State of New York
Court of Appeals

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 86
In the Matter of the People &c.
by Letitia James, &c.,
Appellant,
v.
Commons West, LLC, et al.,
Respondents.

Patrick A. Woods, for appellant.
Curtis A. Johnson, for respondents
Safe Horizon, Inc. et al., American Civil Liberties Union et al., CNY Fair Housing, Inc. et al., National Housing Law Project et al., Housing Works et al., amici curiae.

Order reversed, with costs, and respondents' motion to dismiss the proceeding and cross-motion for summary judgment on their counterclaim for declaratory relief denied. Chief Judge Wilson and Judges Singas, Troutman and Halligan concur, Chief Judge Wilson in a concurring opinion, in which Judges Troutman and Halligan concur and Judge Singas in a separate concurring opinion. Judge Garcia dissents and votes to affirm in an opinion, in which Judges Rivera and Cannataro concur.

Decided November 23, 2026

WILSON, Chief Judge (concurring):

The New York State Human Rights Law (HRL) prohibits landlords from discriminating against tenants based on their source of income. The federal Section 8 program provides housing assistance to needy persons. Several landlords in Tompkins

County challenge the HRL as facially unconstitutional — although the HRL itself says nothing about searches or inspections — because federal law requires inspections of rental properties as part of the Section 8 program. The landlords contend that the HRL is facially unconstitutional because they cannot refuse tenants on the basis of their receipt of Section 8 vouchers, and are thus forced to submit to inspections of their properties, books and records in violation of the Fourth Amendment to the U.S. Constitution. Because the HRL itself contains no search requirement and, even if the State and Federal laws could somehow be treated as a single statute, the combination would not be unlawful in every application, we hold that the HRL is not facially unconstitutional.

I.

Fifty years ago, Congress passed the Housing and Community Development Act of 1974, amending the U.S. Housing Act of 1937 by adding a housing choice voucher program—now commonly referred to as Section 8. The Section 8 program aims to help "low-income families in obtaining a decent place to live" and to "promot[e] economically mixed housing" (42 USC § 1437f [a]). Public housing agencies (PHAs)—which may be state, county, or local agencies—administer the program pursuant to guidance from the United States Department of Housing and Urban Development (HUD), which also funds the program (42 USC § 1437a [b] [6]; 24 CFR. 982.51). HUD provides qualifying Section 8 beneficiaries with assistance payments in the form of vouchers that they may use to pay rent, cover homeownership expenses, or buy a home (42 US.C §§ 1437f [o], 1437f [y]).

Section 8 obliges participating landlords to sign a Housing Assistance Payments (HAP) contract with a PHA (42 USC § 1437f [c] [8]). HUD sets the HAP contract terms

(24 CFR 982.451 [a] [1]). The present HAP contract requires landlords to grant the PHA access to the property and provide access to any relevant records. Section 8 also requires PHAs to inspect rental units for safety and habitability once before a renter can receive vouchers to pay for that property, biennially thereafter, and additionally in response to complaints (42 USC § 1437f [o] [8]). Despite the language in the HAP contracts regarding landlord consent, no statutory provision mandates the PHA rely on landlord consent to conduct inspections, nor does any statutory provision mandate inspection of landlord records.

In 2019, New York amended the HRL, making it illegal for landlords to discriminate against prospective renters based on their source of income. The Legislature enacted that change to combat widespread behavior by landlords rejecting tenants for their use of assistance vouchers (New York State Division of Budget, Mem. in Support of Fiscal Year 2020 Exec. Budget, Educ., Labor, and Family Assistance Art. VII Legislation, 24.1). Executive Law § 296(5)(a) provides:

> "5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof: (1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the . . . lawful source of income . . . of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available."

Executive Law § 292(36) defines "lawful source of income" to include:

> "income derived from . . . any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and any other forms of lawful income. The provisions of this subdivision shall not be construed to prohibit the use of criteria or qualifications of eligibility for the sale, rental, leasing or occupancy of publicly-assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program."

In 2020, two prospective tenants filed complaints with the Attorney General, asserting that the respondent landlord owners of certain residential rental properties in Tompkins County had refused to rent apartments to them because they intended to pay with Section 8 vouchers. The Attorney General began this proceeding under Executive Law § 63 (12), alleging that the landlords' refusal violated Executive Law § 296 (5) (a) (1). The Attorney General sought an injunction compelling the landlords to design and implement nondiscriminatory housing accommodation policies regarding sources of income, set aside a percentage of units in each of their buildings for Section 8 recipients for three years, undergo court monitoring and pay restitution and civil penalties.

The landlords moved to dismiss the petition on several grounds and brought a cross-claim seeking declaratory relief. The relevant ground here is their contention that the HRL has the effect of compelling them to participate in the Section 8 program if an otherwise qualified prospective tenant applies to rent an apartment with Section 8 income. Then, because the required federally prescribed HAP contract requires the landlords to consent to searches, the landlords are being subjected to warrantless inspections of property and

records in violation of the Fourth Amendment. Tompkins County Supreme Court agreed and dismissed the Attorney General's petition; it held that Executive Law § 296(5)(a)(1) was "unconstitutional to the extent that it makes it an unlawful discriminatory practice to refuse to rent or lease housing accommodations to any person, or group of persons, because their source of income includes Section 8 vouchers" (*People by James v Commons W., LLC*, 80 Misc 3d 447, 452 [Sup Ct, Tompkins County 2023]).

Following the dismissal, the local PHA responsible for administering the Section 8 program in Tompkins County published a guidance document that directed the agency either to seek consent from the tenant or to procure an administrative warrant to conduct any inspections if a landlord objected. The Attorney General then moved to renew her opposition to respondents' motion to dismiss, and the landlords cross-moved for summary judgment. Supreme Court denied the Attorney General's renewal motion and granted the cross-motion, declaring the HRL facially unconstitutional. Relying on our decision in *Sokolov v Village of Freeport* (52 NY2d 341 [1981]), Supreme Court held the source-of-income law "facially unconstitutional because it compels a property owner to provide advance consent to such searches in violation of the Fourth Amendment" (*People by James v Commons W., LLC*, 85 Misc 3d 1055, 1057 [Sup Ct, Tompkins County 2024]).

On the Attorney General's appeal, the Appellate Division affirmed, agreeing the proceeding was properly dismissed and defendant was entitled to a declaration in its favor (*People v Commons W., LLC*, 252 AD3d 190, 192 [3d Dept 2026]). Also relying on *Sokolov*, the court held that "although the source-of-income discrimination law does not, itself, require any searches, [the landlords] are indirectly compelled through the terms of

the Section 8 program and the HAP contract" to consent to warrantless searches (*id*. at 196). The Attorney General appealed to this Court as of right.

II.

As a threshold matter, the Attorney General challenges the landlords' constitutional claim as nonjusticiable. She argues that the alleged harm is too speculative to support a claim because the enforcement action brought by the State does not presently threaten respondents' Fourth Amendment rights.

"The function of the courts is to determine controversies between litigants. They do not give advisory opinions" (*Self-Insurer's Assn. v State Indus. Commn.*, 224 NY 13, 16 [1918, Cardozo, J.] [internal citations omitted]). "The 'justiciable controversy' upon which a declaratory judgment may be rendered requires not only that the plaintiffs in such an action have an interest sufficient to constitute standing to maintain the action but also that the controversy involve present, rather than hypothetical, contingent or remote, prejudice to plaintiffs" *(American Ins. Assn. v Chu*, 64 NY2d 379, 383 [1985]). State justiciability is distinct from the federal standing doctrine, and New York has no analogous case or controversy requirement (*People v Johnson*, 46 NY3d 65, 74 [2025]). Under our caselaw, "[t]he existence of an injury in fact . . . ensures that the party seeking review" has a sufficiently "concrete interest" to make the action "capable of judicial resolution" (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772 [1991] [internal quotation marks omitted]). "To constitute an injury in fact, [a party's] claimed harm must be direct and immediate such that it cannot be prevented or significantly ameliorated by administrative action or by steps available to the complaining party" (*Matter of Acevedo v*

New York State Dept. of Motor Vehs., 29 NY3d 202, 218 [2017]). "[S]tanding rules should not be applied in an overly restrictive manner where the result would be to completely shield a particular action from judicial review" (*Matter of Stevens v New York State Div. of Criminal Justice Servs.*, 40 NY3d 505, 515 [2023]).

Here, no one has conducted any warrantless inspections, nor are any on the immediate horizon. But the present suit arose out of the State's prosecution of the landlords for noncompliance with the HRL. The State's enforcement action presents the landlords with a sufficiently direct and immediate harm to render the cross-claim justiciable.

III.

The landlords' central claim is that the New York Human Rights Law is facially unconstitutional because "it is impossible for landlords to comply with the [law] without signing a HAP contract consenting to [warrantless] searches" in violation of their Fourth Amendment rights.

Statutes are presumptively constitutional; "courts strike them down only as a last unavoidable result after every reasonable mode of reconciliation of the statute with the Constitution . . . has been found impossible" (*Stefanik v Hochul*, 43 NY3d 49, 57 [2024] [internal quotation marks omitted]). Challengers bear the "heavy burden" of proving unconstitutionality (*People v Viviani*, 36 NY3d 564, 576 [2021]).

Because "[s]tatutes are quintessentially the product of the democratic lawmaking process," and so require "safeguards for enactors and defenders of statutes" to protect the balance of power between coequal branches of government, courts view facial challenges with particular skepticism (*Cohen v State*, 94 NY2d 1, 8 [1999]; *see also People v Stuart*,

100 NY2d 412, 422 [2003] ["facial challenges to statutes are generally disfavored"]; *Washington State Grange v Washington State Republican Party*, 552 US 442, 450–51 [2008] ["facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented"]). Such a challenge must fail unless the statute is unconstitutional "in any degree and in every conceivable application" *(Cuomo v New York State Commn. on Ethics & Lobbying in Govt.*, 44 NY3d 141, 149 [2025]; *see also United States v Salerno*, 481 US 739, 745 [1987] ["the challenger must establish that no set of circumstances exists under which the Act would be valid"]). A facial constitutional claim is thus "the most difficult challenge to mount successfully" (*Salerno*, 481 US at 745).

In contrast to an as-applied challenge, which requires analyzing the law as it governs a specific set of facts, "a facial challenge requires the court to examine the words of the statute on a cold page and without reference to the defendant's conduct" (*Stuart*, 100 NY2d at 421; *see also Washington State Grange*, 552 US at 449–450 ["In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases"]).

The Fourth Amendment of the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourth Amendment's prohibition on unreasonable searches and seizures applies to administrative inspections of commercial properties (*See v City of Seattle*, 387 US 541, 543 [1967]; *Marshall v Barlow's, Inc.*, 436 US 307, 312–313 [1978]). "[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent" will constitute a Fourth amendment violation "unless it has been authorized by a valid search warrant" (*Camara v Municipal Ct.*, 387 US 523, 528–29 [1967]). Given the heavy burden imposed on a challenger bringing a facial constitutional challenge, the question becomes whether the HRL compels searches of landlords' rental properties and records in violation of the Fourth Amendment in every conceivable application.

IV.

The landlords' argument goes as follows. The HRL's prohibition on source-of-income discrimination means that landlords confronted with a qualified prospective renter must accept Section 8 vouchers. Federal regulations compel landlords receiving payment through Section 8 vouchers to sign HAP contracts, in which they agree to provide "full and free access" to the apartment, the premises and all relevant accounts and records. Federal law requires the local PHA administering the program to perform an inspection of the rental unit, the equipment that services the unit and any common areas of the building; the PHA must conduct those inspections before the unit is occupied and again regularly during the term of the tenancy (*see* 42 USC § 1437f [o] [8] [A], [D]; 24 CFR 982.405). The HAP contract also requires that landlords must make available to the PHA their records concerning the apartment in question as well as the amounts of rent they charge for other units (*see* 24 CFR 982.507). Together, the landlords allege, these requirements combine

to create a scheme wherein the landlords must consent to warrantless search of their premises and documents if an otherwise qualified tenant eligible for Section 8 assistance applies to rent a vacant unit.

The fundamental problem with the landlords' facial challenge is that the New York law is completely silent on searches. The statute here requires, on its face, nothing more than nondiscrimination on the basis of income source.[1] We can find no instance in which a successful facial challenge to a state statute arose because of the effect of a statute issued by a different sovereign, and the landlords have not directed us to one.[2]

The landlords' challenge to the HRL for forcibly waiving privacy of books and records is on even weaker footing. Not only is the HRL silent on record access, but neither the federal Section 8 statute nor the federal Section 8 regulations say anything about accessing documents. 24 CFR § 982.507(d) does require a unit owner certify to the PHA "that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises" and furnish "information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere," but those obligations

[1] The dissent misreads our analysis as implying that "the action of one [sovereign] should not be affected by any interplay with the law of [an]other" (dissenting op at 11). To the contrary, such interplay can certainly have significant impacts, but that interplay here is insufficient to create a facial constitutional defect in a statute that itself does not contain any requirement for a search.

[2] The dissent looks to *Jones v City of Kansas City Missouri* (2025 WL 4236642, 2025 US Dist LEXIS 121974 [WD Mo 2025, No. 24-cv-00649-RK], *see* dissenting op at 12), but the court there included no discussion of facial constitutionality doctrine in its opinion, which was solely considering a preliminary injunction.

could be met in various ways, for example by a letter stating the other rents charged and relevant details about each unit, without allowing any inspection of the underlying records. The only place in the Section 8 scheme that expressly requires owners to grant access to their records is the HAP contract.[3] In other words, the alleged constitutional defect with the State law is a clause in a form contract used by a federal agency that is not required by either the federal statute nor any federal regulation, nor directly incorporated by the New York law.

Moreover, the remedy proposed by the landlords is incompatible with our facial challenge jurisprudence. The landlords challenged, and the lower courts found unconstitutional, only a portion of the HRL statute namely, the part of it that prohibits discrimination against Section 8 vouchers as a source of income in renting or leasing (*see Commons W.*, 252 AD3d at 193–94, 199–200). When we have invalidated portions of a statute as facially unconstitutional, we have assessed whether "those unconstitutional subdivisions may be severed from the valid and the remainder of the statute preserved" (*Viviani*, 36 NY3d at 583; *see also Westinghouse Electric Corp. v Tully* (63 NY2d 191, 200 [1984]). But the landlords do not contend that any specific provision of the New York statute is unconstitutional.[4] For example, they do not claim the provision which defines

[3] The dissent argues that we have "disregard[ed]" the regulations but identifies no regulatory provision beyond those discussed here (dissenting op at 15).

[4] The dissent identifies section 296 (5) (a) (1) as the provision of New York law the landlords have challenged as facially unconstitutional (dissenting op at 14). But that provision prevents discrimination on a far broader basis than just section 8 vouchers in rental housing, including on the basis of race, creed, color, national origin, citizenship and immigration status, and is plainly not unconstitutional in all applications. Instead of

"lawful source of income" to include public housing assistance, among numerous other sources, is unconstitutional (*see* Executive. Law § 292 [36]). Nor do they ask us to carve up the statute by striking the phrase "any form of federal, state, or local public assistance" (which would include Section 8 vouchers even were we to strike the explicit reference to them from the Executive Law) from the definition of "lawful source of income" (*see id.*). To the extent they are asking us to excise just the reference to "section 8 vouchers," that would leave us with a definition that makes little sense: "any form of . . . housing assistance including, but not limited to, any other form of housing assistance payment or credit." Instead, what we really have is a request from the landlords to find a provision of the statute, Executive Law § 296 (5) (a) (1), facially unconstitutional, but only in the *very specific circumstances* implicated in the proceeding brought against them by the Attorney General. In other words, the landlords seek quintessential as-applied relief.

The lower courts' treatment of the landlords' challenge reinforces that the landlords pursue as-applied relief. Notably, the lower courts did not even find the application of the anti-discrimination provision in Executive Law § 296 (5) (a) (1) to section 8 vouchers unconstitutional in every instance (252 AD3d at 200). In addition to prohibiting a landlord from refusing to "rent or lease" housing on the basis of section 8 voucher status, that provision also makes it unlawful for a landlord to "otherwise deny to or withhold" housing

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challenging the entire provision, they are challenging a particular combination of the HRL with the entire federal scheme, statutes and regulations alike, which does not make out a facial challenge to the HRL.

accommodations based on source of income (which includes section 8 vouchers). The lower courts' rulings did not purport to find that portion of the statute unconstitutional because those rulings were limited to the portion of the statute forbidding a landlord to refuse to rent or lease.

The landlords ask us to look far beyond the face of the statute and yet find it facially unconstitutional. They argue we did so in *Sokolov v Village of Freeport* (52 NY2d 341 [1981]), upon which both the Supreme Court and Appellate Division relied. In *Sokolov*, we considered the constitutionality of a Freeport rental ordinance with two interlocking provisions: one required landlords to obtain a permit prior to renting, and another mandated a warrantless inspection prior to granting a permit (*id.* at 346). We held that the combination of those two provisions resulted in "the imposition of a penalty upon a landlord for renting his premises without first consenting to a warrantless search" and held that such an imposition "violates the property owner's Fourth Amendment rights" (*id*. at 343).

There are two problems with the lower courts' reliance on *Sokolov*. First, *Sokolov* concerned two provisions that were part of a single ordinance promulgated by a single governmental entity (*id.* at 343–344). In contrast, the two provisions that may interact here — the HRL and Section 8 — are different in form, function, and source. The crucial source of the compelled consent to search exists in the federal HAP contracts, not New York law.[5]

[5] The centrality of the HAP contracts to the landlords' arguments illustrates why the HRL is not facially unconstitutional: HUD could amend the terms of the contracts to remove landlord consent requirements or stipulate that PHAs rely exclusively on tenant consent or

New York has not enacted any legislation that requires an inspection: the landlords can point to no provision of State law that, even in combination with other State law, requires a search. The landlords bring no claim here that the federal Section 8 law or its regulations or the HAP contract impose unconstitutional burdens, but it is the federal government that has promulgated the search requirement.

Second, Freeport's ordinance applied to all residential rental properties, and we grounded the opinion on its forced choice between a warrantless search or "the effective deprivation of any economic benefit from his rental property." Here, that is far from the case. The first provision in *Sokolov* applied to all landlords without exception, whereas the HRL does not. There are myriad applications in which the HRL's income-source antidiscrimination provision would not even interact with federal law (which the landlords here analogize to the second provision in *Sokolov*). For example, if a landlord charged an amount in excess of the "reasonable rent" for a unit (*see* 24 CFR 982.507), a tenant would be ineligible to receive section 8 vouchers for that unit and the anti-discrimination provision of the HRL as applied to section 8 recipients would be inapplicable as well[6]

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administrative warrants. Either set of changes would remove the alleged facial unconstitutionality of the HRL under the landlords' theory here.

[6] Other examples include renters receiving income from a parent, from lawful gambling activities, or from alimony or child support payments—all of which are facially constitutional applications of the HRL. No doubt the landlords would contest that they do not purport to challenge those applications of the HRL, and that those uses exist outside of the bounds drawn by the lower courts in their attempts to narrow their holdings to section 8 alone (see above). But the narrowness of those bounds only further highlights the fact that the landlords have, at most, an as-applied claim, which they have not pursued before this court.

Moreover, unlike the second provision at issue in *Sokolov*, the federal statute itself does not require the landlord to submit to any search. 42 SC § 1437f (o) (8) does require the PHA to conduct inspections, but the obligatory language applies solely to the PHA, not landlords. The law says nothing about how the PHA should gain access, and contains no penalty or other consequence for the landlord if the PHA does not make the inspection. The operative provision that compels landlord consent to searches exists within the federal regulations and the standardized contract, and even those do not compel warrantless searches in every case, as would be required for a facial challenge to survive.

V.

The Respondents have not cleared the extremely high bar required to demonstrate that a duly enacted New York statute is facially unconstitutional. The New York Human Rights Law is silent on its face regarding searches, and we decline to find the interplay of the law with federal Section 8 regulations sufficient to render the law unconstitutional in all potential applications given the existence of several permissible applications of the law. The landlords' theory here is extraordinary and unprecedented, and although presented as a facial challenge sounds much more like an as-applied challenge.

SINGAS, J. (concurring):

I agree that respondents' claim is justiciable, but that they have not met their heavy burden to demonstrate that Executive Law § 296 (5) (a) (1)'s prohibition on discrimination against Section 8 voucher holders is facially unconstitutional. Nothing in that provision,

alone or viewed together with federal law governing Section 8 vouchers (*see generally* 42 USC § 1437f; 24 CFR part 982), facially requires searches of landlords' property in violation of the Fourth Amendment. However, I disagree that it is of any relevance to the viability of respondents' facial challenge that the HAP contract is part of a federal regulation and required by federal law, rather than mandated by state law (*see* Wilson, Ch. J., concurring op at 10-14 & nn 1, 4). In my view, the legislature's incorporation of another sovereign's law or regulation by reference into a state statute in a way that violates a constitutional right does not preclude a facial constitutional challenge to the state statute. Moreover, my conclusion is limited to the facial challenge before us. There may well be applications of the law that violate property owners' Fourth Amendment rights, but it does not do so in every possible application.

"[T]he party attempting to strike down a statute as facially unconstitutional bears the heavy burden of proving . . . that the statute is in conflict with the Constitution" (*People v Viviani*, 36 NY3d 564, 576 [2021] [internal quotation marks omitted]). Indeed, courts strike down legislation "only as a last unavoidable result after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible" (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal quotation marks and citation omitted]). Moreover, facial challenges "are generally disfavored. A facial challenge requires the court to examine the words of the statute on a cold page and without reference to the complaining party's conduct" (*Matter of Independent Ins. Agents & Brokers of N.Y., Inc. v New York State Dept. of Fin. Servs.*, 39 NY3d 56, 64 [2022] [internal quotation marks, citation, and brackets omitted]). A party advancing a facial

challenge "bear[s] the burden to demonstrate that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment" (*Cohen v State of New York*, 94 NY2d 1, 8 [1999] [internal quotation marks omitted]).

Administrative searches—i.e., searches with the "primary purpose" of serving a "special need" "distinguishable from the general interest in crime control"—are generally subject to the Fourth Amendment's warrant requirement (*Los Angeles v Patel*, 576 US 409, 420 [2015] [internal quotation marks and brackets omitted]; *accord Camara v Municipal Court of City and County of San Francisco*, 387 US 523, 530-534 [1967]). However, administrative searches may be based on less than the particularized probable cause required in the criminal investigatory context (*see id.* at 538; *Marshall v Barlow's, Inc.*, 436 US 307, 320-321 [1978]). Moreover, the warrant requirement is not indispensable. A warrantless administrative search scheme can satisfy the Fourth Amendment even "absent consent, exigent circumstances, or the like" if "the subject of the search [is] afforded an opportunity to obtain precompliance review before a neutral decisionmaker" before the search occurs (*Patel*, 576 US at 420). This is often accomplished through the issuance of a pre-inspection agency demand that the subject can challenge before a neutral arbiter (*see id.* at 421). However, precompliance review is not mandated, and "need only occur in those rare instances where a [property owner] objects to" a search (*id.*).

As a general matter, the government cannot circumvent these requirements by passing a statute coercing individuals to consent to warrantless searches through threat of criminal prosecution (*see Camara*, 387 US at 532-533 [prosecution for refusal to permit a warrantless building code inspection]; *See v City of Seattle*, 387 US 541, 546 [1967]

["appellant may not be prosecuted for exercising his constitutional right to insist that the fire inspector obtain a warrant authorizing entry upon appellant's locked warehouse"]; *see also Wyman v James*, 400 US 309, 325 [1971] [explaining that *Camara* and *See* held that "the Fourth Amendment bar(s) prosecution for refusal to permit the desired warrantless inspection"]). In *Sokolov v Village of Freeport*, we applied this principle to a village ordinance that prohibited landlords from "relet[ting] a residence rental property . . . without first obtaining a permit from the village" and made issuance of a permit contingent on "an inspection of the premises to determine that the property [wa]s 'safe, clean, sanitary, in good repair, and free from rodents and vermin' " (52 NY2d 341, 343-344 [1981]). In *Sokolov*, the plaintiff-landlords were prosecuted "for failure to obtain rental permits under the ordinance" and then brought an action seeking a declaration that the ordinance was unconstitutional (*id.* at 344). We held that, although "a warrantless search [wa]s not directly authorized" by the ordinance, the ordinance's imposition of criminal penalties for renting an apartment without a permit effectively "penalized [the owner] for [their] failure to consent to a warrantless search," thus rendering any consent coerced and involuntary (*id.* at 345-346).[1] We explained that "the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution" (*id.* at 346-347 [internal quotation marks omitted]).

[1] Notably, the village did not argue that it had any other method than owner consent to obtain access to rental units for the required inspections (*see generally Sokolov*, 52 NY2d 341).

Because in *Sokolov* the search was the ordinance's only condition for obtaining the requisite permit, we held that the ordinance was "unconstitutional insofar as it effectively authorize[d] and, indeed, *require*[*d*] a warrantless inspection of residential rental property" (*id.* at 346 [emphasis added]). We noted, however, that even without the ordinance's permit requirement, most owners would still likely consent to warrantless inspections of their properties, and the village could also likely obtain with relative ease administrative warrants to inspect vacant apartments for violations (*see id.* at 348-349 & n 2).

Respondents' argument here boils down to this: though Executive Law § 296 (5) (a) (1) does not itself authorize unlawful searches, the statute nonetheless facially violates landlords' Fourth Amendment rights by requiring them to participate in the Section 8 program because federal law requires that program's participants to sign the HAP contract, which, through its provision giving "full and free access" to the premises and records, requires landlords to consent to warrantless searches. The HAP contract is the linchpin in respondents' argument: nothing else specifically requires a landlord to consent to any inspection of their premises. For several reasons, respondents' argument that this renders Executive Law § 296 (5) (a) (1) facially unconstitutional fails to surmount the significant hurdles attendant to such a challenge.

First, Executive Law § 296 (5) (a) (1) covers conduct that respondents do not challenge, meaning their attack is not truly a facial one. Indeed, the statute's broad prohibition on source-of-income housing discrimination does far more than simply prohibit landlords from refusing to accept Section 8 vouchers. Rather, it prohibits "refus[ing] to sell, rent, lease or otherwise to deny to or withhold from any person" a housing

accommodation because of their receipt of Section 8 vouchers (Executive Law § 296 [5] [a] [1]). On its face, this appears to cover not only a landlord's actual refusal to accept Section 8 vouchers but also accepting Section 8 vouchers for only less desirable units or allowing voucher recipients to live on only certain floors of a building. These other applications of the statute—which do not involve forcing a landlord to sign the HAP contract—are fatal to respondents' claim that Executive Law § 296 (5) (a) (1) is unconstitutional in every conceivable application.[2]

Second, the statute's application to respondents in this case does not even implicate their theory of facial unconstitutionality. That theory rests on the premise that forcing respondents to execute the HAP contract violates their Fourth Amendment rights. But this enforcement action is not based on respondents' refusal to sign the HAP contract. Rather, respondents have allegedly refused to accept rental applications from Section 8 voucher holders. Respondents do not contend that forcing them to accept such applications would violate their Fourth Amendment rights.[3] Thus, even assuming that respondents' arguments

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[2] Notably, the Appellate Division's decision appears to have broader consequences than invalidating a portion of New York State Human Rights Law. Indeed, we have also held that, in New York, a landlord may not refuse to renew a tenant's rent-stabilized lease just because the tenant receives Section 8 assistance (*see Rosario v Diagonal Realty, LLC*, 8 NY3d 755 [2007]). Moreover, since 2008, the New York City Human Rights Law has prohibited the exact type of discrimination at issue here (*see* Administrative Code of City of NY §§ 8-102, 8-107 [5] [a] [1]).

[3] While respondents appear to contend that requiring them to accept and review applications from Section 8 voucher recipients would be pointless if they can ultimately refuse to sign the HAP contract and face no consequences, that is irrelevant to whether compelling landlords to accept such applications would violate the Fourth Amendment. Regardless, just requiring landlords to consider the merits of Section 8 voucher holders' rental applications could serve a beneficial purpose.

about the HAP contract are correct, the proper time to raise their challenge would be in response to an action accusing them of unlawful discrimination based on their refusal to sign the HAP contract—an as-applied challenge, not a facial one seeking to invalidate the statute wholesale.

Third, respondents have failed to demonstrate that being forced to execute the HAP contract actually violates a landlord's Fourth Amendment rights. For one thing, respondents have not established that the HAP contract's relevant language constitutes an indefeasible waiver of all Fourth Amendment rights that leaves the landlord powerless to challenge any search that a local housing authority purports to conduct pursuant to the contract. Without that showing, it is impossible for respondents—who have not been subject to any Section-8-program-related search of their premises, let alone a warrantless one in violation of the Fourth Amendment—to prove that a landlord's forced execution of the HAP contract will invariably violate their constitutional rights.

Fourth, and similarly, even if the HAP contract did have the effect that respondents propose, local housing authorities need not rely on the HAP contract at all to conduct searches of a Section 8 landlord's building. The Section 8 program generally requires an initial housing quality standards (HQS) inspection before the landlord even signs the HAP contract (*see* 42 USC § 1437f [o] [8] [A]-[D]; 24 CFR 982.405). Regardless, the initial HQS inspection can occur after a Section 8 tenant moves in, with that tenant's consent, if

the property "within the previous 24 months has met the requirements of" certain other specified types of inspections (42 USC § 1437f [o] [8] [A] [iii]; [E]; 24 CFR 982.406). Alternatively, the search could be conducted with the outgoing tenant's consent, on notice to the landlord with the opportunity for article 78 review (*see Hudson Shore Assoc. L.P. v State of New York*, 139 F4th 99, 109 [2d Cir 2025]; *see also Lamb v Crofoot*, 2025 WL 3232790, *6, 2025 US App LEXIS 30453, *15-16 [6th Cir, Nov. 19, 2025, No. 25-1313]), or pursuant to an administrative warrant. Furthermore, in addition to the initial HQS inspection, the local public housing authority must conduct a biennial inspection—or must again use an approved alternative inspection method—and may conduct interim inspections in response to complaints that the unit does not meet HQS requirements (*see* 42 USC § 1437f [o] [8] [D], [F]; 24 CFR 982.405 [b], [d]; *see also* para [i] [a local public housing authority may establish other methods to verify the correction of a deficiency including "photographic evidence or other reliable evidence from the owner"]). These inspections can be conducted in the same manner as the initial HQS inspection. Given the existence of other possible constitutionally compliant means of conducting the searches required by federal law, a landlord's refusal to consent to a warrantless inspection would not be an insurmountable barrier to enforcing the Section 8 program's requirements in every conceivable application of Executive Law § 296 (5) (a) (1).

On this final point, the Appellate Division erred in concluding that the statute is "irrelevant" and "does no work when a tenant consents or a warrant is secured" (*see* 252 AD3d 190, 196-197 [2026] [internal quotation marks and brackets omitted]). On the contrary, the statute would still achieve its beneficial purpose of preventing discrimination

against Section 8 voucher holders in those circumstances. The Appellate Division appears to have wrongly equated the statute at issue here to the one in *Patel*, where the law's *sole* function was to force hotel owners to consent to warrantless searches by imposing criminal penalties if they refused (*see* 576 US at 412-413, 418-419; *see also Sokolov*, 52 NY2d at 345-346 [similar]). Here, the purported constitutional infirmity is only one piece of a broader statutory antidiscrimination law; unlike the provisions at issue in *Patel* and *Sokolov*, the statute here can still function without coerced consent.[4]

In sum, we should reject respondents' attempt to repackage their unripe as-applied challenge to Executive Law § 296 (5) (a) (1) as a facial one. Waiting until the proper juncture to answer the difficult questions that respondents' challenge poses will avoid striking down a legislative enactment based on speculation about what the law may require and how it may be implemented. The bar for a facial challenge is high for a reason.

[4] Additionally, as explained above, the consequences for refusing to consent to a search pursuant to the Section 8 program are far from clear, but unlike *Patel* and *Sokolov*, they plainly do not include criminal penalties.

GARCIA, J. (dissenting):

The Fourth Amendment violation here occurs at the intersection of state and federal law, where a state law expressly incorporates an otherwise voluntary federal program into its mandate. The federal Housing Choice Voucher Program provides housing assistance

vouchers to low-income families (42 USC § 1437f) ("Section 8"). The State Human Rights Law's (State HRL) source-of-income discrimination provision (Executive Law § 296 [5] [a]) prohibits housing discrimination on the basis of, as relevant here, one's "lawful source of income," which it defines to include Section 8 vouchers (Executive Law § 292 [36]). That is, under the State HRL, landlords must accept Section 8 vouchers, and under federal law, landlords accepting vouchers must consent to extensive searches of their property and records to qualify for and participate in the program. Compelling "consent" in this way results in a violation of the landlord's Fourth Amendment rights.

The two concurrences assert that the proper vehicle for landlords who object to those searches is an as-applied challenge, with each targeted landlord bringing an action in each case to have the law declared unconstitutional only as it operates in the specific circumstances at issue (Wilson, Ch. J., concurring op at 10-13, 15; Singas, J., concurring op at 6-7, 9), although even the Attorney General was at a loss to articulate how that would work in practice. I instead agree with the courts below that the answer is to declare, here and now, that Executive Law § 296 (5) (a) is facially unconstitutional "to the extent that it makes it an unlawful discriminatory practice to refuse to rent or lease housing accommodations to any person, or group of persons, because their source of income includes Section 8 vouchers" (*People by James v Commons West, LLC*, 80 Misc 3d 447, 455 [Sup Ct, Tompkins County 2023]; *see* 85 Misc 3d 1055 [Sup Ct, Tompkins County 2024]; 252 AD3d 190 [3d Dept 2026]). I dissent.

I.

The federal Housing Choice Voucher Program, established by the Housing and Community Development Act of 1974, is intended to "aid[] low-income families in obtaining a decent place to live and [to] promot[e] economically mixed housing," and to that end provides that "assistance payments may be made with respect to existing housing" to eligible tenants (42 USC § 1437f [a]). Implemented by a series of detailed regulations that presume voluntary participation on the part of landlords, the program is funded by the Department of Housing and Urban Development (HUD), which also promulgates the governing regulations and administers the program alongside local public housing agencies (PHAs). "Families select and rent units that meet program housing quality standards," and if "the PHA approves the family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family" (24 CFR 982.1 [a] [2]). The details of the program—including the stringent and intrusive requirements imposed as the price for participation by landlords—must be faithfully recounted to appreciate the impact of forced participation in this otherwise voluntary regulatory scheme.

In keeping with the federal government's policy "to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families" (42 USC § 1437[a] [1] [a]), both the statute and regulations provide for mandatory inspections of rental units (*id.* at § 1437f [o] [8]; 24 CFR 982.405). These include initial inspections, biennial inspections, and interim inspections whenever a PHA has received a notification of noncompliance with housing quality standards (42 USC 1437f [o] [8]), and the regulations in turn specify that, prior to a Section 8 tenancy, the PHA must conduct an initial inspection of the unit and certain

"common areas and building systems" (24 CFR 5.703, 982.305), in addition to providing for the statutorily-required biennial and interim inspections upon notification of a "potential deficiency" (24 CFR 982.405 [a] – [d]).

Once a unit passes the mandatory initial inspection, the landlord must enter into a Housing Assistance Payment (HAP) contract with the PHA (24 CFR 982.305), the terms of which are set by HUD and cannot be modified (24 CFR 982.451 [a] [1] ["The HAP contract must be in the form required by HUD"]; 982.162 [a] ["The PHA must use program contracts and other forms required by HUD headquarters, including . . . (t)he HAP contract between the PHA and the owner"]). The mandatory HAP contract in turn requires landlords to agree that "[t]he PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the" housing quality standards, that "[t]he PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies," and that "[t]he owner must grant such access to computerized or other electronic records, and to any computers, equipment, or facilities containing such records, and must provide any information or assistance needed to access the records." A PHA may not approve a tenancy unless the rent is reasonable (24 CFR 982.1 [a] [2]; *see also* 42 USC 1437f [c] [1] [A]), and to ensure compliance with this requirement, landlords "must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere" (24 CFR 982.507 [d]).

As is evident, a property owner's consent to inspections of both their property and records is a required precondition for Section 8 participation.

The regulations also anticipate that state and local governments may act to counter discrimination against qualifying tenants, providing that "[n]othing in [the program] is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder," but caution that "such State and local laws *shall not change or affect any requirement of this part, or any other HUD requirements* for administration or operation of the program" (24 CFR 982.53 [d] [emphasis added]). As noted, the HAP contract is a requirement promulgated by HUD pursuant to the regulations and cannot be altered or amended by the PHA (24 CFR 982.451 [a] [1]; 982.162 [a] [2]).

In 2019, the New York State Human Rights Law was amended to include such an anti-discrimination provision. The amendment added "lawful source of income," defined as "any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers" (Executive Law § 292 [36]) as a protected class to several subdivisions of Section 296, which catalogues unlawful discriminatory practices (*see* Executive Law § 296 [2-a], [5], [5-a]). As relevant here, the statute now provides that it is "an unlawful discriminatory practice" "[t]o refuse to sell, rent, lease or otherwise to deny to or withhold" a housing accommodation because of, among other things, an individual's lawful source of income (Executive Law § 296 [5] [a] [1]). The State HRL provides for the imposition of extensive fines and penalties upon a finding of liability, as

well as authority to craft a remedy that "will effectuate the purposes of this article" (Executive Law § 297 [4] [c], [9]).

II.

Respondent owner and operator of several residential rental properties in Ithaca and the sole member of respondent LLCs (hereinafter "respondent") has declined to accept Section 8 vouchers at any of his properties, based on his concern about "waiving [his] Fourth Amendment right to be free from unlawful and warrantless searches." He attested to his understanding that "by participating in the Section 8 program [he] would be required to consent to inspections of [his] buildings as well as [his] companies' books, records and computers, which because of the way [he] own[s] most of [his] units, are [his] personal books, records and computer," and that "[i]f [he] participated in Section 8, [he] would be forced by the HAP Contract to waive [his] Fourth Amendment rights."

Prospective tenants filed complaints with the Attorney General, who investigated respondent for violations of the State HRL and ultimately commenced a proceeding in Supreme Court against him, alleging that his refusal to participate in Section 8 constitutes discrimination in violation of the State HRL. The Attorney General sought significant penalties: a permanent injunction enjoining respondent from refusing to rent units to Section 8 participants; requiring respondent to implement non-discriminatory housing policies, train his employees in these policies, and distribute these policies; directing respondent to set aside 5% of his housing units for Section 8 voucher holders for three years (all of which are now subject to warrantless searches after today's holding); subjecting respondent to monitoring; and seeking restitution, civil penalties, and costs.

While moving to dismiss the petition, respondent also counterclaimed against the Attorney General for a declaratory judgment, raising facial and as-applied constitutional challenges to Executive Law § 296 (5) (a) (1) (*but see* Wilson, Ch. J., concurring op at 14-15 n 6 [faulting respondents, who were not aggrieved below, for failing to "pursue()" an as-applied challenge "before this (C)ourt," in an appeal brought by the Attorney General]), as well as a challenge under the unconstitutional conditions doctrine.

Supreme Court granted respondent's motion, dismissed the AG's petition, and declared that "Executive Law § 296 (5) (a) (1) is unconstitutional to the extent that it makes it an unlawful discriminatory practice to refuse to rent or lease housing accommodations to any person, or group of persons, because their source of income includes Section 8 vouchers" (80 Misc 3d 447, 455 [Sup Ct, Tompkins County 2023]). The court held that "[b]y requiring landlords to accept Section 8 vouchers, the source of income antidiscrimination statute necessarily compels landlords to consent to warrantless searches of their properties . . . in violation of the Fourth Amendment" and "further violates the Fourth Amendment by compelling landlords to consent to warrantless searches of their records" (*id.* at 455). On the Attorney General's motion to renew, Supreme Court adhered to its prior determination and clarified that its holding was that the statute "is facially unconstitutional because it compels a property owner to provide advance consent to such searches in violation of the Fourth Amendment to avoid liability under the statute" (85 Misc3d 1055, 1057 [Sup Ct, Tompkins County 2024]). The Attorney General appealed, and the Appellate Division unanimously affirmed (*Matter of People v Commons W., LLC*, 252 AD3d 190, 192 [3d Dept 2026]). The Court held that it was "constrained to conclude

that the law is unconstitutional on its face" because "as a consequence of this law, landlords are now forced to consent to governmental searches of their rental properties and records" and so "the source-of-income discrimination law violates landlords' Fourth Amendment rights to be free from unlawful searches" (*id.* at 192-193). The courts below properly held that the State HRL's imposition of liability under the statute for the failure to accept Section 8 vouchers is facially unconstitutional and I would affirm.

III.

As a duly enacted statute, Executive Law § 296 (5) (a) (1) enjoys a strong presumption of constitutionality, and any facial challenge "must fail so long as there are circumstances under which the challenged provision could be constitutionally applied" (*Matter of Owner Operator Ind. Drivers Assn., Inc. v New York State Dept. of Transp.*, 40 NY3d 55, 61 [2023] [citations and internal quotation marks omitted]). While this burden is a heavy one, "facial challenges to statutes authorizing warrantless searches . . . can succeed" (*City of Los Angeles, Calif. v Patel*, 576 US 409, 417-418 [2015], citing *Chandler v Miller*, 520 US 305, 308-309 [1997] [Georgia statute requiring candidates for certain state offices to take and pass a drug test facially unconstitutional]; *Payton v New York*, 445 US 573, 574-576 [1980] [New York statute authorizing police officers to enter private residence without a warrant to make routine felony arrest facially unconstitutional]; *cf. Moody v NetChoice, LLC*, 603 US 707, 723 [2024]). When "assessing whether a statute [authorizing warrantless searches] meets this standard, the [US Supreme] Court has considered only applications of the statute in which it actually authorizes or prohibits conduct," and "the proper focus of the constitutional inquiry is searches that the law

actually authorizes, not those for which it is irrelevant" (*Patel*, 576 US at 418-419; *see also Planned Parenthood of Southeastern Pa. v Casey*, 505 US 833, 894 [1992] ["Legislation is measured for consistency with the Constitution by its impact on those whose conduct it affects" and "(t)he proper focus of constitutional inquiry is . . . not the group for whom the law is irrelevant"], *overruled on other grounds by Dobbs v Jackson Women's Health Org.*, 597 US 215 [2022]). In other words, the answer to a facial challenge to a warrantless search provision cannot be that it must fail because in certain circumstances, there will be a separate, lawful basis for a particular search, as such "logic would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches" (*Patel*, 576 US at 418 [noting that "(f)or this reason alone, the City's argument (against a facial challenge) must fail"]).

With respect to the types of searches authorized by the Section 8 regulatory scheme, the US Supreme Court has long recognized that administrative searches pose "significant intrusions upon the interests protected by the Fourth Amendment [and] that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual" (*Camara v Municipal Court of City and County of San Francisco*, 387 US 523, 534 [1967]), even in the case of "commercial structures which are not used as private residences" and in both the civil and criminal contexts (*see See v City of Seattle*, 387 US 541, 542 [1967]). As to administrative searches involving books and records, there is a reasonable expectation of privacy in those business records (*see Patel*, 576 US at 419-422]). Last, it is well established that consent obtained by means of coercion does not provide a lawful basis to search; "[w]here there is

coercion there cannot be consent" (*Bumper v North Carolina*, 391 US 543, 550 [1968]; *see also Schneckloth v Bustamonte*, 412 US 218, 228 [1973]; *People v Gonzalez*, 39 NY2d 122, 128 [1976]).

Relying on several of these cases and the privacy interest they recognize, this Court has rejected as facially unconstitutional an ordinance that required landlords to obtain a rental permit before renting out a property and obtaining that permit in turn required consent to an inspection regime (*Sokolov v Village of Freeport*, 52 NY2d 341, 344 [1981]). In a challenge brought by property owners who had not yet obtained any permit, we held this ordinance facially unconstitutional in violation of the Fourth Amendment "insofar as it effectively authorizes and, indeed, requires a warrantless inspection of residential rental property" because "the property owner's consent is not voluntarily given, as it is clearly a product of coercion" (*id.* at 346-347).

Similarly, the interaction of the State HRL and the requirements of the Section 8 program creates a Fourth Amendment violation properly remedied in response to this facial challenge. The State HRL provision specifically requires participation in Section 8, which in turn requires consent to warrantless searches of property and records, by means of both the property inspection and reasonable rent requirements that the statute and regulations set out, and the HAP contract mandated by the regulations.[1] This required consent includes

[1] The Chief Judge's conclusion that the State HRL's mandate that landlords accept Section 8 vouchers is "not facially unconstitutional" because HUD could at some point "amend the terms of the contracts" (Wilson, Ch. J., concurring op at 14 n 5) ignores the regulatory requirements and seems something akin to an anticipatory mootness doctrine that we have never recognized.

the initial inspections, required biennial inspections, and interim inspections required by statute and regulations (42 USC § 1437f [o] [A]–[D]; 24 CFR 982.305, 982.405); the required disclosure of rent information (24 CFR 982.507); and the extensive searches provided for by the HAP contract, including of a landlord's business records. The property owner's consent to those warrantless searches as part of the Section 8 program is coerced by the State HRL's express mandate that a landlord accept Section 8 vouchers or face liability for discrimination: the landlord must accept the vouchers, to accept the vouchers they must qualify for the program, and to qualify for the program they must consent to search. It is the same conundrum faced by the landlords in *Sokolov*. The State HRL's express incorporation of the Section 8 program requirements creates the Fourth Amendment violation.

Chief Judge Wilson's concurrence attempts to distinguish *Sokolov* because it involved a "single ordinance promulgated by a single governmental entity" (Wilson, Ch. J., concurring op at 13). There can be no "facial challenge," according to that concurrence, because the State HRL is silent on its face as to searches, and "the alleged constitutional defect" is instead some combination of a federal program's terms and a state statute (Wilson, Ch. J., concurring op at 11 [describing this as "(t)he fundamental problem with the landlords' facial challenge"]). This point seems grounded in some unexplored federalism issue—an idea that as dual sovereigns the constitutional implications of the action of one should not be affected by any interplay with the law of the other. This is a novel idea with far-reaching consequences. That concurrence would hold, as a matter of law, that no matter what onerous consent to search provisions were imposed by a federal

statute as a condition of voluntary participation in a benefits program, any state law mandating participation in that program would pass constitutional muster if the state law did not mention the federal consent to search requirement. The Chief Judge's assurance that "such interplay can certainly have significant impacts" but here is "insufficient" (Wilson, Ch. J., concurring op at 10 n 1) not only fails to clarify, but is belied by the remainder of the analysis (Wilson, Ch. J., concurring op at 10-11, 13-14 ["The crucial source of the compelled consent to search exists in the federal HAP contract, not New York law"]; *see also id.* at 15 ["The operative provision that compels landlord consent to searches exists within the federal regulations and the standardized contract"]). Fortunately, this approach has not been adopted by a majority of the members of this Court (*see* Singas, J. concurring op at 2 ["the legislature's incorporation of another sovereign's law or regulation by reference into a state statute in a way that violates a constitutional right does not preclude a facial challenge to the state statute"]). As in *Sokolov*, the effect of the challenged law is to force the landlord to provide a blanket consent to search, and we have already recognized that as a violation of the landlord's Fourth Amendment rights (*see* 52 NY2d at 346).

A Federal District Court in Missouri held that similar interplay between a local human rights law and the Section 8 program would result in coerced consent to warrantless searches of landlords' business records (*see Jones v City of Kansas City Missouri*, 2025 WL 4236642 [ED Mo 2025, No. 24-cv-00649-RK]). In that case, where the challenged source-of-income discrimination statute also required landlords to accept Section 8 vouchers, that court held that landlords challenging the constitutionality of the statute on

the basis that it coerces consent to warrantless searches in violation of the Fourth Amendment had a likelihood of success on the merits (*id.* at *5-7). In granting the landlords' motion for a preliminary injunction, the court reasoned that because "Section 8 requires landlords to permit inspections of various business records," "by being forced to choose between complying with the Ordinance or facing penalties for engaging in an unlawful housing practice, it is likely landlords are being coerced to consent to inspection of their business records in which they have a reasonable expectation of privacy" (*id.* at *7). That Court had no issue with dual sovereigns, or the fact that the local ordinance did not itself authorize any searches (2025 WL 4236642, at *4).[2]

The issue then becomes whether this facial challenge to the coerced consent produced by the State HRL's mandate must be rejected because there are "circumstances under which the challenged provision could be constitutionally applied" (*Matter of Owner Operator Ind. Drivers Assn., Inc*., 40 NY3d at 61 [citations and internal quotation marks omitted]).[3] To answer this question, we must first look at what is being challenged here. Respondent claims that Section 296 (5) (a) (1) forces him to rent or lease his property to recipients of Section 8 vouchers, and that this forced participation in the voluntary federal

[2] Following this ruling, the Kansas City Council removed housing assistance from the source of income definition in its ordinance (Ordinance 250491, Kansas City Code of Ordinances [June 26, 2025]), and the Missouri State Senate codified a preemption provision, providing that no city or county could mandate Section 8 voucher acceptance (RSMo § 441.043).

[3] Our *Sokolov* holding makes clear that there is no bar to petitioners bringing this facial challenge prior to any search occurring under Section 8 (52 NY2d at 344-45).

program is unconstitutional (*but see* Wilson, Ch. J., concurring op at 11, 12 n 4 [respondent does "not contend that any specific provision of the New York statute is unconstitutional"]). In response to that challenge, Supreme Court declared, and the Appellate Division affirmed, that the State HRL is "facially unconstitutional *to the extent* that it makes it an unlawful discriminatory practice *to refuse to rent or lease* housing accommodations to any person, or group of persons, *because their source of income includes Section 8 vouchers*" (252 AD3d at 200 [emphasis added]). For that reason, the Chief Judge's observation that the State HRL applies "to renters receiving income from a parent, from lawful gambling activities, or from alimony or child support payments" (Wilson, Ch. J., concurring op at 14 n 6; *see also* Singas, J., concurring op at 6 [noting that on its face the statute "appears to cover" other discriminatory acts beyond refusal to accept vouchers by landlords based on section 8 status]) is irrelevant to the facial challenge made here and the corresponding declaratory relief obtained.[4] Chief Judge Wilson's concurrence expresses confusion about the scope of this declaration, but this relief was requested by respondent, granted by Supreme Court, and upheld by a unanimous Appellate Division. Likewise, the discussion of "severance" (*see* Wilson, Ch. J., concurring op at 11-12), an

[4] Our decision in *Rosario v Diagonal Realty, LLC* involved a landlord who had voluntarily entered the Section 8 program and signed a HAP contract (8 NY3d 755, 760-761 [2007]; *see* Singas, J., concurring op at 6 n 2). The sole issue in that case was whether the federal statute governing eviction of Section 8 tenants preempted a Rent Stabilization Code rule providing that rent-stabilized tenants' leases must be renewed subject to the same terms and conditions (*id*. at 764). We concluded, based on the legislative history of that specific federal provision, that no preemption was intended (*id*. at 763-764). The landlord here never voluntarily entered the program and never agreed to sign a HAP contract.

issue not raised by the Attorney General at any point in this litigation, misunderstands respondent's challenge and the limited relief granted below.

Nor does the fact that, in some circumstances, a tenant may provide valid consent to search save the provision from this facial challenge (*see* Singas, J., concurring op at 8-9). This conclusion for the most part disregards the federal regulations, which independently require landlords to provide information (including about unrelated units) from business records (24 CFR 982.507 [b], [d]), as well as the broad access required by the HAP contract ("full and free access to . . . all accounts and other records that are relevant to the HAP contract" and "access to computerized or other electronic records, and to any computers, equipment, or facilities containing such records, and . . . any information or assistance needed to access the records"]). No tenant can provide access to such records; the landlord's consent is required. Indeed, *Patel* was concerned only with searches of books and records; no search of the premises was authorized by the local ordinance (*see Patel*, 576 US at 419-420; *see also Jones*, 2025 WL 4236642, at *6-7).

Next, with a facial Fourth Amendment violation, we must look to "applications of the statute in which it actually authorizes or prohibits conduct" and "not those for which [the law] is irrelevant" (*Patel*, 576 US at 418). Unlike tenants, who are required to consent to inspections as part of their voluntary choice to receive Section 8 vouchers (*see* 24 CFR 982.551 [b], [d]), landlords are compelled to consent to warrantless searches as part of their now-required acceptance of Section 8 vouchers. The possibility of tenant consent is irrelevant to the State HRL's mandate that landlords participate in Section 8 and the resultant forced consent to search (*see Patel*, 576 US at 419 ["the constitutional

'applications' that petitioner claims prevent facial relief here are irrelevant to our analysis because they do not involve actual applications of the statute"]; *but see* Wilson, Ch. J., concurring op at 11 n 5; Singas, J., concurring op at 8-9). Otherwise, *Sokolov* would have had a different outcome, as a tenant may well have been available to consent to at least some of the searches at issue in that case (*see* 52 NY2d at 343-44 [rule mandates renewal of permit every two years or each time a vacancy occurred]).

Nor may constitutional application be found in reliance on administrative warrants, the existence of precompliance review, a hypothetical commitment not to rely on landlord consent as the sole basis for the search, or a plan to accept "a letter stating the other rents charged and relevant details about each unit" (*see* Wilson, Ch. J., concurring op at 10-11, 14-15; Singas, J., concurring op at 7-8). *Patel*'s approval of precompliance review as a way to preserve the constitutionality of a warrantless administrative search regime "absent consent, exigent circumstances, or the like" (576 US at 420) does not anticipate a statutory regime where that consent has been obtained by coercion (*compare Hudson Shore Assoc. L.P. v State of New York*, 139 F4th 99, 103 [2d Cir 2025]). And Section 8 does not contemplate precompliance review by means of a state court proceeding assessing the enforceability of its mandated contract. Precompliance review, as well as alternate means of obtaining access and records like administrative warrants or acceptance of a "letter" (Wilson, Ch. J., concurring op at 11) would "change or affect . . . requirement[s] of this part, or any other HUD requirements for administration or operation of the program"—expressly what state and local antidiscrimination statutes cannot do (24 CFR 982.53). The concurrences are silent on this regulatory requirement.

Both concurrences nevertheless conclude that vindication of any Fourth Amendment violation must await an as-applied challenge (*see* Wilson, Ch. J., concurring op at 15 [the landlord's challenge, "although presented as a facial challenge[,] sounds much more like an as-applied"]; Singas, J., concurring op at 9 [advising that we "reject respondents' attempt to repackage their unripe as-applied challenge"]). But if not now, when? And to what end? The Chief Judge suggests an as-applied challenge, possibly to federal law (Wilson, Ch. J., concurring op at 14, 15), but is unclear if that would be before submitting to the initial inspection, signing the HAP contract, or when a search pursuant to the HAP contract is about to be conducted. What the basis of a challenge to federal law would be is unclear—no federal provision mandates participation in Section 8. Judge Singas likewise does not provide any hint of what the "proper juncture" (Singas, J., concurring op at 9) for such a challenge would be, although it at least eschews the other concurrence's reverse-preemption theory.

The only possibilities as I see them are first to bring the as-applied challenge before the initial inspection or signing the HAP contract; or second to sign the HAP contract and then bring an action to challenge any resulting search. As to the first option, putting the burden on every affected landlord to wait until threatened with severe penalties in a lawsuit brought by the Attorney General before challenging the coerced consent involved in enforcing the State HRL cannot be the answer. As the Court found in *Jones*, after noting that the law at issue there also permitted prospective tenants to file complaints, a landlord may well "fear that the [local antidiscrimination ordinance] will be used against them should they deny a Section 8 tenant [and i]n this way the Ordinance is already harming

their freedom to exercise their Fourth Amendment rights" (2025 WL 4236642, at *10). Many landlords may well allow that harm to go unchecked rather than take on the Attorney General in a costly legal battle. Even if they take on the Attorney General and win, would there be any possibility for prospective relief, or could the Attorney General bring another enforcement action when that landlord refuses the next Section 8 tenant?

If the landlord must wait to bring an as-applied challenge until they have been forced to sign a HAP contract and accept a Section 8 tenant, what would the remedy be if successful? The landlord no longer must accept Section 8 vouchers, although now with a Section 8 tenant in place? Or would each landlord have to bring a costly action to declare that each proposed search was a violation of that landlord's Fourth Amendment rights? And if a landlord's challenge succeeds and the PHA obtains an administrative warrant to conduct the required inspections, would this not effect a significant change to the terms and operation of the consent-based federal program in violation of the relevant regulations (*see* 24 CFR 982.53)? In response to a landlord's challenge, could the PHA argue that the tenant consented to the proposed search and so the landlord must wait to bring their challenge to a search of the common area? Or to a books and records demand, or a search of a computer on which they maintain their business records?

The Attorney General's office seemed similarly at a loss for answers to these when and how questions at oral argument. The answer is that we must declare the State HRL facially unconstitutional to the extent "that it makes it an unlawful discriminatory practice to refuse to rent or lease housing accommodations to any person, or group of persons,

because their source of income includes Section 8 vouchers," as the lower courts did here (80 Misc 3d at 455; 252 AD3d at 200).

I agree with the Appellate Division that the challenged statute reflects a "laudable" legislative effort to address troubling discriminatory conduct by landlords, and that the Section 8 program "is a critical tool in advancing the availability of affordable housing" (252 AD3d at 192). Even if we were to affirm that Court's holding, the statute would still prohibit landlords who choose to accept Section 8 vouchers from discriminating against those tenants (*see e.g.* Executive Law § 296 [5] [a] [2]). Mandating a landlord's participation in the Section 8 program, however, results in forced consent to a warrantless inspection scheme. This Court has already held facially unconstitutional an ordinance that "effectively authorizes and, indeed, requires a warrantless inspection of residential rental property" by coerced consent (*Sokolov*, 52 NY2d at 346). The State HRL's requirement that landlords accept Section 8 vouchers or face liability under the statute is a variation on the same unconstitutional theme. What the statute authorizes here results in a violation of landlords' Fourth Amendment rights, and we should say so.