No. 23-

In the Supreme Court of the United States

SUELLEN KLOSSNER,

Petitioner,

v.

IADU TABLE MOUND MHP, LLC, AND IMPACT MHC MANAGEMENT, LLC,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fair Housing Act requires landlords to "make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford" people with disabilities an "equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Some people who are too disabled to work rely on family members or government assistance to help pay their rent. But some landlords have a policy of refusing to accept rent from such alternative sources.

The question presented is whether an "accommodation" under the Fair Housing Act can include the relaxation of a policy of refusing to accept rent from alternative sources, where the tenant is too disabled to work.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Eighth Circuit:

Klossner v. IADU Table Mound MHP, LLC, Nos. 21-3503, 21-3544 (Apr. 10, 2023)

U.S. District Court for the Northern District of Iowa:

Klossner v. IADU Table Mound MHP, LLC, No. 20-CV-1037-CJW-KEM (Oct. 5, 2021)

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PETITION FOR A WRIT OF CERTIORARI

Suellen Klossner respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Eighth Circuit is published at 65 F.4th 349 (8th Cir. 2023). The opinion of the U.S. District Court for the Northern District of Iowa is published at 565 F. Supp. 3d 1118 (N.D. Iowa 2021).

JURISDICTION

The judgment of the U.S. Court of Appeals for the Eighth Circuit was entered on April 10, 2023. On May 31, 2023, Justice Kavanaugh extended the time to file this certiorari petition to August 9, 2023. 22A1037. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 3604(f)(1)(A) provides in relevant part: "[I]t shall be unlawful … [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of … that buyer or renter."

42 U.S.C. § 3604(f)(3)(B) provides in relevant part: "For purposes of this subsection, discrimination includes … a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

STATEMENT

The Fair Housing Act prohibits discrimination against people with disabilities. 42 U.S.C. § 3604(f)(1)(A).

Unlike other forms of discrimination, discrimination against the disabled is usually caused by thoughtlessness rather than by animus. *Alexander v. Choate*, 469 U.S. 287, 295-96 (1985). Ordinary rules and policies that may be unobjectionable in most circumstances, if applied inflexibly, can exclude people with disabilities from renting or buying a dwelling. For this reason, when Congress prohibited housing discrimination against people with disabilities, Congress defined discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).[1]

There is a longstanding circuit split over how to apply this provision in one common situation, where

- a tenant's disability prevents the tenant from working and thus from earning enough income to pay the rent; and
- the tenant has an alternative means of paying the full amount of rent, such as government assistance or the help of a family member; but

[1] This provision was added to the Fair Housing Act by the Fair Housing Amendments Act of 1988, so decisions interpreting it refer interchangeably to the FHA and the FHAA. While the statute refers to people with a "handicap," the term used more often today is "disability," so we will follow conventional practice in using that term except in direct quotations.

- the landlord has a policy of refusing to accept rent from such alternative sources.

In this situation, can the "accommodation in rules [and] policies" required by the Fair Housing Act include a relaxation of the landlord's policy, to allow the disabled tenant to pay the rent from a source other than her own funds?

The circuits are now split 3-2 on this question, with Judge Calabresi and Judge Posner on opposite sides. The Ninth and Eleventh Circuits have held that where a tenant is too disabled to earn an income, the Fair Housing Act may require a landlord to accept rent from an alternative source. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1148-55 (9th Cir. 2003) (requiring a landlord to accommodate the tenant's disability by accepting payment of his rent from his mother, despite the landlord's policy of not allowing such arrangements); *Schaw v. Habitat for Humanity of Citrus Cty., Inc.*, 938 F.3d 1259, 1269-73 (11th Cir. 2019) (requiring the defendant to accommodate the plaintiff's disability by including food stamps and familial support in determining whether the plaintiff's income is high enough to qualify, despite the defendant's policy of not including such alternative sources of income).

In this case, the Eighth Circuit joined the Second and Seventh Circuits in reaching the opposite conclusion. App. 2a-14a (holding that the FHA requires landlords to accommodate only the physical effects of a disability, not the disability's effect on a tenant's ability to earn income); *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 301-02 (2d Cir. 1998) (same); *Hemisphere Bldg. Co. v. Village of Richton Park*, 171 F.3d 437, 440-41 (7th Cir. 1999)

(Posner, C.J.) (same). Judge Calabresi dissented from the Second Circuit's decision in *Salute*. His view was the same as that of the Ninth and Eleventh Circuits. *Salute*, 136 F.3d at 307-10 (Calabresi, J., dissenting).

This case is an ideal vehicle for resolving the conflict. The facts are not in dispute. Petitioner Suellen Klossner is too disabled to earn an income. She can nevertheless pay her full rent by using the voucher she receives from the local housing authority. But respondents (who are collectively her landlord) have a policy of not accepting these vouchers. When Klossner asked for an accommodation in light of her disability, respondents refused. The District Court held that the Fair Housing Act requires respondents to make the accommodation, but the Eighth Circuit reversed. As the case arrives at this Court, it cleanly presents the question on which the circuits have split: Can the "accommodation" required by the Fair Housing Act include the relaxation of a policy of refusing to accept rent from an alternative source, where the tenant is too disabled to work?

1. Suellen Klossner is a woman in her sixties who lives in Dubuque, Iowa. Decades ago, when she was raising her three children, she was employed as a cosmetologist and she supported her family financially. Now, however, she suffers from severe physical and psychiatric disabilities that leave her unable to work. App. 4a. She has received federal disability benefits from the Social Security Administration since 1993. These benefits, now $803 per month, along with food assistance benefits of $194 per month, constitute her sole income.

In 2009, Klossner used a small, unexpected inheritance to purchase a 1977 double-wide manufactured home—a "mobile home"—for $28,000. The home is on a lot which Klossner rents in the Table Mound Mobile Home Park. *Id.* at 28a.[2]

When Klossner moved to Table Mound in 2009, her monthly lot rent was $235. *Id.* The rent increased only gradually until 2017, when she was paying $280 per month, with water, sewer, and trash collection included. *Id.* In 2017, however, the mobile home park was purchased by respondent IADU Table Mound. *Id.* (The other respondent, Impact MHC Management, is the property manager for the mobile home park. Both entities are controlled by the same person, Dave Reynolds, whose website describes him as "the 5th largest owner of mobile home parks in the U.S. with over 25,000 lots spread out in over 25 states.")[3]

When respondents acquired the park in 2017, they raised Klossner's rent to $320. App. 28a. The next year they raised the rent again and began charging Klossner separately for water, sewer, and trash collection. *Id.* In 2019 they raised the rent once more, to $380, and they increased the trash collection fee. *Id.* Rent and utilities amounted to approximately 30% of Klossner's income in 2017, but by

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[2] "The term 'mobile home' is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved." *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992).

[3] Mobile Home University, "About Us," https://www.mobilehomeuniversity.com/about-us.php.

2019 they exceeded 50%. She could no longer afford to live at Table Mound.

But help soon arrived, in the form of the housing choice voucher program funded by the U.S. Department of Housing and Urban Development and administered by local housing authorities. This is the program often called "section 8" because it was established by section 8 of the Housing Act of 1937. The program provides rental assistance to help low-income families obtain safe and sanitary housing. 42 U.S.C. § 1437f. Under the housing choice voucher program, participants pay 30% of their income for rent and utilities, and the remainder is paid directly to the landlord by the local housing authority. App. 29a.

Until 2019, the Dubuque Housing Authority did not provide vouchers to residents of mobile home parks. In November of that year, however, after hearing from Table Mound residents about the dramatic rent hikes, the Dubuque City Council approved a measure allowing the Dubuque Housing Authority to issue housing choice vouchers to residents of mobile home parks. *Id.* Klossner promptly applied and was accepted to the program. *Id.*

When she tried to use the voucher, however, respondents refused to accept it. *Id.* at 29a-30a. They explained that they had a policy against accepting such vouchers except in states where they are required to by state law (Iowa is not one of them), or where they purchased parks in which the prior owner accepted vouchers. *Id.* at 32a. The rationale for this policy, they claimed, was that participation in the voucher program would entail administrative burdens. *Id.* at 32a-33a. When Klossner, through

counsel, asked respondents to accept her voucher as a reasonable accommodation of her disabilities, respondents once more refused.

Klossner filed this suit against respondents in September 2020. She alleged that respondents violated the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), by failing to make a reasonable accommodation in their policy of refusing to accept vouchers. Her suit originally also included some state law claims, but these have since been dropped, so the FHA claim is the only one left.

2. After a bench trial, the District Court granted Klossner's request for an injunction requiring respondents to accept her housing choice voucher. App. 18a-47a.

The District Court found that Klossner "has met her burden of showing that the accommodation is necessary to ameliorate the effect of her disability." *Id.* at 37a. The court explained that Klossner "has proved that her disability has prevented her from working. Her inability to work limits her income. Her limited income prevents her from paying the entire rent from her own limited resources." *Id.* The court accordingly concluded that "an accommodation that would allow her to supplement her rent payments through another funding source is necessary to ameliorate the effect of her disability; her inability to work to earn enough money to pay her rent." *Id.* at 38a-39a.

The District Court rejected respondents' argument "that the accommodation is not necessary to directly ameliorate plaintiff's disability but, rather, to ameliorate her lack of income." *Id.* at 35a. The court not-

ed that there is a circuit split on whether the Fair Housing Act requires landlords to make accommodations in a policy of refusing to accept rent from a source other than the tenant herself, where a tenant's disability prevents her from working to earn an income. *Id.* at 36a (contrasting *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998), and *Hemisphere Bldg. Co. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999), with *Giebeler v. M & B Assocs.*, 343 F.3d 1143 (9th Cir. 2003)).

The District Court reasoned that in *US Airways, Inc. v. Barnett*, 535 U.S. 391, 395-98 (2002), this Court "held that accommodations (1) may require providing preferential treatment to disabled people over those similarly situated but not disabled and (2) are not limited only to lowering barriers created by the disability itself." App. 38a. The court continued: "Here, what that means is that defendants must accommodate plaintiff's disability by accepting a voucher although there may be other nondisabled people unable financially to pay rent at the Park who would similarly benefit from defendants' acceptance of vouchers." *Id.* The court added: "It also means that plaintiff need not show that the requested accommodation lowers a barrier created by her disabilities itself so long as she can show that it lowers a barrier created by the effect of her disability; that is, her inability to work." *Id.*

The District Court thus found that "plaintiff has proved by a preponderance of the evidence that her requested accommodation is necessary to ameliorate the effect of her disability." *Id.* at 40a.

The District Court then turned to the question of whether Klossner's requested accommodation is

"reasonable," as required by the Fair Housing Act. *Id.* The court held that it is reasonable. "The landlord will be paid rent and expenses in full," the court observed. *Id.* "Under plaintiff's proposed accommodation, the landlord need not decrease the rent or incur any obvious expenses." *Id.* at 41a. The court noted that allowing Klossner to use a housing voucher "would not commit the landlord to offer Section 8 housing to anyone who asked, but only to others, like plaintiff, who could show that it would accommodate the effects of a legitimate disability." *Id.* The District Court concluded that while respondents "have identified some burdens of participating in the [voucher] program," *id.* at 43a, respondents "have failed to show that doing so will create an undue hardship," *id.* at 46a.

The District Court accordingly ordered respondents "to accept plaintiff's housing choice voucher." *Id.* at 47a.

Respondents appealed. The United States filed an amicus brief urging the Court of Appeals to affirm.

3. The Court of Appeals reversed. *Id.* at 2a-17a.

The Court of Appeals concluded that "while the statute requires a landlord to make reasonable accommodations that directly ameliorate the handicap of a tenant, the obligation does not extend to alleviating a tenant's lack of money to pay rent." *Id.* at 4a. The court agreed with the Second and Seventh Circuit's holdings to this effect in *Salute* and *Hemisphere*. *Id.* at 7a-9a. By contrast, the Court of Appeals disagreed with the Ninth Circuit's decision in *Giebeler*, which it characterized as an "ambitious in-

terpretation of the FHAA that was rejected in *Hemisphere* and *Salute*." *Id.* at 14a.

The Court of Appeals observed that the term "reasonable accommodation" is not defined in the Fair Housing Act, but that the term was taken from a regulation implementing the Rehabilitation Act of 1973. *Id.* at 9a. Under this regulation, the court stated, accommodations were limited to "the direct amelioration of a disability's effect," but they did not extend to "the dissimilar action of alleviating downstream economic effects of a handicap." *Id.* at 11a (internal quotation marks omitted). When Congress added the "reasonable accommodation" language to the Fair Housing Act in 1988, the court reasoned, "it acted against a background understanding that the concept of a 'reasonable accommodation' was so limited." *Id.*

The Court of Appeals added that the "[r]egulations adopted under the FHAA illustrate the same point." *Id.* These regulations provide two examples of accommodations: "[A] landlord must make an exception to a no-pets policy for a blind person who requires assistance of a seeing eye dog," and "an apartment manager must modify a 'first come first served' policy for allocating parking spaces to accommodate a tenant who is mobility impaired." *Id.* (citing 24 C.F.R. § 100.204(b)). The Court of Appeals reasoned that these examples demonstrate that "[a] landlord's duty to make reasonable accommodations extends to direct amelioration of handicaps, but does not encompass an obligation to accommodate a tenant's shortage of money." *Id.* (internal quotation marks omitted).

The Court of Appeals worried that "if Klossner's interpretation were accepted, then we see no principled reason why a landlord could not be required in the name of 'reasonable accommodation' to reduce monthly rent for an impecunious disabled person." *Id.* at 11a-12a.

The Court of Appeals accordingly vacated the injunction ordered by the District Court. *Id.* at 14a.

Judge Stras concurred in the judgment. *Id.* at 14a-17a. In his view, the court "makes multiple assumptions on the way to holding that a housing voucher is not an 'accommodation' under the Fair Housing Amendments Act." *Id.* at 14a. He preferred to "take a simpler route and just conclude that the request is unreasonable." *Id*. It was unreasonable, he argued, because accepting a housing voucher would impose intolerable burdens on the owner of a mobile home park. *Id.* at 15a-17a.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari. The decision below deepens a circuit split on whether the Fair Housing Act can require landlords to accept payment from a source other than the tenant's own funds, where the tenant's disability prevents her from earning an income. This is an important question that arises frequently. This case is an excellent vehicle for resolving the conflict. And the decision below is wrong. As the Ninth and Eleventh Circuits (along with Judge Calabresi in the Second) have recognized, the statutory text plainly requires landlords to make this accommodation. The distinction made below—between "physical" and "economic" effects of a

disability—is nowhere to be found in the Fair Housing Act.

I. The circuits are split 3-2.

As both courts below recognized, App. 13a-14a, 36a, the circuits are divided as to whether an "accommodation" under the Fair Housing Act can include the relaxation of a landlord's policy of refusing to accept rent from a source other than the tenant herself, where the tenant's disability prevents her from earning an income. The Ninth and Eleventh Circuits have held that an accommodation can include the relaxation of such a requirement. In the decision below, by contrast, the Eighth Circuit joined the Second and Seventh in holding that it cannot.

In *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1144 (9th Cir. 2003), the tenant, who was too disabled to work, asked the landlord to accept his mother as a co-signer of the lease. The landlord refused, citing a policy against co-signers. *Id.* When the tenant requested an accommodation of this policy under the Fair Housing Act, the landlord again refused. *Id.* at 1145-46.

The Ninth Circuit held that the Fair Housing Act required the landlord to make an exception to its policy, to accommodate the tenant's disability. *Id.* at 1148-55. "Permitting Giebeler to live in an apartment rented for him by his qualified mother would have adjusted for his inability, because of his disability, to earn his own income," the court noted, "while providing M & B with substantial assurance that the full rent—not a discounted amount—would be paid monthly." *Id.* at 1148. The court rejected the landlord's argument that this outcome impermissibly fa-

vored the tenant over other impecunious renters who were not disabled. *Id.* The court explained that an "accommodation in the service of equal opportunity may require preferential treatment of the disabled," where such treatment is necessary to afford the same "opportunities enjoyed by nondisabled persons." *Id.* at 1150 (citing *US Airways, Inc. v. Barnett*, 535 U.S. 391, 397-98 (2002)).

The Ninth Circuit also rejected the landlord's argument that relaxing its policy against co-signers would "accommodate Giebeler's poverty rather than his disability." *Giebeler*, 343 F.3d at 1148. The court explained that "accommodations may adjust for the practical impact of a disability, not only for the immediate manifestations of the physical or mental impairment giving rise to the disability." *Id.* at 1150 (citing *Barnett*, 535 U.S. at 398)).

The Eleventh Circuit reached the same holding in *Schaw v. Habitat for Humanity of Citrus Cty., Inc.*, 938 F.3d 1259 (2019). In *Schaw*, the plaintiff, who was too disabled to earn an income, asked the defendant to include food stamps and support from his family in calculating whether his income was high enough to qualify for the defendant's housing. *Id.* at 1263. The defendant refused. *Id.*

The Eleventh Circuit held that the Fair Housing Act required the defendant to make the requested accommodation. *Id.* at 1269-72. The court held that the "accommodation" required by the statute "is one that alleviates not handicaps *per se*, but rather the *effects* of those handicaps." *Id.* at 1270 (internal quotation marks omitted). In Schaw's case, "Schaw's quadriplegia (the handicap) creates an inability to work … and thus a need for a waiver of the usual

type-of-income requirement (the accommodation)." *Id.* The court concluded that "the proper question is whether Schaw's inability to meet the minimum-income requirement through wages earned is an 'effect' of his quadriplegia—whether there is some causal relationship between the two." *Id.* at 1271.

The Second, Seventh, and Eighth Circuits have taken the opposite view.

In *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 295 (2d Cir. 1998), the tenants, who were too disabled to earn an income, asked the landlord to accept section 8 housing vouchers in payment of the rent. The landlord refused, pursuant to a policy of not accepting such vouchers. *Id.* at 296.

The Second Circuit held that the Fair Housing Act did not require the landlord to relax its policy. *Id.* at 301-02. "We think it is fundamental," the court declared, "that the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps." *Id.* at 301. The court continued: "What stands between these plaintiffs and the apartments at Stratford Greens is a shortage of money, and nothing else. In this respect, impecunious people with disabilities stand on the same footing as everyone else." *Id.* at 302. The court concluded that "Congress could not have intended the FHAA to require reasonable accommodations for those with handicaps every time a neutral policy imposes an adverse impact on individuals who are poor. The FHAA does not elevate the rights of the handicapped poor over the rights of the non-handicapped poor." *Id.*

Judge Calabresi dissented. He explained that "[p]laintiffs' respective disabilities, because they pre-

vent them from working, have created a particular need for Section 8 certificates. Accordingly, plaintiffs have asked defendants to accommodate their needs by waiving the facially neutral 'no-Section 8' policy." *Id.* at 309. He continued: "It follows that the majority is wrong when it suggests that, as a matter of law, a landlord's waiver of a 'no-Section 8' policy can never be deemed an accommodation within the meaning of the statute." *Id.*

Judge Calabresi provided an analogy to help make his point. "The plaintiffs' situation," he noted,

> is completely analogous to that of a blind person with a dog who is denied access to a housing complex that has a "no pets policy." We might treat disabled people with dogs as similarly situated to non-disabled dog owners, and say there is no discrimination since both are excluded. And, if the blind would-be-tenant's dog were a chihuahua, then this comparison might be appropriate. But if the blind individual had a *seeing-eye* dog—in other words, if her disability created the *need* for the dog—then, the comparison no longer applies. And the housing complex would be obliged to accommodate the dog (if it reasonably could do so), so long as the would-be-tenant needed the dog as a direct result of her disability.
>
> Similarly, in this case, we could look at the situation of a disabled person with a Section 8 certificate in one of two ways: The plaintiffs could be poor people who happen to be disabled (dog lovers who happen to be blind), or they could be people who are poor *because* they are disabled (blind people who need a seeing-eye

> dog *because* they are blind). It is only in the latter case—where the would-be-tenant needs the Section 8 subsidy as a direct result of a disability—that the housing complex must reasonably accommodate that person.

Id. at 310.

The Seventh Circuit likewise interprets the Fair Housing Act to confine "the duty of reasonable accommodation in 'rules, policies, practices, or services' to rules, policies, etc. that hurt handicapped people *by reason of their handicap*, rather than that hurt them solely by virtue of what they have in common with other people, such as a limited amount of money to spend on housing." *Hemisphere Bldg. Co. v. Village of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999). The court reasoned that "[a]nything that makes housing more expensive hurts handicapped people; but it would be absurd to think that the FHAA overrides all local regulation of home construction." *Id.* Although *Hemisphere* involved a request to relax a zoning ordinance rather than a request to pay rent from a source other than the tenant's funds, Judge Posner's opinion for the court specifically rejected Judge Calabresi's view, which, the court asserted, "would mean that handicapped people, in the name of reasonable accommodation, could claim a real estate tax rebate under the Fair Housing Amendments Act." *Id.* at 441.

Below, the Eighth Circuit joined the Second and Seventh Circuits on this side of the split. App. 7a-9a. It concluded "that the reasoning of these decisions [*Salute* and *Hemisphere*] is sound, and that it forecloses Klossner's claim here." *Id.* at 9a.

The courts contributing to this split have all noted its existence. In *Giebeler*, the Ninth Circuit stated that "[w]e reject the reasoning of *Salute* and *Hemisphere*." 343 F.3d at 1154. In *Schaw*, the Eleventh Circuit described the Second Circuit's holding in *Salute* and then declared: "Not in this Circuit." 938 F.3d at 1270. Below, the Eighth Circuit disagreed with the Ninth Circuit's decision in *Giebeler*, which it criticized as an "ambitious interpretation of the FHAA that was rejected in *Hemisphere* and *Salute*." App. 14a.

Because this issue arises so often, several of the district courts have discussed the split. *See Daniel v. Avesta Hous. Mgmt. Corp.*, 2013 WL 4541152, *9-*10 (D. Maine 2013); *Murphy v. Fullbright*, 2012 WL 4754730, *2 (S.D. Cal. 2012); *Hayden Lake Recreational Water and Sewer Dist. v. Haydenview Cottage, LLC*, 835 F. Supp. 2d 965, 981-82 (D. Idaho 2011); *Evans v. UDR, Inc.*, 644 F. Supp. 2d 675, 682-83 (E.D.N.C. 2009); *Spieth v. Bucks Cty. Hous. Auth.*, 594 F. Supp. 2d 584, 593 n.4 (E.D. Pa. 2009).

The split has also been analyzed in the law reviews. *See* Robert G. Schwemm, *Source-of-Income Discrimination and the Fair Housing Act*, 70 Case W.L. Rev. 573, 612-15 (2020); Note, *Three Formulations of the Nexus Requirement in Reasonable Accommodations Law*, 126 Harv. L. Rev. 1392, 1401-02 (2013); Abram B. Gregory, Note, *Being Reasonable Under the Fair Housing Amendments Act: Allowing Changes in Rent-Admission Policies to Accommodate the Disabled Renter's Economic Status*, 80 Ind. L.J. 905 (2005); Brian R. Rosenau, Note, *Gimme Shelter: Does the Fair Housing Amendments Act of 1988 Require Accommodations for the Financial Circum-*

stances of the Disabled?, 46 Wm. & Mary L. Rev. 787 (2004).

Below, respondents acknowledged this split and successfully urged the Court of Appeals to follow the Second Circuit's decision in *Salute* rather than the Ninth Circuit's decision in *Giebeler*. Resp. 9th Cir. Br. 46.

There is no prospect that this split will be resolved by the courts of appeals themselves. Nor is there any reason to await further percolation. By now, every argument on both sides has been fully aired. The conflict among the circuits is ready for this Court's resolution.

II. This issue arises frequently, and this case is an excellent vehicle for resolving it.

This issue is important because it arises so often. In addition to the already-cited cases that constitute and discuss the circuit split, *see Arnold v. Elmington Prop. Mgmt., LLC*, 2023 WL 4242757 (N.D. Ala. 2023); *CNY Fair Hous., Inc. v. Welltower Inc.*, 588 F. Supp. 3d 282 (N.D.N.Y. 2022); *Schueller v. Pennypack Woods Home Ownership Ass'n*, 2021 WL 7285246 (E.D. Pa. 2021); *Fair Hous. Rights Ctr. in Se. Pa. v. Morgan Props. Mgmt. Co.*, 2018 WL 4489653 (E.D. Pa. 2018); *Mercado v. Realty Place, Inc.*, 2015 WL 5626510 (S.D. Ohio 2015); *Riccardo v. Cassidy*, 2012 WL 651853 (N.D.N.Y. 2012); *Hevner v. Village East Towers, Inc.*, 2010 WL 11680173 (S.D.N.Y. 2010); *Doe v. WCP I, LLC*, 2009 WL 1564909 (Cal. Ct. App. 2009); *Sutton v. Freedom Square Ltd.*, 2008 WL 4601372 (E.D. Mich. 2008); *Freeland v. Sisao LLC*, 2008 WL 906746 (E.D.N.Y.

2008); *Bell v. Tower Mgmt. Serv., L.P.*, 2008 WL 2783343 (D.N.J. 2008); *Lanier v. Assoc. of Apartment Owners of Villas of Kamali'i,* 2007 WL 842069 (D. Haw. 2007); *Bentley v. Peace and Quiet Realty 2 LLC*, 367 F. Supp. 2d 341 (E.D.N.Y. 2005).

This case is an ideal vehicle for resolving the circuit conflict. The District Court held a bench trial and made findings of fact, so the record is as complete as it could be. It is undisputed that Suellen Klossner can pay the full amount of rent if respondents will allow her to use a housing choice voucher, that respondents have a policy against accepting these vouchers, and that respondents refused Klossner's request to make an exception to this policy as an accommodation of her disability.

There are no extraneous legal issues cluttering the case. Klossner has dropped all her other claims, so the Court's resolution of the question presented will determine the outcome. There could not be a cleaner vehicle for deciding whether the Fair Housing Act requires landlords to accept rent from a source other than the tenant herself, where the tenant's disability prevents her from working.

III. The decision below is wrong.

Certiorari is also warranted because the decision below is contrary to the text of the Fair Housing Act.

The FHA defines discrimination against a person with disabilities to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(b). The statute does not distinguish between accommoda-

tions intended to alleviate a disability's *physical* effects and accommodations intended to alleviate a disability's *economic* effects. The statute simply says that if a landlord's policy prevents a disabled person from enjoying a dwelling to the same extent that a non-disabled person could, the landlord must make reasonable accommodations to that policy. The policy at issue in this case—respondents' policy of not allowing tenants to pay part of their rent with housing vouchers—fits squarely within this statutory text, where the tenant's disability prevents her from earning an income.

We can gain some perspective on Congress's use of this language by comparing the Fair Housing Act with another statute that requires the accommodation of disability, the Americans With Disabilities Act. The ADA requires employers to make "reasonable accommodations," just like the FHA does for landlords. But in the ADA, Congress only required employers to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual." 42 U.S.C. § 12112(b)(5)(A). The FHA, by contrast, does not limit "accommodations" to "physical or mental limitations." It includes *all* reasonable accommodations necessary to afford equal opportunity to the disabled. Congress certainly knew how to distinguish between a disability's physical and non-physical effects, but in the FHA it declined to make this distinction.

As Judge Calabresi explained in his dissent in *Salute*, 136 F.3d at 310, a landlord's policy of not accepting housing vouchers is exactly parallel to a landlord's no-pets policy, which everyone agrees is the kind of policy a landlord must relax if necessary

to accommodate a disabled tenant. Where a tenant's disability is not the reason she wants a pet, a landlord need not make an exception to a no-pets policy. But where the tenant needs the pet *because of* her disability, as with a guide dog for the blind, the landlord must make an exception (if an exception would be reasonable). Likewise, where a tenant's disability is not the reason she needs to use a housing voucher, a landlord need not make an exception to a no-voucher policy. But where the tenant needs to use the voucher *because of* her disability—where her disability prevents her from earning an income—the landlord must make an exception (again, if the exception would be reasonable).

The Second, Seventh, and Eighth Circuits have made several arguments to the contrary, but none of these arguments has any merit.

Below, the Eighth Circuit placed great weight on a few cases construing the term "accommodation" in the regulation implementing the Rehabilitation Act of 1973, cases which involved accommodations of a disability's physical effects. App. 9a-11a. But these cases were interpreting a regulation that, like the ADA, only required "accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant." 45 C.F.R. § 84.12(a). In the Fair Housing Act, by contrast, Congress included no such restriction to "physical or mental limitations." Rather, Congress simply required "accommodations."

The Second and Eighth Circuits have emphasized that the regulation implementing this provision of the Fair Housing Act mentions only two examples of reasonable accommodations, both of which relate to

a disability's physical effects—an exception to a no-pets policy for a blind tenant's guide dog and an exception to a first-come first-served parking policy for a tenant with impaired mobility. App. 11a (citing 24 C.F.R. § 100.204(b)); *Salute*, 136 F.3d at 301 (citing the same regulation). These courts inferred that accommodations of a disability's physical effects must be the only accommodations required by the statute. But the regulation itself states that these two examples are only meant to "illustrate[]" how the statute should be applied, not to exhaust all possible applications of the statute. 24 C.F.R. § 100.204(b). The statute is not limited to guide dogs and parking spaces, or indeed to any sub-class of accommodation; it merely says "accommodations."

The Seventh and Eighth Circuits have been worried by what they mistakenly perceived as a slippery slope. If accommodations can include ameliorating the economic effects of a disability, the Seventh Circuit feared, disabled people would be entitled to property tax rebates. *Hemisphere*, 171 F.3d at 441. The Eighth Circuit was concerned that a landlord would have to reduce the rent of a tenant who is too disabled to earn an income. App. 11a-12a. But this is no slope at all, much less a slippery one. The Fair Housing Act only requires "reasonable" accommodations. It would clearly not be reasonable to exempt disabled people from property taxes or to force landlords to accept less rent. *Giebeler*, 343 F.3d at 1154. In the 35 years that this provision of the FHA has been in effect, no court has ever relieved disabled people from property taxes, and no court has ever required a landlord to reduce the rent. By contrast, it *can* be reasonable to require a landlord to accept

the full amount of rent from a source other than the tenant herself.[4]

Finally, the Second Circuit was concerned that requiring landlords to accept housing vouchers from disabled tenants, but not from non-disabled tenants, would "elevate the rights of the handicapped poor over the rights of the non-handicapped poor." *Salute*, 136 F.3d at 302. This Court has made clear, however, that accommodations for the disabled will sometimes require giving them preferences over the non-disabled, where such preferences are necessary to implement the statutory requirement of equal access. *US Airways, Inc. v. Barnett*, 535 U.S. 391, 397-98 (2002). "By definition any special 'accommodation' requires the employer to treat an employee with a disability differently, *i.e.,* preferentially." *Id.* at 397.

Just as tenants who are too disabled to walk may need preferential parking spaces to gain access to housing equal to that of the non-disabled, tenants who are too disabled to work may need preferential voucher rules to gain access to housing equal to that of the non-disabled. As the Tenth Circuit has observed,

> under the FHA it is sometimes necessary to dispense with formal equality of treatment in order to advance a more substantial equality of opportunity. And that is precisely the point of

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[4] To be sure, it is conceivable that participation in a voucher program might impose too great a financial or administrative burden on a landlord. If so, requiring the landlord to accept a voucher would not be reasonable. In this case, however, the District Court found that accepting a voucher from Suellen Klossner would not cause respondents undue hardship. App. 46a.

> the reasonable accommodation mandate: to require changes in otherwise neutral policies that preclude the disabled from obtaining the *same* ... *opportunities* that those without disabilities automatically enjoy.

Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City, 685 F.3d 917, 923 (10th Cir. 2012) (Gorsuch, J.) (internal quotation marks omitted).

It is scarcely conceivable that Congress would have intended to exempt respondents' no-voucher policy from the "rules, policies, practices, or services" to which landlords must "make reasonable accommodations." 42 U.S.C. § 3604(f)(3)(B). Suellen Klossner is a homeowner who is too disabled to work. All she is asking of respondents is to receive two rent checks each month rather than one—one check from her and one from the Dubuque Housing Authority. Together, the two checks will add up to the full amount of rent. But if respondents don't make an exception to their rigid no-voucher policy, Klossner is likely to lose her home and be institutionalized. This is precisely why Congress defined discrimination against the disabled to include the inflexible application of otherwise unobjectionable policies, where such policies deny people with disabilities an equal opportunity to obtain housing.

Under the decision below, many people who are too disabled to work, and who therefore rely on housing choice vouchers to pay part of their rent, will be deprived of the ability to live independently in their own communities. They will be forced into institutional settings, at taxpayer expense. This cannot be what Congress intended when it extended the protections of the Fair Housing Act to the disabled.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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