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New York Court of Appeals Rejects Facial Challenge to Source-of-Income Protections for Section 8 Voucher Holders

On November 23, 2026, the New York Court of Appeals revived the Attorney General's source-of-income discrimination case (*People v Commons West, LLC*, 2026 WL 3585124 (NY Nov. 23, 2026)) against several Tompkins County landlords. The court rejected the landlords' argument that the New York State Human Rights Law is facially unconstitutional insofar as it protects Section 8 voucher holders. The decision remains subject to revision before official publication.

Background

In 2019, New York amended its Human Rights Law to prohibit housing discrimination based on a person's lawful source of income; the amended statute expressly lists Section 8 vouchers as a lawful source of income.

Two prospective tenants complained that landlords in Tompkins County refused to rent to them because they planned to pay with Section 8 vouchers. The Attorney General then brought an enforcement proceeding. The landlords argued that the law effectively forces them into the federal Section 8 program, which requires landlords to sign a Housing Assistance Payments (HAP) contract. The HAP contract grants housing authorities access to the property and to the landlord's records. The landlords contended that this amounts to compelled consent to warrantless searches, in violation of the Fourth Amendment.

The Tompkins County Supreme Court agreed and declared the law facially unconstitutional to the extent it bars refusing to rent to Section 8 voucher holders. The Appellate Division, Third Department, affirmed in March 2026.

The Court of Appeals' Decision

By a 4-3 vote, the Court of Appeals reversed. It denied both the landlords' motion to dismiss and their cross-motion for summary judgment. No single opinion drew a majority. Chief Judge Wilson wrote for three judges, Judge Singas concurred separately, and three judges dissented.

According to Chief Judge Wilson's opinion:

- The Human Rights Law says nothing about searches or inspections. It requires only nondiscrimination based on source of income.
- Any inspection or records-access obligation comes from the federal Section 8 program and the federal HAP contract form, not from New York law.
- A facial challenge succeeds only if a law is unconstitutional in every conceivable application. The landlords could not meet that standard because the law has many valid applications.
- The landlords' theory looked more like an as-applied challenge, which they did not pursue before the court.

The Attorney General's enforcement proceeding will now continue.

Practical Implications for Housing Providers

Housing providers in New York should not rely on the lower-court rulings that had struck down the source-of-income protections for Section 8 voucher holders. Under current law, owners and managers should not:

- Refuse an otherwise qualified applicant because the applicant intends to pay with a Section 8 voucher;
- Impose minimum income requirements, or require guarantors or co-signers, where a voucher covers the full rent or the voucher program has calculated the tenant's share of rent based upon the tenant's income;
- Maintain blanket policies rejecting voucher holders; or
- Advertise or state that voucher holders will not be considered.

The decision leaves some questions open. The court did not decide an as-applied Fourth Amendment challenge. It also did not resolve what happens if a landlord

accepts a voucher holder's application but objects to particular HAP contract terms. Owners with specific concerns about inspections or records access should carefully weigh the risks before raising those concerns as a defense to a discrimination claim.

In the *Commons West* proceeding, the Attorney General has asked the court to:

- Require the landlords to set aside a percentage of the units in each building for Section 8 recipients for three years;
- Impose court monitoring; and
- Order restitution and civil penalties.

Owners should review leasing policies, application procedures, staff training, and marketing materials for compliance with the state's Human Rights Law and any applicable local laws. These include New York City's Human Rights Law, which has prohibited source-of-income discrimination since 2008. Violations of the New York State and City Human Rights Laws can carry significant consequences.

Under the State Human Rights Law, the Division of Human Rights may order a landlord to stop the discriminatory practice and take affirmative action. It may also award compensatory damages and punitive damages of up to $10,000 in housing cases. The Division may also assess civil fines and penalties of up to $50,000, or up to $100,000 where the violation is willful, wanton, or malicious[1] (). Private lawsuits, likewise, expose housing providers to damages, including punitive damages in housing cases, along with civil fines and penalties (N.Y. Exec. Law § 297[9]). Courts and the Division may also award reasonable attorney's fees to a prevailing party (N.Y. Exec. Law § 297[10]). Criminal liability is possible for a willful violation of an order of the Division, which is a misdemeanor, punishable by up to one year in jail, a fine of up to $500, or both (N.Y. Exec. Law § 299).

In New York City, a commission finding of an unlawful discriminatory practice will result in an order to cease and desist, and may also direct the landlord to rent or lease housing without discrimination (NYC Admin. Code § 8-120[a][7]), payment of compensatory damages (§ 8-120[a][8]), submission of compliance reports (§ 8-120[a][9]), and payment of a prevailing complainant's reasonable attorney's fees, expert fees, and costs (§ 8-120[a][10]). The commission may also impose civil penalties of up to $125,000 per unlawful discriminatory practice, or up to $250,000 for willful, wanton, or malicious acts (§ 8-126[a]). Consequences for failure to comply

with a commission order can include civil penalties of up to $50,000, in addition to a penalty of up to $100 per day (§ 8-124), as well as criminal penalties for willful violations that may include up to one year of imprisonment, a fine of up to $10,000, or both (§ 8-129). While a complaint is pending, the commission may also seek a court injunction to prevent conduct that would undermine its ability to grant relief (§ 8-122). Private individuals may also sue, and may recover compensatory and punitive damages and, if they prevail, costs and attorney's fees (§ 8-502[a], [f]).

In our experience, a significant source of exposure is private litigation, including repeat claims, because both the state and city Human Rights Laws allow prevailing claimants to recover attorney's fees. While source of income is not a protected class under the Fair Housing Act, federal courts hear state- and local-law source-of-income claims alongside Fair Housing Act claims challenging minimum-income policies that screen out subsidy holders, including applicants with disabilities or other federally protected characteristics. In those cases, federal courts can award substantial compensatory damages, punitive damages, and attorney's fees to prevailing parties, including fair housing advocacy organizations.

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1 N.Y. Exec. Law § 297[4][c]

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