Godinez v. Sullivan-Lackey: Creating a Meaningful Choice for Housing Choice Voucher Holders

Laura Bacon

Follow this and additional works at: https://via.library.depaul.edu/law-review

Recommended Citation
Available at: https://via.library.depaul.edu/law-review/vol55/iss4/7

This Notes & Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.
GODINEZ V. SULLIVAN-LACKEY: 
CREATING A MEANINGFUL CHOICE FOR 
HOUSING CHOICE VOUCHER HOLDERS

I. Introduction

The face of public housing in the United States is ever-changing. Today, public housing high rises in Chicago and across the country are being torn down in favor of low-level, mixed-income communities and the use of tenant-based vouchers. Individuals and families can apply to local housing authorities to participate in the Housing Choice Voucher Program (Program), but acceptance is unlikely as waiting lists are long and often even closed. Some individuals and families relocated from existing public housing units that are being demolished or rehabilitated may opt to permanently use a voucher rather than return to public housing. Those families are not subject to the regular application process and do not have to be put on a waiting list. As the federal government contemplates cutting funding for the Housing Choice Voucher Program, the availability of vouchers that are not a part of a relocation plan will be further reduced.

The problems of under-funding and unavailability of vouchers, however, merely scrape the surface of the obstacles in administering the Housing Choice Voucher Program. Once individuals or families obtain a household-based voucher, many find it difficult to find an apartment to rent. Much of this difficulty results from landlords in mostly middle- and upper-class communities refusing to rent units to potential tenants who will pay rent with the assistance of a voucher. This widespread discrimination reduces the utility of the voucher program, frustrates the purported goals of the legislation, and further

1. See Mark A. Malaspina, Demanding the Best: How to Restructure the Section 8 Household-Based Rental Assistance Program, 14 Yale L. & Pol'y Rev. 287 (1996).
2. See infra notes 27-51 and accompanying text.
7. See id. at 11.
compounds the problems of city redevelopment projects such as the Chicago Housing Authority’s Plan for Transformation.\textsuperscript{8}

Source-of-income discrimination is against the law in Chicago and has been for almost ten years.\textsuperscript{9} But the Illinois Appellate Court’s recent holding in \textit{Godinez v. Sullivan-Lackey}\textsuperscript{10} has the potential to begin addressing this problem through the court’s judicial affirmance of an administrative agency’s holding that source-of-income discrimination is against the law.\textsuperscript{11} Although the holding is limited in its application, Chicago can serve as a model for other states and municipalities struggling with similar issues.\textsuperscript{12} Short of proposing an amendment to the national Fair Housing Act, the City of Chicago’s approach to the problem is a more realistic, workable solution.\textsuperscript{13}

Part II of this Note discusses a brief history of government subsidized housing and explains why the utility of the Housing Choice Voucher Program is becoming more important as the face of subsidized government housing changes.\textsuperscript{14} Focusing on the administration of the Program in Chicago, this Note describes the widespread discrimination that does occur, as shown through various studies and reports.\textsuperscript{15} It goes on to explain how source-of-income discrimination is hindering the effectiveness of the Program and preventing it from achieving its proffered objective—the integration of low-income families and public housing families into mixed-income communities.\textsuperscript{16} Part III of this Note describes the facts and holding of \textit{Godinez}, including the reasons for the Illinois Appellate Court’s reversal of the circuit court’s holding.\textsuperscript{17} Part IV discusses the Illinois Appellate Court’s interpretation of the City Ordinance in \textit{Godinez} and asserts that the court’s holding is correct.\textsuperscript{18} Finally, in Part V, this Note discusses the advantages, as well as the shortcomings, of a local, legislative remedy such as Chicago’s, and ultimately recommends that other municipalities in Illinois and across the country interpret their Fair Housing Ordinances equally as broadly, as advocated by the Illinois Appellate Court in \textit{Godinez}.\textsuperscript{19} Part VI concludes that if source-of-

\begin{footnotes}
\item 8. See \textit{infra} notes 227-237 and accompanying text.
\item 9. LCBH, \textit{supra} note 6, at 3.
\item 11. See \textit{infra} notes 199-237 and accompanying text.
\item 12. See \textit{infra} notes 238-277 and accompanying text.
\item 13. See \textit{infra} notes 199-210 and accompanying text.
\item 14. See \textit{infra} notes 21-84 and accompanying text.
\item 15. See \textit{infra} notes 67-71 and accompanying text.
\item 16. See \textit{infra} notes 63-84 and accompanying text.
\item 17. See \textit{infra} notes 85-121 and accompanying text.
\item 18. See \textit{infra} notes 122-191 and accompanying text.
\item 19. See \textit{infra} notes 199-277 and accompanying text.
\end{footnotes}
income protection is increasingly added to local and state legislation, and properly interpreted by the judiciary, the objective of the Housing Choice Voucher Program may begin to be realized. But progress through the law can only truly make a difference if the underlying discriminatory attitudes change as well.20

II. BACKGROUND

The subsidized housing policy in the United States has recently moved from "supply-side" construction of public housing units to "demand-side" mobility and voucher programs.21 The Housing Choice Voucher Program, as it is administered in the City of Chicago, exemplifies this trend.22 The objective of the Housing Choice Voucher Program and its underlying theory are sound, but problems in the application of the Program impede its effectiveness.23 One major problem is the prevalence of source-of-income discrimination experienced by voucher-holders, as described in the case of Ms. Sullivan-Lackey below.24 Targeting this problem, some states have passed provisions that outlaw source-of-income discrimination.25 Similarly, the Illinois Appellate Court held that source-of-income discrimination, including housing vouchers as a source of income, is against the law in the City of Chicago.26

A. Creation of the Housing Choice Voucher Program

Government subsidized housing in the United States has taken on many forms since its inception in 1937.27 In its first decade, government subsidized housing legislation was largely ineffective because of strong resistance in the private real estate sector and lack of government funding.28 Unfortunately, today—at a time when the need for

---

20. See infra notes 199–277 and accompanying text.
21. Malaspina, supra note 1, at 288. The Housing Choice Voucher Program is considered a "demand-side" program because it allows tenants to choose among existing units in the private market, as opposed to "supply-side" programs like public housing and project-based housing assistance programs, which directly increase the number of affordable housing units in the public and private markets. Id. at n.4. See also infra notes 27–51 and accompanying text.
22. See infra notes 52–62 and accompanying text.
23. See infra notes 63–71 and accompanying text; see also LCBH, supra note 6, at 3.
25. See infra notes 72–84 and accompanying text.
government assistance may be even higher—not much has changed. The proliferation of public housing high-rise constructions in the 1950s and 1960s created racially segregated, high-crime neighborhoods—largely as a result of racist local housing authorities' discriminatory site-selection and tenant assignment procedures. The U.S. government has since struggled to correct the policy mistake that created these neighborhoods, hoping to find a better solution. The most recent trend in subsidized housing policy relies increasingly on mobility-based programs that allow individuals to enter the private housing market.

The Section 8 household-based rental assistance program (Section 8) began in 1974 and has grown dramatically, now becoming one of the primary subsidized housing programs in the country. Recently renamed the Housing Choice Voucher Program, this program is a federally funded, “demand-side” subsidized housing program. It allows low-income tenants to enter the private market and find housing of their choice, provided that the housing complies with the

29. Id. at 55-56. Budget cuts threaten to eliminate the Department of Housing and Urban Development (HUD), and political hostility toward the Program is high. Id.
30. Id. at 44-45. See also Gautreaux v. Chicago Hous. Auth., 296 F. Supp. 907 (N.D. Ill. 1969). Gautreaux and its progeny represent over thirty years of litigation, which continues today, surrounding the past discriminatory site selection and tenant assignment policies of the Chicago Housing Authority. For the most recent addition, see Gautreaux v. Chicago Housing Authority, No. 66-C-1459, 2004 WL 1427107, at *1 (N.D. Ill. June 23, 2004). See also ALEXANDER POLIKOFF, WAITING FOR GAUTREAUX: A STORY OF SEGREGATION, HOUSING, AND THE BLACK GHETTO (2006).
31. Hendrickson, supra note 27, at 48-52.
32. See, e.g., Malaspina, supra note 1, at 288.
33. The Section 8 Housing Assistance Payments Program was created by the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f (2000); Section 8 Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. pt. 982 (2005). The initial legislation providing low-income housing assistance was passed as section 8 of chapter 896 of the Housing Act of 1937, thus termed “Section 8.” 24 C.F.R. § 982.2.
34. Malaspina, supra note 1, at 288.
35. The Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 545, 112 Stat. 2461 (1998), revised the Section 8 Program, merging the previously separate Section 8 voucher and Section 8 certificate programs into one tenant-based program called the Housing Choice Voucher Program. In October 1999, HUD issued revised regulations to implement the statutory merger. Housing Choice Voucher Program, 64 Fed. Reg. 56,894 (Oct. 21, 1999) (codified at 14 C.F.R. §§ 888, 982). Throughout this Note, the terms “Section 8 vouchers” and “voucher-holders” will be used in reference to the Housing Choice Voucher Program.
36. Malaspina, supra note 1, at 294.
37. Families eligible for the Program are those “whose annual income does not exceed 50% of the median income for the area” in which they choose to live. Id. at 299. But the local public housing agency (PHA) is required to provide at least seventy-five percent of its vouchers to those defined as “extremely low income.” 24 C.F.R. § 982.201(b)(2)(i). A family defined as “extremely low income” is one “whose annual income does not exceed 30 percent of the median income for the area . . . .” 24 C.F.R. § 5.603(b).
Program's requirements. The Department of Housing and Urban Development (HUD) allocates federal funds to the local public housing agencies (PHAs) who then administer the Program locally. The passage of the Quality and Work Responsibility Act of 1998 furthered the trend toward tenant-based programs by encouraging the demolition of public housing units in favor of creating mixed-income communities. The main goal of the legislation is “deconcentration-dispersal” of poverty in public housing, to be achieved through demolition of existing public housing and relocation with vouchers. The theory that concentrations of poverty serve to exacerbate its accompanying social problems supports the legislation. The local implementation of the statute, however, results in a net loss of public housing units. This forces a large number of families into the private market—with or without government assistance—and has resulted in relocation of families to neighborhoods that are no different than those they moved from.

The City of Chicago followed this trend in national housing policy with the announcement of its $1.5 billion Plan for Transformation in 1999. This year marks the seventh year of the city's ten-year plan "to rebuild or rehab 25,000 units of public housing." A large part of

---

38. See Malaspina, supra note 1, at 287-88, 298-99.
43. Id. at 181.
44. Id. at 184 (citing Susan J. Popkin et al., The Gautreaux Legacy: What Might Mixed-Income and Dispersal Strategies Mean for the Poorest Public Housing Tenants?, 11 HOUSING POL’Y DEBATE 911 (2000) (estimating a net loss of more than 14,000 units of affordable housing in Chicago)).
45. Since the inception of the Plan for Transformation, rates of eviction from public housing units have dramatically increased. See Katherine E. Walz, Staff Attorney, Nat’l Ctr. on Poverty Law, Remarks at Panel Discussion Held at DePaul University College of Law, The Future of Chicago's Public Housing (Nov. 15, 2004).
46. See Fischer, supra note 4, at 13. Families relocated using vouchers as a part of the Chicago Housing Authority (CHA) Plan for Transformation have moved to areas that are “overwhelmingly African-American and disproportionately poor.” Id.
48. Id. For the most recent report on progress of the Plan for Transformation and the goals for the past and current years, see Chicago Housing Authority, Plan for Transformation, Annual Plans, http://www.thecha.org/transformplan/plans.html (last visited Jan. 16, 2006).
this project focuses on the transformation of previously "isolated public housing developments into mixed-income communities." The plan requires a large number of public housing residents to be relocated during the course of the project. Approximately half of this relocation has been and will continue to be accomplished through the use of vouchers. Additionally, as of June 30, 2005, thirteen percent of residents have chosen to be permanently housed using a Housing Choice Voucher, even after the rehabilitation or redevelopment is complete.

B. Overview of the Administration of the Housing Choice Voucher Program in Chicago

The administration of the Program may vary somewhat depending on the local housing agency, but the basic Program elements are uniform. Chicago's Housing Choice Voucher Program is administered by CHAC, Inc. (CHAC), a private company contracting with the Chicago Housing Authority (CHA). CHAC accepts applications and screens households from a waiting list to determine if they are eligible for the Program. The waiting list for the Program is currently closed and is estimated to include 9,756 families as of June 30, 2005. In 2001, CHAC estimated that the waitlist would be closed for at least five years. Five years have since passed and the list remains closed.

A family receiving assistance through the Program usually pays no more than thirty percent of their monthly income for housing. The family must locate an apartment that is at or below the Fair Market Rent (FMR) for the particular area. If the unit is above the FMR

51. Id.
52. Because the subject of this Note is Chicago's Housing Choice Voucher Program, the focus is on the administration of Chicago's Program, but the administration of the Program in other large metropolitan areas is likely to be very similar. See U.S. Dep't of Hous. & Urban Dev., Voucher Program Guidebook: Housing Choice (2001), http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm (including complete Program rules and specifications).
54. CHAC, supra note 3, at 4.
55. Annual Plan, supra note 50, at 144. This waitlist is for the Housing Choice Voucher Program only and does not include any individual or family using a voucher as a part of the Plan for Transformation.
56. CHAC, supra note 3, at 11.
58. Id.
for that area, the family may choose to make up the difference, but its share cannot exceed forty percent of the family's monthly income. If the unit meets Program specifications, including the local PHA's safety requirements, and the owner is willing to rent under the Program, both the tenant and the PHA will enter an agreement with the owner or landlord. The housing agency will pay a subsidy directly to the owner on behalf of the participating family, and the family will pay its share, which amounts to the difference between the subsidy and the actual rent charged by the landlord. Upon renewal of the lease, the unit must pass an annual inspection and the tenant must recertify his or her family's income to determine continued Program eligibility.

**C. Problems in Application**

Numerous recommendations have been made to try and increase the effectiveness of the Housing Choice Voucher Program so that it can better achieve its proffered objective. These recommendations include: allowing more time for families to search for a unit, providing mobility counseling and support services, conducting landlord outreach, and providing incentives for landlord and owner participation in the Program. A bill introduced in the House of Representatives in 2004 incorporated some of these suggestions, but focused more on the problems of under-funding and long waiting lists. At best, without some change, maintaining the current administration of the Program will result in continued racial and economic isolation and segregation. At worst, the net loss of public housing units combined

---

59. CHAC, supra note 3, at 7.
60. Id. at 5.
61. The agreement between the PHA and the owner is called a “Housing Assistance Payment contract,” or HAP. Its duration is the same term as the lease, usually one year. Id.
62. Id. at 11.
63. CHI. AREA FAIR HOUS. ALLIANCE, PUTTING THE “CHOICE” IN HOUSING CHOICE VOUCHERS (PART 3), at 4–9 (2004) [hereinafter FAIR HOUSING ALLIANCE]. This report was written by the Alliance for the purpose of “[m]apping the location of Housing Choice Vouchers in the Chicago Region [to] demonstrate the need for affirmative efforts to provide greater access to areas of opportunity for families using vouchers.” Id. at i.
64. See id. at 4–9. See generally Philip D. Tegeler et al., Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation, 30 HARV. C.R.-C.L. L. REV. 451 (1995); see also Hendrickson, supra note 27.
66. Not only does the current distribution of voucher-holders reflect broad segregation, but in a study of 650 families that recently moved out of CHA public housing as a part of relocation,
with the difficulty of using a voucher could lead to a housing shortage and a homelessness epidemic reaching crisis levels. Widespread discrimination against voucher-holders seems to limit the number of affordable units they can choose from. This discrimination increases in "exception rent areas" and if the voucher-holder is Black or Latino. The net effect of this kind of discrimination is to reduce the number of housing units available to voucher-holders, making it increasingly difficult to find a place to use their government assistance. Additionally, because 96.8 percent of vouchers in Chicago are held by Black or Latino households, source-of-income discrimination may be one contributing cause of the continued racial and economic segregation in Chicago communities.

Although the Fair Housing Act of 1968 does not provide protection for source-of-income discrimination, some state legislatures have passed broader fair housing statutes that include source of income as a protected class. For the most part, this additional protection has

ninety-seven percent of them moved to communities that were over thirty-percent African American and had over twenty-four percent of the population living below the poverty level. See Fair Housing Alliance, supra note 63, at 3. See also generally Sudhir Alladi Venkatesh, American Project: The Rise and Fall of a Modern Ghetto (2000).

67. See LCBH, supra note 6, at 3.
68. See id. at 10-11. See also infra notes 222-226 and accompanying text.
69. LCBH, supra note 6, at 11. The study, administered through telephone testing of landlords, found that forty-six percent of landlords in the general Chicago market refused to rent to Housing Choice Voucher holders and twenty-two percent equivocated, meaning they responded neither "yes" or "no." Id. at 9, 10-11. Of landlords in the "exception rent areas" tested, fifty-five percent refused to accept vouchers and sixteen percent equivocated. Id. at 9. The percentages were slightly higher for follow-up calls made by minority testers. Id. The result of these findings is that of the units that are within the CHA rental payment guidelines, only thirty percent are truly available to voucher-holders. Id. at 11.
70. Fair Housing Alliance, supra note 63, at 26 tbl.2A. The table reports that there are 31,829 voucher-holder households in the City of Chicago. Of those households, 26,826 are Black Households and 3,976 are Latino Households. By dividing the total number of Black and Latino Households (30,802) by the total number of voucher-holder households, the result is that 96.8% of Voucher Holder Households in Chicago identify themselves as Black or Latino.
71. "The high levels of segregation" of voucher-holder households "are not explained by the location of affordable housing, since . . . affordable housing units exist throughout the region." Id. at ii. See also Seliga, supra note 41, at 1080-83 (discussing how one of the recent Gautreaux decisions not to extend the judgment order to include Section 8 vouchers has encouraged the CHA to make greater use of the vouchers as a means of relocation from demolished housing projects because the relocation does not have to be to an integrated neighborhood). See also supra note 30.
72. The Fair Housing Act of 1968 currently protects only against discrimination in housing on the basis of "race, color, religion, sex, familial status, or national origin," 42 U.S.C. § 3604(a) (2000), and includes other protections for handicapped persons and age discrimination. Id. § 3604(c).
been upheld by the state judiciaries when challenged in the course of litigation.\textsuperscript{74} In \textit{Attorney General v. Brown},\textsuperscript{75} the Supreme Judicial Court of Massachusetts held that the statutory provision protecting recipients of public assistance, including rental assistance, prohibited a landlord from refusing to rent to an individual solely based on his status as a recipient of Section 8 assistance.\textsuperscript{76} In \textit{Commission on Human Rights and Opportunities v. Sullivan Associates},\textsuperscript{77} the Supreme Court of Connecticut held that the state statutory protection against discrimination on the basis of "lawful source of income" included Section 8 voucher-holders.\textsuperscript{78} Similarly, the Supreme Court of New Jersey in \textit{Franklin Tower One v. N.M.}\textsuperscript{79} interpreted the phrase "source of a lawful rent payment" to include Section 8 vouchers.\textsuperscript{80}

All three cases also held that the state statutes were not preempted by federal law.\textsuperscript{81} These courts do not represent a unanimous view, however, as the Seventh Circuit case \textit{Knapp v. Eagle Property Management Corporation} demonstrates.\textsuperscript{82} In that case, the Seventh Circuit held that the provision of the Wisconsin Open Housing Act protecting lawful source-of-income discrimination did not include Section 8 vouchers.\textsuperscript{83} Additionally, in dicta, the court questioned whether an alternative interpretation would be preempted by federal law.\textsuperscript{84}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{75} Brown, 511 N.E.2d 1103.
\item \textsuperscript{76} Id. at 1109.
\item \textsuperscript{77} Sullivan Associates, 739 A.2d 238.
\item \textsuperscript{78} Id. at 241. The court additionally held that the state statute requires landlords to agree to terms of Section 8 leases. \textit{Id.} at 251.
\item \textsuperscript{79} Franklin Tower One, 725 A.2d 1104.
\item \textsuperscript{80} Id. at 1112–13.
\item \textsuperscript{81} Sullivan Associates, 739 A.2d at 245; Brown, 511 N.E.2d at 1107; Franklin Tower One, 725 A.2d at 1114.
\item \textsuperscript{82} Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272 (7th Cir. 1995). Although interpreting a statute that has since been repealed, the Second Circuit in \textit{Salute v. Stratford Greens Garden Apartments}, 136 F.3d 293, 298 (2d Cir. 1998), echoed this argument.
\item \textsuperscript{83} Knapp, 54 F.3d at 1283.
\item \textsuperscript{84} Id. at 1282.
\end{enumerate}
\end{footnotesize}
III. SUBJECT OPINION: GODINEZ v. SULLIVAN-LACKEY—ONE WOMAN’S STRUGGLE

Ms. Sullivan-Lackey was an elderly woman, suffering from numerous medical conditions.\(^{85}\) In April 1999, she was receiving rental assistance through a Section 8 voucher, and her annual lease was about to expire.\(^{86}\) Before renewal, the Housing Choice Voucher Program requires that the unit undergo an inspection to determine whether the unit continues to comply with Program health and safety regulations.\(^{87}\) Sullivan-Lackey’s apartment failed the inspection, so in order to continue receiving voucher rental assistance, she had to move.\(^{88}\) This meant she would have to find another apartment able to pass inspection, reasonably priced in comparison to rent in the area, and owned by someone willing to participate in the Section 8 Program.\(^{89}\) She had to do all this before her voucher expired or else she would lose the rental assistance.\(^{90}\)

At the time Ms. Sullivan-Lackey needed to move, a vacancy opened in the building where her daughter lived.\(^{91}\) Julio Godinez owned the building and his son Carlos Godinez managed it.\(^{92}\) Ms. Sullivan-Lackey desired this particular apartment because it was on the first floor, suited her medical needs, and would allow her to provide for her daughter’s childcare needs.\(^{93}\) After Ms. Sullivan-Lackey filled out her rental application, paid the application fee, and viewed the unit, Carlos Godinez, knowing she was unemployed, asked her how she would pay for the apartment.\(^{94}\) She replied that she would be using her Section 8 voucher.\(^{95}\) Godinez then said that he did not accept Section 8 vouchers.\(^{96}\) Because Ms. Sullivan-Lackey could not make the rental payments without the government assistance of the voucher, she could not take the apartment.\(^{97}\) Although she continued to look, Sullivan-Lackey’s search for another unit that both accepted her voucher and complied with Program requirements was fruitless.\(^{98}\)

\(^{86}\) Id. at 824.
\(^{87}\) Id.
\(^{88}\) Id.
\(^{89}\) Id.
\(^{90}\) Id.
\(^{91}\) Godinez, 815 N.E.2d at 824.
\(^{92}\) Id.
\(^{93}\) Id. at 824–25.
\(^{94}\) Id. at 825.
\(^{95}\) Id.
\(^{96}\) Id.
\(^{97}\) Godinez, 815 N.E.2d at 825.
\(^{98}\) Id.
She did not find an adequate unit "before the expiration of her vouchers and lost her benefits" as a result.99

Two fair housing testers called the Godinezes who told them that they did not accept Section 8 vouchers.100 In August 1999, Sullivan-Lackey subsequently filed a complaint with the City of Chicago Commission on Human Relations (Commission).101 The complaint alleged "that plaintiffs [Carlos and Julio Godinez] violated the Fair Housing Ordinance by discriminating against [Ms. Sullivan-Lackey] based on her source of income."102 The City of Chicago’s Fair Housing Ordinance states that “it shall be an unfair housing practice ... [t]o make any distinction, discrimination or restriction against any person ... predicated upon the ... source of income of the prospective or actual buyer or tenant ..."103 Following a hearing and a review of the evidence, the Commission issued a final ruling in July 2001.104 It held that the plaintiffs violated the Fair Housing Ordinance by discriminating against Sullivan-Lackey on the basis of her source of income.105 The Commission additionally awarded Sullivan-Lackey $5,610 in damages and $16,284 in attorneys fees, and fined the Godinezes $250.106

The Godinezes objected to the decision and filed a writ of certiorari in the Circuit Court of Cook County “to review the administrative findings of the Commission.”107 In June 2002, the circuit court reversed the finding of the Commission, holding that based on the Seventh Circuit decision in Knapp v. Eagle Property Management Corp.,108 protection against source-of-income discrimination does not

99. Id.
100. Id.
102. Godinez, 815 N.E.2d at 825.
103. Id. at 826. The Chicago Municipal Code states:
   It shall be an unfair housing practice . . . :
   A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the city of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the prospective or actual buyer or tenant thereof.
   Id. (quoting CHI. MUN. CODE § 5-8-030 (2003)).
104. Id. at 825.
105. Id.
106. Id.
107. Godinez, 815 N.E.2d at 825.
108. 54 F.3d 1272 (7th Cir. 1995).
include protection for those receiving Section 8 benefits (i.e., voucher-holders). \(^{109}\) Sullivan-Lackey and the Commission appealed. \(^{110}\)

The Illinois Appellate Court reversed, reinstating the order of the Commission for three reasons. \(^{111}\) First, the precedent relied on by the circuit court was a case interpreting the Wisconsin Open Housing Act, \(^{112}\) containing a definition for "source of income" distinguishable from the City of Chicago Fair Housing Ordinance. \(^{113}\) The Fair Housing Ordinance is broader in its definition, allowing it to include protection for Housing Choice Voucher holders. \(^{114}\) Second, the Commission had been interpreting "source of income" to include protection for voucher-holders since 1995. \(^{115}\) The appellate court reasoned: "[A] court may not overturn an administrative decision unless the authority of the administrative body was exercised in an arbitrary or capricious manner or the decision is against the manifest weight of the evidence." \(^{116}\) In this case, the plaintiffs failed to present evidence that they denied housing to Sullivan-Lackey on a basis other than her intention to pay rent using a Section 8 voucher, and also failed to present evidence indicating that participation in the Housing Choice Voucher Program would create a substantial financial burden. \(^{117}\)

Third, other state courts had chosen to distinguish the interpretations of their states' fair housing legislation from that in the Knapp decision. \(^{118}\) The court rejected Godinez's argument that they had insufficient notice to apply to the Section 8 Program and stated that because the "[p]laintiffs chose to enter the arena of renting residential

---

110. \textit{Id.}
111. \textit{Id.} at 830. On appeal, the court considered the decision of the administrative body directly, rather than reviewing the circuit court's decision. \textit{Id.} at 825. The agency's finding is given deference and upheld as long as it is "just and reasonable in light of the evidence presented." \textit{Id.} at 826 (citing Conklin v. Ryan, 610 N.E.2d 751 (Ill. App. Ct. 1993)). Questions of law, however, are reviewed de novo. \textit{Id.} (citing Sangirardi v. Vill. of Stickney, 793 N.E.2d 787 (Ill. App. Ct. 2003)).
112. \textit{Godinez}, 815 N.E.2d at 827 (citing Wis. STAT. § 101.22(6) (1994) (defining "lawful source of income" as "includ[ing] but . . . not limited to lawful compensation or lawful remuneration in exchange for goods or services provided, profit from financial investments, any negotiable draft, coupon, or voucher representing monetary value such as food stamps, social security, public assistance or unemployment compensation benefits").
113. \textit{Id.}
114. \textit{Id.}
115. In contrast, the Seventh Circuit considered neither the interpretation of the Wisconsin State courts nor that of an administrative agency. \textit{Id.}
117. \textit{Id.} at 828.
property,” knowledge of the requirements imposed by the Commission was necessary.\textsuperscript{119} When a Section 8 prospective tenant approaches a landlord, the Commission rulings required that the landlord seek Section 8 certification.\textsuperscript{120} Additionally, the Illinois Appellate Court held that the award of fees and costs by the Commission was within its statutory authority.\textsuperscript{121}

IV. Analysis

Although the holding in \textit{Godinez}\textsuperscript{122} only serves to affirm the way in which the Commission has been interpreting the Fair Housing Ordinance for almost ten years, the clear reasoning and authority of the Illinois Appellate Court lend important support for future enforceability and public awareness of the law. The court applied not only the correct legal standards, but also reached the right result.\textsuperscript{123} By according extreme deference to the Commission, the court adopted its interpretation of the law and implicitly adopted its preemption analysis.\textsuperscript{124} A brief consideration of the possible alternatives the court could have reached adds further support to the strength of the court’s holding.\textsuperscript{125}

A. Deference to the Commission

First, the court applied both the appropriate standard of review for an administrative decision, and the appropriate standard for review of the interpretation made by an administrative body responsible for enforcement.\textsuperscript{126} Rather than reviewing the circuit court’s decision, the appellate court directly reviewed the Commission’s decision and refused to overturn it unless the decision was against the manifest weight of the evidence.\textsuperscript{127} Although the court noted that questions of law are reviewed de novo, it recognized that when reviewing the interpretation of an administrative agency, the agency’s interpretation is

\begin{enumerate}
\item \textit{Id.} at 829.
\item \textit{Id.}
\item \textit{Id.} The Fair Housing Ordinance gives the Commission authority to award “such relief as may be appropriate” which “is not limited to an order: . . . to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant . . . .” \textit{Id.} (citing \textsc{Chi. Mun. Code} § 2-120-510(\textit{l}) (2003)). The court also stated that the Illinois Human Rights Act gives municipalities the authority to provide broader anti-discrimination measures than those that exist under the Act. \textit{Id.} (citing 775 Ill. Comp. Stat. Ann. 5/7-108(A) (West 2000)).
\item \textit{Godinez,} 815 N.E.2d at 830.
\item \textit{See infra} notes 126–191 and accompanying text.
\item \textit{See infra} notes 126–153 and accompanying text.
\item \textit{See infra} notes 154–191 and accompanying text.
\item \textit{Godinez,} 815 N.E.2d at 825–27.
\item \textit{Id.} at 825–26.
\end{enumerate}
entitled to more deference because of the agency's responsibility to enforce the particular law. Unfortunately this leads to an opinion with clear conclusions, but somewhat brief reasoning.

By according the proper degree of deference to the Commission, the court did not interfere with the necessary ability of an administrative agency to interpret and enforce the law as it deems necessary. Because the Commission's reasoning is clear in previous opinions, the court deferred to it without much elaboration.

In determining whether Section 8 vouchers are a protected source of income, the Commission first considers the plain meaning of the language of the Chicago Fair Housing Ordinance. In the Chicago Human Rights Ordinance and the Commission's Regulations, "source of income" is defined as "the lawful manner by which an individual supports himself or herself and his or her dependents." The Commission has rejected the argument that anyone receiving a Section 8 voucher is not supporting himself or herself, but is being supported by the federal government. The statute's broad definition, which contains no other restrictions or qualifications, does not support such a narrow interpretation. Nothing in the text of the provision indicates that the drafters intended to exclude those who rely on government assistance from protection against discrimination based on their source of income. In addition, interpreting "source of income" to include Section 8 vouchers is consistent with the City of Chicago's stated policy of "assuring full and equal opportunity to all residents of the city to obtain fair and adequate housing for themselves and their families in the city of Chicago without discrimination against them."

Because the Commission is responsible for enforcing the statute by accepting complaints and issuing orders regularly, the court adopted the Commission's reasoning. The importance of a court's deference

128. See id.
130. Smith, 1999 WL 308207, at *3
131. Id. (citing CHI. MUN. CODE §§ 2-160-020(m), 5-08-040; Regulation 100(32)) (internal quotation marks omitted).
132. Id.
133. Id. at *4.
134. Id.
135. Id. at *3 (citing CHI. MUN. CODE § 5-08-010) (alteration in original) (emphasis added).
136. Because it deals with the issues more frequently, an agency's decision tends to be more informed, reflecting experience, expertise, and possibly even legislative intent. See Ill. Consol. Tel. Co. v. Ill. Commerce Comm'n, 447 N.E.2d 295, 300 (Ill. 1983).
to an administrative body is highlighted by a comment made in the
Godinez brief filed in the Commission proceeding: "[I]t 'is highly un-
likely that a court of law would find a Section 8 subsidy to be a 'source
of income.'" This comment indicates that the author of the brief
felt that a court of law would accord little weight to the Commission's
interpretation and would instead apply a different standard. Because
this opinion may reflect others' views of the Commission's authority,
the Illinois Appellate Court's application of the correct standards in
this case not only served to uphold the law, but also affirmed the
Commission's authority to do so.

B. Preemption Analysis Omitted

One particularly conclusory point the court made was its affirma-
tion of the Commission's award of fees and costs. The court af-
firmed the Commission's award of fees and costs based on the city's
authority both in the Fair Housing Ordinance and under the Illinois
Human Rights Act to pass a provision that is broader in scope than
the state law. Yet, while the language of the Fair Housing Ordin-
ance clearly gives the Commission broad authority to award civil
damages, the language of the Illinois Human Rights Act is not as
clear. The statute cited does not explicitly mention damages or
even remedies, and if the authority is implicit, the court does not ex-
plain how.

The answer perhaps lies in the "broad home rule powers" created
by the Illinois Constitution. The Illinois Constitution provides that
"home rule units," such as a municipality, "may exercise and perform
any function pertaining to their government and affairs, including reg-
ulation for the protection of the public health, safety, morals and wel-
fare." Under this home rule power, unless preempted by another
provision of the Illinois Constitution, the City of Chicago has broad

Relations July 18, 2001) (quoting Respondent's brief).
139. See id.
140. Id. (quoting CHI. MUN. CODE § 2-120-510(i)).
141. The court derived the Commission's authority to award damages from the language of
the Illinois Human Rights Act, which permits (1) the creation of a local department for the
purpose of promoting the act, and (2) the provisions of an ordinance to protect "broader or
different categories of discrimination." Id. (citing 775 ILL. COMP. STAT. ANN. 5/7-108(A) (West
2000)).
142. See id.
rule powers").
144. Id. (citing Beverly Bank v. County of Cook, 510 N.E.2d 941 (Ill. App. Ct. 1987)).
power to legislate. The more expansive discrimination protection provided by the City's Fair Housing Ordinance, including the damages provision, could likely be upheld under Chicago's home rule power.

But even more obviously absent from the court's opinion is an answer to whether the City of Chicago has the authority to pass a law broader in scope than the federal fair housing law. Perhaps the court did not feel the need to explicitly address this question because it was not argued by the plaintiffs. Also, the preemption analysis has been considered at length in previous Commission decisions, so through its extreme deference, the court may be assenting to the Commission's conclusion on this point as well. Notice, however, that although the court did not specifically identify any of its analysis as being preemption-related, its reference to the Commission's de minimis burden requirement indicates that the issue did not escape consideration completely. Allowing landlords to have valid, nondiscriminatory reasons for refusing to accept Section 8 vouchers reduces the mandatory feel that the Program might otherwise have had following this decision. The court was most likely saying that because of this distinction, the ordinance avoids any plausible argument for preemption. Because the plaintiffs did not assert that Section 8 compliance

145. Id. The state legislature may preempt home rule authority in two ways, as provided in the Illinois Constitution, article VII, sections 6(g) and 6(h). Id. "The legislature may preclude the home rule authority in an area not regulated by the state through a three-fifths majority vote," or the legislature may specifically preempt home rule in a particular piece of legislation. Id. The Illinois Supreme Court has held these to be the only ways that the legislature can preempt home rule authority. Id. (citing Kalodimos v. Vill. of Morton Grove, 470 N.E.2d 266 (Ill. 1984)).

146. The Illinois Appellate Court has held that the City of Chicago has the authority to enact a sexual harassment law applying to employers with less than fifteen employees, which is broader than the state law's protection. See Page, 701 N.E.2d at 227.

147. The plaintiffs may have decided not to assert the preemption argument in the appellate court because it was summarily rejected by the Commission. In re Sullivan-Lackey, No. 99-H-89, 2001 WL 1042296, at *4 (Chi. Comm'n Human Relations July 18, 2001).


149. The Commission has held that the municipal ordinance is not preempted by the federal statute. Sullivan-Lackey, 2001 WL 1042296, at *4.


151. For a more in-depth consideration of the preemption arguments, see infra notes 166–182 and accompanying text.

152. The Seventh Circuit in Knapp asserted that the mandatory application of the Program may be preempted. See Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272, 1282 (7th Cir. 1995).
would impose a substantial financial burden, the court did not need to address the factual question in this case.\textsuperscript{153}

\section*{C. Alternative Results}

Although there are various alternative conclusions the court could have reached, as set out in this section, most would have relied on faulty reasoning or would have reduced the harshness of the result on the plaintiff landlords. None of the precedent considered was binding on the Illinois Appellate Court.\textsuperscript{154} But the court chose, in support of its own reasoning, to follow the weight of the relevant authority from other jurisdictions and in turn reached the right result.\textsuperscript{155}

\subsection*{1. Affirm the Circuit Court}

The obvious alternative route the court could have taken would have been to affirm the holding of the circuit court and to follow the reasoning of Knapp. Although the Illinois Appellate Court reasoned that the language of the two statutes was different, warranting different interpretations,\textsuperscript{156} in reality the language of both statutes could be interpreted either way. In fact, in its definition of "lawful source of income," the Wisconsin Open Housing Act specifically includes other forms of public assistance such as food stamps and social security, designated as a "voucher representing monetary value."\textsuperscript{157} The Seventh Circuit distinguished Section 8 vouchers as "not hav[ing] a monetary value independent of the voucher holder and the apartment sought," therefore making them more analogous to a subsidy rather than a source of income.\textsuperscript{158} In doing so, however, the Seventh Circuit noted that "[w]hile this form of assistance could arguably be included within the Wisconsin Act, we decline to ascribe such an intent to the state legislature because of the potential problems in doing so."\textsuperscript{159} This statement singularly indicates that the court was weighing policy considerations much more heavily than the actual language of the legislation. In fact, other than considering the language of the statute, the

\textsuperscript{153} See Godinez, 815 N.E.2d at 828.
\textsuperscript{154} Id. at 827 ("not[ing] that the Seventh Circuit's construction of Wisconsin law is not binding... "). New Jersey and Connecticut state court decisions are not binding on an Illinois state court.
\textsuperscript{155} Id. at 828.
\textsuperscript{156} See id. at 827.
\textsuperscript{157} Knapp, 54 F.3d at 1282.
\textsuperscript{158} Id.
\textsuperscript{159} See id.
Seventh Circuit did not look any further to determine the actual intent of the state legislature.\textsuperscript{160}

Rather than making a decision based on potential problems in application, the Illinois Appellate Court focused on the rules of legislative interpretation by first looking at the plain language of the ordinance. If the language was ambiguous, only then would the court consider the policy behind the legislation in order to determine the legislative intent.\textsuperscript{161} Similarly, the other courts that have deviated from Knapp’s conclusion have followed the rules of statutory interpretation and have, therefore, come to a logical and reasonable result as to the meaning of the statute under consideration.\textsuperscript{162}

2. \textit{Reverse the Factual Conclusion Regarding Discrimination}

The Illinois Appellate Court could also have affirmed the reasoning of the Commission, but reversed its factual conclusion that the plaintiffs discriminated against Ms. Sullivan-Lackey based on her source of income. This would have made little sense, however, considering that the standard of review for questions of fact is even higher than that for questions of law.\textsuperscript{163} In fact, in cases of source-of-income discrimination, particularly involving Section 8 vouchers, the facts of the incident are quite clear and the discrimination overt.\textsuperscript{164} This may be a result of landlords not having any knowledge that their conduct is against the law. But this is not a valid excuse, as demonstrated by the court’s

\begin{itemize}
  \item \textsuperscript{160} See id.
  \item \textsuperscript{161} See Alison C. v. Westcott, 798 N.E.2d 813, 816 (Ill. App. Ct. 2003).
  \item \textsuperscript{162} Comm’n on Human Rights & Opportunities v. Sullivan Assocs., 739 A.2d 238, 248, 251 (Conn. 1999) (concluding that legislative inaction following administrative construction of a state statute indicated validation of the interpretation); Franklin Tower One, L.L.C. v. N.M., 725 A.2d 1104, 1112 (N.J. 1999) (interpreting the state statute according to “both the letter and the spirit of” the statute).
  \item \textsuperscript{163} For the court to overrule an administrative agency’s decision on a question of fact, it would have to be “against the manifest weight of the evidence.” See Godinez v. Sullivan-Lackey, 815 N.E.2d 822, 826 (Ill. App. Ct. 2004).
  \item \textsuperscript{164} In this case, the facts were almost undisputed. The plaintiffs unsuccessfully claimed that Ms. Sullivan Lackey “left with the [rental] application and never returned it.” See In re Sullivan-Lackey, No. 99-H-89, 2001 WL 1042296, at *2 (Chi. Comm’n Human Relations July 18, 2001). This testimony was deemed “utterly incredible” by the Commission, considering that Sullivan-Lackey’s daughter found her mother’s torn application on the floor in the building, en route to the garbage. Id. See also In re Smith, Nos. 95-H-159, 98-H-44/63, 1999 WL 308207, at *1-2 (Chi. Comm’n Human Relations Apr. 13, 1999) (observing that all three complainants had experiences where the respondent directly said to them that he “did not accept Section 8”); In re Hoskins, No. 01-H-101, 2003 WL 23529506, at *2 (Chi. Comm’n Human Relations Apr. 16 2003) (alleging that complainant was told over the phone that respondent does not take Section 8 and “want[s] working people in the place”).
\end{itemize}
prompt rejection of the plaintiffs' argument of insufficient notice, a rejection based on past rulings of the Commission.  

3. Potential Preemption Argument

Additionally, as alluded to in Knapp, and briefly addressed above, the court could have moved away from the weight of authority and held that the federal Fair Housing Act preempts any state or municipal law that is broader in scope. The Knapp court indicated that it might have based this conclusion on voluntariness. The Seventh Circuit asserted that to interpret "source of income" in the statute to include voucher-holders would effectively "make a voluntary federal program mandatory" on landlords, and possibly render it vulnerable to preemption. This argument was echoed by the Second Circuit in Salute v. Stratford Greens Garden Apartments. In its holding, the court focused on the principle "that landlords have a statutory right to avoid Section 8 participation . . . ." If a landlord can be held liable for rejecting tenants on the basis of their status as voucher-holders, the "statutory right" to opt out of the Program disappears.

166. See supra notes 147–153 and accompanying text.
168. Id.
169. 136 F.3d 293, 298 (2d Cir. 1998). The complaint in Salute was brought, in part, pursuant to a statute that was repealed while the case was pending—"the take one, take all" provision of the United States Housing Act. Id. at 296. This provision, repealed in 1996, provided that after a landlord had voluntarily participated in the Section 8 Program, he or she could not refuse to rent to Section 8 voucher-holders solely on the basis of their status as a voucher-holder. Id. at 297. The purpose of this legislation was to promote access to affordable housing for lower income households by "prevent[ing] landlords from picking and choosing from the pool of Section 8 applicants . . . ." Id. But see Beck, supra note 39, at 167 (asserting that the statute in fact created a disincentive for landlords to participate in the Program).
170. See Salute, 136 F.3d at 298.
171. Id. The owner of the apartment complex in Salute had accepted Section 8 vouchers from existing tenants who began participating in the Program during their tenancy. Id. at 296. The plaintiffs, prospective tenants, were subsequently denied apartments because they were voucher-holders. Id. The Second Circuit held that the landlord did not violate the statute because there was an exception to the "take one, take all" provision so that a landlord did not have to accept Section 8 vouchers after agreeing to participate for existing tenants. Id. at 298. The court noted that to hold otherwise would encourage eviction of tenants who had "experienced reversals of fortune" and had enrolled in the Program, undermining the congressional intent of the provision. Id. at 295. But reading the provision in light of "the voluntary nature of the Section 8 program," the court upheld the exception drawn by the district court. Salute, 136 F.3d at 298.
This argument sounds persuasive, but does not fit within any of the three ways that a federal statute preempts state or municipal law.\(^{172}\) State or local law can be preempted by federal law when: (1) Congress has expressly stated that the federal law preempts state law;\(^{173}\) (2) the federal legislation is so comprehensive that it leaves "no room" for state law in that area;\(^{174}\) or (3) state law actually conflicts with federal law so that compliance with both is impossible or state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."\(^{175}\) The courts that have directly considered the issue of preemption in the context of source-of-income discrimination including protection for voucher-holders, have unanimously held that applicable federal legislation does not preempt state or local law.\(^{176}\) No language in the federal statute expressly preempts state legislation, the federal statute is not so comprehensive as to preempt the field, and it is not impossible to comply with both laws.\(^{177}\) Although the federal law is voluntary in nature, that voluntariness is "not at the heart of the federal scheme."\(^{178}\) Therefore, a state statute mandating landlord participation does not conflict or frustrate Congress's objective to aid lower income families in finding an affordable, decent place to live.\(^{179}\) Furthermore, "state laws imposing stricter requirements than federal law are not necessarily preempted."\(^{180}\)  

Although it did not address any of these arguments directly, the court in Godinez did not view its decision as mandating landlord participation in the Housing Choice Voucher Program, but rather as determining that invidious discrimination was not an acceptable reason for not participating.\(^{181}\) Because the Illinois Appellate Court left open the possibility that a landlord could successfully argue that com-  


\(^{174}\) See id. (commonly known as "field preemption").

\(^{175}\) See id. at 1106 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

\(^{176}\) Id. at 1107; see also Comm'n on Human Rights & Opportunities v. Sullivan Assocs., 739 A.2d 238, 245, 251 (Conn. 1999); Franklin Tower One, L.L.C. v. N.M., 725 A.2d 1104, 1114 (N.J. 1999).

\(^{177}\) See, e.g., Sullivan Associates, 739 A.2d at 246; Brown, 511 N.E.2d at 1105–06; Franklin Tower One, 725 A.2d at 1113.

\(^{178}\) See Franklin Tower One, 725 A.2d at 1113.

\(^{179}\) See Brown, 511 N.E.2d at 1106.

\(^{180}\) See Franklin Tower One, 725 A.2d at 1112.

plying with the Program creates a substantial financial burden, its holding does not make the Program mandatory.\textsuperscript{182}

4. Option of Awarding Fees and Costs

The court also could have reversed the circuit court’s holding, but instead of reinstating the Commission’s holding, the court could have deviated from it by not awarding fees and costs. Although this possibility weighs more heavily on the impact of the holding, as addressed below,\textsuperscript{183} it also bears on the preemption analysis. One could argue that awarding fees and costs in this case further causes a voluntary program to become mandatory.

The Second Circuit in \textit{Salute} reasoned that even if the plaintiffs had had a private right of action under the Fair Housing Act, the award of damages would be even more unlikely.\textsuperscript{184} The court said that to do so “might severely discourage landlord participation in the Section 8 program by creating an open-ended liability for landlord participants.”\textsuperscript{185} Similarly, the Seventh Circuit in \textit{Knapp} held that even though a jury determined that the landlord did discriminate against the plaintiff in violation of the statute, the district court was correct in limiting damages to equitable and contractual remedies, thus reducing the jury verdict of $95,000 to $1.\textsuperscript{186} The court based its affirmation on the consideration that allowing unlimited compensatory damages “would deter owners from participating in the section 8 program” and work against Congress’s goal to make housing more available to tenants participating in the Program.\textsuperscript{187}

Unlike the above cases, the result in \textit{Godinez} will not necessarily deter landlord participation in the traditional sense because landlords are not given a choice.\textsuperscript{188} In this case, although it would not be an issue of discouraging landlord participation, one could argue that awarding fees and costs in this case further strengthens the notion that a voluntary program is indeed mandatory. If a landlord feels open to unlimited liability, he or she may feel obligated to accept every

\begin{itemize}
\item \textsuperscript{182} See id. at 827.
\item \textsuperscript{183} See infra notes 216–221 and accompanying text.
\item \textsuperscript{184} Salute v. Stratford Greens Garden Apartments, 136 F.3d 293, 299 (2d Cir. 1998).
\item \textsuperscript{185} Id.
\item \textsuperscript{186} Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272, 1275 (7th Cir. 1995).
\item \textsuperscript{187} Id. at 1278.
\item \textsuperscript{188} The Illinois Appellate Court did not explicitly say so, but the Commission has held that “the City of Chicago has mandated that its landlords participate in the Section 8 program.” See \textit{In re Smith}, Nos. 95-H-159, 98-H-44/63, 1999 WL 308207, at *7 (Chi. Comm’n Human Relations Apr. 13, 1999).
\end{itemize}
voucher-holder that seeks to rent an apartment.\textsuperscript{189} Although it is still undetermined whether mandatory landlord participation would be preempted or otherwise unconstitutional, this is not the effect of the holding in \textit{Godinez}.\textsuperscript{190} Not only can the landlord object to the Program on the grounds of substantial financial burden, but he or she can reject a voucher-holder for any reason that a non-voucher-holding potential tenant would be rejected.\textsuperscript{191} 

In sum, the Illinois Appellate Court reached the right result by deferring to the Commission, adopting the Commission's interpretation of the law and its preemption analysis. While the court's holding is based on strong legal reasoning, the weaknesses inherent in these alternative arguments serve as additional support for the court's holding. By including the possibility for a de minimis burden exception, the court avoided having to determine whether making the Program mandatory would result in preemption.

\textbf{V. Impact}

The court reached the correct result, not only in terms of the law, but also for the future of Housing Choice Voucher holders. The law in Chicago, as affirmed by the Illinois Appellate Court, provides a workable solution that can be locally enforced and provides voucher-holders with a legal remedy.\textsuperscript{192} Prohibiting discrimination against voucher-holders based on their source of income will increase the availability of units for voucher-holders, especially in low poverty neighborhoods.\textsuperscript{193} This increased availability will create a better outlook for the future of the CHA's Plan for Transformation, and will give former public housing residents more possibilities in relocation.\textsuperscript{194} But the newly confirmed law is not the ultimate solution to housing discrimination. Landlords remain resistant to the Program and may attempt to use the "de minimis burden" exception to bypass

\textsuperscript{189} While this might have been the court's intent, it is not the holding of the case.

\textsuperscript{190} \textit{Compare Knapp}, 54 F.3d at 1282, \textit{with Smith}, 1999 WL 308207, at *16–19 (holding that the ordinance is not preempted, does not violate landlord's procedural due process, does not improperly infringe the landlord's freedom of contract, and does not violate the takings clause of the Fifth Amendment), \textit{and Attorney Gen. v. Brown}, 511 N.E.2d 1103, 1106 (Mass. 1987) (holding that just because Congress provided for voluntary participation, the states are not precluded "from mandating participation, absent some valid nondiscriminatory reason for not participating").

\textsuperscript{191} Franklin Tower One, L.L.C. v. N.M., 725 A.2d 1104, 1114 (N.J. 1999) (noting that a landlord always has the right to review a tenant's references, rental history, and other information, as long as he or she treats voucher-holders the same as any other prospective tenant).

\textsuperscript{192} \textit{See infra} notes 199–210 and accompanying text.

\textsuperscript{193} \textit{See infra} notes 211–226 and accompanying text.

\textsuperscript{194} \textit{See infra} notes 227–237 and accompanying text.
the law. The law applies only to the City of Chicago and, therefore, cannot be enforced against landlords throughout the state. Although mandating landlord participation in the Housing Choice Voucher Program would likely be permissible, it is not preferable. Until society can find a way to change the discriminatory attitudes perpetuating housing patterns segregated by class and race, no law will truly fulfill the goals of the Housing Choice Voucher Program.

A. What Will Godinez Remedy?

The Illinois Appellate Court's holding in Godinez served to reaffirm the City of Chicago's existing law against source-of-income discrimination, including protection for voucher-holders. This law, although not an ideal remedy, is a workable solution to the problems that currently plague the utility of the Housing Choice Voucher Program. The law can be enforced locally, and discrimination against voucher-holders can no longer be used as a proxy for racial discrimination. It provides legal recourse, including possible damage awards, for voucher-holders that have been discriminated against on the basis of their source of income. Overall it will increase the total number of units available to voucher-holders, which is especially important for the future of the CHA's Plan for Transformation.

1. A Workable Solution

Discrimination against Housing Choice Voucher holders has greatly diminished the Program's effectiveness and its ability to achieve its goals. Some have even argued that discrimination against voucher-holders has served as a proxy for racial discrimination. If the law permits discrimination on the basis of one's status as a voucher-holder, a landlord can use that status as an excuse for discrimination on the basis of race, gender, or other family characteristics.

Legal scholars have proffered various solutions to the problem. Paula Beck has proposed that the Fair Housing Act be amended to include source of income as a protected class. More specifically, she proposed that "status with regard to rental assistance" be pro-

195. See infra notes 238–249 and accompanying text.
196. See infra notes 250–254 and accompanying text.
197. See infra notes 255–271 and accompanying text.
198. See infra notes 272–277 and accompanying text.
199. See Beck, supra note 39, at 159.
200. Malaspina, supra note 1, at 313.
201. Id.; see also Beck, supra note 39.
ected from discrimination under the statute.\textsuperscript{203} On a smaller scale, one student article has proposed a course of action that some plaintiffs have already attempted: finding protection within existing law by molding source-of-income discrimination into another category of discrimination.\textsuperscript{204} This student also proposed HUD-promulgated regulations that would prohibit source-of-income discrimination, namely discrimination against voucher-holders based solely on their status as Housing Choice Voucher Program participants.\textsuperscript{205} These propositions are excellent for exactly that, propositions. The solutions proposed by these authors are idealistic, but not probable, especially considering the more conservative direction of many of our nation's policies.\textsuperscript{206}

If finding a solution that would provide maximum impact and immediate results is the ultimate goal, then the holding in \textit{Godinez} is not the answer. It is not universal, it is not sweeping, and change will take a long time. But where changes at the federal level are unlikely, the most realistic way to attack this problem is at the state and local levels.\textsuperscript{207} Beck proposed her amendment eight years ago and no change has been made.\textsuperscript{208} This, along with the holding of the Seventh Circuit in \textit{Knapp}, provides evidence of the tentativeness, if not resistance, of the federal legislature and judiciary to include source of income and especially Section 8 voucher-holders as a protected class.

Various state courts have held that the federal Fair Housing Act does not preempt state or local regulations that may be more restrictive or even make the Housing Choice Voucher Program mandatory with its jurisdiction.\textsuperscript{209} Congress has not made any amendments in response, possibly indicating acceptance of this interpretation (or at

\begin{itemize}
\item[203.] Id.
\item[205.] Id. at 476–79.
\item[206.] Jonathan Weisman, \textit{Bush Plans Sharp Cuts in HUD Community Efforts}, WASH. POST, Jan. 14, 2005, at A1. One proposal in the 2006 Federal Budget suggested that the Department of Housing and Urban Development may be eliminated altogether through its consolidation with the more business-friendly Commerce Department. \textit{Id.}
\item[207.] Cf. Beck, \textit{supra} note 39, at 170. Beck noted that the "handful of state cases [addressing the issue of source-of-income discrimination in housing] produced widely disparate results, suggesting that" federal legislation would be more effective. \textit{Id.}
\item[208.] Since Beck's article proposed amending the Fair Housing Act to include protection for source-of-income discrimination in 1996, there have in fact been bills proposing the expansion of the Fair Housing Act but only to the extent of adding protection against discrimination based on sexual orientation. \textit{See, e.g.}, H.R. 214, 108th Cong. (2003); H.R. 217, 107th Cong. (2001); H.R. 311, 106th Cong. (1999); H.R. 365, 105th Cong. (1997).
\end{itemize}
least not complete opposition).\textsuperscript{210} Perhaps by using administration at the state level as a test, national policy will follow suit.

2. \textit{The Chance for Change}

Although this solution may seem disjointed, it will offer much needed change in large cities where the need for affordable housing is reaching crisis levels. The widespread refusal of landlords to rent to voucher-holders may be the "most serious obstacle" to the utility of the Section 8 Program.\textsuperscript{211} The result of this pervasive nonparticipation has been "Section 8 submarkets," specific areas where landlords typically accept vouchers, and voucher-holders have, in response, limited their search for available units to those areas.\textsuperscript{212} At the very least, the law in Chicago provides a better path of recourse for voucher-holders who are victims of discrimination.\textsuperscript{213} At a grassroots level, local fair housing advocacy groups can conduct telephone research to enforce the provision, just as they currently do with race and gender discrimination.\textsuperscript{214}

Additionally, the Illinois Appellate Court's holding, allowing for the award of fees and costs, has the important function of making landlords responsible for knowing and abiding by the current law.\textsuperscript{215} Just the mere possibility of incurring liability, including damages and attorney's fees, will deter some landlords from discriminating against Housing Choice Voucher holders. For others, it will only deter overt discrimination, and they will find other reasons for rejecting voucher-holders as tenants.

Although not addressed in \textit{Godinez}, the Illinois Appellate Court has even authorized the Commission to award punitive damages.\textsuperscript{216} The provision of the Chicago Municipal Code that allows the Commission to award damages, fees, and costs was used in \textit{Page v. City of Chicago} to award punitive damages in the context of a claim for sexual harassment.\textsuperscript{217} The Illinois Appellate Court in \textit{Page} considered not only the language of the provision, but the fact that sexual harass-

\textsuperscript{210} See \textit{supra} note 208 and accompanying text.

\textsuperscript{211} Malaspina, \textit{supra} note 1, at 311.

\textsuperscript{212} \textit{Id.} (quoting \textsc{Stephen D. Kennedy & Meryl Finkel, Section 8 Rental Voucher and Rental Certificate Utilization Study: Final Report IV}, at 72 (1994)).

\textsuperscript{213} \textit{Id.} at 316.

\textsuperscript{214} \textit{Id.}


ment was an area where punitive damages “would be highly appropriate and necessary.”

Discrimination in housing, especially in instances where it is overt, would also be an appropriate area for awarding punitive damages. In fact, punitive damages may be a necessary measure for the Commission to take in order to hold landlords responsible for their actions and reduce the instances of source-of-income discrimination among them. The Commission touched on this point in its hearing of the Godinez case. In its opinion, the Commission stated that it did not award punitive damages in this particular case because of the landlords’ good-faith belief that they did not have to participate in the Section 8 Program. But, the Commission explicitly left open the possibility of awarding punitive damages in the future, implying that as time goes on, a good faith belief such as that held by the Godinezes will be less plausible.

Aside from providing legal recourse, the holding in Godinez will make more units of housing available to voucher-holders. For the most part, voucher-holders have been limited to apartments that are at or below the HUD-established FMR for their region. In April 1994, HUD encouraged PHAs to establish “exception rent” areas in order to expand the areas available for voucher-holders, namely “areas outside of high-poverty census tracts.” Because rent charged for units in these areas typically exceeds the FMR established by HUD, the exception purports to make more units available in “opportunity areas.”

The CHA, in an attempt to further the objective of transforming public housing and creating mixed-income communities, has designated certain Chicago neighborhoods as optimal for relocation and has increased the available rental subsidy in order to offset the higher rent in these areas. These “exception rent areas” include the Lin-
coln Park and Near North neighborhoods, where the CHA offers to pay up to twenty percent more than the FMR for voucher-holders who find units in these areas.226 Although this effectively increases the value of the voucher for the individual and seems to greatly expand the number of units available, if landlords are able to discriminate against voucher-holders based on their source of income, the additional opportunity is only theoretical. The holding in Godinez, affirming that source-of-income discrimination is against the law, will serve to make housing in these areas truly available for voucher-holders seeking an apartment.

3. The Future of the CHA’s Plan for Transformation

The current trend toward reliance on voucher and other mobility-based programs to house the nation’s poor purports to be the answer to the current isolation and segregation of minorities and the lower economic class. But as cities across the country attempt to quickly demolish existing high rises and transform their housing policies accordingly, the people and families that are affected have largely been forgotten.227 In Chicago, the CHA has used Section 8 vouchers to relocate families whose existing public housing units have been or will be demolished according to its Plan for Transformation.228 This is an ideal solution for the housing authority because the voucher program is easier to administer than the construction of new housing, and also because the CHA currently has no obligation to make sure the voucher-holders move to integrated areas.229 As a result, it seems that “[t]he CHA’s sole concern is that families receiving Section 8 vouchers find housing somewhere—anywhere—regardless of whether the housing is in an integrated neighborhood or not.”230

226. Id.
227. Crump, supra note 42, at 186. In fact, a recent report reflects that the Chicago Housing Authority has lost track of many of the former tenants of demolished high rise apartments. See Antonio Olivo, Report Hits CHA for Losing Residents, CHI. TRIB., July 22, 2005, § 2, at 3.
229. Seliga, supra note 41, at 1081. In Gautreaux, the Northern District Court of Illinois found that the CHA’s site selection for public housing sites and its procedures for unit allocation to tenants had violated the Equal Protection Clause of the Fourteenth Amendment by maintaining existing patterns of racial segregation in Chicago. Id. at 1056. The court-ordered remedy mandated a “scattered-site” system for the construction of new public housing buildings, with equal numbers of units in both predominantly African American and predominantly white areas. Id. at 1050. Litigation surrounding the implementation of this mandate is ongoing, with one of the most recent decisions holding that the order does not apply to the Section 8 Program. Id. at 1081.
230. Id. at 1082. Although the original mandate in Gautreaux may not apply to the Section 8 Program, a new lawsuit was filed similarly challenging the Chicago Housing Authority’s reloca-
The rapid relocation of families, with neither the time nor resources to explore their options for new housing, has resulted in relocation to privately owned housing in low-income, mostly black neighborhoods.\textsuperscript{231} In other words, the result of the CHA's current approach to the implementation of vouchers as a part of its Plan for Transformation is simply moving low-income residents into equally bad neighborhoods, or sometimes neighborhoods even worse than those they are leaving.\textsuperscript{232} One author commented: "Regrettably, it may take another round of ghetto explosions before policy-makers admit that there are no quick fixes to the legacy of systematic discrimination that has shaped the American city."\textsuperscript{233}

Much of the litigation and scholarly writing surrounding the implementation of the City's plan was focused on racial discrimination.\textsuperscript{234} But, as one author pointed out, race alone cannot be the only cause of segregated housing patterns.\textsuperscript{235} Underlying racial prejudice is a "heavy overtone of class-based discrimination."\textsuperscript{236} If class-based discrimination is permitted under the law, the racial discrimination that often accompanies it becomes permissible as well.\textsuperscript{237} The holding in \textit{Godinez} will help reverse this cycle and allow voucher-holders to move to neighborhoods that are truly of their choosing. As landlords begin to understand that they can no longer say, "I don't accept Section 8," and as more local testers discover source-of-income discrimination, more units will be available to voucher-holders. This increase in available units should improve the outlook for the CHA's Plan for Transformation, and possibly even alleviate the need for further litigation surrounding its implementation.
B. Obstacles Remain

Although the holding in \textit{Godinez} is a huge step forward for the future of public housing policy in Chicago, some obstacles could prove to be major setbacks if not handled properly. The Illinois Appellate Court left open the possibility that a landlord could circumvent the law by claiming that participation in the voucher program will cause him or her a substantial financial burden.\footnote{Godinez v. Sullivan-Lackey, 815 N.E.2d 822, 828 (Ill. App. Ct. 2004).} Considering their continued reluctance to participate in the Program and to accept voucher-holders as tenants, landlords are likely to use this exception to its full extent if allowed by the Commission and by the courts. Also, considering the limited scope of the Chicago ordinance, it will have a limited impact on the choices of voucher-holders if the city’s surrounding communities and other communities throughout the state of Illinois do not adopt similar provisions. Furthermore, the policy of mandating the Program for landlords, if not accompanied by incentives, may have adverse consequences for landlord participation and for the Program as a whole.

1. One Major Loophole: The “De Minimis” Burden

The holding in \textit{Godinez} will foreclose many of the reasons that landlords have proffered for why they do not accept vouchers-holders as tenants (or why they do not like to accept them). Although a number of these reasons were illogical to begin with, they are now clearly illegal. Take, for example, a landlord who is concerned about nonpaying tenants. Because the payment assistance contract signed by both the landlord and the PHA guarantees payment, a landlord is in fact better off accepting a voucher-holder than he or she would be accepting many other tenants. This type of excuse not only reflects a landlord’s lack of knowledge and understanding of the Program, but also reflects a hostile attitude toward accepting voucher-holders as tenants.

After \textit{Godinez}, a landlord can only offer two rationales for rejecting a Housing Choice Voucher holder: (1) compliance with the Program would result in a substantial financial burden, or (2) a tenant was rejected for a nondiscriminatory reason that could apply to any prospective tenant.\footnote{See id.} At least one court has accepted the argument that nondiscriminatory, “objectionable features of the Section 8 lease” re-
sulted in the refusal to rent the unit.240 In most states, landlords can still refuse a tenant on the grounds that the requirements under the Section 8 Program serve an unduly onerous financial burden—an objection to the burdens of Section 8 compliance, rather than an objection to Section 8 tenants (a difficult distinction).241 The way that future courts apply the de minimis burden standard will be important in determining the real impact of Godinez. The less substantial the financial burden needs to be for the landlord to be permitted to reject voucher-holders, the more it will be used as an excuse by landlords. In fact, this exception has the potential, if applied incorrectly, to swallow the protection of the ordinance.

The FMR for a given locality is determined annually by HUD and is used by the PHAs to determine the payment standard amount.242 The proposed FMRs for 2005, published on August 6, 2004, were calculated in a new way using data from the 2000 Census and the new Office of Management and Budget (OMB) metropolitan area definitions.243 The net result of this calculation was to lower FMRs in certain areas, which would have effectively decreased the value of individual vouchers in the Housing Choice Voucher Program.244 In part, as a result of the public outcry that ensued, HUD recalculated the FMR using the old metropolitan area definitions used for the 2004 calculations.245 This accounted for any change in the FMR as a result of geography, but using the most recent census data still resulted in a decrease in some areas.246 Although the new rents do not change the number of vouchers available or reduce the Program’s budget, it reduces the value of a voucher to an individual or family.247 A landlord may attempt to use these new figures to claim that participation in the Housing Choice Voucher Program causes an unreasonable burden. If this argument is offered by a landlord, it should fail because


241. Malaspina, supra note 1, at 316.


243. Id.

244. Grady & Olivo, supra note 5.

245. Fair Market Rents, 69 Fed. Reg. at 59,004. The final FMRs, effective October 1, 2004, reflect this calculation. Id.

246. Id. at 59,008–09. Where possible, the 2000 Census data was updated by random, digit-dialing survey data.

247. Id.

248. Grady & Olivo, supra note 5.
the HUD calculations are based on the most recent available data and adjusted annually. 249

2. Limited Application

Unfortunately, the Illinois Appellate Court did not have a way of expanding its decision to impact a larger area and was forced to limit its scope to the City of Chicago, to the exclusion of Cook County and the surrounding areas. 250 The Chicago Fair Housing Ordinance is broader than the Illinois Human Rights Act, offering protection against discrimination for a greater number of people. Under the Illinois Human Rights Act, "[u]nlawful discrimination" means "discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, handicap, military status, or unfavorable discharge from military service . . . ." 251 Because source of income is not included in this definition, in order for it to be a protected class, an individual municipality would have to pass its own law prohibiting discrimination based on source of income. 252

This will limit the impact of the Godinez holding in the Chicago metropolitan area and beyond. As voucher-holders attempt to use their subsidies outside of the city limits, other mobility issues aside, they will almost certainly find that many landlords simply do not accept Section 8 tenants. 253 Unfortunately, where source of income is

249. Beck, supra note 39, at 164. For the 2006 Final Fair Market Rent calculations, effective October 1, 2005, see Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2006, 70 Fed. Reg. 57,654 (Oct. 3, 2005). The 2006 FMRs were calculated using the revised OMB county-based statistical area definitions with some modifications to limit the number of large changes. Id.


251. 775 ILL. COMP. STAT. 5/1-103(Q).

252. Although this is the current state of the law, efforts to amend the Illinois Human Rights Act to include protection against "source of income" discrimination are ongoing. The most recent effort is a bill introduced to the Illinois State Senate on February 2, 2005. This bill adds source of income as a protected category, defining the term as follows: (O-5) "Source of Income. Source of income means any lawful income, subsidy, or benefit with which an individual supports himself or herself and his or her dependents, including, but not limited to, child support, maintenance, and any federal, State, or local public assistance, medical assistance, or rental assistance program." S.B. 0167, 94th Gen. Assem., Reg. Sess. (Ill. 2005).

253. Tegeler et al., supra note 64, at 453. The authors created a fictional person whose experience they felt represented that of many individuals trying to obtain or use a Section 8 voucher. Id. at 451 n.1. This article provides an excellent discussion of the mobility issues faced by voucher-holders when attempting to use their vouchers in a city's surrounding suburbs. Id. at 461-86.
not a protected class, this response is permissible under the law of the state and the individual has little recourse against the landlord.

Under both federal law and the current law of most states, the only way to expand the legal protection for voucher-holders would be to encourage other municipalities in Illinois and across the country to pass similar legislation. The City of Chicago Fair Housing Ordinance and the Chicago Commission on Human Relation's resulting interpretation should serve as an example for the rest of the country. The Commission's broad interpretation and strict enforcement of the statute truly serve to further the goal that all residents are able to seek housing free from discrimination. Further, the Commission's action is consistent with the purported goal of the Housing Choice Voucher legislation: "aiding low-income families in obtaining a decent place to live and promoting economically mixed housing . . . "

3. Mandating, Rather Than Encouraging, Landlord Participation

Although the Illinois Appellate Court in Godinez did not intend its holding to mandate landlord participation in the Housing Choice Voucher Program, the Commission does not seem at all uncomfortable with this interpretation. The Commission rejected the Godinezes' argument that to include Section 8 vouchers within the definition of "source of income" would be to involuntarily subject every landlord to the requirements of the Program. The Commission's opinion used stronger language than the Illinois Appellate Court, addressing the issue head-on:

[A] landlord who is approached by a prospective Section 8 tenant has a duty to seek approval to accept Section 8 for the unit in question. . . . The Commission now holds that a landlord must make at least a good faith effort to comply with the requirements. . . . The mere possibility that a property may not be approved cannot excuse a refusal to seek the necessary approval in the first place.

In addition to the Commission, courts have held that federal law does not preclude states from mandating landlord participation in the Housing Choice Voucher Program. These arguments arise in judicial decisions in the context of preemption analysis, but there is a policy consideration at stake as well. Regardless of the law, the reality is

256. Id. at *3.
257. Id. at *4.
258. See supra notes 176–180 and accompanying text.
that landlords are resistant to participate in the Housing Choice Voucher Program.\textsuperscript{259}

In 1987, in an effort to encourage landlord participation, Congress passed the "take one, take all" provision, stating that once a landlord had accepted a Section 8 tenant, he or she could no longer refuse to accept Section 8 tenants based solely on their status as subsidy recipients.\textsuperscript{260} In practice, this statute had the opposite of its intended effect by creating a disincentive for landlords to participate at all in the Program because subsequent tenants seeking to rent automatically had a discrimination claim.\textsuperscript{261} Congress repealed the statute in 1996, largely because of the unforeseen adverse consequences.\textsuperscript{262} The short life of this statute serves to illustrate the difficulty in resolving the tension between measures that encourage landlord participation and measures that are more coercive.

Landlords have proffered countless reasons as to why they are opposed to participating in the Housing Choice Voucher Program. Some are unreasonable assumptions based on stereotypes, but others do have merit.\textsuperscript{263} Landlords are mainly concerned about two aspects of the Program: the ability to evict an unfavorable tenant, and the financial burden of maintaining the unit in compliance with the specifications of the Program.\textsuperscript{264} There are specific procedural requirements for evicting a tenant under the Program that must be complied with, otherwise the eviction is invalid.\textsuperscript{265} Additionally, HUD has established Housing Quality Standards (Standards) for the units that are occupied by voucher-holders.\textsuperscript{266} The Standards are usually no more stringent than the local building code, but compliance with the Standards is more closely watched by the local PHA than the building codes are by local inspectors.\textsuperscript{267} Units are inspected initially, and then annually upon renewal of the lease.\textsuperscript{268} If a violation is found and the owner does not promptly make repairs, the PHA will terminate the contract and cease making payments.\textsuperscript{269}

\begin{footnotesize}
\begin{enumerate}
\item[259.] Malaspina, supra note 1, at 311-12.
\item[260.] This provision was passed as a part of the Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 147, 101 Stat. 1815 (1988) (codified at 42 U.S.C. § 1437ff(t)).
\item[261.] Beck, supra note 39, at 167.
\item[262.] Franklin Tower One, L.L.C. v. N.M., 725 A.2d 1104, 1109 (N.J. 1999) (citing Beck, supra note 39, at 157).
\item[263.] Beck, supra note 39, at 163-66.
\item[264.] Malaspina, supra note 1, at 312-13; see also Beck, supra note 39, at 165-66.
\item[265.] Malaspina, supra note 1, at 313.
\item[266.] Beck, supra note 39, at 175:
\item[267.] Id.
\item[268.] Id.
\item[269.] Id.
\end{enumerate}
\end{footnotesize}
Mandating the Housing Choice Voucher Program may have future adverse consequences. The obligation to seek Section 8 compliance may drive some landlords out of the market if they do not wish to participate. Others may raise their rent so that it is higher than the FMR, and their units would therefore be less likely to attract voucher-holders as potential tenants. In order to avoid these results, HUD and the local PHAs need to work together to pass incentives to encourage landlords to participate in the Program. First, steps could be taken to educate landlords about the existing benefits of participation. Many landlords might feel differently about the Program if they knew about some of the protections it offers them.\textsuperscript{270} Second, if owners were permitted to treat voucher-holders in the same way that they treat other tenants, using the same lease provisions and governed by the same state and local rules for eviction, more landlords would be likely to participate.\textsuperscript{271}

Legislated change, even when backed by the judiciary, does not necessarily have the effect of actual change. In fact, "the most salient option in promoting racially-integrated neighborhoods is to reverse the discriminatory attitudes that furnish the motivation in the first instance, whether the motivation be class-based or race-based or one as a pretext for the other."\textsuperscript{272} One author has noted that despite it being "130 years since Congress prohibited racial discrimination in housing," pervasive racial discrimination and segregation exist within the public housing system, particularly in the Section 8 Program.\textsuperscript{273} She argued that this was largely due to HUD's failure to take affirmative action to insure that its programs were administered in compliance with the law, even when ordered by a court pursuant to litigation.\textsuperscript{274} Of course the degree of effectiveness of any antidiscriminatory legislation such as this depends on the degree to which the discrimination can be detected and if found, an appropriate consequence applied. An effective detection and meaningful consequence will likely result in deterrence and ultimately a decrease in the prevalence of discrimination. HUD could aid in this effort by creating a fair housing en-

\textsuperscript{270} See id. at 163–64. For instance, because the landlord signs a contract with the PHA, the landlord is guaranteed payment of rent for the year. A landlord can evict a tenant for serious violations of the lease, violations of the law, and for good cause. Id.

\textsuperscript{271} Malaspina, supra note 1, at 314.

\textsuperscript{272} Krzewinski, supra note 235, at 328.

\textsuperscript{273} Florence Wagman Roisman, Long Overdue: Desegregation Litigation and Next Steps to End Discrimination and Segregation in the Public Housing and Section 8 Existing Housing Programs, 4 CITYSCAPE: J. POL'Y DEV. & RES. 171, 171 (1999).

\textsuperscript{274} Id. at 174.
forcement organization in each city and metropolitan area where there is a demonstrated need.\textsuperscript{275}

Some might argue that by mandating landlord participation in the Program, changes in the prevalence of source-of-income discrimination may mimic the history of race discrimination in housing—following the Fair Housing Act, overt discrimination slowly disappeared, but it was replaced by a more covert discrimination.\textsuperscript{276} This kind of discrimination is less easily detectable, and more importantly, less easily proven in a court of law.\textsuperscript{277} If the municipality were to pass provisions that were designed to promote rather than mandate landlord participation, discrimination against voucher-holders would be less likely to go unchecked.

The holding in \textit{Godinez} has the potential to greatly influence the future of the Housing Choice Voucher Program. It reinforces the existing law in Chicago, puts landlords on notice, and provides legal recourse for voucher-holders. This "chance for change" will at least begin to address some of the obstacles faced by voucher-holders in attempting to use their subsidies prior to their expiration. The law should make more units available for voucher-holders, particularly in opportunity areas, which is particularly important for those relocating as a part of the CHA's Plan for Transformation. Of course the law is not an all-encompassing solution. The de minimis burden exception allowed by the court, if applied improperly, has the potential to eliminate the protection of the ordinance. The applicability of the ordinance is limited to the City of Chicago, but will serve as a model for other states and municipalities. Finally, a program that effectively mandates landlord participation may have an adverse effect on the rental market. Until the discriminatory attitudes that sustain this class-based discrimination are eliminated, legislated change only goes so far.

\textbf{VI. Conclusion}

The Illinois Appellate Court's holding in \textit{Godinez v. Sullivan-Lackey} will help provide a meaningful choice for Housing Choice Voucher holders. With the increased reliance of national and local housing policy on subsidized vouchers, the ability of individuals to use

\textsuperscript{275} Id. at 175. Of course, considering HUD's 2006 eleven percent Discretionary Budget decrease and the present administration's focus on homeownership initiatives, this proposal is likely to remain just that. \textit{See DEP'T HOUS. URBAN DEV., OVERVIEW OF THE PRESIDENT'S 2006 BUDGET}, 167, 167 (2005), http://www.whitehouse.gov/omb/budget/fy2006/pdf/budget/hud.pdf.

\textsuperscript{276} Krzewinski, \textit{supra} note 235, at 326.

\textsuperscript{277} Id.
the vouchers has become increasingly important. Landlord discrimination against voucher-holders based on their source of income is a large obstacle for tenants seeking available units, especially in lower poverty areas. The difficulty that some voucher-holders have in finding an available unit was illustrated by the experience of Ms. Sullivan-Lackey.

In its opinion, the Illinois Appellate Court bolstered the Chicago Commission on Human Relations’s authority to interpret and enforce the law by according the proper degree of deference to the agency. Although the opinion is a bit short on reasoning, past Commission decisions use proper legislative analysis to arrive at their interpretation that voucher-holders are a protected class under the law. An exploration of preemption analysis and alternative results demonstrates that the court reached the right result.

The Chicago law, although not ideal, is a workable solution, providing a chance for change. It can be enforced locally and can provide a legal recourse for voucher-holders who experience discrimination, bolstered by the possibility of incurring fees and even punitive damages. The CHA’s Plan for Transformation will provide benefits in the form of increased availability of units and more attractive options for former public housing residents who are forced to relocate. These future changes, however, depend in large part on actions to promote landlord participation and future courts’ application of the de minimis burden exception. Either factor has the potential to eliminate any benefits gained by the newly supported law. Finally, because the law and the court’s holding apply only within the Chicago city limits, the scope of its impact depends on the willingness of other municipalities in Illinois and throughout the country to follow suit. And of course, only limited change can be made if the underlying discriminatory attitudes remain, perpetuating current housing patterns segregated by race and class.

Laura Bacon*

* J.D. Candidate, 2006, DePaul University College of Law. Thank you to Doug Schenkelberg and Steven McKenzie at the Lawyer’s Committee for Better Housing for steering me toward this fascinating and timely topic and for their continued support throughout the writing process. Thank you also to Raj Nayak and Kate Waltz at the Sargent Shriver National Center on Poverty Law for their assistance.