

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CITY OF AUSTIN, §
Plaintiff, §
§
v. § NO. _____
§
STATE OF TEXAS and GREG ABBOTT, §
Texas Governor, in his official capacity, §
Defendants. §

CITY OF AUSTIN'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

The City of Austin (“City”) files this Original Complaint seeking declaratory and injunctive relief to prevent further implementation of Texas Local Government Code Section 250.007 (“Section 250.007”), a law that largely eliminates the City’s authority to protect local residents who pay for housing with federal housing choice vouchers.

I. SUMMARY

1. Texas violated the Supremacy Clause of the U.S. Constitution when it prevented cities and counties from enacting “source of income” protections for recipients of federal housing assistance, like individuals and families who participate in the Housing Choice Voucher (HCV) Program. The purpose of the HCV Program is to assist “low-income families in obtaining a decent place to live and of promoting economically mixed housing.” 42 U.S.C. § 1437f(a). As a recipient of federal community development block grant funds, the City is required to certify that it will “affirmatively further fair housing.” 42 U.S.C. § 5304(b)(2). To affirmatively further fair housing means that the City will take steps to remove local barriers to fair housing choice. Landlords who refuse to rent to individuals and families who pay rent under the HCV Program create a barrier to housing choice. To address this barrier, the City adopted an ordinance prohibiting discrimination against

individuals who pay rent under the HCV Program. In response, the State enacted Section 250.007 with the goal to override the City's authority to provide source of income protections. The City seeks a declaration that Section 250.007 obstructs the purposes and objectives of Congress and is therefore subject to federal preemption. *See Crosby v. NFTC*, 530 U.S. 363, 373 (2000)

II. JURISDICTION AND VENUE

2. The Court has jurisdiction under 28 U.S.C. § 1331 to decide the City's claim under the Supremacy Clause of the United States Constitution. The Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, provides the Court with further remedial authority.
3. Venue properly lies within the Western District of Texas. Plaintiff reside in this District, and Defendant Governor Abbott resides in this District and maintains offices in this District. 28 U.S.C. §§ 124(d)(1), 1391(b)(1). Further, a substantial portion of the events or omissions giving rise to this action occurred or will occur in this District. 28 U.S.C. § 1391(b)(2).

III. PARTIES

4. Plaintiff City of Austin, appearing and proceeding by and through its City Attorney, is a home-rule municipality and political subdivision of the State of Texas.
5. Defendant State of Texas is responsible for the actions of its officials with regard to state-wide enforcement of its laws and regulations.
6. Defendant Greg Abbott is the elected Governor of the State of Texas. Governor Abbott is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. The City Enacted a Source of Income Ordinance to Broaden Housing Opportunities for Participants in the Federal Housing Choice Voucher Program

7. Within the City of Austin, several thousand individuals and families have been awarded vouchers pursuant to the federal Housing Choice Voucher Program.

8. Unfortunately, the vast majority of local landlords refuse to rent their properties to HCV holders.

9. Thus, despite being able to pay for housing with federally-guaranteed benefits, HCV holders are often denied housing in higher opportunity neighborhoods in the City, including housing in neighborhoods with higher quality schools and lower rates of crime.

10. As a result of diminished housing choice, including reduced choice due to landlord discrimination against HCV holders, a large majority of voucher holders are segregated to lower opportunity areas of the City.

11. The segregation of HCV holders to lower opportunity neighborhoods disproportionately impacts African-American and Hispanic residents, children, and disabled individuals.

12. As a recipient of federal funds, including community development block grants from the Department of Housing and Urban Development (HUD), the City has committed to affirmatively further fair housing.

13. On April 17, 2014, the City Council approved a resolution directing the City Manager to bring City Council an ordinance that would provide fair housing protections to HCV holders. The City Council cited a HUD report, “The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes,” showing that source of income laws can substantially improve the ability of HCV holders to access housing in high opportunity areas. In support of its resolution, the City Council made findings including: as of 2014, the local housing authority administered 5,800 HCVs, serving 15,200 people, including 997 seniors, 3,578 persons with disabilities, and 7,765 children; the average income of an HCV participant was \$14,000; and the average wait time to receive a HCV was more than five years. The City Council also noted a local study that showed that, as of 2012, 91% of Travis County landlords did not accept HCVs.

14. On December 11, 2014, the City Council amended the City of Austin's fair housing law to prohibit discrimination against renters based on source of income (the "Ordinance"). Source of income is defined as lawful and verifiable income, including income provided by the HCV program. The Ordinance took effect January 12, 2015.

B. After a Landlord Challenge, the District Court for the Western District of Texas Ruled that the Ordinance Fulfills Federal Objectives and Should Not Be Enjoined

15. The Austin Apartment Association immediately sought to enjoin the City's Ordinance. In response, the District Court, Judge Sam Sparks presiding, ruled that the Ordinance is consistent with federal purposes and objectives as described in the FHA, and denied relief. *Austin Apartment Ass'n v. City of Austin*, 89 F.Supp.3d 886 (W.D.Tex. 2015) (issued Feb. 27, 2015).

16. The Court noted that Congress created the Housing Choice Voucher Program to "aid low-income families in obtaining a decent place to live" and to "promote economically mixed housing." 89 F.Supp.3d at 889 (citing 42 U.S.C. § 1437f(a)).

17. In regard to the City's ordinance, the Court found "[t]he Ordinance, in protecting from discrimination all of the classes protected under federal law and then some, exhibits the essential feature of federal fair housing law." 89 F.Supp.3d at 893.

18. Specifically, the Court found:

[T]he Ordinance advances an obviously legitimate government interest: ensuring low-income persons—many of whom are racial minorities, children, disabled, or elderly—have access to affordable housing (and thus to better schools and safer neighborhoods) throughout the City of Austin.

89 F.Supp.3d at 898; *see also id.*, at 902 ("the Ordinance substantially advances an obviously legitimate government interest: ensuring low-income persons will have access to affordable housing throughout the City of Austin").

19. The Court also found:

The record shows HCVP participants suffer serious discrimination in the Austin private housing market and, to the extent they are able to find housing, are concentrated in the poorest areas of the City. The City determined the public interest required discrimination against voucher holders be prohibited, as have dozens of states and municipalities around the nation.

89 F.Supp.3d at 899-900.

C. After the District Court's Ruling, the Texas Legislative Enacted Senate Bill 267, Which Largely Obstructed the City's Source of Income Protections

20. On June 19, 2015, Governor Abbott signed into law SB 267, a law that specifically overruled the City's ordinance. At the time SB 267 was signed into law, no other Texas city or county had enacted local protections for HCV holders.

21. SB 267 was codified as Texas Local Government Code Section 250.007 ("Regulation of Rental or Leasing of Housing Accommodations"), effective September 1, 2015. Section 250.007 provides:

Except as provided by this section, a municipality or county may not adopt or enforce an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program.

(b) This section does not affect an ordinance or regulation that prohibits the refusal to lease or rent a housing accommodation to a military veteran because of the veteran's lawful source of income to pay rent.

(c) This section does not affect any authority of a municipality or county or decree to create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to encourage the acceptance of a housing voucher directly or indirectly funded by the federal government, including a federal housing choice voucher.

TEX. LOCAL GOV'T CODE § 250.007.

22. Beginning September 1, 2015, Section 250.007 limited the Ordinance's protections to HCV holders who are military veterans.

23. Without the ability to enforce its Ordinance on behalf of all City residents, the City has lost an important and effective tool to redress discrimination and further fair housing.

24. Due in part to the limitations on local authority imposed by Section 250.007, HCV holders—including a disproportionate number of Black and Hispanic residents, children, and disabled individuals—do not have access to housing in many of the higher opportunity areas of the City.

V. CLAIMS

CAUSE OF ACTION: PREEMPTION

25. The City hereby incorporates by reference the preceding paragraphs 1 through 24.

26. Section 250.007 violates the Supremacy Clause of the United States Constitution by obstructing the purposes and objectives of Congress to promote decent housing for low-income families and fair housing choice, as expressed in the Housing Choice Voucher Program, the Fair Housing Act, and the Housing and Community Development Act, among other laws. *See* 42 U.S.C. §§ 1437(a) 1437f(a), 3601, 5304(b). Section 250.007 also specifically conflicts with HUD interpretations of federal law, including its determination that local source of income protections are consistent with Congressional fair housing objectives. *See* 24 C.F.R. § 982.53. By continuing to enforce Section 250.007, Texas has frustrated the City’s ability to redress segregation, promote integration, and otherwise pursue the federal objective of fair housing.

PRAYER FOR RELIEF

The City seeks relief including:

- A. A declaration that Section 250.007 is unconstitutional;
- B. A preliminary and permanent injunction barring Texas and Governor Abbott from enforcing Section 250.007; and

C. Any further relief that the Court deems fit and proper.

Respectfully submitted,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Michael Siegel

MICHAEL SIEGEL
State Bar No. 24093148
michael.siegel@austintexas.gov
PATRICIA LINK
State Bar No. 24041343
patricia.link@austintexas.gov
Telephone: (512) 974-2888
Facsimile: (512) 974-1311
City of Austin – Law Department
P. O. Box 1546
Austin, Texas 78767-1546

ATTORNEYS FOR PLAINTIFF