STATE OF MINNESOTA

IN SUPREME COURT

A18-1271

Court of Appeals

Thissen, J.
Concurring, Anderson, J., Gildea, C.J.

Fletcher Properties, Inc., et al.,

Appellants,

vs.

Filed July 29, 2020
Office of Appellate Courts

City of Minneapolis,

Respondent.

Tamara O'Neill Moreland, Inga K. Schuchard, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota, for appellants.

Erik Nilsson, Interim Minneapolis City Attorney, Kristin R. Sarff, Tracey N. Fussy, Assistant City Attorneys, Minneapolis, Minnesota, for respondent.

Aaron D. Van Oort, Thomas Pryor, Faegre Drinker Biddle & Reath, LLP, Minneapolis, Minnesota; and

Todd B. Liljenquist, Minnesota Multi Housing Association, Bloomington, Minnesota, for amicus curiae Minnesota Multi Housing Association.

Seth Leventhal, Leventhal PLLC, Minneapolis, Minnesota; and

John J. McDermott, National Apartment Association, Arlington, Virginia, for amicus curiae National Apartment Association.

John Cann, Saint Paul, Minnesota, for amicus curiae Housing Justice Center.

Eric Dunn, Richmond, Virginia; and

Renee Williams, San Francisco, California, National Housing Law Project, for amicus curiae National Housing Law Project.

Philip Tegeler, Washington, D.C., for amicus curiae Poverty & Race Research Action Council.

Lawrence R. McDonough, Theresa M. Bevilacqua, Dorsey & Whitney LLP, Minneapolis, Minnesota; and

Samuel Spaid, HOME Line, Minneapolis, Minnesota, for amicus curiae HOME Line.

S Y L L A B U S

1. Those portions of title 7, chapter 139, of the Minneapolis Code of Ordinances that prohibit an owner from refusing to rent residential property to an individual because of any requirement of a public assistance program do not violate the Minnesota Constitution's guarantee of substantive due process.

2. Those portions of title 7, chapter 139, of the Minneapolis Code of Ordinances that prohibit an owner from refusing to rent residential property to an individual because of any requirement of a public assistance program do not violate the Minnesota Constitution's guarantee of equal protection.

Affirmed.

O P I N I O N

THISSEN, Justice.

In this case, we consider a constitutional challenge to an ordinance adopted by respondent City of Minneapolis that prohibits certain property owners, property managers, and others (collectively, landlords) from refusing to rent property to prospective tenants

when that refusal is motivated by a desire to avoid the burden of complying with the requirements of Section 8 of the United States Housing Act of 1937. Appellants are property owners (Owners) who own and rent residential properties in Minneapolis. They assert that the ordinance violates the Due Process Clause and the Equal Protection Clause of the Minnesota Constitution. Because we conclude that the ordinance survives due process and equal protection rational basis scrutiny, we affirm.

FACTS

Section 8 of the United States Housing Act of 1937 provides for housing assistance to low-income people in the United States. *See generally* 42 U.S.C. § 1437f (2016). The United States Department of Housing and Urban Development (HUD) funds Section 8 programs and local housing authorities administer the programs in their regions. In Minneapolis, the Minneapolis Public Housing Authority (the Housing Authority) administers Section 8.

Housing choice vouchers are one form of assistance provided under Section 8. *See id.*, § 1437f(o). Families using housing choice vouchers have a portion of their rent payments subsidized by the government. *See* 24 C.F.R. § 982.1(a) (2018). Families using housing choice vouchers "select and rent units that meet program housing quality standards." 24 C.F.R. § 982.1(a)(2). If the Housing Authority approves a family's unit and tenancy, the Housing Authority "contracts with the [property] owner to make rent subsidy payments on behalf of the family." *Id.* The Housing Authority uses the funds provided by the federal government to pay the rent subsidy.

Under federal law, participation in Section 8 is voluntary for both landlords and tenants. *See, e.g.*, *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2d Cir. 1998); *Knapp v. Eagle Prop. Mgmt. Corp.*, 54 F.3d 1272, 1280 (7th Cir. 1995). Landlords who opt to participate in the program are required to enter into a Housing Assistance Payments Contract with HUD. *See generally* 24 C.F.R. § 982.451 (2018). Under the Housing Assistance Payments Contract, landlords are subject to certain rules and restrictions that apply only when landlords lease to voucher holders. These include minimum length of initial lease terms and housing quality standards. *See id.* § 982.401.

For years, voucher holders have consistently reported difficulty finding landlords who accept Section 8 housing choice vouchers. In June 2015, the Minneapolis City Council published a notice of intent to introduce an amendment "prohibiting discrimination based on receipt of public assistance, including tenant-based Section 8 assistance, regardless of any requirements of such public assistance program." Over the next two years, the City conducted private meetings, public hearings, surveys, and focus groups with landlords, tenants, tenant advocates, and representatives of housing industry organizations. The City also conducted research and gathered reports and data to further its understanding of the Section 8 housing choice voucher program, affordable housing, and the Minneapolis housing market, among other topics.

In March 2017, the City amended the section of its civil rights title addressing discrimination in real estate. Before the amendment, the section prohibited landlords from refusing to rent to prospective tenants "because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, status with

regard to public assistance or familial status." Minneapolis, Minn., Code of Ordinances (MCO), tit. 7, § 139.40(e) (2016). The amendment added a new prohibition providing that a landlord may not refuse to rent to a prospective tenant "because of . . . any requirement of a public assistance program."[1] MCO, tit. 7, § 139.40(e) (2017).

The ordinance was again amended in December 2017. The ordinance now states:

> (e) *Discrimination in property rights*. It is an unlawful discriminatory practice for an owner, lessee, sublessee, managing agent, real estate broker, real estate salesperson or other person having the right to sell, rent or lease any property, or any agent or employee of any of these, when . . . status with regard to a public assistance program, or any requirement of a public assistance program is a motivating factor:
>
> (1) To refuse to sell, rent or lease, or to refuse to offer for sale, rental or lease; or to refuse to negotiate for the sale, rental, or lease of any real property; or to represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available; or to otherwise make unavailable any property or any facilities of real property.

MCO, tit. 7, § 139.40(e) (2020).[2] Under the ordinance, the Section 8 housing choice voucher program is a public assistance program. *Id.*, § 139.20 (2020) (defining "[p]ublic assistance program" to include any "tenant-based federal, state or local subsidies, including, but not limited to, rental assistance, rent supplements, and housing choice vouchers").

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[1] Nine months after adding the "any requirement of a public assistance program" language, the City restructured chapter 139 and again amended the language of section 139.40(e) to provide that it is unlawful for a landlord to refuse to rent to a prospective tenant if race, color, creed and other statuses, or any requirement of a public assistance program, is a "motivating factor."

[2] Landlords may continue to refuse to rent to prospective tenants if renting would violate applicable laws and regulations like maximum occupancy restrictions and may continue to screen prospective tenants based on nondiscriminatory criteria such as credit or rental history. MCO, tit. 7, § 139.30(c)(1)–(3) (2020).

The 2017 amendments also added an affirmative defense for landlords providing that refusing to rent due to a requirement of a public assistance program is not unlawful if the "requirement would impose an undue hardship." *Id.*, § 139.40(e)(1). "Undue hardship" is defined as "a situation requiring significant difficulty or expense when considered in light of a number of factors to be determined on a case-by-case basis." *Id.*, § 139.20. The factors include, but are not limited to:

> (1) The nature and net cost of complying with any requirement of a public assistance program, taking into consideration existing property management processes;
> (2) The overall financial resources of the landlord, taking into consideration the overall size of the business with respect to the number of its employees, and the number, type, and location of its housing stock; and
> (3) The impact of complying with any requirement of a public assistance program upon the business and dwelling.

Id.

The ordinance also provides that four categories of landlords are exempt from the prohibition on refusing to rent because of the requirements of the housing choice voucher program without needing to prove undue hardship. The ordinance states:

> The provisions of section 139.40(e) relating to tenant-based federal, state or local subsidies, including, but not limited to, rental assistance, rent supplements, and housing choice vouchers, or any requirement of such a program, shall not apply to:
>
> (1) Renting or leasing a room in an owner occupied single-family dwelling.
>
> (2) Renting or leasing a single-family dwelling, a single dwelling unit, or a single dwelling unit of a condominium, townhouse, or housing cooperative, by the owner of the dwelling or dwelling unit, for no more than thirty-six (36) months, when such dwelling or dwelling unit is an owner occupied homestead at the start of the thirty-six (36) month period.

> (3) Renting or leasing a dwelling with two dwelling units when a person who owns or has an ownership interest in the dwelling is residing in the other dwelling unit.
>
> (4) Renting or leasing a single-family dwelling, a single dwelling unit, or a single dwelling unit of a condominium, townhouse, or housing cooperative, by the owner of the dwelling or dwelling unit, while the owner is on active military duty and when such dwelling or dwelling unit is an owner occupied homestead at the start of the active military duty.

Id., § 139.30(b) (2020).[3]

The Owners' complaint alleged that the amended ordinance (1) is preempted by state law; (2) violates the Due Process Clause of the Minnesota Constitution, Minn. Const. art. I, § 7; (3) is an unconstitutional partial regulatory taking; (4) unlawfully interferes with freedom of contract; and (5) violates the Equal Protection Clause of the Minnesota Constitution, Minn. Const. art. I, § 2. The Owners also requested temporary and permanent injunctive relief. After the parties filed cross-motions for summary judgment, the district court granted summary judgment in favor of the Owners, concluding that the ordinance violated the due process and equal protection clauses. The district court did not address the Owners' other claims.[4] The court of appeals reversed on both claims and remanded to the district court for it to consider the Owners' other claims. *Fletcher Props., Inc. v. City of*

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[3] On appeal, the Owners' equal protection challenge focuses on only two types of exemptions: those for owner-occupied duplexes and those previously homesteaded as single-family dwellings or units being rented by the owner for no more than 36 months. *Id.*, § 139.30(b)(2)–(3).

[4] In their briefs, the Owners assert that the ordinance exceeds the scope of the City's police powers. To the extent the Owners' argument is that a city's exercise of police powers must be consistent with due process, we address those arguments below. To the extent the Owners' argument is that the ordinance may constitute an uncompensated taking, we do not reach that issue.

Minneapolis, 931 N.W.2d 410, 429–30 (Minn. App. 2019). The Owners sought review and we granted their petition.

ANALYSIS

This case comes to us on appeal from a grant of summary judgment. We review a grant of summary judgment de novo. *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 18 (Minn. 2009). We view the evidence "in the light most favorable to the party against whom judgment was granted"—here, the City. *See Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). We will affirm the judgment "if no genuine issues of material fact exist and if the court below properly applied the law." *Kratzer*, 771 N.W.2d at 18.

The constitutionality of a statute is a question of law which we review de novo. *State v. Larsen*, 650 N.W.2d 144, 147 (Minn. 2002). Because statutes are presumed constitutional, we "exercise our power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *Boutin v. Lafleur*, 591 N.W.2d 711, 714 (Minn. 1999).

I.

A.

We start with the Owners' due process challenge to the ordinance. The Due Process Clause of the Minnesota Constitution provides that "no person shall . . . be deprived of life, liberty or property without due process of law." Minn. Const. art. I, § 7. Due process challenges to laws call on us to reconcile several competing constitutional values.

First, we must reconcile our fundamental constitutional commitment that generally people should be allowed to go about their business without government interference with

the broadly recognized understanding that, at times, the government must intervene to protect the interests of others and the common good. In most cases, government action is constitutional when the objective of the law is permissible, the means chosen to achieve that objective are reasonable, and the legislative body did not act arbitrarily or capriciously in enacting the law. *See Boutin*, 591 N.W.2d at 717–18 (citing *Contos v. Herbst*, 278 N.W.2d 732, 741 (Minn. 1979)).[5]

A law is permissible when it is within the power of the governmental decision maker to enact and serves a public purpose. *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979) (stating that the "purpose of the statute must be one that the state can legitimately attempt to achieve"); *Contos* 278 N.W.2d at 741 (stating that the law must "serve to promote a public purpose").[6]

The means chosen to achieve the purpose are reasonable if the legislative body could rationally believe that the mechanism it chose would help achieve the legislative goal or mitigate the harm the legislation seeks to address. *See Boutin*, 591 N.W.2d at 718 (rejecting the argument that the State has no interest in registering nonpredatory offenders because

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[5] When fundamental rights are at stake, the legislative body must surmount a higher hurdle before government interference with life, liberty, or property is justified. We apply strict scrutiny to legislative actions in those cases. *See SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). Here, the parties agree that no fundamental rights are at stake and the less demanding rational basis standard applies.

[6] *Miller Brewing Company* concerns an equal protection challenge. Although the rational basis tests for equal protection and due process claims differ in some respects, and we have used different formulations to describe them, the inquiries overlap in many ways. In particular, the inquiry into the legitimacy of the objective or purpose of the statute is the same. *See State v. Holloway*, 916 N.W.2d 338, 346, 348–49 (Minn. 2018).

maintaining a list that includes nonpredatory and predatory offenders is rationally related to the State interest of solving crimes). We will not invalidate a law just because the chosen mechanism "does not assure complete amelioration of the evil it addresses." *Mack v. City of Minneapolis*, 333 N.W.2d 744, 751 (Minn. 1983). And the legislative body need not choose the best or most exact mechanism to achieve the purpose; it must merely choose a reasonable method. *See Red Owl Stores, Inc. v. Comm'r of Agric.*, 310 N.W.2d 99, 103 (Minn. 1981).

A law is not arbitrary or capricious when it emerged from a reasoned, deliberative process, rather than as a result of legislative chance, whim, or impulse. *See Minn. State Bd. of Health v. City of Brainerd*, 241 N.W.2d 624, 629–30 (Minn. 1976) (holding that a law requiring water fluoridation was not arbitrary and violative of due process because the Legislature relied on scientific opinion that fluoridation is safe and effective at reducing dental caries); *see also State v. Rey*, 905 N.W.2d 490, 495–96 (Minn. 2018) (holding that an identity theft statute that allowed some victims to recover restitution in excess of actual losses is not arbitrary because it recognizes the difficulty of discovering and quantifying identify theft losses). When assessing arbitrariness, we have also considered whether the law provides a sufficiently definite standard so that obligations and enforcement authority are clear. *See Red Owl Stores, Inc.*, 210 N.W.2d at 103–04.

Second, due process challenges raise questions about the extent to which courts should disturb decisions of a legislative body. We generally defer to legislative judgments on the wisdom and utility of a law out of concern for democratic legitimacy and institutional capacity. Legislators—as the elected representatives of the people—and

legislative bodies are generally institutionally better positioned than courts to sort out conflicting interests and evidence surrounding complex public policy issues. *See id.* at 104 (stating that "it is not our role to decide whether [a law] is sound policy or whether it appropriately balances" competing interests). As the United States Supreme Court put it:

> This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function.

Carmichael v. S. Coal & Coke Co., 301 U.S. 495, 510 (1937). Under the due process clause then, "it is not this court's function, at least in the absence of overwhelming evidence to the contrary, to second-guess the . . . accuracy of a legislative determination of fact. Nor is it within our province to determine the wisdom of or necessity for a legislative enactment." *Minn. State Bd. of Health*, 241 N.W.2d at 629.

Accordingly, on a rational basis review, the burden of proving that a statute is invalid rests with the party challenging its constitutionality. *Essling v. Markman*, 335 N.W.2d 237, 239 (Minn. 1983). We will not strike down a law as irrational when "it is evident from all the considerations presented to [the Legislature], and those of which we may take judicial notice, that the question is at least debatable" and the government decision maker could reasonably have conceived those facts and considerations to be true. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) (citation omitted)

(internal quotation marks omitted); *see Contos*, 278 N.W.2d at 742 (holding that a law forfeiting severed mineral interests if the owner failed to register the interests with the state was not a violation of substantive due process because the Legislature "could have concluded" that the prior mechanism for encouraging registration was not adequately effective).

B.

With these principles in mind, we turn to the question of whether the Minneapolis ordinance violates the Owners' substantive due process rights. We conclude that it does not.

1.

The City articulated three purposes for the ordinance: (1) increasing housing opportunities for voucher holders, (2) addressing the discriminatory effects of housing denials, and (3) prohibiting prejudice-based discrimination. Each of these is a permissible object of legislation. The Owners neither question that the City can seek to achieve these ends nor contend that these objectives lack a public purpose. We agree that the objectives of the ordinance are permissible.

2.

The Owners assert that the ordinance is not a reasonable means to achieve the City's purposes. First, they contend that the ordinance will not increase housing opportunities because the ordinance will not overcome the actual barriers that voucher holders face in finding housing in Minneapolis. These barriers include a tight rental market and low vacancy rates, especially for voucher holders; lawful screening criteria that are left untouched by the ordinance; and rent increases driven by the added costs imposed by the ordinance itself. For

constitutional purposes, these arguments are unavailing because the ordinance addresses one impediment to voucher holders finding housing in Minneapolis: the undisputed fact that some landlords reject voucher holders because the landlords want to avoid the perceived burdens of participating in the housing choice voucher program. By making it unlawful for landlords to refuse to participate based on the requirements of the program, more landlords will participate, thus expanding housing opportunities for voucher holders.

Further, based on the evidence in the record, the City's conclusion that the ordinance will increase housing opportunities for voucher holders is "at least debatable." *See Clover Leaf Creamery Co.*, 449 U.S. at 464. Under our deferential rational basis test, we cannot conclude that the City acted unreasonably by seeking to create more housing opportunities for voucher holders by prohibiting landlords from refusing to rent to voucher holders to avoid the burdens associated with the housing choice voucher program.

The Owners similarly contend that the ordinance will not reduce the concentration of housing opportunities for voucher holders in certain poor, racially segregated neighborhoods. They argue that the concentration of Section 8 housing is driven by the supply of housing and not the refusal of landlords to participate in the Section 8 housing choice voucher program. The Owners also point out that housing mobility for voucher holders is limited by the lack of job opportunities and social services in areas of the city where fewer voucher holders live.

Although the Owners offer a reasoned argument that the City could have chosen more effective mechanisms to reduce the concentration of housing opportunities in some neighborhoods, they do not satisfy their burden under our deferential rational basis test. The

City had before it evidence that low participation by landlords in the Section 8 housing choice voucher program contributed to the concentration of voucher holders in poorer, more segregated neighborhoods. The City could rationally decide that making it unlawful to refuse to participate in the housing choice voucher program due to the requirements of the program would increase the number of landlords who participate in the voucher program in all parts of the city and, consequently, open up housing opportunities in neighborhoods with lower concentrations of voucher holders.

The Owners finally assert that the ordinance will not reduce prejudice-based discrimination against Section 8 housing choice voucher holders.[7] The Owners note that the ordinance independently makes it unlawful for landlords to refuse to rent to prospective tenants because they plan to use housing choice vouchers to help cover payment of the rent. Accordingly, the Owners argue, the additional prohibition on landlords refusing to rent to voucher holders because they do not want to comply with program requirements is unnecessary and redundant. The Owners also point out that many landlords do, in fact, rent some of their properties to voucher holders and other renters who rely on different government subsidies. They vigorously contend that their objection to the housing choice voucher program is motivated solely by the perceived additional burdens and costs that are associated with the Housing Assistance Payments Contract and not by any prejudice against voucher holders. We have no reason to doubt this of the Owners and many other landlords

[7] The parties disagree about whether one of the purposes of the ordinance is to reduce or eliminate discrimination against voucher holders. Because we conclude that the ordinance passes constitutional muster even if that is a purpose (or *the* purpose) of the ordinance, that dispute is not germane to our resolution of the case.

in Minneapolis. But such prejudice is one reason among several that some subset of landlords in Minneapolis does not rent to voucher holders. And as with the other two purposes, refusing to allow landlords to opt out of the housing choice voucher program due to the burden of complying with its requirements is one rational step toward reducing refusals to rent based on prejudice against voucher holders.

That the ordinance may impose burdens on some property owners who are not motivated by prejudice against voucher holders does not render the ordinance unconstitutional under the due process rational basis test. Outside of laws directed against protected classes or politically unpopular groups, overinclusive rules—rules that sweep in and burden more people than absolutely required to achieve the legislative purpose—have consistently been upheld against due process challenges because they are rationally connected to the legislative purpose. *See N.Y.C. Transit Auth. v. Beazer*, 440 U.S. 568, 591–92 (1979) (upholding a rule that individuals in methadone treatment programs cannot work for the transit authority, even though some individuals may be competent and safe employees, because the rule was a legislative policy choice); *Mourning v. Family Publ'ns Serv., Inc.*, 411 U.S. 356, 377–78 (1973) (upholding a "prophylactic" rule that required certain disclosures to consumers if a loan was to be repaid in four or more installments, even if the lender did not impose a finance charge, under a Truth in Lending Act provision that required certain disclosures for contracts imposing finance charges).

> [T]he question . . . is not whether a statutory provision precisely filters out those, and only those, who are in the factual position which generated the [legislative] concern reflected in the statute. Such a rule would ban all prophylactic provisions . . . . Nor is the question whether the provision filters out a substantial part of the class which caused [legislative] concern, or

> whether it filters out more members of the class than nonmembers. The question is whether [the legislative body], its concern having been reasonably aroused by the possibility of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence, and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule.

Weinberger v. Salfi, 422 U.S. 749, 777 (1975). Once again, the Minnesota Constitution does not require a legislative body "to devise precise solutions to every problem." *Rey*, 905 N.W.2d at 495.

Here, the City's decision to prohibit landlords from refusing to rent to housing choice voucher holders because the landlords do not want to comply with the program requirements is a rational way to reduce refusals to rent based on prejudice against voucher holders. And the reasonableness of the provision is enhanced by the undue hardship exemption that allows landlords to avoid the requirements of the ordinance and the housing choice voucher program altogether when those requirements impose unreasonable burdens.

3.

The Owners also argue that the ordinance violates the Due Process Clause because it creates a constitutionally impermissible irrebuttable presumption that a landlord who refuses to rent to a prospective tenant because of the burdens associated with the Section 8 housing choice voucher program was motivated by prejudice against voucher holders. We disagree.[8]

[8] We are not unsympathetic to the Owners' concern that they may be broadly labelled as persons who "discriminated," despite the fact that, as individuals, each may have acted wholly without discriminatory animus as that term is commonly understood. The no-refusal-because-of-Section-8-requirements provision is somewhat of an ill fit with

First, the Owners' irrebuttable-presumption argument is a nonstarter because proof of prejudicial intent simply is not required under the provision prohibiting landlords from refusing to rent to avoid compliance with housing choice voucher program requirements. Accordingly, there is no need or reason to presume prejudicial intent.

Like innumerable statutes and ordinances, the provision establishes a substantive rule of law that prohibits conduct regardless of the actor's intent. The unlawful conduct prohibited by the ordinance is the refusal of a landlord to rent or lease a property because the landlord wants to avoid complying with the requirements of the housing choice voucher program—plain and simple. Nothing in the specific prohibition at issue here makes an intent to discriminate against a voucher holder an element of the violation.

Contrary to the Owners' arguments, using the word "discrimination" in the ordinance does not inherently include a notion of invidious intent. The City chose to expressly define "discrimination" in the ordinance. "When a word is defined in a statute, we are guided by the definition provided by the Legislature." *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016). The ordinance provides:

> *Discriminate or discrimination*: Includes any act, attempted act, policy or practice, which results in unequal treatment, separation or segregation of or which otherwise adversely affects any person who is a member of a class or combination of classes protected by this title.

MCO, tit. 7, § 139.20. On its face, the definition does not require proof of intent.

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section 139.40 and perhaps would have been more properly enacted in the housing regulation title of the Minneapolis Code of Ordinances. But this does not render the provision unconstitutional. *See Red Owl Stores, Inc.*, 310 N.W.2d at 103.

Further, section 139.40 affirmatively declares certain acts—some of which require proof of intent and some of which do not—to be "unfair discriminatory acts." Accordingly, if a person engages in one of those acts, the person's conduct is by definition an "unfair discriminatory act." A property owner's refusal to rent property to a potential tenant because the owner wants to avoid complying with the requirements of the housing choice voucher program is such an act, regardless of whether the property owner was acting out of prejudice toward a voucher holder. *See* MCO, tit. 7, § 139.40(e)(1).

Finally, the responsibility of the Minneapolis Commission on Civil Rights to determine whether a landlord's refusal to rent is motivated by a desire to avoid complying with Section 8 program requirements, *see* MCO, tit. 7, § 141.50 (2020), does not compel the conclusion that there can be no violation of section 139.40(e)(1) in the absence of proof of discriminatory intent. The Director of the Minneapolis Department of Civil Rights has authority to investigate and enforce many municipal economic regulations that lack any discriminatory intent, including the City's prevailing wage law, MCO, tit. 2, § 24.220 (2020), and the City's minimum wage and sick leave policies, MCO, tit. 2, §§ 40.10–.650 (2020). A finding of "discrimination" by the Commission on Civil Rights simply means that a person engaged in "unfair discriminatory acts" or "unlawful discriminatory practices" as defined in section 139.40. *See* MCO, tit. 7, § 141.50(r). As set forth above, those determinations neither connote nor require proof that the person acted with discriminatory intent.

The Owners also point to the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01–.44 (2018), to support their view that proof of prejudicial intent is required in

every "discrimination" case in Minnesota.[9] They cite two court of appeals cases to argue that, under the MHRA provisions related to refusal to rent, a prospective tenant must prove that the landlord's refusal to rent was because of the prospective tenant's status in the Section 8 voucher program.[10] In other words, the Owners argue that the precedents they cite stand for the proposition that Minnesota law requires a prospective tenant to demonstrate that the landlord intended to discriminate based on the prospective tenant's

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[9] Before the district court, the Owners argued that the ordinance was preempted by state statute and case law. The district court did not address the issue, and the question of preemption—whether the existence of the MHRA precludes the City from adopting the provision at issue in this case—is not before us.

[10] The two cases cited by the Owners are *Edwards v. Hopkins Plaza Ltd. P'ship*, 783 N.W.2d 171 (Minn. App. 2010), and *Babcock v. BBY Chestnut Ltd. P'ship*, No. CX-03-90, 2003 WL 21743771 (Minn. App. July 29, 2003). Due process considerations were not raised. In each case, the tenant was a Section 8 participant but, for business reasons, the landlord did not participate in the Section 8 program. The tenants argued that the landlords violated the provision of the MHRA that defined as an unfair discriminatory practice refusal to rent or lease property "because of . . . status with regard to public assistance." *Edwards*, 783 N.W.2d at 175-76; (quoting Minn. Stat. § 363A.09, subd. 1(1) (2018)); *Babcock*, 2003 WL 21743771 at *1 (quoting Minn. Stat. § 363.02, subd. 2(1)(b) (2002) (current version at Minn. Stat. § 363A.09, subd. 1(1) (2018))). Noting that nothing in Minnesota state law required a landlord to participate in the Section 8 program or accept Section 8 vouchers, the court of appeals rejected the tenants' argument because the tenants offered no proof that the landlords' reason for refusing to rent to the tenants was animus toward participants in Section 8. *Edwards*, 783 N.W.2d at 177; *Babcock*, 2003 WL 21743771 at *1–2. "[R]efusal to participate in a voluntary program for a legitimate business reason does not constitute discrimination *under the MHRA*." *Edwards*, 783 N.W.2d at 177 (emphasis added).

The Owners also rely on *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to support their argument that intent to discriminate is mandatory in every law that seeks to prohibit or decrease discrimination. This reliance is misplaced for the same reason that the Owners' reliance on the MHRA is misplaced. The burden shifting test set forth in *McDonnell Douglas* is a method of applying the statutory requirements of Title VII of the Civil Rights Act of 1964. It is not a constitutional case. And, of course, this is not a Title VII case.

status. The flaw in the Owners' argument is that the conclusion reached by the court of appeals in those case was a matter of statutory interpretation of the MHRA. *See* Minn. Stat. § 363A.09, subd. 1(1) (defining refusal to rent or lease property "because of . . . status with regard to public assistance" as an unfair discriminatory practice).

The City's ordinance is fundamentally different from Minn. Stat. § 363A.09, subd. 1(1). The City's ordinance has a provision similar to the Minnesota Human Rights Act provision on which the Owners rely. MCO, tit. 7, § 139.40(e)(1) ("It is an unlawful discriminatory practice for an owner [to refuse to sell or lease a property when] status with regard to a public assistance program . . . is a motivating factor."). But the ordinance also expands the list of prohibited reasons for refusing to rent property beyond those already listed in the MHRA and includes the additional provision at issue here, which prohibits landlords from refusing to rent because of the burdens associated with complying with Section 8 requirements. Moreover, the City expressly chose to change the language of the ordinance from prohibiting a landlord from refusing to rent "because of . . . any requirement of a public assistance program" to prohibiting a landlord from refusing to rent when "any requirement of a public assistance program is a motivating factor." MCO, tit. 7, § 139.40(e) (amending MCO, tit. 7, § 139.40(e) (2016)). Interpretations of the statutory language in section 363A.09, subdivision 1(1), are simply inapposite.

Indeed, in one of the cases cited by the Owners, the court of appeals distinguished the MHRA from a Massachusetts statute, which, similar to the City's ordinance, made it unlawful to refuse to rent to an individual receiving Section 8 benefits " 'because of any requirement of . . . [a] housing subsidy program.' " *Edwards v. Hopkins Plaza Ltd. P'ship*,

783 N.W.2d 171, 178 (Minn. App. 2010) (quoting Mass. Gen. Laws Ann. ch. 151B, § 4(10) (West 2006)). The Massachusetts Supreme Court held that a landlord could be found liable under the Massachusetts statute without a showing that the landlord was motivated by discriminatory animus. *DeLiddo v. Oxford St. Realty, Inc.*, 876 N.E.2d 421, 428–29 (Mass. 2007).

In essence, the Owners' claim is that due process principles prohibit a legislative body from passing a law that has the goal of stopping prejudicial discrimination unless the law includes proof that the actor had an intent to discriminate as an element of the violation. For purposes of rational basis review, however, the argument improperly conflates a purpose of a law with the mechanism the legislative body chooses to achieve that purpose. There is more than one rational way to reduce or eliminate discrimination against voucher holders. A legislative body rationally could attempt to accomplish that objective by requiring proof that the refusal to rent was "because of" the prospective tenant's *status* as a voucher holder. But a legislative body could also rationally attempt to reduce or eliminate discrimination against voucher holders by removing the burden of the program requirements as a lawful excuse for not participating in the housing choice voucher program.

In short, because the language of the Minneapolis ordinance does not require proof that a landlord acted out of prejudice against voucher holders, the Owners' argument that the ordinance creates a constitutionally impermissible conclusive presumption of discriminatory intent fails.

Despite the Owners' contentions, our decision in *Twin Cities Candy & Tobacco Co. v. A. Weisman Co.*, 149 N.W.2d 698 (Minn. 1967), does not compel a different result. In *Weisman*, we held unconstitutional a state criminal statute prohibiting wholesale distributors from selling cigarettes at less than actual invoice cost. *Id.* at 703. The statute allowed a distributor to be convicted for a sale below cost regardless of whether the distributor acted with the intent or effect of injuring a competitor or destroying or lessening competition. *Id.* at 701. Relying on our understanding that substantive due process required proof of predatory purpose as an element of any law making sales below cost unlawful, *id.* at 703–04, we held that the statute was unconstitutional because "[n]o opportunity [was] afforded [to the distributor] to show that [a] transaction is either innocently consummated or has no injurious effect on competitors or the public." *Id.* at 702. We ruled that a conclusive legislative presumption regarding a factual element necessary to convict a person of the crime of selling cigarettes below cost was unjustified and invalid. *Id.*

The statute at issue in *Weisman* differs in several respects from the City's prohibition on refusing to rent due to the requirements of the housing choice voucher program. First, for the reasons stated earlier, the ordinance does not presume prejudicial intent. Unlike the statute in *Weisman*, intent is simply not an element.

Second, in *Weisman*, we relied primarily on state and federal case law concerning price fixing and price discrimination. *See* 149 N.W.2d at 703–04 (discussing *Fairmont Creamery Co. v. Minnesota*, 274 U.S. 1 (1927), and *Nebbia v. New York*, 291 U.S. 502 (1934); then citing *State by Clark v. Wolkoff*, 85 N.W.2d 401 (Minn. 1957), *State by Clark*

v. Applebaums Food Mkts., Inc., 106 N.W.2d 896 (Minn. 1960)). The *Fairmont Creamery* Court struck down a law prohibiting price discrimination in the purchase of creamery products. 274 U.S. at 11. The Court held that the statute interfered with the freedom of contract protected by the Fourteenth Amendment. *Id.* It stated that because "the statute applie[d] irrespective of motive, [it was] an obvious attempt to destroy [the company's] liberty to enter into normal contracts, long regarded, not only as essential to the freedom of trade and commerce but also as beneficial to the public." *Id.* at 8.

The *Fairmont Creamery* Court's focus on freedom of contract—and the date of the decision—make clear that the decision was part of the approach to the due process clause that characterized the Court's *Lochner*-era[11] cases. The constitutional requirement that price-fixing statutes inherently include proof of injurious intent as an element was rooted in an effort to protect individuals' freedom to contract, particularly with regard to setting prices for goods. Courts have long since disavowed this *Lochner*-era approach and moved away from a focus on freedom of contract. *See Griswold v. Connecticut*, 381 U.S. 479, 481–82 (1965) ("Overtones of some arguments suggest that *Lochner v. New York* should be our guide. But we decline that invitation . . . . We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions." (citations omitted)); *Nebbia*, 291 U.S. at 523 ("[N]either property rights nor contract rights are absolute; for government cannot exist if the citizen

[11] *Lochner v. New York*, 198 U.S. 45 (1905).

may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm." (footnotes omitted)).

Relying on those older notions of substantive due process, the *Weisman* court applied a more stringent level of scrutiny than rational basis. The court, echoing strict scrutiny analysis, stated: "A basic assumption in considering this question is the premise that vendors have a right to deal with their property as they wish and that freedom to contract is a liberty which may not be circumscribed *except for compelling reasons*." *Id*. at 702 (emphasis added). When an ordinance deprives a person of fundamental rights, the United States Constitution requires that we apply such a heightened standard. *See Salfi*, 422 U.S. at 771–72 (distinguishing "conclusive evidentiary presumption" cases like *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974), and *Stanley v. Illinois*, 405 U.S. 645 (1972), on the ground that the rights at issue in those cases were fundamental liberties); *cf. Fed. Distillers, Inc. v. State*, 229 N.W.2d 144, 159 n.19 (Minn. 1975) ("The proper reach or scope of the constitutional standard denouncing the use of irrebuttable presumption is far from settled since we find no cases invalidating its use in the area of economic regulations except for [*Weisman*].") But here, the parties agree that the provision in this case is subject to rational basis review which does not require a compelling reason for the government action but rather a legitimate government interest

Finally, in the years since *Weisman*, the Supreme Court has moved away from a distinct "irrebuttable presumption" analysis of due process challenges and refocuses on the basic rational basis inquiry of reasonable fit between statutory means and purpose. In *Michael H. v. Gerald D.*, the Supreme Court upheld a California statute that conclusively

presumed a woman's husband was the father of a child born during the marriage and did not allow another man to introduce paternity evidence to refute the presumption. 491 U.S. 110, 132 (1989). The *Michael H.* Court ruled that, although framed as a presumption, the California law was actually a substantive rule of law—that it is irrelevant for paternity purposes whether a child born into an existing marriage was begotten by someone other than the husband— supported by rational legislative purposes. *Id.* at 120–21. Accordingly, the *Michael H.* Court held that the proper focus was the traditional rational basis inquiry: "the adequacy of the 'fit' between the classification and the policy that the classification serves." *Id.* at 121. It concluded that, because an unmarried biological father does not have a fundamental liberty interest in obtaining parental rights under state law, the conclusive presumption that the husband is the father "is a question of legislative policy and not constitutional law." *Id.* at 129–30; *see also Salfi*, 422 U.S. at 771–72; *Shreve v. Dept. of Econ. Sec.*, 283 N.W.2d 506, 509 (Minn. 1979) (upholding a law that created a conclusive presumption that full-time students were unavailable for work and therefore ineligible for unemployment benefits); *cf. Juster Bros., Inc. v. Christgau*, 7 N.W.2d 501, 509–11 (Minn. 1943) (Pirsig, J., dissenting).

Consequently, in cases that do not implicate fundamental rights, legislative enactments will be upheld against due process challenges when the means chosen to achieve a permissible legislative objective are reasonable, regardless of whether the law is framed as a substantive rule of law or as a conclusive presumption.

4.

Finally, we conclude that the ordinance is not an arbitrary and capricious exercise of the City's power. Quite the contrary. After considering the ordinance amendment for almost 2 years, the City adopted a definite and understandable standard of conduct for landlords. The City gathered substantial evidence before passing the ordinance. It consulted with stakeholders including landlords, voucher holders, business associations, and housing nonprofit groups. The City held two public hearings on the ordinance, received feedback from focus groups, and was presented with numerous reports regarding the housing crisis within Minneapolis and the broader metropolitan area. The evidence presented to the City supported its conclusion that prohibiting landlords from refusing to rent to voucher holders because of the burden of complying with the requirements of the housing choice voucher program would help remedy the challenges faced by voucher holders in obtaining housing in Minneapolis, reduce the concentration in poor and segregated neighborhoods of housing available to voucher holders, and prevent prejudice-based discrimination. The arbitrary and capricious challenge fails.

We therefore conclude that the Minneapolis ordinance does not violate the Minnesota Constitution's guarantee of substantive due process.

II.

We now turn to the Owners' equal protection challenge. As we have acknowledged on several occasions over the past few decades, our precedent on equal protection under the Minnesota Constitution has not been a model of clarity. So today we state our rule: a law subject to rational basis review does not violate the equal protection principle of the

Minnesota Constitution when it is a rational means of achieving a legislative body's legitimate policy goal. Because we are deferential to the judgment of the lawmaking body, in the absence of overwhelming evidence to the contrary, we will not second-guess the accuracy of a legislative determination of facts. Thus, the principle we apply in analyzing laws subject to rational basis review under the Minnesota Constitution is the same principle applied to such laws under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

But under our precedent, this rule is subject to an important exception: under the equal protection guarantee of the Minnesota Constitution, we hold lawmakers to a higher standard of evidence when a statutory classification demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently. *See State v. Russell*, 477 N.W.2d 886, 890 (Minn. 1991). In those circumstances, we require actual (and not just conceivable or theoretical) proof that a statutory classification serves the legislative purpose.[12]

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[12] The varying levels of scrutiny applied in equal protection cases differ along two dimensions: the significance of the government interest at issue and the tightness of the connection between the means chosen and the government interest. Our cases have characterized the *Russell* rule of law as part of our precedent addressing rational basis review of legislative enactments. As in our rational basis cases, *Russell* requires only that the government articulate a legitimate interest—the same inquiry that applies under the rational basis test of the Fourteenth Amendment to the United States Constitution. However, our *Russell* rule differs from the federal standard along the second dimension because it requires a tighter fit between the government interest and the means employed to achieve it in the form of actual evidence (as opposed to hypothetical or conceivable proof) that the challenged classification will accomplish the government interest. *See* 477 N.W.2d at 888 n.2 (distinguishing federal equal protection law where stricter scrutiny is applied only where the legislature enacted a particular statute because of, not merely in spite of, its anticipated discriminatory effect); *cf. Mitchell v. Steffen*, 504 N.W.2d 198, 210

A.

Legislative bodies regularly, and for many different reasons, pass laws that treat people differently. There is nothing inherently wrong with that. Indeed, it is in the nature of the work of balancing different policy considerations in a complex and diverse polity.

The equal protection guarantee in the Minnesota Constitution places limits on the circumstances under and extent to which the Legislature can treat similarly situated people differently.[13] In certain circumstances, when a statutory classification impacts fundamental rights or creates a suspect class, the scope of action of the legislative body is significantly constrained and its decision is subject to less deference and heightened scrutiny by the courts. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 133 (Minn. 2014) (stating that when fundamental rights are at issue, a statutory classification is not entitled to the usual presumption of validity and the government must show that the classification is "narrowly tailored to serve a compelling government interest"); *see also State ex rel. Forslund v. Bronson*, 305 N.W.2d 748, 750 (Minn. 1981) (applying intermediate scrutiny to gender-based classifications).

(Minn. 1993) (Tomljanovich, J., dissenting) (interpreting *Russell* as part of a different class of cases where a higher level of scrutiny than minimal rational basis scrutiny applies).

[13] The federal equal protection clause as applicable to the states is found in the Fourteenth Amendment to the United States Constitution. The Minnesota equal protection guarantee is found in the Rights and Privileges Clause in Article 1, Section 2 of the Minnesota Constitution. *See Miller Brewing Co.*, 284 N.W.2d at 354. We have also applied the principle under the uniformity clause found in Article 10, Section 1, *id.*, and the Special Legislation clauses now found in Article 12 of the Minnesota Constitution, *see Loew v. Hagerle Bros.*, 33 N.W.2d 598 (Minn. 1948).

When fundamental rights or suspect classes are not at issue, the legislative body generally may enact laws that treat similarly situated people differently as long as the different treatment of classes of people is a rational means of achieving—there is "some fit" with—the legislative body's policy goal. *Back v. State*, 902 N.W.2d 23, 29 (Minn. 2017). As appropriate under principles of separation of powers and the distinct institutional roles played by elected legislative representatives and judges, courts are deferential to those legislative decisions. *See id*.; *see also Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 723 (Minn. 2007) (assessing whether the Legislature "could reasonably have believed in any facts" to support the connection between the classification and purpose of the law); *Moes v. City of Saint Paul*, 402 N.W.2d 520, 525 (Minn. 1987) ("[I]t is not this court's function, at least in the absence of overwhelming evidence to the contrary, to second-guess the scientific accuracy of a legislative determination of fact." (quoting *Minn. St. Bd. Of Health*, 241 N.W.2d at 629)). Moreover, in this latter circumstance, the legislative body's action is presumed to be constitutional and the burden rests with the person challenging the law to prove that the legislative body's reason for treating one class differently from another class was not legitimate. *Back*, 902 N.W.2d at 29. This is the essence of what we call rational basis review under equal protection principles.

Over the years, we have used many different formulations to describe rational basis review. We have applied the federal two-part formulation that examines whether the challenged legislation has a legitimate purpose and whether it was "reasonable for lawmakers to believe that use of the challenged classification would promote that purpose."

See Imlay v. City of Lake Crystal, 453 N.W.2d 326, 329 (Minn. 1990). We have also used a three-part formulation of rational basis review, which requires that (1) the distinction between the classes be "genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs"; (2) there be "an evident connection between the distinctive needs peculiar to the class and the prescribed remedy"; and (3) "the purpose of the statute be one that the state can legitimately attempt to achieve." *Miller Brewing Co.*, 284 N.W.2d at 356 (citing *Schwartz v. Talmo*, 205 N.W.2d 318, 323 (1973), *superseded by statute as stated in Meils ex rel. Meils v. Nw. Bell Tel. Co.*, 355 N.W.2d 710, 714 (Minn. 1984); *Montgomery Ward & Co., Inc. v. Comm'r of Taxation*, 12 N.W.2d 625 (Minn. 1943)). We have applied yet another formulation of the very same constitutional equal protection principle in some workers' compensation cases. *See Gluba*, 735 N.W.2d at 721 (stating that the standard is whether the classification applies uniformly to all those similarly situated, is "necessitated by genuine and substantial distinctions between the two groups," and effectuates the purpose of the law) (citation omitted) (internal quotation marks omitted)).

These differing formulations are best understood as lenses that courts use to examine different types of equal protection problems that may arise in a given case, rather than a strict checklist that must be run down in every case.[14] In the end, they "merely

[14] *Talmo*, which is the source of and precursor to the *Miller Brewing* test, is instructive. We adopted the *Talmo* three-part test from earlier cases, including *Loew v. Hagerle Bros.*, 33 N.W.2d 598 (Minn. 1948). *See Talmo*, 205 N.W.2d at 322 n.2. In *Loew*, we applied equal protection principles to a claim brought under the Special Legislation clause of the Minnesota Constitution. 33 N.W.2d at 601. To assemble the three-part test, *Loew* pulled together different "principles" and "fundamental rule[s]" that we had applied in even

represent different ways of stating the same analysis." *In re Estate of Turner*, 391 N.W.2d 767, 770 n.2 (Minn. 1986); *see also AFSCME Councils 6, 14, 65 & 96 v. Sundquist*, 338 N.W.2d 560, 569–70, 570 n.12 (Minn. 1983) ("Although we have expressed this standard in various ways, the preeminent expression of rationality analysis under the equal protection clause is the requirement that legislative classifications make distinctions which are rationally related to legitimate legislative goals or interests."); *Talmo*, 205 N.W.2d at 322 (using the phrase "guiding principles" when listing factors to consider in equal protection challenges). The tests and formulations exist to prompt litigants and courts to ask the right questions and, depending on the specific distinction or classification made in the law, those questions may be different. As we noted in *Loew v. Hagerle Bros.*, "[a]ny formulation of the applicable principles cannot be expected to reflect all facets in their application to an infinite variety of circumstances."[15] 33 N.W.2d 598, 601 (Minn. 1948). What is most important is identifying clearly the specific equal protection concern raised by the party challenging the law.

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earlier cases to help courts assess whether legislative classifications passed constitutional muster in a variety of contexts. *See Hamlin v. Ladd*, 14 N.W.2d 396, 399 (Minn. 1944). The lesson is that the *Loew*/*Talmo*/*Miller Brewing* test is properly conceptualized as a compendium of principles of analysis—some or all of which may apply in a particular case depending on the type of equal protection challenge raised—rather than as a set of elements to establish a constitutional violation.

[15] When reading a large number of our equal protection decisions, it becomes evident that our analysis of the elements of the three-part test is often duplicative; the reason that the distinction made in a law between the classes is genuine and substantial is the very same reason that an evident connection exists between the distinctive needs peculiar to the class and the prescribed remedy.

Thus, to clarify, we hold that, unless a law that treats groups of people differently impacts fundamental rights or creates a suspect class, it does not violate the Equal Protection Clause of the Minnesota Constitution when it is a rational means of achieving the legislative body's legitimate policy goal.

In applying the standard, we have stated that the first step is to identify whether the law creates distinct classes within a broader group of similarly situated persons or whether those treated differently by the law are sufficiently dissimilar from others such that the law does not create different classes within a group of similarly situated persons. *See State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011). To make this determination, we ask whether " 'the claimant is treated differently from other [persons] to whom the claimant is similarly situated in *all relevant respects*.' " *State v. Holloway*, 916 N.W.2d 338, 347 (Minn. 2018) (quoting *State v. Johnson*, 813 N.W.2d 1, 12 (Minn. 2012)) (emphasis added). When the claimant is not treated differently than all others to whom the claimant is similarly situated, there is no equal protection violation. *Cox*, 798 N.W.2d at 521–22.

This first step is not a contextless comparison of the classes within the broader group. To meaningfully assess whether a claimant is similarly situated to all others in all relevant respects, we examine the positions of the claimant and all others in light of the broad purpose and operation of the statute. Whether a claimant is "similarly situated" to other persons cannot be decided based solely on the very classification challenged as violating equal protection. Stated another way, a classification does not pass equal protection muster simply because the Legislature created two classes. To do so would beg the question and render the equal protection principle meaningless.

Our decision in *Holloway* is illustrative. We analyzed a Minnesota statute that make it a crime to sexually penetrate or have sexual contact with a person between the ages of 13 and 16. The equal protection challenge focused on a legislative decision to impose a lower sentence on defendants who were 10 or fewer years older than the victim and a longer sentence on defendants who were more than 10 years older than the victim. *Holloway*, 916 N.W.2d at 343. In assessing whether the two classes of perpetrators were similarly situated, we did not focus on the challenged classification—the age differential. *Id.* at 347. Rather, we decided that the two classes were similarly situated because, at a higher level of generality, they were both subject to criminal liability for sexual contact with a minor. *Id.* at 347–48. Accordingly, we concluded that persons in each of the two classes (those more than 10 years older than the victim and those 10 or fewer years older than the victim) were similarly situated. *Id.* at 348; *cf. Cox*, 798 N.W.2d at 523, 525 n.9 (holding, in a case challenging the differential in sentences between a person convicted for violation of the dishonored check statute and a person convicted under the theft-by-check statute, that the two persons were not similarly situated because the Legislature imposed different mens rea requirements for the two crimes, and noting that we defer to the Legislature's power to set criminal sentences).

In *Schatz v. Interfaith Care Center*, we held under the Workers' Compensation Act that Minnesota providers who treat injured workers are not in the same class as out-of-state providers who treat injured workers. 811 N.W.2d 643, 656–57 (Minn. 2012). We reached that conclusion because the Workers' Compensation Act "has a mechanism for employers . . . to challenge the reasonableness of the charges of medical providers subject

to the Act [i.e., Minnesota providers]; but those employers may be unable to challenge the reasonableness of the charges of medical providers not subject to the Act [i.e., out-of-state providers]." *Id.* at 657.

After we identify the appropriate group of similarly situated persons, we determine the two critical nodes of equal protection analysis: the precise nature of the challenged distinction between members of the group and the legislative purpose for that distinction. Finally, we apply the rational basis test, asking if the distinction is a rational way to achieve the legislative purpose.

To be clear, however, this analysis does not mean that we are compelled to interpret or apply the equal protection guarantee in the Minnesota Constitution identically to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Justice Wahl's observation in her concurrence in *Estate of Turner* remains apt:

> I would question whether we should harness interpretation of our state constitutional guarantees of equal protection to federal standards and shift the meaning of Minnesota's constitution every time federal law changes. Such a result would undermine the integrity and independence of our state constitution and degrade the special role of this court, as the highest court of a sovereign state, to respond to the needs of Minnesota citizens.

391 N.W.2d at 773 (Wahl, J., concurring specially) (footnote omitted). But we emphasize that the uniqueness of Minnesota's equal protection guarantee does not turn on the specific formulation used to describe the standard. Rather, in certain circumstances, the Minnesota Constitution's equal protection guarantee demands more rigorous analysis from lawmakers when they are determining whether a classification will, in fact, achieve a statutory goal. In other words, in a narrow range of cases, we apply a more searching level of scrutiny and

less deference to legislative enactments challenged under the Minnesota Constitution's Equal Protection Clause than would be applied under the Fourteenth Amendment to the United States Constitution.

In particular, we hold lawmakers to a heightened standard of proof as to the fit between the means chosen by the Legislature and the government interest to be achieved when a statutory classification demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently. In *State v. Russell*, we considered a law providing for longer sentences for possession of crack cocaine than for possession of the same amount of powder cocaine. 477 N.W.2d 886, 887 (Minn. 1991). We struck down the law on equal protection grounds. *Id.* at 891. The Legislature adopted the distinction between crack cocaine and powder cocaine in an effort to stop street-level dealers of cocaine. *Id*. at 889. Evidence presented to a legislative committee suggested that a person who possessed three grams of crack cocaine was likely a dealer while a person who possessed powder cocaine was unlikely a dealer unless he possessed 10 grams or more. *Id*.

The record in *Russell*, however, also demonstrated that "the law ha[d] a discriminatory impact on black persons." *Id.* at 887. The district court found that "crack cocaine is used predominantly by blacks and that cocaine powder is used predominantly by whites," and thus, "a far greater percentage of blacks than whites are sentenced for possession of three or more grams of crack cocaine . . . with more severe consequences than their white counterparts who possess three or more grams of cocaine powder." *Id*. (footnote omitted).

We recognized that under the Supreme Court's interpretation of the Fourteenth Amendment, this racially discriminatory effect of the law was insufficient to invoke a higher level of scrutiny in the absence of proof that the Legislature enacted the sentencing distinction *because* the law would have such a racially discriminatory effect. *Id*. at 888 n.2 (citing *McCleskey v. Kemp*, 481 U.S. 279, 298 (1987)). Nonetheless, while acknowledging that "we are ordinarily loathe to intrude or even inquire into the legislative process," we said that "the correlation between race and the use of cocaine base or powder and the gross disparity in resulting punishment cries out for closer scrutiny of the challenged laws." *Id.* We stated: "It is particularly appropriate that we apply our stricter standard of rational basis review in a case such as this where the challenged classification appears to impose a substantially disproportionate burden on the very class of persons whose history inspired the principles of equal protection." *Id.* at 889.

Accordingly, because of the disparate effect of the law on African Americans, we more closely scrutinized whether the distinction between crack cocaine and powder cocaine accurately reflected whether the person possessing a determined amount was a street-level dealer. *Id*.; *see State v. Frazier*, 649 N.W.2d 828, 842 (Minn. 2002) (Page, J., dissenting) (interpreting *Russell* to hold that "[u]nder Minnesota law . . . a defendant who challenges the constitutionality of a statute on the basis that it has a disparate impact on the members of a minority racial group is entitled to review of the statute under the Minnesota rational basis test if the defendant shows that the statute falls more harshly on one group than another"). In other words, we considered whether the evidence proved a sufficiently

strong connection between the purpose of the law—regulating the possession of drugs by street-level dealers—and the means chosen by the Legislature.

Rather than allowing lawmakers to rest on the theoretical assumption that a person who possessed three grams of crack cocaine was a dealer and someone who possessed three grams of powder cocaine was not a dealer, we demanded that the legislation be supported by actual proof that that was the case. *Russell*, 477 N.W.2d at 890. We found such proof lacking because the Legislature relied on "anecdotal testimony" of a Hennepin County attorney which was contradicted by a report by the Minnesota Department of Safety Office of Drug Policy that rejected the "street dealer" distinction in possession amounts. *Id.* at 889–90; *see also id*. at 891 ("Without more [actual] evidence, it is as easily assumed that individuals jailed with possession of three grams of crack are mere personal users who are arbitrarily penalized as dealers.").

Since *Russell*, we have not employed its higher scrutiny of means-end connection—requiring actual proof as opposed to theoretical or hypothesized proof—to strike down any law under the Equal Protection Clause of the Minnesota Constitution. In *Frazier*, we faced a similar challenge to a longer sentence imposed for a controlled substance crime committed for the benefit of a gang than would be imposed for someone who violated the Racketeer Influenced and Corrupt Organizations statute. 649 N.W.2d at 832. We did not have occasion to more closely examine the connection between the means of imposing a longer sentence for gang crimes and the ends to be achieved by the distinction because we determined that the evidence that the benefit-of-a-gang enhancement has a disparate impact on minorities was insufficient. *Id*. at 836–37. *Contra id.* at 842 (Page, J., dissenting). And

we have continued to apply a deferential rational basis standard to "statutory classifications affecting the regulation of economic activity and the distribution of economic benefits." *Gluba*, 735 N.W.2d at 723 (citation omitted) (internal quotation marks omitted).

In *Russell*, we cited a law review article that analyzed *Wegan v. Village of Lexington*, 309 N.W.2d 273 (Minn. 1981), *Thompson v. Estate of Petroff*, 319 N.W.2d 400 (Minn. 1982), and *Nelson v. Peterson*, 313 N.W.2d 580, 580–81 (Minn. 1981), to support the conclusion that the Minnesota equal protection guarantee requires more searching judicial scrutiny of the evidence on which the Legislature relied to support a law. *Russell*, 477 N.W.2d at 889 (citing Deborah K. McKnight, *Minnesota Rational Relation Test: The Lochner Monster in the 10,000 Lakes*, 10 Wm. Mitchell L. Rev. 709 (1984)). We disagree with the article's interpretation of the cases. Those cases were not about imposing more robust judicial scrutiny of—and second-guessing—the evidence before the Legislature. Rather, those decisions turned on a conclusion that it is not rational for the Legislature to treat two similarly situated individuals differently when there is absolutely no difference between them regarding the purpose the Legislature was attempting to achieve.

In *Wegan*, we considered an equal protection challenge to a provision of the dram shop statute that established a 1-year statute of limitations on claims brought by an injured individual against a bar that served an impaired driver "intoxicating liquors." 309 N.W.2d at 278. In contrast, an individual injured by a driver impaired by drinking 3.2 beer had 6 years to bring a common law negligence action against the bar.[16] *Id*. Applying basic equal

[16] The dram shop statute did not apply to the sale of 3.2 beer for anachronistic historical reasons related to prohibition. *Wegan*, 309 N.W.2d at 278–79.

protection principles, we reasoned that the appropriate class was individuals injured by an intoxicated driver. *Id*. at 280 ("An injured person cares little whether the driver who causes his injuries became intoxicated as a result of consuming 3.2 beer or stronger liquor."). Some injured individuals had only 1 year to sue the bar that served the driver and some injured individuals had 6 years to bring the same claim. Yet, there was no reason that some claims would grow stale more quickly than others. Stated another way, the purpose of the statute of limitations—to avoid stale claims and encourage early resolution of disputes—applied equally to both sets of claimants and their claims. *Id*. at 280. The Legislature simply had no conceivable rational basis for treating the two classes of injured claimants differently. *Id.*; *see also id.* at 281 (citing *Kossak v. Stalling*, 277 N.W.2d 30 (Minn. 1979), and *Pacific Indem. Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548 (Minn. 1977), in which we struck down as equal protection violations statutes of limitations that applied only to select groups of defendants).

In *Nelson*, we struck down, as an equal protection violation, a statute that prevented state-employed lawyers who represented petitioners in workers' compensation proceedings from serving as workers' compensation judges until 2 years had elapsed since leaving state employment. 313 N.W.2d at 583. No other lawyers who represented parties in workers' compensation cases faced a similar prohibition, including state-employed lawyers who represented the State in workers' compensation cases. *Id.* at 581. Although we acknowledged that the Legislature could have believed that former petitioners' counsel would be perceived as biased in favor of employees, we concluded that the same argument would apply equally to most other lawyers working in the workers' compensation arena,

especially state-employed defense lawyers. *Id.* at 582. As in *Wegan*, viewed in light of the stated legislative purpose, the Legislature had no conceivable rational basis for the distinction. *Id.* at 583.

Our rationale in *Thompson* was the same. There, we held unconstitutional a statute that prohibited the victim of an intentional tort from recovering in an action against the estate of a deceased tortfeasor, but allowed recovery by victims injured as a result of negligence or intentional conduct that interferes with property rights. *Thompson*, 319 N.W.2d at 406. We reasoned that the Legislature's rationale—that intentional claims are harder to prove after the alleged wrongdoer dies—was belied by the fact that other claims requiring proof of intent survived. *Id.* at 404–05. We stated that even if the Legislature was correct that intentional torts are more difficult to prove if the defendant is dead, "its failure to place intentional torts on an equal footing with other causes of action for which proof is no less difficult was unreasonable." *Id.* at 407 n.10.[17]

[17] Recently, we applied a similar analysis and concluded that a statute regarding jail credit for juveniles violated the Equal Protection Clause. The statute denied jail credit to an extended-jurisdiction juvenile offender for time spent postadjudication in a custodial setting, but granted jail credit to a juvenile offender certified as an adult for time spent in postconviction probation in a custodial setting. *State v. Garcia*, 683 N.W.2d 294, 300–01 (Minn. 2004). We noted that the rationale for denial of jail credit to extended-jurisdiction juvenile offenders—that it provides an incentive to successfully complete the probationary program—applies identically to juveniles certified as adults who are sentenced to probation. *See also Back*, 902 N.W.2d at 30 (holding that a provision was not rational because it allowed a claim under the Imprisonment and Exonerated Remedies Act only upon proof that a court vacated a conviction *and* the prosecutor dismissed the charges because the statute premised relief under the statute on an legally impossible act). As with *Wegan* and the other cases discussed above, our analysis in these later cases did not turn on judicial second-guessing of the evidence before the Legislature. Rather, we found an equal protection violation because there was absolutely no difference between the two

This principle articulated in *Wegan* and similar cases[18] is consistent with the rule that equal protection rational basis review is not concerned that a distinction may have uneven effects upon some members within an excluded or included group. *See Holloway*, 916 N.W.2d at 349 (a classification that has some reasonable basis " 'does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality' " (quoting *Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138, 143 (Minn. 1980))); *Westling v. Cty. of Mille Lacs*, 581 N.W.2d 815, 822 (Minn. 1998) (stating that "imperfection is not a constitutional defect"). In *Wegan* and similar cases, we focused on whether, in view of the purpose the Legislature is trying to achieve, there is *any* rational distinction between the similarly situated persons covered by the classification and those who are excluded. When there is no rational distinction at all, the classification violates equal protection principles. In cases like *Westling* and *Guilliams*, the focus is on the uneven effects the classification has upon individuals *within* each of the distinct groups created by the classification. Those inequalities are not of constitutional import under rational basis review.[19]

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classes of similarly situated persons in light of the purpose the Legislature was attempting to achieve.

[18] During the same period that *Wegan*, *Nelson*, and *Thompson* were decided, we struck down a number of other classifications under equal protection rational basis review by applying the same principles. *See, e.g.*, *Johnson v. Moberg*, 334 N.W.2d 411 (Minn. 1983); *Grassman v. Minn. Bd. of Barber Exam'rs*, 304 N.W.2d 909 (Minn. 1981); *Dependents of Ondler v. Peace Officers Benefit Fund*, 289 N.W.2d 486 (Minn. 1980); *Price v. Amdal*, 256 N.W.2d 461 (Minn. 1977).

[19] We acknowledge that, in some cases decided in the late 1970s and early 1980s, tension exists between our willingness to strike down laws on rational basis equal

In summary, we conclude that, as a general matter, the Minnesota equal protection standard is not less deferential to legislative decisions than the federal standard. But where a law demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently, our precedent under the Minnesota Constitution requires more of lawmakers (actual as opposed to theoretical factual justification for a statutory classification)—and demands of this court more searching scrutiny—than does the Fourteenth Amendment.

B.

With this background in mind, we turn to the specific equal protection challenge before us. Once again, the ordinance provides that owner-occupied duplexes and previously homesteaded single-family homes rented for 36 or fewer months are not subject to the no-refusal-because-of-Section-8-requirements provision of the ordinance.

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protection review and our general deference to legislative decisions to adopt regulations that "only partially ameliorate a perceived evil and refer[] complete elimination of the evil to future regulations." *ILHC of Eagan LLC v. Cty. of Dakota*, 693 N.W.2d 412, 423 (Minn. 2005) (citation omitted) (internal quotation marks omitted) (articulating a step-by-step standard); *see also Haskell's, Inc. v. Sopsic*, 306 N.W.2d 555, 559 (Minn. 1981) (citing *Clover Leaf Creamery*, 449 U.S. at 470) (same). It is notable that, during this same period, our decision in *Clover Leaf Creamery Co. v. State*, 289 N.W.2d 79 (Minn. 1979) (holding step-by-step principle did not apply even though the first step had no rational relationship to achievement of a legitimate state interest), was reversed by the United States Supreme Court. *Clover Leaf Creamery*, 449 U.S. at 470. We acknowledged the tension at the time. We affirm today that under Minnesota equal protection principles, we will not interfere with a law solely on the ground that it does not completely ameliorate a perceived evil.

We start by identifying the relevant group of similarly situated persons. Because the ordinance regulates the conduct of persons who rent residential units in the city, we conclude that the relevant class is residential landlords.

Next, we precisely identify the distinction at issue. The Owners argue that the distinction is between those residential landlords who are subject to the prohibition on refusing to rent because of voucher program requirements and those residential landlords who are not. We disagree.

The distinction that the Owners draw does not consider the entire ordinance. In fact, no residential landlord is absolutely subject to the prohibition on refusing to rent because of voucher program requirements. Every residential landlord has the opportunity to seek an exemption from the ordinance provision if compliance with housing choice voucher requirements will impose an undue hardship on the landlord. *See* MCO, tit. 7, § 139.40(e)(1).

Accordingly, the real distinction at issue in this case is between residential landlords who may refuse to rent without proving an undue hardship (the exempt residential landlords) and residential landlords who may refuse to rent only if they establish that compliance with the requirements will impose an undue hardship (the nonexempt residential landlords). In other words, the different burden imposed on the Owners is not that they must comply with the provision, but rather that they must bear the burden of proving undue hardship while other residential landlords do not. And so the question we must answer is whether exempting certain residential landlords from the burden of proving

an undue hardship is a rational means of achieving the City's purpose for adopting the exemption.

One of the reasons that the City exempted previously homesteaded single-family homes rented for 36 or fewer months and owner-occupied duplexes from the requirement of proving an undue hardship was administrative efficiency. Owners of those types of properties are likely to be able to demonstrate undue hardship and, accordingly, the limited government resources needed to conduct a case-by-case analysis of such properties would be better used for other purposes.

We have recognized administrative efficiency as a valid reason for a legislative body to distinguish between classes. *See In re Harhut*, 385 N.W.2d 305, 311 (Minn. 1986) (holding that an indeterminate commitment to state hospitals for mentally disabled individuals was not unreasonable because it was "the more effective and efficient way to deal with the state's responsibility to treat mentally [disabled] persons"); *Bituminous Cas. Corp. v. Swanson*, 341 N.W.2d 285, 289 (Minn. 1983) ("Under the rational basis standard, administrative ease is an adequate justification."). It is not irrational for the City to conclude that owners of formerly homesteaded single-family homes and owner-occupied duplexes are likely to be able to demonstrate undue hardship as defined in the ordinance.

It is certainly conceivable that those owners are less likely to have property management processes, that the nature and net cost of complying with Section 8 requirements will be relatively significant for those owners, that the overall financial resources of those owners will be relatively low, that those owners are unlikely to have employees or own a large number of properties, and that there will be a relatively

substantial impact on the rental business of those owners, and on their dwelling, if they must comply with Section 8 housing choice voucher program requirements. These burdens are particularly heightened for owners of formerly homesteaded single-family homes who are limited to 36 months to recoup their investment.

The Owners offer several reasons why the City's administrative efficiency argument should be rejected. First, the Owners argue that the premises underlying the City's position are based on anecdotal evidence and unproven assumptions and, consequently, the administrative efficiency rationale for allowing those owners to be automatically exempted from the ordinance does not satisfy the heightened scrutiny required under the Minnesota Constitution's equal protection guarantee. But the Owners do not contend that the exemptions demonstrably and adversely affect residential landlords of one race differently than residential landlords of another race or make any argument that landlords as a category have unique characteristics or rights that justify a similar departure from traditional rational basis scrutiny. Accordingly, a heightened standard of means-end scrutiny does not apply.

Second, the Owners argue that exempting owners of formerly homesteaded single-family homes and owner-occupied duplexes is inconsistent with the broader purposes of the ordinance; namely, to increase the stock of affordable housing available to voucher holders and to prevent discrimination against voucher holders. The argument, however, focuses on the wrong purposes. While those may be the purposes of the ordinance provisions, the purpose of distinguishing between landlords who are automatically exempt from the provision and those who must prove undue hardship to

become exempt is administrative efficiency. *See Holloway*, 916 N.W.2d at 348–49 (focusing on the purpose of the exemption from the general rule).

Third, the Owners argue that the exemption is both overinclusive and underinclusive. They state that there are likely owners of formerly homesteaded single-family homes and owner-occupied duplexes who could not satisfy the undue hardship exemption and that there are likely nonexempt residential landlords who could qualify for the undue hardship exemption. Even if that were true, we do not require that legislation be perfect. *See Westling*, 581 N.W.2d at 822 (noting that a statute that treated certain property differently from other property for taxation purposes did not violate the equal protection guarantee, even though the classification scheme was imperfectly related to the legislative objectives, because "imperfection is not a constitutional defect"); *see also Rey*, 905 N.W.2d at 495 (stating in a rational basis due process case that "[t]he United States and Minnesota Constitutions do not require the Legislature to devise precise solutions to every problem"). "When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. The calculus of effects, the manner in which a particular law reverberates in society, is a legislative and not a judicial responsibility." *Guilliams*, 299 N.W.2d at 143 (Minn. 1980) (quoting *Personal Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979)).

In *Guilliams*, we analyzed the farm loss modification law. The Legislature enacted the law to create a disincentive to a growing tax shelter scheme. *Id.* at 140. Because farm income received unique treatment under the tax code, increasing numbers of taxpayers were buying farms for the sole purpose of using the farm losses to offset their nonfarm

income. *Id.* at 140–41. To address the problem, the Legislature passed a law that limited the amount of farm losses that could offset nonfarm income to $15,000. *Id.* at 140. In other words, owners of farms with $15,000 or less in nonfarm income were treated differently than owners of farms with more than $15,000 in nonfarm income. *Id.* at 142.

Even though we acknowledged that some full-time farmers who did not own their farm for tax shelter purposes might still have nonfarm income greater than $15,000 to offset, we upheld the statute. "If the classification has some reasonable basis, it does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality." *Id.* at 143 (citation omitted) (internal quotation marks omitted); *see also State v. Barnes*, 713 N.W.2d 325, 333 (Minn. 2006) (stating that "substantial deference is given to the legislature where an underinclusiveness challenge is made on rational basis review").

Finally, it is not irrational line-drawing to treat owners of duplexes any differently than owners of triplexes or fourplexes, notwithstanding that the latter owners may face the same likelihood of qualifying for an undue hardship exemption as owners of duplexes or formerly homesteaded single family homes. Under rational basis review, we have consistently rejected such arguments, including in the context of nearly the precise line-drawing at issue here. *See Hegenes v. State*, 328 N.W.2d 719, 722 (Minn. 1983). In *Hegenes*, we rejected an equal protection challenge to a property tax classification that treated residential properties of three units or less differently from those with four or more units. *Id.* at 720. We stated:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where such change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Id. at 722 (quoting *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 41 (1928) (Holmes, J., dissenting)); *see also Gluba*, 735 N.W.2d at 724–25 (rejecting an equal protection challenge to a Workers' Compensation Act provision that treated a 49-year-old worker differently than a 50-year-old worker).

We conclude that the distinction between owners who must show undue hardship and those who are automatically exempt from the ordinance is a rational method to achieve the exemptions' legislative purpose. Therefore, we conclude that the Minneapolis ordinance does not violate the Minnesota Constitution's equal protection guarantee.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

C O N C U R R E N C E

ANDERSON, Justice (concurring).

I concur in the result reached by the court on the due process issue. I also concur with the court's holding that the deference afforded by the federal rational basis test applies to equal protection claims brought under the Minnesota Constitution. We have inconsistently applied the rational basis test, vacillating between various iterations of a Minnesota specific standard and the federal standard. *See State v. Cox*, 798 N.W.2d 517, 525 (Minn. 2011) (Stras, J., concurring) ("[O]ur equal protection jurisprudence is inconsistent and confusing."). Adopting the federal rational basis test, as we do today, brings predictability and greater certainty to our law.

I write separately to briefly address the court's discussion of *State v. Russell*, 477 N.W.2d 886 (Minn.1991). In dicta unnecessary to reach today's result, the court mentions a possible disparate impact exception to the federal equal protection standard that we adopt. This is not a case that implicates the considerations of *Russell*, and the court need not carve out any exceptions to the federal rational basis test to reach its decision. In addition, given the high bar we set in *State v. Frazier* for the type of evidence required to establish a disparate impact claim, it is unlikely the disparate impact evidence in *Russell* would survive this scrutiny even under a Minnesota specific rational basis test. *See State v. Frazier*, 649 N.W.2d 828, 834–37 (Minn. 2002). Further, the particular issue in *Russell* is now moot as the offending statute has been amended.

We should neither weigh the credibility of legislative testimony nor second-guess the accuracy of legislative determinations of fact absent overwhelming contrary evidence.

See Moes v. City of Saint Paul, 402 N.W.2d 520, 525 (Minn. 1987). Doing otherwise impermissibly encroaches on the legislative branch and violates the separation of powers doctrine. A statute will survive an equal protection challenge when the "classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985). We should simply adopt and apply the federal rational basis test here and avoid discussing exceptions for issues that are not present in the case before us and unnecessary to our decision.

GILDEA, Chief Justice (concurring).

I join in the concurrence of Justice Anderson.