A25-1220, A25-1221

STATE OF MINNESOTA
IN SUPREME COURT

Housing First Minnesota,

Appellant,

vs.

City of Corcoran (A25-1220),

Respondent.

Housing First Minnesota,

Appellant,

vs.

City of Dayton (A25-1221),

Respondent.

BRIEF OF *AMICI CURIAE* BUILDERS ASSOCIATION OF MINNESOTA AND NATIONAL ASSOCIATION OF THE REMODELING INDUSTRY – MINNESOTA CHAPTER

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STATEMENT OF AMICUS CURIAE[1]

Builders Association of Minnesota ("BAM") is a statewide trade association representing the interests of Minnesota homebuilders. BAM was established in 1974 to represent the interests of building contractors, land developers, manufacturers, suppliers, and related enterprises. BAM serves 500 employer-members with approximately 8,500 employees in homebuilding, remodeling and related industries. Accordingly, BAM works to represent the interests of both its members and the public. It is dedicated to providing the public with quality and affordable housing. The efforts of BAM focus on building code and other drivers of housing quality and affordability, and on the education of association members, policymakers and the public about housing affordability and best construction practices. As part of its mission, BAM has litigated constitutional challenges in state court to defend its members' rights and the rule of law.

Similarly, National Association of Remodeling Industry, Minnesota Chapter ("NARI MN," who with BAM are collectively *Amici*) is the only association in Minnesota dedicated solely to the remodeling industry, and its membership consists of approximately 288 companies working in Minnesota, including remodeling contractors and subcontractors, material suppliers, manufacturers, and professional service providers. NARI MN champions the remodeling industry by empowering members through education and credentialing programs, networking opportunities, and knowledge sharing about

[1] Pursuant to Minnesota Rule of Civil Appellate Procedure 129.03, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus curiae*, their members, and their counsel have made any monetary contribution to the preparation or submission of this brief.

innovative trends and techniques. NARI MN promotes ethical and sound business practices for the benefit of America's homeowners and the industry.

ARGUMENT

This case presents a question of access to the courts. The Court of Appeals' decision that parties may not use the Uniform Declaratory Judgments Act ("UDJA" or the "Act") to challenge municipal ordinances is inconsistent with the UDJA, with this Court's precedent, and would immunize unlawful or overreaching municipal ordinances from judicial review. The Court of Appeals' decision also drives up the costs of doing business in Minnesota, ultimately impacting the general public. If the persons who pay building permit fees cannot ask a court whether those fees comply with state law, then in practice no one will.

Minnesota has enacted a State Building Code that applies uniformly throughout Minnesota, and it limits the fees a municipality may charge for building permits to the cost of administering the permit program. Minnesota has separately enacted the UDJA, which by its plain terms authorizes any person whose rights are affected by a municipal ordinance to obtain a judicial declaration of that ordinance's validity. The decision below holds, contrary to the UDJA's text, broad remedial purpose, and common practice in the state, that the code and UDJA do not connect, and therefore that a builder, remodeler, or homeowner who is subject to an unlawful permit fee has no way to ask a court whether the fee is lawful. That holding cannot be reconciled with the text of the UDJA or this Court's jurisprudence.

I. THE COURT OF APPEALS' DECISION WILL RAISE THE COST OF HOUSING IN MINNESOTA BY PLACING MUNICIPAL OVERCHARGES BEYOND THE REACH OF ANY COURT.

Although the question presented is procedural, its consequences are economic, and, in this case, they fall on Minnesota homebuyers, builders, home remodelers and renters. The Legislature limited building permit fees to amounts that are "fair, reasonable, and proportionate" and that have "a nexus to the actual cost of the service for which the fee is imposed." Minn. Stat. § 462.353, subd. 4(a); Minn. Admin. R. 1300.0160, subd. 2. That limit on municipal authority means nothing if no one can enforce it. The parties who pay permit fees—builders, remodelers, and the homeowners who hire them—are the parties with the information, the incentive, and the concrete stake needed to test whether a municipality's fee schedule complies with state law. If they are denied declaratory relief, the statutory limit becomes a right without a remedy, and whatever a municipality collects above its costs will be built into the price of Minnesota housing. That result is especially consequential now, when data from the State's housing finance agency, independent researchers, and national industry surveys all document a housing affordability crisis in which government-imposed costs are a substantial and growing component.

A. Minnesota Is Experiencing a Documented Housing Affordability and Supply Crisis.

The Minnesota Housing Finance Agency reports that approximately 640,000 Minnesota households were cost burdened in 2023—spending more than 30% of their income on housing—and that housing development costs rose 10.7% in 2021 and 8.5% in 2022. Minn. Hous. Fin. Agency, *2025 Cost Containment Report* at 1 (Nov. 13, 2025). The

Minnesota Housing Partnership's most recent statewide review found that home values rose in every Minnesota county from 2023 to 2024 while homeowner incomes rose in only 65% of counties, and that at least one in four renters is cost burdened in every county in the State. Minn. Hous. P'ship, *2026 County Profiles* (2026), https://mhponline.org/publications/2026-county-profiles/.

Minnesota's supply shortfall compounds the problem. A November 2025 study found that Minnesota's homeownership rate fell to 71% in 2024—a three-percentage-point decline that was the largest single-year drop in forty years of Census data—and estimated the State's housing deficit at approximately 98,000 units, three-quarters of them in the Twin Cities region. Elliot Eisenberg, Hous. Affordability Inst., *Minnesota's Homeownership Challenge: Undersupply, High Prices, and Competitive Disadvantage* at 5 (Nov. 2025). The study further reported that residential permits declined 35% statewide and 43% in the Twin Cities from 2021 to 2024, and that Minnesota has the highest median cost of new and existing single-family homes in the upper Midwest. *Id.* The Pew Charitable Trusts, drawing on that research, observed that more than half of Minnesota households can no longer afford the median-priced existing home and roughly three-quarters cannot afford the median-priced new home. Alex Horowitz, *Housing Affordability Is Slipping in Minnesota—State Policy Can Help*, Pew Charitable Trusts (Mar. 9, 2026), https://www.pew.org/en/about/news-room/opinion/2026/03/09/housing-affordability-is-slipping-in-minnesota-state-policy-can-help.

B. Surveys Consistently Show That Government-Imposed Costs Are a Substantial and Rapidly Growing Share of the Price of Housing.

The most significant barriers to the availability and affordability of housing are not financing considerations, but policy-induced costs and local feasibility barriers. Tobias Peter & Edward Pinto, Am. Enterprise Inst. Housing Ctr., *Housing Supply is Not Primarily a Financing Problem* (May 28, 2026). A report by the American Enterprise Institute Housing Center examined the influence of policy-induced costs, including permitting delays, land-use restrictions, inclusionary zoning and other regulatory requirements, finding that these requirements raise the cost of development by tens of thousands of dollars and therefore reduce the number of financially viable projects. *Id*. at 14.

Similarly, one of the longest-running measures of regulatory cost in home construction is the National Association of Home Builders' periodic survey of builders and land developers. Its 2026 study found that regulation imposed at the federal, state, and local levels accounts for $131,734—26.4%—of the average price of a new single-family home. Nat'l Ass'n of Home Builders, *Regulatory Costs Jump 40% in Five Years, Add $131,734 to New Home Prices* (June 9, 2026), https://www.nahb.org/news-and-economics/press-releases/2026/06/regulatory-costs-jump-40-in-five-years-add-131734-to-new-home-prices. That figure is more than 40% higher than the $93,870 (23.8%) that NAHB measured in 2021, while U.S. disposable income rose only 18.3% over the same period. *Id.*; Paul Emrath, Nat'l Ass'n of Home Builders, *Government Regulation in the Price of a New Home: 2021*, at 1 (May 5, 2021). Of particular relevance here, NAHB found that the share of a new home's price attributable to regulation during the construction phase rose from

13.3% to 17.0%, "largely because of higher building permit fees and changes to building codes." Nat'l Ass'n of Home Builders, *supra*. The burden is heavier still for rental housing: a 2022 joint survey by NAHB and the National Multifamily Housing Council found that regulation accounts for an average of 40.6% of multifamily development costs, and explained that each added cost requires developers to raise rents for a project to remain financially feasible. Paul Emrath & Caitlin Sugrue Walter, Nat'l Ass'n of Home Builders & Nat'l Multifamily Hous. Council, *Regulation: 40.6 Percent of the Cost of Multifamily Development* (June 2022).

Minnesota-specific research points in the same direction. A 2019 study comparing construction costs in Minnesota and neighboring markets found that a new home in Lake Elmo, Minnesota costs $47,000 more than an identical home in Hudson, Wisconsin, roughly ten miles away, and that a new home in Victoria, Minnesota costs $82,000 (25%) more than a similar home built by the same builder in Chicago's southwest suburbs—differences the study attributed to land, infrastructure, and regulatory costs. Hous. Affordability Inst., *Priced Out: The True Cost of Minnesota's Broken Housing Market* (Feb. 2019). The study estimated that up to one-third of a new home's price in the Twin Cities is attributable to regulations and policies imposed at the local, regional, and state levels. *Id.*

C. Without Declaratory Relief, No One Can Enforce the Fee Limit, and Minnesota Homebuyers and Renters Will Bear the Cost.

Without application of the UDJA, builders and remodelers could be forced to comply with unlawfully promulgated ordinances. As an example, building permit fees must

be paid before a permit issues, and most construction cannot lawfully begin without a permit. *See* Minn. Stat. §§ 326B.107; Minn. Admin. R. 1300.0120, 1300.0160. A builder or remodeler therefore would have no practical choice but to comply with any overbearing regulation such as paying whatever the municipal fee schedule demands and to build that cost into the price of the home or project. Permit fees collected in excess of program costs thus operate, in effect, as a tax on new construction and remodeling—one that raises the price of every home and every project on which it is imposed. *Amici's* members pay these fees, and their customers ultimately bear them. Many of those members are small and mid-sized employers. Those businesses cannot absorb unauthorized exactions indefinitely, and the homebuyers and homeowners they serve cannot avoid them.

The Court of Appeals' rule limits the forums in which unlawful ordinances, including permit fees that exceed statutory limits, can be challenged. An individual homebuyer, who pays the overcharge indirectly and in an amount that is small relative to the cost of litigation, has neither the information nor the incentive to sue. The entities that have both—builders, remodelers, and the associations that represent them—are precisely the parties the decision below would turn away. The predictable consequence is that a municipality facing budget pressure could treat building-permit revenue (or other ordinances) as a general-purpose revenue source, as the Cities are alleged to have done here, with no prospect of judicial review. Every such dollar is added to the price of housing at a time when more than half of Minnesota households cannot afford the median-priced existing home and the State faces a deficit of nearly 100,000 housing units. Higher costs

reduce the number of homes that can be built at prices Minnesotans can afford, which constrains supply and places further upward pressure on both home prices and rents.

Amici do not ask the court to decide whether any particular fee is lawful. They ask only that those who pay building permit fees retain the ability the UDJA expressly confers: to ask a court whether a municipal ordinance complies with state law. Preserving that ability is essential to ensuring that the legislature's limits on permit fees protect Minnesota homebuyers, home remodelers, and renters in practice, not merely on paper.

II. THE UNIFORM DECLARATORY JUDGMENTS ACT EXPLICITLY PROVIDES A MECHANISM TO CHALLENGE A MUNICIPAL ORDINANCE.

A. Section 555.02 Expressly Authorizes the Challenges to Municipal Ordinances.

Minn. Stat. § 555.01 provides that courts "shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." The Act does not impose any requirement that a party seeking relief under the Act have a distinct cause of action or constitutional claim. Rather, the Act straightforwardly provides a mechanism for parties to challenge the validity of a municipal ordinance. Minn. Stat. § 555.02 provides the following:

> Any person . . . whose rights, status, or other legal relations are affected by a municipal ordinance . . . may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

The "rights, status, [and] other legal relations" of builders, remodelers, homeowners, and other parties who must pay building permit fees are affected by a city's permit fee

ordinances, as this controversy concerns whether the party has a valid legal obligation to pay these fees under state law, and is therefore a proper basis to seek declaratory relief. *Montgomery v. Minneapolis Fire Dept. Relief Ass'n*, 15 N.W.2d 122, 124-25 (Minn. 1944) ("The court is not limited or restricted in the exercise of the broad general powers conferred by § 555.01, since it is provided by § 555.05 that, 'in any proceeding where declaratory relief is sought, in which judgment or decree will terminate the controversy or remove an uncertainty,' the court's authority comes into play. Thus rights are settled and determined before disputes become serious or well nigh irremediable.").

B. Minnesota Precedent Confirms That Municipal Ordinances May Be Tested Under the UDJA.

This Court has repeatedly recognized that challenging the validity of a municipal ordinance—whether on a constitutional or statutory basis—is an intended feature of the Act. *See Builders Ass'n of Minnesota v. City of St. Paul*, 819 N.W.2d 172 (Minn. Ct. App. 2012) (considering conflict between State Building Code and municipal building code which exceeded scope of delegated authority within the context of UDJA action); *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 815 (1966) (considering UDJA action where plaintiff alleged municipal ordinance conflicted with state law); *City of Glencoe v. Beneke*, 179 N.W.2d 279, 281 (Minn. 1970) (declaratory judgment action a proper tool to test an annexation proceeding, even where no independent cause of action existed). Notably in *Beneke*, in responding to an argument by the plaintiffs that they were denied due process of law and had no recourse to challenge an annexation proceeding under state law, the Court explicitly acknowledged that Minn. Stat. § 555.02 provided the parties a

means to challenge a municipal action. *Id* at 281. ("Secondly, appellants are not denied recourse to the courts in light of the existence of Minn. St. 555.02, which provides parties with the right of declaratory judgment."). Indeed, this Court also held in *McCaughtry v. City of Red Wing* that the Act "specifically provides for challenges to the validity of a municipal ordinance that 'affect[s]' the rights of a person." 808 N.W.2d 331, 337 (Minn. 2011) ("we have long held that a declaratory judgment action is proper to test the validity of a municipal ordinance, regardless of whether another remedy exists."). Accordingly, this Court has recognized a right of action under the UDJA to challenge a municipal ordinance or other action, and should reverse the contrary decision by the Court of Appeals.

Further, the Act plainly contemplates challenges to municipal ordinances that are not necessarily constitutional claims or that otherwise challenge the constitutionality of a law. Minn. Stat. § 555.11 states that in proceedings which involve "the validity of a municipal ordinance or franchise," "the municipality shall be made a party." It adds the additional requirement that if the "statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served." *Id*. The enumerated procedure for challenging a municipal ordinance, as well as the additional requirements for challenges to the constitutionality of an ordinance, illustrate that the legislature understood and intended that 1) some challenges to municipal ordinances would be non-constitutional in nature, and 2) the law would provide a mechanism to challenge municipal ordinances whether or not an alleged constitutional issue existed.

For example, this Court applied this same analysis to a building-permit exaction in *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681 (Minn. 1997). There, home building

contractors challenged a road unit connection charge imposed as a condition of issuing all building permits within the city, the proceeds of which funded major street construction. *Id*. at 682–83. The contractors did not identify a statutory cause of action; they challenged the city's authority to impose the charge under the UDJA. This Court held that a city lacks express or implied authority to impose a road unit connection charge as a condition to issuance of building permits within its borders. *Id*. at 682. The same analysis governs a permit fee set above the cost of the permitting program: the excess is not a fee authorized under state law. *See Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995) (home rule charter city's resolutions exceeding the scope of a state statute on a matter of statewide concern were "ultra vires and without legal force"), review denied (Minn. Mar. 29, 1995).

C. Requiring a Separate Cause of Action Would Erase the Statute's Text.

Were the Court to adopt the ruling below and abrogate *Country Joe*, *Builders Ass'n of Minnesota*, *McCaughtry*, and the rest of the Court's jurisprudence regarding the availability of UDJA actions to challenge municipal ordinances, the express statutory language would be rendered superfluous; if § 555.02 authorized a validity challenge only when some other statute independently created a right to sue, the express reference to "municipal ordinance" and to "any question of . . . validity" would become mere surplusage. *See* Minn. Stat. § 645.16. ("Every law shall be construed, if possible, to give effect to all its provisions."). The reading adopted below cannot satisfy that command because it would leave the Legislature's affordability-protective fee limits on the books

while denying the builders, remodelers, and homeowners who bear those fees any means to challenge them.

D. Other Jurisdictions Consistently Permit Building and Remodeling Associations to Challenge Unlawful Municipal Ordinances and Permit Fees using a Declaratory Judgment Action.

Courts in other jurisdictions routinely permit building-industry associations to use declaratory judgment actions to determine whether municipal permit fees and development charges comply with state law. Those courts do not require an independent statutory cause of action before adjudicating the validity of the challenged municipal action. *Michigan Association of Home Builders v. City of Troy* is particularly instructive., 934 N.W.2d 713 (2019). There, construction-industry associations challenged municipal building-inspection fees under a statute requiring the fees to be reasonable, related to the cost of services provided, and used only to operate the enforcing agency. *Id*. at 207–09. Although the statute created no private cause of action for damages, the Michigan Supreme Court held that the associations could pursue declaratory and equitable relief because the allegedly unlawful fees created an actual controversy affecting their members' economic interests. *Id*. at 222–26. The absence of an independent damages claim therefore did not prevent the associations from seeking a declaration that the fees violated state law. *Id*.

Other jurisdictions follow the same approach. In *Greater New Braunfels Home Builders Association v. City of New Braunfels*, a home builders association successfully used a declaratory judgment action to invalidate portions of municipal ordinances imposing development and connection fees contrary to state law. 240 S.W.3d 302, 303–11 (Tex. App. 2007); *see* Tex. Civ. Prac. & Rem. Code § 37.004. Similarly, in *Contractors &*

Builders Association of Pinellas County v. City of Dunedin, building contractors and their association obtained declaratory relief against municipal water and sewer connection charges that exceeded the city's lawful fee authority. 329 So. 2d 314, 316–22 (Fla. 1976); *see* Fla. Stat. §§ 86.021; 86.091. *See also Home Builders Association v. City of North Logan*, 983 P.2d 561, 562–66 (Utah 1999); Utah Code Ann. § 78B-6-403, et. seq.; *Home Builders Association of Middle Tennessee v. Williamson County*, No. M2019-00698-COA-R3-CV, 2020 WL 1231386, at *1–8 (Tenn. Ct. App. Mar. 13, 2020); Tenn. Code Ann. § 29-14-107, et seq. Accordingly, affirming the decision of the Court of Appeals would make Minnesota an outlier by recognizing statutory limits on municipal permit fees while denying the builders and associations directly affected by those fees the ordinary declaratory remedy used elsewhere to enforce comparable limits.

III. THE COURT OF APPEALS' DECISION LEAVES PARTIES WITH NO RECOURSE TO CHALLENGE OVERREACHING MUNICIPAL ORDINANCES.

A. A Justiciable Controversy, Not a Separate Cause of Action, Has Always Been the Proper Test.

The Act is not and has never been limited to "causes of action"; rather, to be entitled to relief, the declaratory judgment action must present an "actual, justiciable controversy," *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337-38 (Minn. 2011). That requirement is met whenever the plaintiff presents definite and concrete assertions of right emanating from a legal source, a genuine conflict of tangible interests between adverse parties, and a claim capable of specific resolution by judgment. *Id.*; *Rice Lake Contracting Corp. v. Rust Environment and Infrastructure, Inc.*, 549 N.W.2d 96 (Minn. App. 1996). This is true

regardless of whether a party has some concrete "cause of action" or seeks to clarify its rights or obligations pursuant to present controversy. *Id*. In *Rice Lake Contracting Corp.*, the Court of Appeals held that a party could obtain declaratory judgment regarding contractual terms "prior to the final conclusion of a contractual relationship," insofar as it would be unwarranted to expect a party to risk violating a law or proceeding without a determination of their rights. *Id*. at 99. In such a case, the parties have not concluded a contract and therefore have no "cause of action" such that it could be subject to judicial determination under the standard articulated by the Court of Appeals. Builders, remodelers, and homeowners seek to assert the same type of claims by clarifying their obligations under state law, and the lack of a specific cause of action cannot bar their ability to do so.

B. The Availability or Unavailability of Another Remedy Has Never Defined the UDJA's Reach.

Within approximately a decade after the Act was adopted, the Minnesota Supreme Court decided several cases which considered whether the Act permitted a party to obtain declaratory relief in circumstances where another adequate remedy existed. *See e.g. Barron v. City of Minneapolis*, 4 N.W.2d 622, 624 (1942); *Montgomery v. Minneapolis Fire Dept. Relief Ass'n*, 15 N.W.2d 122, 124 (Minn. 1944). In these cases, the Court repeatedly articulated that unlike a suit in equity—for which a lack of an adequate remedy at law was a strict prerequisite—an action for declaratory judgment exists even where another adequate remedy may be available. *Barron*, 212 Minn. at 569 ("[T]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."). In other words, declaratory relief is available under the UDJA regardless of

whether or not a party has an explicit remedy available at law. *Id.*; Minn. Stat. § 555.01 ("Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations *whether or not further relief is or could be claimed*.") (emphasis added). That the Court needed to address whether declaratory judgments would also be available where other remedies existed presupposed that actions for declaratory relief would be permitted where no adequate remedy existed, and therefore no explicit cause of action was available.

C. Permit Applicants Face a Concrete Dispute Before Construction Begins.

In the context of suits for declaratory relief, this Court has observed that a claimant under the Act "need not necessarily possess a cause of action . . . as a basis for obtaining declaratory relief, nevertheless he must . . . possess a bona fide legal interest which has been, or . . . is about to be, affected in a prejudicial manner." *State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 477 (1946). In other words, there must be a "justiciable controversy," which consists of three elements: (1) definite and concrete assertions of right that emanate from a legal source, (2) a genuine conflict in tangible interests between parties with adverse interests, and (3) the issue is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 336 (Minn. 2011). A justiciable controversy exists in the context of challenges to municipal ordinances because the legal source implicated straightforwardly is the State Building Code and the Municipal Planning Act, Minn. Stat. § 462.353, which restricts municipalities from enacting certain fees and ordinances,

including those at issue here, which conflict with Minnesota statutes and exceed the authority delegated to municipalities under Minnesota law. The concrete controversy arises before construction begins because the applicant must pay the challenged fee to obtain the permit, and the fee immediately becomes part of the cost of producing or improving housing. There can be little doubt that a genuine conflict exists or that the requested judgment—a declaration that the ordinance is invalid—would resolve the conflict between the municipal permitting scheme and state law. A challenge to a municipal ordinance unambiguously meets the definition of a dispute under this Court's jurisprudence, which is consistently the only requirement this Court has imposed in order for a party to obtain declaratory judgment.

IV. THE COURT OF APPEALS' DECISION EXEMPTS MUNICIPALITIES FROM COMPLYING WITH STATE LAW.

A. Builders, Remodelers, and Homeowners Should not be Precluded from Challenging Municipal Authority that Contradicts State Law.

The Court of Appeals' decision that parties may not use the UDJA to challenge municipal ordinances is inconsistent with the Act, this Court's precedent, and would immunize unlawful or overreaching municipal ordinances from judicial review, creating economic injustice to builders, homeowners, home remodelers and renters. Municipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred. *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (1966) (citing *Minnetonka Elec. Co. v. Village of Golden Valley*, 141 N.W.2d 138 (1966)). City or municipal

regulations are not valid if they conflict with state law. *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007).

B. Statewide Uniformity Is Meaningless If Local Fee Limits Cannot Be Reviewed.

Minn. Stat. § 462.361 delegates authority to municipalities to conduct municipal planning activities, including setting fees "to defray the costs incurred by it in reviewing, investigating, and administering an . . . application for a permit" pursuant to the Municipal Planning Act. In enacting the State Building Code applicable throughout Minnesota, the state legislature sought uniformity, so that the rules and costs of construction would not vary arbitrarily from city to city. *See* Minn. Stat. § 326B.121; *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 180 (Minn. App. 2012); *Wessman v. City of Mankato*, No. A08-0273, 2008 WL 5058608, at *4 (Minn. Ct. App. Dec. 2, 2008). To that effect, Minn. Stat. § 462.353, Subd. 4(a) and Minn. Admin. R. 1300.0160, subd. 2 provide that fees set by a municipality "must be fair, reasonable, and proportionate and have a nexus to the actual cost of the service for which the fee is imposed." If, as the Court of Appeals decided, a party cannot challenge a municipal ordinance under the UDJA using the means explicitly created under § 555.02 or the Court's historical position that any justiciable controversy could be subject to a declaratory judgment, affected parties, such as BAM and NARI MN's members, will have no means to enforce the guarantee the state legislature explicitly adopted in the State Building Code. Moreover, parties will have no means to oppose or seek relief from municipal actions which conflict with state law or overreach delegated authority.

C. Unreviewable Municipal Permit Fees Deny Builders, Remodelers, and Homeowners Protections Guaranteed by State Law and Will Flow Directly Into Housing Prices and Supply.

The position advocated for by Housing First and the *Amici* here does not ask the courts to invent a new right; it asks the Court only to recognize and enforce existing limits under state law. A municipality possesses only those powers the state legislature has conferred, expressly or by necessary implication, and an ordinance that conflicts with state law is "invalid as being in conflict" with an ordinance to the contrary. *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 815 (1966). Without the right to challenge an unlawful ordinance utilizing the UDJA, the burden of this outcome—which conflicts with the state legislature's demand for permitting schemes—falls on the construction and improvement of housing. In effect, municipalities could impose conditions (such as an excess fee) that raise the price of every home and every project on which they are imposed. *Amici's* members would pay these fees, and their customers ultimately bear them. At a time when the cost and availability of housing is among the most pressing issues facing this State, a rule that completely immunizes unauthorized and excessive construction exactions from review or challenge will negatively impact the cost, and therefore supply, of housing in Minnesota. Declaratory review is therefore the mechanism that connects the Legislature's fee limits to their intended real-world effect: preventing unauthorized municipal charges from worsening Minnesota's housing shortage and affordability crisis.

CONCLUSION

The UDJA explicitly provides that a person whose rights are affected by a municipal ordinance may obtain a determination of that ordinance's validity and need not possess an

independent cause of action to do so. Because the Act draws no distinction between ordinances and statutes, the contrary rule adopted by the Court of Appeals would upset decades of precedent and reach well beyond this case. *Amici* respectfully request that this Court reverse the decision of the Court of Appeals and hold that Housing First's declaratory judgment action may proceed.

Date: October 1, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the typeface requirements of Minn. R. Civ. App. P. 132.01 subds. 1 and 3; it was prepared with 13-point proportionally spaced typeface, using Microsoft Word 365, and contains 4,961 words excluding the Table of Contents and Table of Authorities based on a word count by Microsoft Word 365 version software.

/s/ Thomas Revnew
Thomas Revnew

A25-1220, A25-1221

STATE OF MINNESOTA
IN SUPREME COURT

Housing First Minnesota,

Appellant,

vs.

City of Corcoran (A25-1220),

Respondent.

Housing First Minnesota,

Appellant,

vs.

City of Dayton (A25-1221),

Respondent.

CERTIFICATE OF SERVICE

I hereby certify on October 1, 2026 that I caused copies of BRIEF OF AMICI CURIAE BUILDERS ASSOCIATION OF MINNESOTA AND NATIONAL ASSOCIATION OF THE REMODELING INDUSTRY – MINNESOTA CHAPTER to be served electronically on the following:

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