

Being Reasonable Under the Fair Housing Amendments Act: Allowing Changes in Rent-Admission Policies to Accommodate the Disabled Renter’s Economic Status

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INTRODUCTION.....	905
I. OVERVIEW OF THE FHAA AND THE REASONABLE ACCOMMODATION CLAUSE.....	909
A. <i>Purpose of the FHAA</i>	909
B. <i>Incorporation of Existing “Reasonable Accommodation” Doctrine into the FHAA</i>	909
C. <i>The Supreme Court and the Reasonable Accommodation Provisions</i>	911
D. <i>Reasonable Accommodation Claims</i>	912
II. DISABLED RENTER’S ECONOMIC STATUS UNDER THE FHAA’S REASONABLE ACCOMMODATION PROVISION.....	913
A. <i>Analytical Approach of Salute and Hemisphere</i>	913
B. <i>Supreme Court Insight on Reasonable Accommodation—Barnett</i>	916
C. <i>The Barnett Doctrine and the FHAA—Giebeler v. M & B Associates</i>	918
CONCLUSION.....	921

INTRODUCTION

John Giebeler suffers from the deadly disease Acquired Immunodeficiency Syndrome (“AIDS”).¹ Due to the advanced stage of his AIDS, Giebeler is disabled and can no longer work.² Prior to becoming disabled by AIDS, Giebeler had worked as a psychiatric technician for five years, earning approximately \$36,000 per year.³ However, since he became disabled in 1997, Giebeler’s income has consisted only of monthly Social Security Disability Insurance (“SSI”) benefits and housing assistance from the Housing Opportunities for People with AIDS program (“HOPWA”).⁴

In May 1997, Giebeler tried to rent an apartment at the Park Branham Apartments (“Branham”) in San Francisco because he could no longer afford his monthly rent of

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1. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1144 (9th Cir. 2003).

2. *Id.*

3. *Id.* at 1145.

4. *Id.*

over \$1500.⁵ By moving to Branham, Giebeler would save almost \$700 per month in rent.⁶ The new apartment would also be within a mile of his mother's house,⁷ allowing his mother, Anne Giebeler, to more effectively watch over and care for him.

However, Branham informed Giebeler that he did not meet the income qualifications under its rent-admission policy⁸ because his monthly gross income was not at least three times the monthly rent.⁹ Giebeler would not be eligible to rent at Branham despite the facts that Giebeler had a six-year record of consistent and prompt payment of rent of over \$700 more than the rent at Branham and that he had no negative notations on his credit record.¹⁰

Giebeler's mother went to Branham the next day and offered to sign the lease and be financially responsible for the monthly rent payments for Giebeler.¹¹ Even though Anne's income more than qualified for the apartment,¹² Branham rejected the application on the basis that it "considered Anne Giebeler a cosigner and [it] has a policy against allowing co-signers on lease agreements."¹³ In short, because Branham's rent-admission policy prohibited Giebeler from counting a source of income that would have made him eligible for the apartment—his mother—Giebeler was denied the opportunity to rent a cheaper apartment that was closer to his mother.

A few years earlier, a similar series of events occurred on Long Island to Richard Salute, an individual whose disabilities included chronic asthma, dextroscoliosis of the back, diverticulitis, ulcerative colitis, and depression.¹⁴ Like Giebeler, Salute received Social Security disability benefits. In addition, Salute was also found eligible to receive low-income housing assistance under the Section 8 housing program.¹⁵

Section 8 is administered by the Department of Housing and Urban Development ("HUD").¹⁶ Under this program, the Section 8 certificate recipient must find an apartment that meets the rent guidelines, and the landlord must agree to participate in the program.¹⁷ A Section 8 recipient is responsible for only a set portion of the rent to the landlord, with the government paying the remaining portion.¹⁸ Landlord participation in the program is voluntary; landlords can legally refuse to rent to Section 8 recipients.¹⁹

5. *Id.*

6. *Id.*

7. *Id.*

8. The term "rent-admission policy" refers to the standards adopted by a landlord or property manager establishing the criteria for acceptable tenants among those who apply for an apartment to rent. Often, these standards include minimal income level requirements.

9. 343 F.3d at 1145.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Salute v. Stratford Greens*, 918 F. Supp. 660, 662 (E.D.N.Y. 1996).

15. *Id.* Section 8 of the United States Housing Act of 1937 involves housing assistance for low-income individuals. See United States Housing Act of 1937 § 8, 42 U.S.C. § 1437f (2000).

16. *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2d Cir. 1998).

17. *Id.*

18. *Id.*

19. *Id.*

After spending five years on the Section 8 waitlist, Salute received his certificate and found an apartment that met the applicable rent guidelines at the Stratford Greens apartment complex.²⁰ Stratford Greens's property manager, however, had a policy against accepting applications from Section 8 recipients because he did not want to "get involved with the federal government and its rules and any accompanying regulations."²¹ After Salute was refused an apartment at Stratford Greens, his Section 8 certificate properly reverted to the government.²² Thus, Salute was left both without an apartment at Stratford Greens and without his Section 8 certificate.

Giebeler and Salute each filed suit against the property managers of their respective apartment buildings.²³ Each complaint included a count alleging that the defendants had violated the federal Fair Housing Amendments Act of 1988 ("FHAA")²⁴ by refusing to make a change in their rental qualification policies, and therefore not reasonably accommodating Giebeler's and Salute's disabilities.²⁵ On appeal, the Second Circuit²⁶ and the Ninth Circuit²⁷ reached opposite conclusions as to whether § 3604(f)(3)(B) requires landlords to make reasonable accommodations for the economic status of a disabled individual. The Second Circuit held that accommodating for the disabled individual's financial situation was "not 'necessary' to afford handicapped persons 'equal opportunity' to use and enjoy a dwelling,"²⁸ a conclusion also reached by the Seventh Circuit.²⁹ On the other hand, the Ninth Circuit arrived at the opposite conclusion, holding that a change to a landlord's application policy can be a required accommodation under the FHAA even though the change is based upon "financial considerations."³⁰

The resolution of this circuit split will have a tremendous impact on landlords and disabled tenants throughout the country. The decisions in the Second and Seventh Circuits have already caused great concern for the many advocates of disabled individuals: "[R]ecent decisions have severely limited the potential applicability of reasonable accommodations in overcoming disability-caused economic barriers to tenancy."³¹ In other words, the decisions in the Second and Seventh Circuits add to the housing crisis faced by 3.7 million disabled adults in this country who rely on SSI

20. *Salute v. Stratford Greens*, 918 F. Supp. at 662.

21. *Id.* (citing *Monter Aff.*, May 15, 1995, ¶ 4).

22. *Id.* (explaining how Section 8 certificates revert back to the local housing agency).

23. See *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1146 (9th Cir. 2003); *Salute v. Stratford Greens Garden Apartments*, 136 F.3d at 295.

24. 42 U.S.C. §§ 3601–3631 (2000).

25. *Giebeler*, 343 F.3d at 1146; *Salute*, 136 F.3d at 296.

26. *Salute*, 136 F.3d 293.

27. *Giebeler*, 343 F.3d 1143.

28. *Salute*, 136 F.3d at 302 (quoting 42 U.S.C. § 3604(f)(3)(B)) (emphasis omitted).

29. See *Hemisphere Bldg. Co. v. Village of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999); see also *Schanz v. Village Apartments*, 998 F. Supp. 784, 792 (E.D. Mich. 1998) ("[I]t is plaintiff's financial situation which impedes him from renting an apartment at The Village, and it is plaintiff's financial situation which he is requesting that defendants accommodate. The FHAA does not require that this be done.").

30. *Giebeler*, 343 F.3d at 1153.

31. Sherry Trafford, *Using Reasonable Accommodations to Preserve Rights of Tenants with Disabilities*, 33 CLEARINGHOUSE REV. 131, 141 (1999) (referring to the *Salute* and *Schanz* decisions).

benefits as their source of income.³² Those who are disabled and survive on their Social Security benefits, like Giebele and Salute, will never be able to qualify for an apartment where the landlord's application policy follows the standard industry practice of requiring that the prospective renter's income be at least three times the rent.³³ According to one study,

[i]n 2002, for the first time ever, the average national rent was greater than the [average] amount of income received by Americans with disabilities from the federal SSI program. Specifically, the average rent for a modest one-bedroom rental unit in the United States was equal to 105 percent of [the average] SSI benefit amounts³⁴

Thus, when disabled individuals' monthly income is roughly equal to the monthly rent, these individuals—according to the Second and Seventh Circuits—will never be able to rent from those landlords and owners who follow the industry standard of the income-to-rent ratio for prospective tenants.

This result is especially troublesome for those disabled individuals who would otherwise be able to afford to rent these apartments due to housing subsidies they receive from the Section 8 program, as in Salute's case, or from other charitable or familial sources, as in Giebele's case. Despite the fact that these individuals would be able to afford the housing with the help of their subsidies, landlords in the Second and Seventh Circuits are not required to deviate from their policies to accommodate for these individuals' disabilities. This result, in terms of social policy, is not one that we should embrace. But more fundamentally, the reasoning used by the Second and Seventh Circuits conflicts with the principles set forth by the Supreme Court in *U.S. Airways, Inc. v. Barnett*.³⁵

Part I of this Note will provide an overview of the purpose of the FHAA. It will also explain the relationship between the reasonable accommodation clauses contained in the Rehabilitation Act of 1973 ("Rehabilitation Act"),³⁶ the Americans with Disabilities Act of 1990 ("ADA"),³⁷ and the FHAA.³⁸ Part II examines the Second, Seventh, and Ninth Circuits' analyses of accommodating for the economic status of a disabled renter. Finally, this Note will conclude that landlords and property owners are not automatically exempted from the FHAA's reasonable accommodation provision when asked to modify their rent-admission policies to accommodate for the economic status caused by the individual renter's disability.

32. ANN O'HARA & EMILY COOPER, TECHNICAL ASSISTANCE COLLABORATIVE & CONSORTIUM FOR CITIZENS WITH DISABILITIES HOUS. TASK FORCE, PRICED OUT IN 2002 I (2003), <http://www.c-c-d.org/PO2002.pdf> (last visited Oct. 12, 2004).

33. *See id.*

34. *Id.*

35. 535 U.S. 391 (2002).

36. 29 U.S.C. § 794 (2000).

37. 42 U.S.C. § 12112(b)(5)(A) (2000).

38. *Id.* § 3604(f)(3)(B).

I. OVERVIEW OF THE FHAA AND THE REASONABLE ACCOMMODATION CLAUSE

Congress passed the Fair Housing Act ("FHA") as Title VIII of the Civil Rights Act of 1968.³⁹ The FHA initially only prohibited discrimination in the sale or rental of housing on the account of race, color, religion, or national origin.⁴⁰ In 1988, however, Congress amended the FHA by passing the Fair Housing Amendments Act of 1988, which extended the scope of prohibited discrimination to include discrimination against handicapped persons.⁴¹

A. Purpose of the FHAA

By extending protection of the FHA to disabled individuals, Congress intended the FHAA to be "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream."⁴² The FHAA makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap."⁴³ It further defines 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."⁴⁴ Thus, the FHAA "imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons."⁴⁵ This duty includes not only the accommodation of physical needs, but also accommodation in the administrative "rules, policies, [and] practices" of the landlords.⁴⁶

B. Incorporation of Existing "Reasonable Accommodation" Doctrine into the FHAA

In addition to the FHAA, Congress has also passed the Rehabilitation Act⁴⁷ and the ADA,⁴⁸ both of which contain reasonable accommodation provisions pertaining to disabled individuals.⁴⁹ In the House Committee Report on the FHAA, the House of

39. See Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. §§ 3601-3631).

40. See *id.*

41. See Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, sec. 6, §§ 804-806, 102 Stat. 1619, 1620-22 (codified as amended at 42 U.S.C. §§ 3604-3606).

42. H.R. REP. NO. 100-711, at 18 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2179.

43. 42 U.S.C. § 3604(f)(2) (2000).

44. *Id.* § 3604(f)(3)(B).

45. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994).

46. 42 U.S.C. § 3604(f)(3)(B) (2000).

47. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701-7961 (2000)).

48. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101-12213 (2000)).

49. See 29 U.S.C. § 794; 42 U.S.C. § 12112(b)(5)(A) (defining discrimination as "not making reasonable accommodations to the known physical or mental limitations of an otherwise

Representatives clearly stated its intention to incorporate the then-existing principles of "reasonable accommodation" provisions:

New subsection 804(f)(3)(B) makes it illegal to refuse to make reasonable accommodation in rules, policies, practices, or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" has a long history in regulations and case law dealing with discrimination on the basis of handicap. A discriminatory rule, policy, practice, or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.⁵⁰

The House Committee Report further explained that "[i]n adopting this amendment, the Committee drew on case law developed under Section 504 of the Rehabilitation Act of 1973 Handicapped individuals are 'otherwise qualified' if, with reasonable accommodation, they can satisfy all the requirements for a position or services."⁵¹ Consistent with the House Committee Report, courts have acknowledged that Congress borrowed the reasonable accommodation language in the FHAA from regulations and case law interpreting the same language in the Rehabilitation Act, and that Congress intended for this case law to supply the governing standard in determining what accommodations are reasonable under the FHAA.⁵² Since Congress intended the reasonable accommodation provisions of the Rehabilitation Act, ADA, and FHAA to be interpreted under the same principles and then-existing case law, it follows that Congress intended these provisions to be so substantially similar that subsequent case law interpreting one of these provisions should provide guidance for the interpretation of the other reasonable accommodation provisions. In fact, courts have often used case law governing one of these statutes' provisions to interpret another statute's provision.⁵³

Thus, in order to correctly interpret the reasonable accommodation provision of the FHAA, it is critically important to understand not only governing case law interpreting the FHAA provision, but also case law that interprets the parallel Rehabilitation Act

qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity").

50. H.R. REP. NO. 100-711, at 25 (1988)(footnote omitted), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186 (citing *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979); 45 C.F.R. § 84.12 (1988)) (footnote omitted).

51. *Id.* at 28 (citing *Davis*, 442 U.S. at 406; *Pushkin v. Regents of Univ. of Colo.*, 658 F.2d 1372, 1385-87 (10th Cir. 1981)).

52. *See, e.g.*, *Erdman v. City of Fort Atkinson*, 84 F.3d 960, 962 (7th Cir. 1996); *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 334-35 (2d Cir. 1995); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416-18 (9th Cir. 1994); *Means v. City of Dayton*, 111 F. Supp. 2d 969, 977 (S.D. Ohio 2000); *Roe v. Hous. Auth.*, 909 F. Supp. 814, 820 (D. Colo. 1995); *Judy B. v. Borough of Tioga*, 889 F. Supp. 792, 799 (M.D. Pa. 1995).

53. *See, e.g.*, *Jones v. City of Monroe*, 341 F.3d 474, 477 n.3 (6th Cir. 2003); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 275-76 (2d Cir. 2003); *Good Shephard Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 561 (7th Cir. 2003); *Pace v. Bogalusa City Sch. Bd.*, 325 F.3d 609, 622-23 (5th Cir. 2003), *vacated by* 339 F.3d 348 (5th Cir. 2003) (en banc).

and ADA provisions. Although the case law interpreting the Rehabilitation Act and ADA provisions may not directly govern over the FHAA provision, it is certainly highly influential, especially when the case law comes from the Supreme Court.

C. The Supreme Court and the Reasonable Accommodation Provisions

When interpreting the FHAA's reasonable accommodation provision, the Court has clearly emphasized the importance of the statute's "'broad and inclusive' compass,"⁵⁴ and the need to be "mindful of the Act's stated policy 'to provide, within constitutional limitations, for fair housing throughout the United States.'"⁵⁵ So, when analyzing the contrasting reasoning used by the courts in *Salute* and *Giebeler*, it is first necessary to understand that such analysis must be done with the specific goals of the FHAA in mind.

Perhaps the Court's "most extensive discussion of the overall scope of the accommodation concept"⁵⁶ appears in a recent ADA case, *U.S. Airways v. Barnett*.⁵⁷ In that case, an airline cargo handler, Barnett, injured his back while working for U.S. Airways.⁵⁸ Barnett then transferred to a less physically demanding mailroom position.⁵⁹ Two years later, Barnett learned that two employees senior to him intended to invoke the company's seniority system policy and bid for Barnett's job.⁶⁰ Barnett asked U.S. Airways to accommodate his disability by making an exception to the company's seniority system and allowing him to keep the mailroom job.⁶¹ U.S. Airways denied Barnett's request and followed its seniority system, granting Barnett's job to a senior employee.⁶² Unable to work in a more physically demanding position, Barnett lost his job.⁶³ Barnett then brought an ADA suit against U.S. Airways, claiming, among other things, that the "mailroom job amounted to a 'reasonable accommodation' of his disability, and that U.S. Airways, in refusing to assign him the job, unlawfully discriminated against him."⁶⁴

U.S. Airways argued that the reasonable accommodation provision of the ADA "seeks only 'equal' treatment for those with disabilities. It does not . . . require an employer to grant preferential treatment."⁶⁵ Thus, according to U.S. Airways, any preferential exception to a disability-neutral policy, such as the seniority rule, would

54. *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972)).

55. *Id.* (quoting 42 U.S.C. § 3601 (2000)).

56. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1149 (9th Cir. 2003).

57. 535 U.S. 391 (2002).

58. *Id.* at 394.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 394-95.

65. *Id.* at 397 (citing 42 U.S.C. § 12101(a)(9) (1994 & Supp. V 1999)) (citation omitted).

automatically exceed the intended scope of the reasonable accommodation provision of the ADA.⁶⁶

The Court rejected this argument, holding that “preferences will sometimes prove necessary to achieve the Act’s basic equal opportunity goal,”⁶⁷ and “the Act does not create any such automatic exemption.”⁶⁸ This holding, which is further discussed in Part II below, will be critical in analyzing the contrasting views in the Second and Ninth Circuits.

D. Reasonable Accommodation Claims

As previously stated, discrimination covered by the FHAA 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.”⁶⁹ In order to establish a claim of discrimination based on failure to reasonably accommodate, the plaintiff must show that (1) he suffers from a disability as defined by the FHAA, (2) the landlord or property manager knew or reasonably should have known of the disability, (3) accommodation of the disability “may be necessary to afford” the disabled individual an equal opportunity “to use and enjoy” the dwelling,⁷⁰ and (4) the landlord or property manager refused to make the requested accommodation.⁷¹

The majority of cases brought under the FHAA’s reasonable accommodation provision are brought against government entities by parties requesting relief from zoning restrictions, or are brought against landlords or property managers by already disabled tenants seeking access to parking spaces, service animals, or other reasonable accommodations.⁷² This Note, however, addresses cases like *Salute* and *Giebeler*, which involve a disabled individual who requests the modification of certain financial requirements of a rental application so as to accommodate the individual’s financial situation.

Both *Salute* and *Giebeler* recognized the two step inquiry that must be made in the analysis of all reasonable accommodation claims.⁷³ First, the court must determine whether the accommodation sought by the disabled individual is an *accommodation*

66. *Id.*

67. *Id.*

68. *Id.* at 398.

69. 42 U.S.C. § 3604(f)(3)(B) (2000).

70. *Id.*

71. See *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997); *Schanz v. Vill. Apartments*, 998 F. Supp. 784, 791 (E.D. Mich. 1998); *Roseborough v. Cottonwood Apartments*, No. 94 C 3708, 1996 WL 490717, at *2 (N.D. Ill. Aug. 26, 1996); *Ocean Sands, Inc., HUDALJ 04-90-0231-1*, 1993 WL 343530, at *11 (H.U.D.A.L.J. Sept. 3, 1993).

72. For a discussion on these types of cases, see Polly W. Blakemore, Note, *Short of Money or Shortchanged?: Reasonable Accommodations in Rental Rules and Policies for Disabled Individuals Receiving Financial Assistance*, 39 BRANDEIS L.J. 449, 461 nn. 107–111 and accompanying text (2000).

73. See *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1148 (9th Cir. 2003); *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 300 (2d Cir. 1998); see also *Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment*, 284 F.3d 442, 457 (3d Cir. 2002).

within the meaning of 42 U.S.C. § 3604(f)(3)(B).⁷⁴ Second, the court must determine whether the accommodation is *reasonable*.⁷⁵ As the Ninth Circuit observed in *Giebeler*, “[t]here is some tendency in the case law to truncate the ‘accommodation’ concept so as to preclude requirements that unreasonably burden housing providers, rather than conducting the two-step analysis mandated by the statute.”⁷⁶ The first inquiry, whether an accommodation fits within the intended scope of the statute, is exactly where the circuits split in their outcome and in their analysis. As the Ninth Circuit described, the Second and Seventh Circuits hold that “however reasonable the requested accommodation, the FHAA does not require landlords or cities to accommodate needs generated by the inability of disabled individuals to generate income by working.”⁷⁷ The Ninth Circuit in *Giebeler*, however, correctly held that such an interpretation of the FHAA cannot stand in light of *Barnett*.

II. DISABLED RENTER’S ECONOMIC STATUS UNDER THE FHAA’S REASONABLE ACCOMMODATION PROVISION

A. Analytical Approach of *Salute* and Hemisphere

As already mentioned, *Salute* involved a disabled individual who received a Section 8 certificate. He found an appropriate one-bedroom apartment, but the property manager refused to rent to him because *Salute* was a Section 8 recipient.⁷⁸ *Salute* then filed suit under the FHAA, claiming that the property manager was required to accommodate *Salute*’s disability by waiving the policy of not accepting Section 8 recipients.⁷⁹ Because this was a reasonable accommodation claim, the court proceeded with the two-step inquiry.⁸⁰

Peculiarly, the court chose to address the second part of the inquiry first—determining whether requiring the property manager to waive his policy regarding Section 8 renters was reasonable.⁸¹ The court affirmed the district court’s decision by

74. *Salute*, 136 F.3d at 300; *Giebeler*, 343 F.3d at 1148.

75. *Giebeler*, 343 F.3d at 1148.

76. *Id.*

77. *Id.* at 1153 (citing *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437 (7th Cir. 1999); *Salute*, 136 F.3d at 301–02); see also *Schanz v. Vill. Apartments*, 998 F. Supp. 784, 792 (E.D. Mich. 1998) (arriving at the same conclusion as *Salute*).

78. See *supra* notes 14–22 and accompanying text.

79. *Salute*, 136 F.3d at 296.

80. *Id.* at 300.

81. *Id.* The dissent criticizes the majority for approaching the inquiry in reverse order:

In so doing, the majority once again displays an unrelenting eagerness to decide far more than it needs to resolve the case before it. It would be one thing if the majority assumed *arguendo* that participation in Section 8 was an accommodation under the statute and then held that such an accommodation was unreasonable as a matter of law. But instead the majority . . . goes on also to affirm on the alternate ground—that “economic discrimination—such as the refusal to accept Section 8 tenants—is not cognizable as a failure to make reasonable accommodations.” Given this second finding, its first holding is wholly superfluous.

holding that such an accommodation, regardless as to whether it was a type of accommodation intended to fit within the scope of the statute, was not a reasonable accommodation.⁸² The court offered two reasons that the accommodation was not reasonable. First, the court stated that the Section 8 program was intended to be purely voluntary for landlords: "We think that the voluntariness provision of Section 8 reflects a congressional intent that the burdens of Section 8 participation are substantial enough that participation should not be forced on landlords, either as an accommodation to handicap or otherwise."⁸³ Second, the court stated that forcing a landlord to participate in the Section 8 program would be burdensome on the landlord because participation in the program requires substantial government involvement: "A landlord may consider that participation in a federal program will or may entail financial audits, maintenance requirements, inspection of the premises, reporting requirements, increased risk of litigation, and so on."⁸⁴ For these two reasons, the court concluded that an accommodation requiring the landlord to participate in the Section 8 program was not "reasonable" within the meaning of 42 U.S.C. § 3604(f)(3)(B).

After resolving the second prong of the inquiry, the court then discussed whether requiring a landlord to participate in the Section 8 program should even be considered an accommodation under the FHAA at all, an inquiry that usually precedes the reasonableness inquiry. The court reiterated that an accommodation must be "'necessary' to afford handicapped persons 'equal opportunity' to use and enjoy a dwelling" in order to fall within the scope of the FHAA.⁸⁵

In order to reach the conclusion that requiring the landlord to participate in the Section 8 program was not an accommodation that fit this definition, the court first found that such an accommodation would be shaped by the economic status of the disabled individual—and not by the disability as the statute requires. According to the court, "the duty to make reasonable accommodations is framed by the nature of the particular handicap."⁸⁶ To illustrate this point, the court provided a list of cases where the valid requested accommodation addressed only the disability itself.⁸⁷ In addition, the court cited HUD regulations that provided two examples illustrating when a reasonable accommodation would be required: "[T]he lifting of a no-pets rule to allow use of a seeing-eye dog; or the waiver of a first-come, first-serve policy on parking spots to accommodate the impaired mobility of a person suffering from multiple sclerosis."⁸⁸ The court argued that in all of these cases, and the HUD regulation examples, it was the disability itself that was accommodated, not a "disadvantage[]" that

Id. at 307 n. 16 (Calabresi, J., dissenting) (citation omitted).

82. *Id.* at 302.

83. *Id.* at 300.

84. *Id.* at 301.

85. *Id.* at 302 (emphasis omitted) (quoting 42 U.S.C. § 3604(f)(3)(B) (2000)).

86. *Id.* at 301.

87. *Id.* (citing *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 894–95 (7th Cir. 1996) (parking space as accommodation for multiple sclerosis sufferer); *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (hearing dog as accommodation for deaf individuals); *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 330 (2d Cir. 1995) (parking space as accommodation for multiple sclerosis sufferer); *United States v. Bd. of Trs. for Univ. of Ala.*, 908 F.2d 740, 746 (11th Cir. 1990) (sign language interpreter as accommodation for deaf students).

88. *Salute*, 136 F.3d at 301 (citing 24 C.F.R. § 100.204(b) (2004)).

may be correlated with having handicaps.”⁸⁹ The court then contrasted these situations with the one in *Salute* where the disabled plaintiff sought to use the reasonable accommodation provision to “remedy economic discrimination . . . without regard to handicap.”⁹⁰ According to the court, this difference distinguished economic accommodation claims from legitimate disability accommodation claims.

Furthermore, the court held that a landlord’s policy of not accepting Section 8 renters was a neutral policy that did not discriminate against the disabled.⁹¹ Thus, because “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,”⁹² the statute could not require such an accommodation. Otherwise, according to the court, poor disabled individuals would receive preferential treatment over poor nondisabled individuals.⁹³ Such treatment would no longer be providing the disabled individual an “equal opportunity to use and enjoy a dwelling,” as required by 42 U.S.C. § 3604(f)(3)(B), but would instead be providing the disabled individual with a preferential opportunity beyond that which is equal.⁹⁴ Thus, because the duty to accommodate was not shaped by the handicap and, as the court stated, “[t]he FHAA does not elevate the rights of the handicapped poor over the rights of the non-handicapped poor,”⁹⁵ an accommodation requiring the landlord to change his admission policy against Section 8 renters was not, and could never be, an accommodation that fit within the meaning of the statute, regardless of whether it was reasonable or not.⁹⁶

In *Hemisphere*, a case involving a different factual context than *Salute*, the Seventh Circuit reached the same legal conclusion as the Second Circuit: the reasonable accommodation provision of the FHAA never requires an accommodation that is shaped by the economic limitations that a disability generates.⁹⁷ *Hemisphere* was a developer who wished to construct nine townhouses specifically designed to accommodate for the needs of disabled individuals⁹⁸ on a property in the Village of

89. *Id.*

90. *Id.* at 302.

91. *Id.*

92. *Id.*

93. *Id.*

94. See *Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187 (S.D.N.Y. 1998) (“Accommodations that go beyond affording a handicapped tenant ‘an equal opportunity to use and enjoy a dwelling’ are not required by the Act.”) (quoting 42 U.S.C. § 3604(f)(3)(B) (2000)); see also *Sporn v. Ocean Colony Condo. Ass’n*, 173 F. Supp. 2d 244, 250 (D.N.J. 2001) (using the same language).

95. *Salute*, 136 F.3d at 302.

96. See also *Schanz v. Vill. Apartments*, 998 F. Supp. 784 (E.D. Mich. 1998) (arriving at the same conclusion as *Salute* where the disabled tenant was not trying to use Section 8, but rather funds from a third-party charitable organization).

97. *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999).

98. Although the homes would be available to both disabled and nondisabled individuals, the homes would be built in order to accommodate the needs of disabled residents. Specifically, the designs included wider doors, lower light switches, roll-in showers, high toilet seats, and preinstalled grab bars in the bathroom. In addition, the units would be built horizontally instead of vertically, further accommodating the needs of disabled residents.

Richton Park ("The Village"). The Village had certain zoning ordinances prescribing the maximum density (number of dwelling units per acre) allowed.⁹⁹ In order to make the homes economically feasible for disabled individuals, the developer had to exceed the maximum density by a few units.¹⁰⁰ Hemisphere requested that The Village make an exception to its zoning ordinance in order to accommodate disabled occupants, but The Village denied this request.¹⁰¹ As a result, Hemisphere, along with a prospective disabled resident of the proposed development, brought suit against The Village, claiming that 42 U.S.C. § 3604(f)(3)(B) required that The Village make such an accommodation.¹⁰²

The Seventh Circuit reasoned that if the reasonable accommodation provision required that the standards in the zoning policy be ignored, then it would follow, as a slippery slope, that developers of housing for the disabled would also be allowed to ignore "a local building code that increased the cost of construction, or for that matter a minimum wage law, or regulations for the safety of construction workers."¹⁰³ The court considered such a result to be absurd and held that it must be avoided:

The result that we have called absurd is avoided by confining 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.¹⁰⁴

With this ruling, the Seventh Circuit joined the Second Circuit in holding that the FHAA reasonable accommodation provision, as a matter of law, never includes accommodating the economic disadvantages caused by a disability.

B. Supreme Court Insight on Reasonable Accommodation—Barnett

As already explained, the Court's approach to the reasonable accommodation concept in *Barnett*, although it addressed the ADA provision, is extremely important in our analysis of the *Salute* line of cases because of the congressional intent to incorporate the reasonable accommodation doctrine into the FHAA provision.¹⁰⁵ Thus, *Barnett* would not be binding over the FHAA cases, but it should nevertheless be extremely persuasive due to the similarities between the two provisions.

In *Barnett*, the Court was faced with the same type of argument that the *Salute* line of cases supports. U.S. Airways claimed that its seniority system, a disability-neutral workplace policy, would automatically "trump[]" a conflicting accommodation

Hemisphere Bldg. Co. v. Vill. of Richton Park, No. 96 C 1268, 1998 WL 100291, at *1 (N.D. Ill. Feb. 12, 1998).

99. *Hemisphere*, 171 F.3d at 438.

100. *Id.* at 439.

101. *Id.* at 438–39.

102. *Id.* at 439.

103. *Id.* at 440.

104. *Id.* (emphasis in original) (citing *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 301–02 (2d Cir. 1998); *Erdman v. City of Fort Atkinson*, 84 F.3d 960 (7th Cir. 1996); *Brandt v. Vill. of Chebanse*, 82 F.3d 172 (7th Cir. 1996)).

105. See *supra* notes 47–53 and accompanying text.

demand.”¹⁰⁶ It argued that the reasonable accommodation provision only granted “equal” treatment for the disabled.¹⁰⁷ If an employer were to ignore its seniority system in order to accommodate a disabled worker like Barnett, then it would be granting the disabled worker a special and preferential treatment that was not available to nondisabled employees.¹⁰⁸ According to U.S. Airways, such an accommodation would not be consistent with the wording of the reasonable accommodation provision because it would grant a preference to disabled employees—not put them on “equal” ground with the nondisabled.¹⁰⁹ Recall that this is the same logical sequence that the Second Circuit used in order to reach its conclusion that the FHAA reasonable accommodation provision could not require landlords to accommodate for the economic status of disabled individuals when such accommodations would favor the disabled Section 8 applicants above the nondisabled Section 8 applicants.¹¹⁰

The Supreme Court, however, rejected this argument, holding that there was no automatic exemption for disability-neutral rules. As the Court explained, this argument failed to recognize that any accommodation received by a disabled individual could be considered a type of preferential treatment:

While linguistically logical, this argument fails to recognize what the Act specifies, namely, that preferences will sometimes prove necessary to achieve the Act’s basic equal opportunity goal. The Act requires preferences in the form of “reasonable accommodations” that are needed for those with disabilities to obtain the *same* workplace opportunities that those without disabilities automatically enjoy. By definition any special “accommodation” requires the employer to treat an employee with a disability differently, *i.e.*, preferentially. And the fact that the difference in treatment violates an employer’s disability-neutral rule cannot by itself place the accommodation beyond the Act’s potential reach.¹¹¹

Were this not so, then the provision could never accomplish its intended purpose, because each accommodation of a disability-neutral rule could be considered a preference. If a disability-neutral rule received an automatic exemption to the statute, then, for example, “[n]eutral office assignment rules would automatically prevent the accommodation of an employee whose disability-imposed limitations require him to work on the ground floor.”¹¹² Not only did the employer’s argument not logically fit with the purpose of the reasonable accommodation provision, but also “Congress . . . said nothing suggesting that the presence of such neutral rules would create an automatic exemption.”¹¹³ For these reasons, the Court found that providing a

106. U.S. Airways, Inc. v. Barnett, 535 U.S. 391, 397 (2002).

107. *Id.*

108. *Id.*

109. *Id.*

110. *See supra* notes 91–96 and accompanying text.

111. *Barnett*, 535 U.S. at 397 (emphasis in original).

112. *Id.* at 397–98. The court likewise provides the following examples: “Neutral ‘break-from-work’ rules would automatically prevent the accommodation of an individual who needs additional breaks from work, perhaps to permit medical visits. Neutral furniture budget rules would automatically prevent the accommodation of an individual who needs a different kind of chair or desk.” *Id.* at 398.

113. *Id.*

preference to a disabled individual in the face of a disability-neutral rule would not ipso facto justify an automatic exemption from the ADA reasonable accommodation provision.¹¹⁴

C. *The Barnett Doctrine and the FHAA—Giebeler v. M & B Associates*

Because *Barnett* dealt with the ADA's reasonable accommodation provision, and not the FHAA's provision, it does not directly overrule the *Salute* line of cases. Nevertheless, there is clear tension between the reasoning used by the Supreme Court in *Barnett* and the reasoning used by the circuit courts in the *Salute* line of cases.¹¹⁵ In 2003, the Ninth Circuit was faced with the same question presented in the *Salute* line of cases.¹¹⁶ In fact, the defendant/landlord in *Giebeler*, along with the district court, relied on both *Salute* and *Hemisphere* to argue for an automatic exemption.¹¹⁷ But, drawing on the additional insight provided by *Barnett*, the Ninth Circuit arrived at the opposite conclusion as the *Salute* courts.¹¹⁸

In *Giebeler*, the disabled individual requested that the landlord change his policy against cosigners in order to allow Giebeler to have his mother cosign the rent application, thus allowing Giebeler to satisfy the application's financial requirements.¹¹⁹ When the landlord refused to change his policy against cosigners, Giebeler brought suit under the FHAA, claiming that the defendant/landlord discriminated against Giebeler by not making the appropriate reasonable accommodations in the application procedure.¹²⁰ The defendant/landlord relied on the reasoning used by the courts in *Salute* and *Hemisphere*, arguing that "accommodations of one's personal economic situation are outside the scope of the FHAA's reasonable accommodation requirement,"¹²¹ and thus he should be automatically exempted from the reasonable accommodation provision. Following *Salute*'s reasoning, the defendant/landlord stated two reasons why he should receive an automatic exemption from the reasonable accommodation provision of the FHAA: (1) making the accommodation would "prefer disabled over nondisabled impecunious individuals,"¹²² and (2) changing the financial requirements would "accommodate Giebeler's poverty rather than his disability."¹²³

The defendant/landlord's first argument was the same disability-neutral-rule argument that the *Salute* court upheld.¹²⁴ The *Giebeler* court, however, correctly rejected this argument. Instead, *Giebeler* focused on the analysis provided by the Supreme Court in *Barnett*,¹²⁵ in which the Court held that "[t]he Act requires

114. *Id.*

115. See *supra* notes 79–114 and accompanying text.

116. *Giebeler v. M & B Assocs.*, 343 F.3d 1143 (9th Cir. 2003).

117. *Id.* at 1153.

118. See *id.* at 1154.

119. *Id.* at 1145–46.

120. *Id.* at 1146.

121. *Id.* at 1153.

122. *Id.* at 1148.

123. *Id.*

124. See *supra* notes 91–96 and accompanying text.

125. See *Giebeler*, 343 F.3d at 1154.

preferences in the form of 'reasonable accommodations' that are needed for those with disabilities to obtain the *same* workplace opportunities that those without disabilities automatically enjoy."¹²⁶ This same principle applies to the FHAA provision. If the provision were not allowed to grant preferences, then the provision could never accomplish its intended purpose, because every accommodation of a disability-neutral rule would be considered a preference.¹²⁷

To illustrate this point, consider the two examples provided in the HUD regulations of when a reasonable accommodation would be required: (1) the lifting of a no-pets rule to allow use of a seeing-eye dog; and (2) the waiver of a first-come, first-serve parking policy to accommodate a person suffering from multiple sclerosis.¹²⁸ Both of these examples involve disability-neutral policies. An accommodation given to a disabled tenant under either of these policies would create a preference for disabled tenants over nondisabled tenants. Yet, even the *Salute* court recognized that these were valid reasonable accommodations under the provision.¹²⁹ In light of *Barnett*, *Giebeler* recognized *Salute*'s error in upholding this disability-neutral policy argument. Thus, regardless of whether the request for accommodation arises under the ADA or under the FHAA, the mere fact that the requested accommodation would grant preference to a disabled individual, does not, "*in and of itself*,"¹³⁰ automatically exempt the defendant/landlord from providing that accommodation.

The defendant/landlord argued in the alternative that he was automatically exempt from the provision because the requested accommodation would accommodate *Giebeler*'s economic status rather than his disability.¹³¹ According to this argument, because the FHAA only prohibited a landlord from discriminating against a disabled renter because of his disability,¹³² discriminating against *Giebeler*'s economic status, and not his disability, could not violate the FHAA. Again, this argument mirrors the reasoning of the Second Circuit in *Salute*: "We think it is fundamental that the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps."¹³³ It is, however, important to recognize the difference between an argument based on correlation and one based on causation. Neither the Second Circuit nor the defendant/landlord in *Giebeler* discussed whether a causal link existed between the disability and the plaintiff's poverty. Instead, the Second Circuit only recognized that the two are "correlated."¹³⁴ Because the court failed to investigate the causal relationship, its ruling clearly does not align with either the plain wording of the statute or the Supreme Court's holding in *Barnett*.

As previously stated, the FHAA prohibits a landlord from discriminating against a disabled renter because of his disability.¹³⁵ Therefore, at the very least, the plain

126. *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002) (emphasis in original).

127. *See id.*

128. *See* 24 C.F.R. § 100.204(b) (2004).

129. *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 301 (2d Cir. 1998).

130. *Barnett*, 535 U.S. at 398 (emphasis in original).

131. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1148 (9th Cir. 2003).

132. 42 U.S.C. § 3604(f)(2) (2000).

133. *Salute*, 136 F.3d at 301.

134. *Id.*

135. 42 U.S.C. § 3604(f)(2).

wording of the statute allows accommodations for the physical, mental, or social status of a disabled individual, so long as the disability was the cause of the status. Even the dissent in *Barnett* recognized that where a causal relationship existed, a reasonable accommodation would be necessary.¹³⁶ In addition, the majority in *Barnett*, by rejecting Justice Scalia's narrow interpretation of the provision, left open the question of whether there must be a direct causal relationship at all, thus leaving the door open to an argument that only a correlation, and not a causal relationship, must exist between those barriers faced by disabled individuals.¹³⁷

Regardless of whether the FHAA provision actually extends so far to include correlated barriers, *Barnett* left no doubt that the provision includes those barriers that the renter's disability causes. However, the *Salute* court argued that no causal relationship existed because the economic status of a disabled individual was too remote from the disability.¹³⁸ In reaching this conclusion, the court attempted to distinguish the economic status case from the seeing-eye dog and parking cases¹³⁹—cases which are clearly accepted as valid reasonable accommodations cases under the FHAA¹⁴⁰—by arguing that, in the latter cases, “it is the handicap that is [directly] accommodated.”¹⁴¹ However, as the dissenting opinion in *Salute* recognized, there is really no difference between these cases and the economic status case:

But, in fact, in the seeing-eye dog and parking examples cited by the majority, it is not the handicap *itself* that is directly accommodated by the change in a policy. Rather, it is the *need* that was created by the particular handicap that is accommodated. Thus, a person's blindness creates the need for a seeing-eye dog, and a person's multiple sclerosis leads to impaired mobility, which, in turn, creates the need for a priority parking space close to the tenant's residence.¹⁴²

136. U.S. Airways, Inc. v. Barnett, 535 U.S. 391, 413 (2002) (Scalia, J., dissenting) (arguing that “the ADA eliminates workplace barriers only if a disability prevents an employee from overcoming them—those barriers that would not be barriers *but for* the employee's disability”) (emphasis in original).

137. *See id.* at 398; *see also* Giebeler v. M & B Assocs., 343 F.3d 1143, 1150 (9th Cir. 2003) (recognizing that “*Barnett* indicates, inferentially if not expressly, that a required accommodation need not address ‘barriers that would not be barriers *but for* the [individual's] disability” (emphasis and alteration in original) (quoting *Barnett*, 535 U.S. at 413 (Scalia, J., dissenting))); *United States v. City of Philadelphia*, 838 F. Supp. 223, 229 (E.D. Pa. 1993) (“[T]he language of § 3604(f) does not suggest that to establish a Fair Housing Act violation, a plaintiff must show a ‘causal nexus’ between the challenged provision and the handicaps of the prospective residents.”).

138. *See Salute*, 136 F.3d at 301.

139. *Id.*

140. *See, e.g.*, *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 894–95 (7th Cir. 1996) (parking space as accommodation for multiple sclerosis sufferer); *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (hearing dog as accommodation for deaf individuals); *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 330 (2d Cir. 1995) (parking space as accommodation for multiple sclerosis sufferer); *United States v. Bd. of Trs. for Univ. of Ala.*, 908 F.2d 740, 746 (11th Cir. 1990) (sign language interpreter as accommodation for deaf students); 24 C.F.R. § 100.204(b).

141. *Salute*, 136 F.3d at 301.

142. *Id.* at 308 (Calabresi, J., dissenting) (emphasis in original).

Likewise, the disabled individual in *Salute* argued that, but for his disability, he would not be in the economic situation that he was in, and thus he would have otherwise qualified for the apartment. In short, he argued that his disability created the need for a cosigner or for a Section 8 voucher. This same causal relationship, recognized by the court, existed in *Giebeler*.¹⁴³ *Barnett* makes clear that where these causal relationships exist, reasonable accommodations cannot be automatically exempted—notwithstanding the erroneous decision in *Salute*.¹⁴⁴

CONCLUSION

The purpose of the Fair Housing Amendments Act was to codify the means to accomplish the “national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.”¹⁴⁵ To achieve this goal, the FHAA requires that landlords and property managers provide reasonable accommodations in their rules and policies. This provision has allowed the disabled community to make great

143. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1151 (9th Cir. 2003).

144. Even though *Salute*'s holding that “accommodations of one’s personal economic situation are [automatically] outside the scope of the FHAA’s reasonable accommodation requirement” is incorrect in light of *Barnett*, *Giebeler*, 343 F.3d at 1151, *Salute* may nevertheless have reached the correct result because of the second prong of the reasonable accommodation test. Recall that all reasonable accommodation cases have two issues to be decided: (1) whether the requested accommodation falls within the scope of the provision, and (2) whether the requested accommodation is reasonable. See *supra* notes 73–76 and accompanying text. As discussed throughout this Note, the conflicting holdings in the Second, Seventh, and Ninth Circuits all pertain to the first prong of the inquiry—defining “accommodation.” These cases, therefore, do not address the issue of the reasonableness of the requested accommodation. Despite the fact that the *Salute* court incorrectly held that the request to modify the rental policies was not an accommodation within the scope of the FHAA provision, the court could have found that such an accommodation was unreasonable. In fact, the court did.

Generally an accommodation is reasonable under 42 U.S.C. § 3604(f) so long as it does not impose “undue financial or administrative burdens” or requires a “fundamental alteration in the nature of a program.” *Erdman v. City of Fort Atkinson*, 84 F.3d 960, 962 (7th Cir. 1996) (quoting *Southeastern Comm. Cmty. Coll. v. Davis*, 442 U.S. 397, 410, 412 (1979)); see also *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1417 (9th Cir. 1994). More specifically, “the determination of whether a particular modification is ‘reasonable’ involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification . . . and the cost to the organization that would implement it.” *Staron v. McDonald’s Corp.*, 51 F.3d 353, 356 (2d Cir. 1995). In *Salute*, the Second Circuit determined that the requested accommodation, requiring a landlord to alter his policy and accept Section 8 renters if they are disabled, was not reasonable because (1) the Section 8 program was intended to be a strictly voluntary program, and (2) the program would involve substantial government involvement that would be burdensome on the landlord. See *supra* notes 81–84 and accompanying text. For the purposes of this Note it is not important how the Second Circuit resolved the reasonableness issue; however, it is important to recognize that just because there are no automatic exemptions, based on the economic status of the disabled, available to the landlords in these cases, the courts can still determine that the requested accommodation is unreasonable.

145. H.R. REP. NO. 100-711, at 18 (1988), reprinted in 1988 U.S.C.A.N. 2173, 2179.

strides in integrating themselves into the American society. For example, blind individuals who need the assistance of seeing-eye dogs can now find homes in the many buildings that do not allow pets, and persons suffering from multiple sclerosis no longer have to fight for parking spots that are close to their apartments. However, when it comes to making reasonable accommodations in the landlord's rent-admission policies, some jurisdictions still permit the exclusion of disabled individuals from the mainstream of our society. Such discrimination cannot be tolerated, neither as a matter of social policy nor as a matter of law.