpose of Congress is the ultimate touchstone" in this evaluation. *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978). Courts recognize three types of federal preemption: (1) express; (2) field; and, (3) conflict. *United States v. South Carolina*, 720 F.3d 518, 528-529 (4th Cir. 2013). As explained below, Virginia's "source of funds" law conflicts with the congressional Section 8 voucher scheme and poses an obstacle to the accomplishment of its aims.

Section 8's voluntary structure is integral to the Fair Housing Act: "Landlords have a **statutory right** to avoid Section 8 participation" and "the voluntariness provision of Section 8 reflects a congressional intent that the burdens of Section 8 participation are substantial enough that participation should not be forced on landlords." *Salute*, 136 F.3d at 298, 300 (emphasis added); *Knapp*, 54 F.3d at 1282; *Graoch Assocs. # 33, L.P. v. Louisville/Jefferson Cnty. Metro Hum. Rels. Comm'n*, 508 F.3d 366, 369 (6th Cir. 2007); *Franklin Tower One, L.L.C. v. N.M.*, 725 A.2d 1104, 1113 (N.J. 1999) ("That 42 U.S.C.A. § 1437f does not mandate landlord participation in the Section 8 program is undisputed."). When enacting the Section 8 program in 1974, Congress

modeled it on the private housing market, where "the selection of tenants shall be the function of the owner." Jenna Bernstein, *Section 8, Source of Income Discrimination, and Federal Preemption: Setting the Record Straight*, 31 CARDOZO L. REV. 1407, 1424 (2010) (quoting 42 U.S.C. §1437f).

For a brief period in the late 1980s and early 1990s, Congress did deviate from this approach, by mandating the acceptance of certain section 8 vouchers through its "take one, take all" and "endless lease" policies, passed in 1987. "Take one, take all" required that landlords who accepted one Section 8 tenant no longer decline any tenant based on Section 8 status, and "endless lease" forbid Section 8 landlords from terminating a lease at its conclusion except for violations of applicable laws or good cause. Bernstein, *supra* at 1414; *Salute*, 136 F.3d at 298. The regulatory burdens from these provisions plus an "endless marriage" with government regulators counterproductively deterred landlords from Section 8 participation, in contrast to what Congress initially hoped and anticipated. Bernstein, *supra* at 1415-16. Thus, in 1996, Congress repealed its "take one, take all" and "endless lease" provisions, and returned to the private housing model of voluntary tenant selection. *Id.* & nn. 60-62.

Compelling landlord participation in the Section 8 program negates Congress's decision to repeal Section 8's "take one, take all" and "endless lease" provisions. By revising the program to again be entirely voluntary, Congress decided that the best way to deliver affordable housing to low-income people was to "build a subsidized housing system that mirrored the private market—where private owners retain sole discretion over tenant selection." *Id.* at 1424. "[T]he selection of tenants shall be the function of the owner…" 42 U.S.C. § 1437f(d)(1)(A). "Shall" does not leave room for states to mandate Section 8 participation.

Having established Congress's precepts, preemption turns on whether an actual conflict exists between the VFHL's "source of funds" provisions and the federal law. *Gade v. Nat'l Solid*

Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992) (discussing preemption types).[3] A conflict can exist where "compliance with both federal and state regulations" is impossible, or "where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Id.* (cleaned up). The first type of conflict is not at issue, since a landlord complies with both the VFHL's "source of funds" provisions and Section 8 by simply accepting vouchers, even if she does so against her will. However, the second conflict type presents itself here, since Congress designed Section 8 to be voluntary and the VFHL now undoes Congress's design. "A state law [] is pre-empted if it interferes *with the methods* by which the federal statute was designed to reach that goal." *Gade*, 505 U.S. at 103 (emphasis added). Congress designed Section 8 to embrace choice—for renters and landlords alike—in the housing market, and now the VFHL is replacing that structure in Virginia with a punitive and coercive scheme.

Even so, the Supreme Court prescribes a "presumption against preemption" absent congressional intent. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). But as demonstrated above, Congress designed Section 8 to be voluntary—a core feature of the statutory scheme. Moreover, the presumption against preemption hinges on the "historic primacy of state regulation of matters of health and safety." *Id.* But "there is no deeply rooted tradition of local control of public housing; rather, public housing is a federally supervised program with early roots in federal statutes." *Gautreaux v. Chicago Hous. Auth.*, 503 F.2d 930, 936 (7th Cir. 1974), *aff'd sub nom. Hills v. Gautreaux*, 425 U.S. 284 (1976). And "where a comprehensive federal scheme" like Section 8 "intentionally leaves a portion of the regulated field without controls"—*i.e.*, keeps it voluntary—"then the preemptive inference can be drawn … not from federal inaction alone, but from inaction joined with action." *Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*,

[3] The Supreme Court in *Wyeth v. Levine*, 555 U.S. 555, 574 (2009), noted while finding no preemption that "if Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express preemption provision at some point." This dicta plausibly portended the impending death of implied statutory purpose in preemption analysis, but that demise never materialized. Since *Wyeth*, the Supreme Court has regularly looked at statutory design and structure to ascertain implied congressional purpose and, if appropriate, find preemption. *See*, *e.g.*, *Kansas v. Garcia*, 589 U.S. 191, 203 (2020) (listing post-*Wyeth* cases).

485 U.S. 495, 503 (1988); *see also Arizona v. United States*, 567 U.S. 387, 406 (2012). Congress's decision to fund vouchers but to keep them voluntary—especially after previously doing the opposite—is the type of "inaction joined with action" that substantiates the preemptive inference. And it remains a valid canon of construction that "[w]hen Congress amends legislation," like Congress did by ending Section 8's "take one, take all" and "endless lease" provisions, "courts must presume it intends the change to have real and substantial effect." *Ross v. Blake*, 578 U.S. 632, 641-642 (2016) (internal quotation marks and brackets omitted).

In some other states and localities with similar laws, landlords have also argued preemption. While more courts to consider the issue have found no preemption,[4] that conclusion is wrong for three reasons. *First*, courts wrongly used HUD regulations to justify overruling Section 8 statute's voluntary design. S*econd*, these courts assumed there can be no preemption if the federal and state/local law share the same end goal. Not so. And *third*, they reasoned on public policy grounds that "source of funds" nondiscrimination provisions helped low-income families obtain decent housing, *Brown*, 511 N.E.2d at 1106. But those provisions can frustrate that very purpose. For these reasons, the federal Section 8 law preempts the VFHL's "source of funds" language.

i. HUD's Section 8 regulations which disclaim preemption of source of funds laws are not relevant to the Court's preemption analysis.

Both *Montgomery County* and *Austin Apt. Ass'n v. City of Austin* used language in HUD's Section 8 *regulations* to justify ignoring the Section 8 *statute*'s voluntary design. 936 A.2d at 336-37 (noting the "federal regulation is not intended to pre-empt the operation of such State or local laws"); 89 F. Supp. 3d 886, 896 (W.D. Tex. 2015) ("the HUD regulations implementing HCVP

[4] *Compare, e.g., Montgomery Cnty. v. Glenmont Hills Assocs. Privacy World*, 936 A.2d 325, 336 (Md. 2007); *Franklin Tower*, 725 A.2d at 1113; *Attorney General v. Brown*, 511 N.E.2d 1103, 1106 (Mass. 1987), *with Mother Zion Tenant Ass'n v. Donovan*, 55 A.D.3d 333, 336 (N.Y.A.D.2008) (citing *Forest Park II v. Hadley*, 336 F.3d 724, 728 (8th Cir. 2003)); *Knapp*, 54 F.3d at 1282 ("[i]t seems questionable, however, to allow a state to make a voluntary federal program mandatory.").

specifically provide the federal statutes creating it are not intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder") (citing the now-overruled *Chevron* doctrine's deference).

But relying on a regulation to deny preemption and thus void landlords' "statutory right" in Section 8 is backwards. While agencies can get deference to "interpretation[s] of its regulations," courts "do not defer to an agency's ultimate conclusion about whether state law should be preempted." *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 613 n.3 (2011). This is because when "the statute itself speaks clearly to" preemption, even if it does so through context and structure, it is "unnecessary to rely upon that agency view." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 326 (2008). Section 8's statutory scheme "speaks clearly" to the program being voluntary, *id.*, as demonstrated by circuit court unanimity interpreting the relevant laws as such, often without substantial analysis. *See Graoch Assocs*, 508 F.3d at 369; *Salute*, 136 F.3d at 298-300; *Knapp*, 54 F.3d at 1282; *Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 900 (5th Cir. 2019). Moreover, the statutory history as to Section 8's voluntariness is straightforward. *See* Bernstein, 31 CARDOZO L. REV. at 1424-26. In certain circumstances an agency's preemption interpretation may be given "some weight," but only when "the subject matter is technica[l] and the relevant history and background are complex and extensive." *Wyeth*, 555 U.S. at 576. That simply isn't the case here. Moreover, the weak deference previously afforded to agencies on preemption in cases like *Austin Apts.*, 89 F. Supp. 3d at 896, is on even weaker footing now given the overruling of *Chevron* deference in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).[5]

[5] *Montgomery County* is even further afield because the Maryland "source of funds" statute at issue permitted landlords to decline to rent to a Section 8 tenant for a legitimate business reason. 936 A.2d at 342 (noting the landlord refused to rent "solely" because of Section 8 vouchers). Same in *Austin Apt.* 89 F. Supp. 3d at 900 ("Landlords remain free to reject voucher holders provided they do so on other legitimate, nondiscriminatory grounds"). But Plaintiffs have no such freedom in Virginia, even though the reasons they've provided—substantial compliance costs, waived constitutional and statutory rights—would be perfectly reasonable under the *Montgomery County* and *Austin Apt.* statutes.

Section 8's statutory history and scheme make clear that the program is voluntary as a matter of statutory right, and HUD regulations discussing preemption as a general matter do not override this design.

ii. Preemption exists even if federal and state laws share overlapping goals, when the state's methods—like here—frustrate or contradict the federal approach.

Separately, the no-preemption courts have held incorrectly that because both the state and local "source of funds" discrimination laws and Section 8 were intended to provide more housing to low-income Americans, the laws do not conflict. But "in determining whether state law stands as an obstacle to the full implementation of a federal law... it is not enough to say that the ultimate goal of both federal and state law is the same" and thus there is no conflict. *Gade*, 505 U.S. at 103; *Mich. Canners & Freezers Ass'n v. Agric. Mktg. & Bargaining Bd.*, 467 U.S. 461, 477 (1984). Congress designed Section 8, after multiple revisions of the statute, to be a voluntary program that mirrors the private housing market—not a punitive-based scheme that forces landlord compliance to achieve its ultimate ends. *See* Bernstein, 31 CARDOZO L. REV. at 1424-26. Because the VFHL's "source of funds" provisions interfere with "the [voluntary] method" integral to Section 8, it is preempted. *Gade*, 505 U.S. at 103.

"[L]aw is like a vector. It has length as well as direction. We must find both, or we know nothing of value. To find length we must take account of objectives, of means chosen, and of stopping places identified." Frank H. Easterbrook, *The Role of Original Intent in Statutory Construction*, 11 HARV. J.L. & PUB. POL'Y 59, 63 (1988). In other words, "no law pursues its purpose at all costs . . . the textual limitations upon a law's scope are no less a part of its 'purpose' than its substantive authorizations." *Rapanos v. United States*, 547 U.S. 715, 752 (2006). "Even if Congress could or should have done more, still it wrote the statute it wrote—meaning, a statute going so far and no further." *Cyan v. Beaver Cty. Emps. Ret. Fund*, 583 U.S. 416, 434 (2018) (internal quotation omitted). Even if VFHL's "source of funds" law has the same direction as Section 8, it does not have the same vector. It is preempted.

iii. Forcing landlords to accept Section 8 may *defeat* Congress and Virginia's shared goal to increase the availability of high-quality, low-income housing; it's for Congress—not the Court or the state—to manage the tradeoffs incumbent to this public policy question.

Third and finally, requiring landlords to accept Section 8 vouchers can counterproductively frustrate Section 8's overarching purpose to help low-income families "obtain[] a decent place to live." 42 U.S.C. § 1437f. To be sure, "source of income" discrimination provisions like that in the VFHL likely lead to higher acceptance rates of Section 8 vouchers in the short term. *See* HUD, *A Pilot Study of Landlord Acceptance of Section 8 Vouchers*, 5 (2018) https://tinyurl.com/ynczjnmm (noting a 67% landlord denial rate in areas without source of income protections versus 31% in areas with them).

But voucher acceptance rates are not the only variable that determine whether Section 8 achieves its end goals. For example, source of income protections can lead to rental properties being taken off the market, as mom-and-pop operations like Plaintiffs' decide to do something else with their property rather than deal with the "substantial burden" of complying with the program. Judge Glock, *A Solution in Search of a Problem: The Costs and Benefits of Source of Income Discrimination Laws* 5 (MANHATTAN INSTITUTE 2024), *available at* https://tinyurl.com/mrxa32p3. Source of income protections also reduce vacancy rates of rental properties. *Id.* at 4. And the costs associated with Section 8 can lead small properties to roll-up into corporate conglomerates that have resources to deal with compliance costs and can optimize for efficiency. These corporate landlords are more likely to evict Section 8 tenants and have more housing code violations than smaller property owners. Josh Merchant, *Corporate landlords are more likely to evict their tenants and maintain unsafe housing in Kansas City according to a new study*, THE BEACON NEWS (Jun. 13, 2025), https://tinyurl.com/4vb67bec.

Ultimately, there are public policy tradeoffs in determining how best to achieve Section 8's statutory goal of helping low-income families "obtain[] a decent place to live."[6] Congress

[6] And, of course, there are also tradeoffs with other goals pursued by Congress at the same time. "Few pieces of legislation pursue any single purpose at all costs." *Martin v. United States*, 605 U.S. 395, 408 (2025) (internal quotations and alterations omitted).

decided that was by "build[ing] a subsidized housing system that mirrored the private market—where private owners retain sole discretion over tenant selection." Bernstein, 31 CARDOZO L. REV. at 1424. But the courts that ruled against preemption for state/local source of income protections wrongly allowed states to substitute their judgment for Congress's and isolated voucher acceptance rates as the lone variable in determining whether the end goals of *a federal program* (Section 8) are achieved. Recognizing the complexity of the housing market, this Court should reject that approach, and instead follow Congress's judgment in guaranteeing voluntary landlord participation in Section 8 as the best method to achieve its statutory aims.

To conclude, Section 8 preempts the VFHL's source of income provision because choosing whether to participate in Section 8 is a "statutory right" afforded to landlords, the VFHL's "source of funds" law "interferes" with that voluntary choice, and Congress decided a voluntary marketplace was the best approach for helping low-income families "obtain[] a decent place to live."

IV. Plaintiffs both suffer irreparable harm from the VFHL's "source of funds" law, which violates their constitutional rights and—because of HRI's complaint, now subjects them to state investigation.

The VFHL's requirement that Plaintiffs, over their objection, accept Section 8 vouchers, even though that federal program is voluntary by design, violates Plaintiffs' Fourth Amendment rights and the Supremacy Clause of the United States Constitution. *Supra* Section III. Where "there is a likely constitutional violation" at issue, the irreparable harm factor is [generally] satisfied." *Leaders of a Beautiful Struggle*, 2 F.4th at 346. That constitutional harm is magnified here because HRI has already reported Plaintiffs for source of funds discrimination, which means they are subject to an impending state investigation and Defendants' immediate enforcement purview. An injunction is necessary to prevent HRI's demands, proffered as part of the state conciliation process, from coercing Plaintiffs into waiving their Fourth Amendment rights. Because of the constitutional rights at issue, Plaintiffs could have sued Defendants *before* HRI even called and still demonstrated irreparable harm. *See Mobil Oil Corp.*, 940 F.2d at 75 (discussing pre-

enforcement constitutional suits). But the combination of constitutional rights *and* an impending investigation by the state makes irreparable harm indisputable.

V. The public interest and the balance of the equities favor enjoining the VFHL's "source of funds" provisions.

Under *Leaders of a Beautiful Struggle*, once a plaintiff shows likelihood of success on the merits of a constitutional claim, "the balance of the equities favors preliminary relief … [and] … it is well-established that the public interest" factor does, too. 2 F.4th at 346. The balance of the equities factor is satisfied because "a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). And regarding the public interest factor, "upholding constitutional rights surely serves" that objective. *Id.*

Beyond the constitutional magnitude for the balance of the equities and public interest factors, a couple of factual nuances also weigh in favor of preliminary relief. *First*, HRI suffered no harm by Plaintiffs' decision to not accept to Section 8 vouchers; their "tester" caller had no intention to rent the unit, and the tester's activity was consistent with HRI's mission. Plaintiffs are the only ones suffering actual harm here. But even if Plaintiffs were contacted by an actual Section 8 tenant, the equities and the public interest favor protecting federal constitutional rights over conflicting state and local statutory obligations.

Second, while the VFHL's "source of funds" provisions may increase the percentage of landlords who accept Section 8 vouchers in Virginia, it also likely has other effects—such as landlord consolidation, decreased vacancy rights, unit reduction, and corporatization of Section 8—that otherwise frustrate congressional intent to help low-income families "obtain[] a decent place to live." 42 U.S.C. § 1437f; *see supra* Section III.b. It is in the public's interest to follow, and the balance of the equities favors, *Congress*'s judgment to make Section 8 resemble a private marketplace—including voluntary landlord participation—given competing public policy

tradeoffs. *Cf. U.S. v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012); *United States v. California*, 921 F.3d 865, 893 (9th Cir. 2019).

For these reasons, Plaintiffs also substantiate the final two elements for a preliminary injunction: such an injunction serves the public interest and the balance of the equities.

VI. The Court should waive the injunction bond under Rule 65(c) or require a nominal bond as security.

Under Rule 65(c), a court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." However, a district court "retains the discretion to set the bond amount as it sees fit or waive the security requirement." *Pashby v. Delia*, 709 F.3d 307, 331-332 (4th Cir. 2013), *abrogation recognized on other grounds in Stinnie v. Holcomb*, 37 F.4th 977, 981 (4th Cir. 2022). "In some circumstances, a nominal bond may suffice." *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999).

Here, the Court should waive the requirement entirely or, at worst, require only a nominal dollar figure as security. The Court's injunction will protect Plaintiffs' and the class's constitutional rights, which is often mentioned as an express exception to Rule 65(c). *See CASA, Inc. v. Trump*, 793 F. Supp. 3d 687, 702 (D. Md. 2025) (no bond); *Honeyfund.com, Inc. v. DeSantis*, 622 F. Supp. 3d 1159, 1186 (N.D. Fla. 2022) ("waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right"). And public interest litigation like this case also justifies a waived or nominal injunction bond, lest plaintiffs be deterred or precluded from meaningful judicial review. *See Defenders of Wildlife v. U.S. Fish and Wildlife Service*, 539 F. Supp. 3d 543, 560 (D.S.C. 2021) (collecting cases); *see also* 11A Charles Alan Wright, *et al*., FEDERAL PRACTICE & PROCEDURE § 2954 (3d ed. 2020) (same). Finally, Plaintiffs are very likely to succeed on their constitutional claims, *supra* Section III, and there is no harm to Defendants should they win at a later stage; delayed VFHL investigations might simply resume if they demonstrate success at later stage in this case. *Cf. Maryland Dept. of Human Resources v. U.S. Dept. of Agriculture*, 976 F.2d 1462, 1483 n.23 (4th

Cir. 1992) ("The virtual certainty that USDA would suffer substantial monetary damage from an injunction … distinguishes this case from those recognizing a district court's discretion to set a bond amount of zero where the enjoined or restrained party faces no likelihood of material harm").

CONCLUSION

For the reasons discussed above, this Court should grant Plaintiffs' Motion for a Preliminary Injunction and enjoin Defendants from enforcing the VFHL's "source of funds" provisions as applied to claims arising out of the non-acceptance of Section 8 vouchers against both Plaintiffs and the class certified under the concurrently filed motion for class certification.

DATED this 9th day of March, 2026.

Respectfully submitted,

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Certificate of Service

I certify that on March 9, 2026, I served a copy of the above on all counsel of record by filing a copy via the ECF system.

Dated: March 9, 2026

/s/ Jerome P. Friedlander
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