

Legal Alert: Appellate Division Holds Mandatory Section 8 Participation Unconstitutional

March 9, 2026

In a significant decision affecting housing providers across New York, the Appellate Division, Third Department has held that New York's source-of-income discrimination law cannot be used to compel landlords to participate in the Section 8 Housing Choice Voucher Program.

On March 5, 2026, the court issued its decision in *Matter of People of the State of N.Y. v. Commons West, LLC* addressing Section 8 vouchers and New York's source-of-income discrimination law.

The court examined New York Executive Law § 296(5)(a)(1), which generally prohibits landlords from refusing to rent based on a tenant's lawful source of income, including Section 8 vouchers. The court held that, as applied to Section 8 participation, the statute is *facially unconstitutional*.

The court's reasoning focused on the Housing Assistance Payment (HAP) contract required for participation in the Section 8 program. That contract grants the administering agency the right to inspect rental units and access related records. The court found that forcing landlords to participate in the program effectively compels them to consent to potential warrantless inspections, creating a credible concern under the Fourth Amendment to the United States Constitution.

The court also rejected the State's argument that policy changes by New York State Homes and Community Renewal (HCR) resolved the issue. Because those policies are voluntary and not codified into law, the court determined that they do not eliminate the constitutional concerns associated with the inspection requirements.

As a result, the decision concludes that landlords cannot be compelled under the New York State Human Rights Law to participate in the Section 8 program where doing so requires consent to inspections that may implicate constitutional protections.

Practical Implications: Importantly, the ruling *does not eliminate other lawful source-of-income protections*, which remain in effect. However, if other subsidy programs impose inspection or access requirements similar to Section 8, the decision may provide a good-faith basis to challenge mandatory participation in those programs.

We will continue to monitor further legal developments and advise accordingly.