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## JUDICIAL REVIEW OF DISPLACEE RELOCATION IN FEDERAL URBAN RENEWAL PROJECTS: A NEW APPROACH?

### INTRODUCTION

Prior to June, 1968, persons displaced by federal urban renewal programs lacked standing to contest the adequacy of relocation standards provided by the local agencies and approved by the Secretary of the national housing program.<sup>1</sup> However, in June of 1968, the Second Circuit Court of Appeals ruled in the case of *Norwalk CORE v. Norwalk Redevelopment Agency*<sup>2</sup> that displacees in federal urban renewal areas could sue to contest the adequacy of the relocation procedure as prescribed by section 105(c) of the Housing Act of 1949.<sup>3</sup>

The purpose of this note is to scrutinize the provisions of the Housing Act; to evaluate displacees' need for judicial review of the local director's decisions regarding relocation standards; to trace the history of court interpretation of section 105(c); and to discuss and analyze the decision in the *Norwalk* case and its possible impact upon existing federal law.

### THE HOUSING ACT OF 1949

As enacted, the primary purpose of the Housing Act of 1949 was:

[T]he elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of com-

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1. *Green Street Ass'n. v. Daley*, 373 F.2d 1 (7th Cir. 1967); *Johnson v. Redevelopment Agency of Oakland*, 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963); *Harrison-Halsted Community Group, Inc. v. HHFA*, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963); *Gart v. Cole*, 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959); *Hunter v. City of New York*, 121 N.Y.S.2d 841 (Sup. Ct. 1953).

2. 395 F.2d 920 (2d Cir. 1968).

3. The urban renewal program was created as Title I of the Housing Act of 1949, 42 U.S.C. §§ 1441-68 (1964), *as amended*, 42 U.S.C. §§ 1441-69(c) (1968). See C. ABRAMS, *THE CITY IS THE FRONTIER* (1965) [hereinafter cited as ABRAMS]; S. GREER, *URBAN RENEWAL AND AMERICAN CITIES* (1965) [hereinafter cited as GREER]; *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* (J. Wilson ed. 1966); Foard & Fefferman, *Federal Urban Renewal Legislation*, 25 LAW & CONTEMP. PROB. 635 (1960); Johnstone, *The Federal Renewal Problem*, 25 U. CHI. L. REV. 301 (1958); Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321 (1959); Note, *Protecting the Standing of Renewal Site Families to Seek Review of Community Relocation Planning*, 73 YALE L.J. 1080 (1964); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

munities and to the advancement of the growth, wealth, and security of the nation.<sup>4</sup>

This statement of policy, contained in the Act of 1949, is based on the Housing Act of 1937, which calls for "decent, safe and sanitary dwellings for families of low income."<sup>5</sup> There is no reference to adequate displacee relocation in the statements of policy in either act. It has been suggested that the problems of relocation are secondary to the primary problem of blight removal in urban areas.<sup>6</sup>

As originally designed, the urban renewal program was to be administered by the federal administrator<sup>7</sup> of the Housing and Home Finance Agency (HHFA).<sup>8</sup> As a result of amendments to the Housing Act of 1949, HHFA became the Department of Housing and Urban Development (HUD)<sup>9</sup> and the administrator's title was changed to Secretary of HUD.<sup>10</sup> Although the administrative titles and agencies have changed since 1949, the basic provisions of the Act have remained the same.

4. Housing Act of 1949 § 2, 42 U.S.C. § 1441 (1964), *as amended*, 42 U.S.C. § 1441 (1967). *See also* Housing and Urban Development Act of 1968 § 1601, 42 U.S.C. § 1441(a) (1968) (Congressional reaffirmation of the national housing goal); Housing and Urban Redevelopment Act of 1968 §§ 1602-03, 42 U.S.C. §§ 1441(b), (c) (1968) (Presidential reports to Congress regarding urban renewal progress).

5. Housing Act of 1937 § 1, 42 U.S.C. § 1401 (1937), *as amended*, 42 U.S.C. § 1401 (1968).

6. *See* S. REP. No. 84, 81st Cong., 1st Sess. 2, 3 (1949). This bill provided for: 1) a declaration by Congress of the national objectives in housing and the policies to be followed in attaining them; 2) the authorization of federal financial aid to communities to start slum clearance; 3) the authorization for a continuation and expansion of public housing for low income families; 4) an authorization for a comprehensive program of federal research in housing aimed at relieving technical, social and economic problems in the housing field; and 5) financial assistance for the provision of decent housing for those who live and work on farms.

Commissioner Slayton of the Urban Renewal Administration stated before the Subcommittee on Housing of the House Committee on Banking and Currency that relocation is an obstacle to be overcome rather than a central objective. The clearance and redevelopment of the blighted areas was a national objective, more so than the improvement of living conditions for families in the blighted areas. *Hearings on Housing Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 88th Cong., 1st Sess. at 391-92 (1963). *See also* GREER 96; Frieden, *The Legal Role in Urban Development*, 12 U.C.L.A.L. REV. 856 (1965).

7. Housing Act of 1949 § 101, 42 U.S.C. § 1451 (1965), *as amended*, 42 U.S.C. § 1451 (a) (1968).

8. Housing Act of 1949 § 2, 42 U.S.C. § 1441 (1964); *as amended*, 42 U.S.C. § 1441 (1967).

9. Housing Act of 1949, 42 U.S.C. § 1441 (Supp. III, 1967), *amending* 42 U.S.C. § 1441 (1949).

10. Housing Act of 1949, 42 U.S.C. § 1451 (Supp. III, 1967), *amending* 42 U.S.C. § 1451 (1965). For the purpose of this note administrative reference will be made to HUD, except in the later case discussions where it is necessary to differentiate between the HHFA and HUD. Similarly, reference will be made to the federal director instead of the administrator.

Urban renewal is to be locally initiated.<sup>11</sup> After the Local Public Agency (LPA)<sup>12</sup> petitions HUD for financial assistance, the Secretary of HUD delegates administrative authority to a local federal director who is required to enforce the requirements of the Act.<sup>13</sup> The LPA is then required by the Act to submit a "workable program" for community improvement to the federal director as a prerequisite to any loan or capital grant that might be made.<sup>14</sup> An integral part of this "workable program" is an adequate relocation assistance program. Section 105(c) provides that:

Contracts for loans or capital grants . . . shall require that—

(c) (1) There shall be a feasible method for the temporary relocation of individuals and families displaced from the urban renewal area, and there are or are being provided, in the urban renewal area or in other areas not generally less desirable . . . decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced individuals and families and reasonably accessible to their places of employment. . . .

(2) As a condition to further assistance after August 10, 1965, with respect to each urban renewal project involving the displacement of individuals and families, the Secretary shall require, within a reasonable time prior to actual displacement, satisfactory assurance by the local public agency that decent, safe and sanitary dwellings as required by the first sentence of this subsection are available for the relocation of each such individual or family.<sup>15</sup>

Many problems have arisen because of the gap between the statutory ideal and the practicalities of urban renewal relocation.<sup>16</sup> Two funda-

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11. Housing Act of 1949 § 101(a), (b), 42 U.S.C. § 1451(a), (b) (1965) *as amended*, 42 U.S.C. § 1451(a), (b) (1968).

12. Housing Act of 1949 § 101 (b), 42 U.S.C. § 1451(b) (1965), *as amended*, 42 U.S.C. § 1451(b) (1968) describes a local public agency as "agencies established on a State, or regional (within a State), or unified metropolitan basis or as are established on such other basis as permits such agencies to contribute effectively toward the solution of community development or redevelopment problems on a State, or regional (within a State), or unified metropolitan basis."

13. Housing Act of 1949 § 106, 42 U.S.C. § 1456 (1964), *as amended*, 42 U.S.C. § 1456 (1968).

14. Housing Act of 1949 § 101, 42 U.S.C. § 1451(c) (1965), *as amended*, 42 U.S.C. § 1451(e) (1968).

15. Housing Act of 1949 § 105(c), 42 U.S.C. § 1455(c) (1964), *as amended*; 42 U.S.C. § 1455(c) (1968).

16. For reports on the inadequacies of present relocation procedures see U.S. ADVISORY COMMISSION ON INTER-GOVERNMENTAL RELATIONS, *RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENTS* 27-52, 114-16, 127 (1965); P. NIEBANCK, *THE ELDERLY IN OLDER URBAN AREAS* 126-62 (1965); See

mental issues have been whether the LPA has provided such a workable relocation program and whether the director has abused his discretion in granting the federal money when a workable relocation program has in fact not been provided. Prior to 1968 these issues were dismissed, not upon the merits, but upon the theory that the displacees lacked standing to sue.<sup>17</sup>

#### DISPLACED'S NEED FOR JUDICIAL REVIEW OF DIRECTOR'S DISCRETIONARY FINDINGS REGARDING RELOCATION

Several factors have contributed to difficulties which have brought about the need for judicial review of relocation procedures. First, in the haste and anxiety of petitioning for federal funds and beginning the urban renewal project, the LPA's have gained notorious reputations for presenting to the director only the positive information gained from their surveys.<sup>18</sup> These findings are aimed primarily at convincing the director that the statutory standards have been complied with, rather than at critically appraising the local situation and the feasibility of relocating displacees.<sup>19</sup> Local data recorded in official Boston and Cleveland surveys,<sup>20</sup> when compared with independent surveys, were found to be self-serving and inaccurate.<sup>21</sup> Furthermore, social and physical features of relocation were ignored and it was found that the standards set by law were compromised in about one-half of the cases.<sup>22</sup> In a 1963 report, the Department of Health, Education and Welfare chastised the superficial local surveys and remarked that "it can hardly be said that the general picture of relocation has provided reason for applause. . . ."<sup>23</sup> Thus, the displacee has not found due regard for statutory standards in LPA reports and at this point must look to the director to halt programs in which relocation provisions have not been made for the displacees.

At this point another problem becomes apparent regarding enforcement of the statutory provisions. When the LPA's report reaches the

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ABRAMS 132-54; A. SCHORR, SLUMS AND SOCIAL INSECURITY 61-68 (1963); Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321 (1959); Note, *Protecting the Standing of Renewal Site Families to Seek Review of Community Relocation Planning*, 73 YALE L.J. 1080 (1964); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

17. See note 1 *supra* and accompanying text.

18. ABRAMS 135, 143-45; Hartman, *The Housing of Relocated Families*, in URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 322, 326 (J. Wilson ed. 1966).

19. Hartman believes that the LPA has no choice but to issue extremely positive relocation reports because anything less might produce legal, political and ethical conflicts and could slow up the entire rebuilding effort, the principal goal of the LPA. Hartman, *supra* note 18, at 326.

20. ABRAMS 138.

21. *Id.* at 143.

22. *Id.*

23. *Id.* at 143-44. See A. SCHORR, SLUMS AND SOCIAL INSECURITY 62, 65 (1963).

director, he must personally decide upon the feasibility of such a program. By statute, he has the affirmative duty to inspect the local agency's reports and to judge the practical applicability of an urban renewal program to a given area.<sup>24</sup> Oftentimes the director's scrutiny of the local agency's reports is merely a rubber stamp process;<sup>25</sup> and, if the local reports are analyzed, the director's research of the project rarely goes beyond the four corners of the LPA report.<sup>26</sup> As a result, the true housing situation can go undetected.<sup>27</sup>

Among the critical areas overlooked by the LPA when petitioning for federal financial assistance and by the director when approving the local reports are: 1) housing shortages throughout the urban area; 2) shortages of decent, safe, and sanitary housing within the general area; 3) shortages of low rental housing for the low-income displacees; and 4) unavailability of good housing, in many areas, to minority racial groups because of discriminatory housing practices.<sup>28</sup>

Housing shortages are presumed by the very passage of the Housing Act.<sup>29</sup> Congress expressly stated that the primary purpose of the Act was to abolish blighted areas and in their stead construct adequate numbers of low and middle-income housing.<sup>30</sup> However, surveys show that the national urban renewal program has resulted in destruction of four dwelling units for each one built, while other surveys show a two-to-one ratio.<sup>31</sup> A survey of cases reaching appellate courts show the existence of urban renewal projects which replaced substandard housing with shopping centers and universities.<sup>32</sup> Such municipal and private con-

24. Housing Act of 1949 § 101, 42 U.S.C. § 1451 (1964), *as amended*, 42 U.S.C. § 1451 (1968).

25. ABRAMS 137.

26. *Id.*

27. Abrams hypothesizes that even where relocation procedures are recognized as inadequate by the director, he will rarely superimpose his judgment upon that of the local renewal agency. *Id.*

28. Hartman, *supra* note 18, at 324.

29. Housing Act of 1949 § 2, 42 U.S.C. § 1441 (1964), *as amended*, 42 U.S.C. § 1441 (1967) reads:

The Congress declares that the general welfare and security of the Nation and the health and the living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage. . . .

The Housing and Urban Development Act § 1601, 42 U.S.C. § 1441a (1968) reads: The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949, of the realization as soon as feasible of the goal of a decent home and suitable living environment for every American family.

30. Housing Act of 1949 § 2, U.S.C. § 1441 (1964), *as amended*, 42 U.S.C. § 1441 (1967). *See* note 6 *supra*.

31. GREER 56 n.20.

32. Green Street Ass'n. v. Daley, 373 F.2d 1 (7th Cir. 1967) (Negro housing, both standard and substandard, destroyed to accommodate mall facilities); Harrison-

struction compounds the housing shortage and the indirect result is an increase in the rent displacees must pay elsewhere.<sup>33</sup>

The lack of clean, safe and decent (standard) housing in most urban communities is another pressing problem.<sup>34</sup> Displacees often relocate into substandard housing, either because it is all that is available or because it is all they can afford. A 1961 study showed that in forty-one cities, 60 percent of the displaced tenants were merely relocated into other slum areas; the percentage in large cities was even higher.<sup>35</sup> These slum areas consequently became overcrowded and deteriorated at a faster rate.<sup>36</sup> Another study of four large cities showed that only 25.9 percent of the displacees used the LPA relocation assistance agency; and of the 74.1 percent who did not use the assistance agency, 90 percent went into substandard housing.<sup>37</sup> A solution for the problem of substandard housing eradication is elusive, for under present practices the slum areas merely shift from one part of a city to another, and displacees manage to stay only one step ahead of the demolition crews.<sup>38</sup>

Still another problem of relocation is the higher rentals paid by displacees after relocation. Generally, these tenants have low incomes and cannot afford an increase in rent.<sup>39</sup> A study of Boston's West End District<sup>40</sup> showed the median rent rose from \$41 per month to \$71 per month, a 73 percent increase.<sup>41</sup> The study also showed that before relocation, 88 percent of the tenants paid less than \$55 per month and 2

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Halsted Community Group, Inc. v. HHFA, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 375 U.S. 915 (1963) (substandard housing destroyed to accommodate University of Illinois expansion); Gart v. Cole, 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959) (housing destroyed to accommodate Fordham University expansion).

33. ABRAMS 145-50.

34. Housing Act of 1949 § 2, 42 U.S.C. § 1441 (1964), *as amended*, 42 U.S.C. § 1441 (1967); The Housing and Urban Development Act §§ 1601, 42 U.S.C. § 1441a (1968).

35. Gans, *The Failure of Urban Renewal*, in *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* 539 (J. Wilson ed. 1966).

36. *Id.* See also Hartman, *supra* note 18, at 321.

37. ABRAMS 144. Section 105(b) was amended in 1965 to provide the displacees with "information as to real estate agencies, brokers, and boards in or near the urban renewal areas which deal in residential or business property that might be appropriate for the relocating of displaced individuals, families. . . ." Housing Act of 1949, 42 U.S.C. § 1455(b) (Supp. III, 1967), *amending* 42 U.S.C. § 1455(b) (1949). However, there are no studies available which show the effects of the amendment upon relocation procedures.

38. ABRAMS 144; Hartman, *supra* note 18, at 321.

39. The majority of displacees are poverty-stricken within the meaning of the Social Security Administration's guidelines. See U.S. Housing and Home Finance Agency, *The Housing of Relocated Families: Summary of a Census Bureau Survey*, in *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* 337 (J. Wilson ed. 1966).

40. Hartman, *supra* note 18. The West End study, which covers Boston's relocation efforts during 1958-59, is one of the few comprehensive studies showing the effects of relocation in a large city.

41. *Id.* at 306.

percent paid more than \$75 per month. After relocation, only 30 percent paid less than \$55 per month and 45 percent were paying more than \$75 per month.<sup>42</sup> These figures, while staggering in the abstract, become more meaningful when it is realized that only 1 percent of the displacees surveyed were Negroes, who traditionally pay higher rent for housing.<sup>43</sup>

Perhaps the most pressing relocation problem is the resistance Negroes and other minority groups meet when forced to relocate. The percentage of displacees who are non-white is estimated to be 70 percent.<sup>44</sup> One author has characterized urban renewal as Negro clearance rather than slum clearance.<sup>45</sup> While white racism is presently the subject of much controversy,<sup>46</sup> its effects are clearly seen in relocation of minority groups in urban areas.<sup>47</sup> The high rent problem mentioned above is compounded when faced by non-white groups, as is the problem of availability of standard, decent housing.<sup>48</sup> The problem is poignantly illustrated by an Akron, Ohio study which showed that Negroes can expect to search for rehousing for twenty weeks, while for whites the search time averages only seven weeks.<sup>49</sup> It is submitted that in approving a workable program, the director, as a matter of practicality, should take into consideration not only what decent, safe and sanitary housing is available for low rental rates, but also whether the housing is equally available to all displacees.

42. *Id.* at 306 and accompanying Tables VI and VII. The same study showed that after relocation 20 percent of the displacees were paying more than \$95 per month.

43. Hartman, *supra* note 18, at 311.

44. ABRAMS 136.

45. Gans, *supra* note 35, at 539. See also NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *HOW THE FEDERAL GOVERNMENT BUILDS GHETTOS* 6-7, 11-12 (1967); ABRAMS 145; GREER 54-55, 146-64; Frieden, *The Legal Role in Urban Development*, 12 U.C.L.A. L. REV. 856, 867-69 (1965).

In *Green Street Ass'n. v. Daley*, 373 F.2d 1 (7th Cir. 1967), the plaintiffs' complaint alleged "Negro removal." However, because the Negro plaintiffs failed to allege "Negro removal" as the sole purpose of the renewal project the court would not allow a cause of action under the Fourteenth Amendment.

In *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968) the plaintiffs' complaint alleged unequal treatment for whites and non-whites regarding relocation procedure. Here the non-white displacees had standing to assert their claims even though they did not claim the sole purpose of the renewal project was to discriminate on the basis of race.

46. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (N.Y. Times Co. 1968).

47. *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968); *Green Street Ass'n. v. Daley*, 373 F.2d 1 (7th Cir. 1967).

48. Hartman, *supra* note 18, at 312. Frieden, *The Legal Role in Urban Development*, 12 U.C.L.A. L. REV. 856 (1965); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

49. Hartman, *supra* note 18, at 312.



## NON-JUDICIAL RECOURSE FOR DISPLACEE GRIEVANCES

Once the director makes the decision to proceed with the slum clearance, it has been suggested that there is little the displacee can do to enforce a neglected statutory provision.<sup>50</sup> With little money, short notice and no subpoena power, a displacee lacks the tools with which to effectively challenge an inadequate relocation program.<sup>51</sup> However, there are provisions for extra-judicial review which are available to the dispossessed tenant. At least one court has ruled that due process demands that the director's decision be reviewable by a public hearing,<sup>52</sup> while another court required the hearing as a matter of course.<sup>53</sup> The critical problem encountered at such a hearing is that the displacee is asking the director to overrule his prior decision, to make another analysis of the rehousing potential for displacees, and to halt the project, if necessary, until adequate relocation facilities are available.

Social critics seriously doubt the quality of such a hearing.<sup>54</sup> The director is caught between his obligation to enforce the statutory requirements on the one hand and the necessity of showing progress with the program on the other.<sup>55</sup> The director is under no less pressure from the LPA, which by this time is politically and financially committed to the urban renewal program, and from the private redevelopers who are

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50. ABRAMS 140-45; Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321 (1959); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

51. Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321, 329 (1959).

52. *Gart v. Cole*, 263 F.2d 244, 250 (2d Cir. 1959).

53. *Green Street Ass'n. v. Daley*, 373 F.2d 1 (7th Cir. 1967).

54. See note 50 *supra*.

55. ABRAMS 138. There appears to be nothing in the Housing Acts which would require the director to take action based on the information provided at the hearing. Although section 106(c)(1) of the Housing Act of 1949, 42 U.S.C. § 1456(c)(1) (1968) provides: "[I]n the performance of, and with respect to, the functions, powers and duties vested in him by this subchapter, the Secretary . . . may (1) sue and be sued . . .," only the Second Circuit has allowed the Secretary to be sued under section 105(c).

Suits under other sections of the Housing Acts have also been maintained. In *Merge v. Sharott*, 341 F.2d 989, 994 (3d Cir. 1965), moving expenses for families and businesses were compensable under section 114, 42 U.S.C. § 1465 (1964), as amended, 42 U.S.C. § 1465 (1968) and displacees had standing to challenge the HHFA's determinations regarding moving expenses. It must be noted that section 114(d) expressly declares the Secretary's acts are discretionary and non-reviewable. Yet the *Merge* court allows displacees standing to contest as arbitrary and capricious the Secretary's determination of reasonable moving fees. Two queries are presented: 1) Why did the court disregard the express declaration by Congress that such acts by the Secretary were non-reviewable? and 2) Section 114(d) directly forbids suits contesting expense amounts allowed under that section. Why did Congress not expressly forbid suits under section 105(c) regarding relocation requirements? If it be that Congress made no such prohibition on 105(c) suits, why then have courts refused to grant standing to displacees alleging violations of relocation requirements?

anxious to grab their fair share of the federal money. At least one court inadvertently put the situation in true perspective:<sup>56</sup> it held that the displacees were entitled by statute<sup>57</sup> to a public hearing to contest the feasibility of the relocation procedure, but that the hearing might be conducted before the LPA and not before the local federal director.<sup>58</sup> Indeed, the complex machinery of urban renewal is gaining momentum and it has been suggested that it is impractical to expect official recalcitrance at such a late date.<sup>59</sup>

#### COURT INTERPRETATION OF SECTION 105(c) REGARDING JUDICIAL REVIEW OF RELOCATION PROBLEMS

##### *Hunter v. City of New York*

The first court to substantially interpret section 105(c) of the Housing Act of 1949 was the New York County Supreme Court in the

56. *Gart v. Cole*, 263 F.2d 244 (2d Cir. 1959).

57. Housing Act of 1949 § 105(d), 42 U.S.C. § 1455(d) (1964), *as amended*, 42 U.S.C. § 1455(d) (1968).

58. The court ruled that it was not necessary for the federal administrator to hear the displacees' complaints at the public hearing. 263 F.2d at 250. Section 101(c) of the Housing Act of 1949 provides:

(2) on the basis of his (administrator's) review of such program, the Administrator determines that such program meets the requirements of this subsection. . . . And provided further, That, notwithstanding any other provisions of law which would authorize such delegation or transfer, there shall not be delegated or transferred to any other official (except an officer or employee of the Housing and Home Finance Agency serving as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in that office) the final authority vested in the Administrator (i) to determine whether any such workable program meets the requirements of this subsection . . . or (iii) to determine that the relocation requirements of section 1455(c) of this title have been met. . . .

59. Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321, 328-29 (1959).

In *Johnson v. Redevelopment Agency of Oakland*, 317 F.2d 872 (9th Cir. 1963) a state statute [CAL. HEALTH & SAFETY CODE § 33500 (West Supp. 1968)] allowed the displacee to appeal from the public hearing. However, *Riganti v. McElhinney*, 56 Cal. Rptr. 195, 248 Cal. App. 2d 116 (1967) interpreted § 33500 as setting a time for bringing an action questioning the validity of a redevelopment plan and, as such, was a statute of limitations and was not to be construed as authorizing the bringing of such actions.

Most state statutes which deal with housing and relocation problems refer to judicial review of state housing board or state housing commissioner decisions and fail to provide displacees with judicial review of state housing board or state housing commissioner decisions and fail to provide displacees with judicial review of federal administrative acts under section 105(c) for example: ILL. REV. STAT. ch. 67 ½, § 179 (1935) provides for judicial review in the state appellate or supreme court of *state* housing board decisions; N.Y. PUB. HOUSING LAW § 15 (McKinney 1964) provides that the *state* housing commissioner may sue or be sued. State courts usually offer no relief to displacees suing under the federal housing statutes because the federal questions involved should be left to the federal courts. *See Hunter v. City of New York*, 121 N.Y.S.2d 841 (Sup. Ct. 1953).

case of *Hunter v. City of New York*.<sup>60</sup> The displacees contended that the severe housing shortage in New York City made it impossible for them to adequately relocate; and, because there was no workable relocation program, the financial aid and redevelopment contracts were invalid for they were entered into in violation of section 105(c).<sup>61</sup> A formal complaint had been filed with the HHFA, but no satisfaction was accorded the plaintiffs.<sup>62</sup> To force the LPA to produce a feasible program, the displacees sought to enjoin the progress of the plan for slum clearance and to enjoin the performance of the contracts between the federal agency and the LPA, as well as the contracts between the LPA and the sponsors of the Harlem and West Park renewal areas. The plaintiffs' entire case rested upon the question of whether there had been compliance with the statutory standard.<sup>63</sup> The court refused to rule upon the adequacy of relocation potential for the displacees, holding that the displacees lacked standing to sue.<sup>64</sup>

Plaintiffs' counsel admitted there was no express right given by the statute to sue the administrator, but he argued that the displacees possessed standing to sue upon the theory that they were the intended and ultimate beneficiaries of the contract between the federal government and the LPA.<sup>65</sup> The court dismissed this argument, saying that while this may have been the statute's intended purpose, the plaintiffs had no vested or property right in the laws except those expressly protected by constitutional provisions. Although the general public may be the intended beneficiaries of such a contract, this did not per se vest the legal capacity to sue in every person; and because plaintiffs failed to show "an injury or threat to a particular right of their own, as distinguished from the public's interest," they lacked standing to sue.<sup>66</sup> Coupled with this argument was the court's assumption that if Congress had intended to give displacees a cause of action to review the Administrator's actions, it would have *expressly* authorized it.<sup>67</sup>

Three facets of this case command attention. First, standing is denied the plaintiffs although the court admits that dispossessed tenants are actually the intended and ultimate beneficiaries of the contract between the HHFA and LPA. However, the lack of a vested right disallows the displacees' right to claim, in a court of law, abuse of discretion

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60. 121 N.Y.S.2d 841 (Sup. Ct. 1953).

61. *Id.* at 844.

62. *Id.* at 848.

63. *Id.* at 844.

64. *Id.* at 846.

65. *Id.*

66. *Id.*

67. *Id.* at 845.

on the administrator's part in approving the renewal project.<sup>68</sup>

Coupled with this formal argument was the statement that Congress must *expressly* state that for the relocation requirements to be enforced by displaced persons, such persons must have a right to judicial review.<sup>69</sup> It is not enough that Congress may have impliedly given such a cause of action.<sup>70</sup>

Thirdly, the court ruled that even if displacees had a legal right to sue under section 105(c) this suit could not be maintained since a state court has no jurisdiction over the acts of federal officials administering federal laws.<sup>71</sup> This ruling determined the jurisdiction for subsequent 105(c) cases, all of which were brought in federal courts.

### *Gart v. Cole*

The pivotal case in the chronology of suits seeking judicial review was *Gart v. Cole*.<sup>72</sup> In *Gart*, New York City residents and businessmen of the Lincoln Square Project sued to enjoin further action in an urban renewal program because of the inadequacy of the relocation plan. Prior to the letting of the bids to redevelopers, public hearings were held, but the evidence was not conclusive as to whether the plaintiffs attended the hearings. Plaintiffs did request a hearing before the Federal Housing and Home Finance Agency, but the request was denied.<sup>73</sup>

The displacees attacked the urban renewal program on three grounds,<sup>74</sup> the third claim challenging the sufficiency of the relocation plan as prescribed by section 105(c), and the refusal of the administrator to grant them a private hearing to present their claims.<sup>75</sup> In pressing this

68. In subsequent cases the "vested right" theory is discarded. Instead, displacees and courts talk in terms of "legal wrongs."

69. 121 N.Y.S.2d at 845.

70. *Id.* at 847. *Contra*, *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968) where the court found it was the Congress' specific intent to allow standing to displacees.

71. The emphasis of this note is on remedies available in federal courts, as the state court remedies are generally thought to be inadequate. Because substantial questions regarding the operation of a federal program are involved, state courts have held that determination of a section 105(c) claim rests with federal agencies. *See Spadanuta v. Incorporated Village of Rockville Center*, 33 Misc. 2d 499, 224 N.Y.S.2d 963 (Sup. Ct. 1962); *Hunter v. City of New York*, 121 N.Y.S.2d 841 (Sup. Ct. 1953); *Housing and Redevelopment Authority v. Minneapolis Metropolitan Co.*, 259 Minn. 1, 104 N.W.2d 864 (1960); Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321 (1959); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

72. 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959).

73. *Id.* at 250.

74. *Id.* at 249. The two other claims were 1) that the HHFA's participation in the Lincoln Square urban renewal project constituted an unconstitutional subsidy to a religious institution and 2) that the sale by the city of portions of the project area to sponsors at negotiated minimum bids was invalid.

75. 263 F.2d 244 (2d Cir. 1959).

claim, the plaintiffs relied upon the Administrative Procedure Act (APA)<sup>76</sup> to secure judicial review of the administrator's decision. The district court dismissed the APA claim, stating that the plaintiffs had suffered no legal wrong from administrative action.<sup>77</sup> In reaching this conclusion, the court compared the instant case to *Kansas City Power & Light Co. v. McKay*<sup>78</sup> and *Allied-City Wide, Inc. v. Cole*,<sup>79</sup> two business competition cases. The court refused to distinguish between business competition and family housing. This distinction was found crucial in 1968.<sup>80</sup>

The lower court also dismissed the plaintiffs' complaint that they were refused a hearing before the administrator,<sup>81</sup> ruling that such a hearing could be delegated to the local public agency. Due process, according to the court, required no such hearing.<sup>82</sup>

By way of dictum, the lower court ruled:

Although I need not go so far as to say that the Housing Act precludes judicial review in this case, *it appears to do so* and that would be another reason for holding that plaintiffs were without standing under the Administrative Procedure Act.<sup>83</sup>

The court did not directly and expressly rule that displacees lacked standing to sue, but merely hinted that they seemed to be so

76. The Administrative Procedure Act, § 10 5 U.S.C. § 701-06 (Supp. II 1965-66) generally provides that: 1) Any person suffering a legal wrong because of the action of any agency or adversely affected or aggrieved within the meaning of any relevant statute shall be entitled to judicial review thereof (*Id.* at § 702); 2) Agency action made reviewable by statute and final agency action where there is no other adequate remedy are subject to judicial review (*Id.* at § 704).

The above rights are applicable except so far as statutes preclude judicial review or agency action is by law committed to agency discretion. (*Id.* at § 701).

For an analysis of what constitutes a "legal wrong" see L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 501-10, 528 (1965) (displacees have suffered "legal wrong" if the statutory provision intended for their protection has been slighted by HUD).

77. 166 F. Supp. 129, 135 (S.D.N.Y. 1958).

78. 225 F.2d 924 (D.C. Cir.), *cert. denied*, 350 U.S. 884 (1955).

79. 230 F.2d 827 (D.C. Cir. 1956).

80. For the purposes of this note the "competition cases" include cases in which the gravamen of the plaintiffs' complaint is the allegation of economic loss resulting from administrative agency determinations. The "competition cases" refer only to agency actions effecting businesses and not to displacement of individuals and families. See *Alabama Power Co. v. Iches*, 302 U.S. 464 (1938); *Berry v. HHFA*, 340 F.2d 939 (2d Cir. 1965); *Pittsburgh Hotels Ass'n. v. Urban Redevelopment Authority of Pittsburgh*, 309 F.2d 186 (3d Cir. 1962); *Taft Hotel Corp. v. HHFA*, 262 F.2d 307 (2d Cir. 1958), *cert. denied*, 359 U.S. 967 (1959); *Allied-City Wide, Inc. v. Cole*, 230 F.2d 827 (D.C. Cir. 1956); *Kansas City Power & Light Co. v. McKay*, 225 F.2d 924 (D.C. Cir.), *cert. denied*, 350 U.S. 884 (1955).

81. *Gart v. Cole*, 166 F. Supp. 129, 135 (S.D.N.Y. 1958).

82. *Id.*

83. *Id.* (Emphasis added).

precluded.<sup>84</sup>

Upon appeal, the court held that while the plaintiffs clearly had no standing to contest the city's open bidding procedures,<sup>85</sup> the plaintiffs did have standing to challenge the administrator's refusal to grant them an oral hearing regarding the feasibility of the relocation plan.<sup>86</sup> The lower court's dictum that the Housing Act *seems* to preclude judicial review went unmodified, thus leaving the issue officially undecided by the Second Circuit.<sup>87</sup>

*Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency*

In *Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency*,<sup>88</sup> the displacees, both residents and businessmen, sought injunctive relief to enjoin proceedings to acquire and clear an area in Chicago's Near West Side for the use of the University of Illinois. Plaintiffs contended that many of them had relocated in the Near West Side in reliance upon the Chicago Land Clearance Commission Harrison-Halsted Redevelopment Plan which called for rehabilitation of the salvageable slums and spot clearance and construction of moderate income housing in the badly blighted areas. According to the newly proposed program, all buildings were scheduled for demolition to accomodate the University of Illinois campus site. Plaintiffs argued that since such administrative decisions were kept a "high-level secret," and because plaintiffs relocated in the Near West Side in reliance upon the city's promise of spot rehabilitation, equity demanded they be accorded injunctive relief.<sup>89</sup>

The Chicago Land Clearance Commission held no hearings on the resolution.<sup>90</sup> After approval of the resolutions, the Planning and Housing Committee of the Chicago City Council held a public hearing. Objectors were permitted to air their grievances, but were not allowed to subpoena witnesses, documents or cross-examine city and Land Clearance officials.<sup>91</sup> The displacees' objections were dismissed and although the State Housing Board agreed to hear their complaints, it abruptly termi-

84. *Id.*

85. 263 F.2d 244, 250 (2d Cir. 1959).

86. *Id.*

87. Judge Dimock's dictum in the lower court decision was not mentioned in the appellate court and thus the issue went undecided. This opening allowed the *Norwalk* court to grant standing without the necessity of overruling or distinguishing the *Gart* case.

88. 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963).

89. *Id.* at 101, 103.

90. *Id.* at 102.

91. *Id.*

nated the hearing, ratified the University site project, and forwarded its findings to the HHFA.<sup>92</sup> Over plaintiffs' objections, the HHFA approved the project and entered the loan and capital grant contracts.

In addition to their reliance argument, the displacees maintained that substantial percentages of the residents in the condemned area were Negro and Mexican, that at that time in Chicago there was extensive racial discrimination in housing, that the University project would force these people out of the area and that no standard housing was available for such persons.<sup>93</sup> Because there was no adequate relocation plan as required by the Housing Act, the administrator's action in executing contracts with the Land Clearance Commission was a final and judicially reviewable act.<sup>94</sup>

The court held that the taking of land by condemnation proceedings was a matter for the state courts;<sup>95</sup> and plaintiffs' suit might be maintained in a federal court only if they had standing to sue or if a substantial federal question was involved.<sup>96</sup> Relying on *Frothingham v. Mellon*,<sup>97</sup> the court ruled that plaintiffs had to show a direct personal injury before they would have standing to sue; and because the displacees were not parties to the original contract between the HHFA and LPA, the plaintiffs had no direct interest in the proceedings.<sup>98</sup> Plaintiffs had no individual legal rights to assert under the Housing Act. An argument for standing under the Administrative Procedure Act<sup>99</sup> was dismissed.

The court ruled that the weight of authority denies standing to persons alleging economic injury as a result of agency action regardless of whether the person's private legal rights have been violated.<sup>100</sup> By citing the business competition cases, the court failed to distinguish between pure economic loss and the severity of taking homes from persons who have no adequate means for securing rehousing.<sup>101</sup> Although the court concedes that "[i]t is understandable that many of the plaintiffs . . . feel that there has been a breach of faith by various public officials by reason of the abrupt change in plans from a typically urban renewal

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92. *Id.*

93. *Id.* at 102, 103.

94. *Id.* at 103.

95. *Id.*

96. *Id.* at 103, 104.

97. 262 U.S. 447 (1923).

98. 310 F.2d 99, 104 (7th Cir. 1962).

99. *Id.*

100. *Id.* at 104, 105.

101. *Id.* at 105. The *Norwalk* court has not made such a distinction on the basis that one's right to adequate housing upon relocation is a personal right which the courts will recognize. *Cf. Shelley v. Kraemer*, 334 U.S. 1 (1948) [Taken from Brief for Appellant at 15, *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968)].

plan to the campus project now proposed,"<sup>102</sup> the court found the displacees had no right to judicial review under the Housing Act and not even a right to a hearing before the HHFA.<sup>103</sup> The court failed to consider that housing is a necessity of life<sup>104</sup> and as such should be protected from "a breach of faith" by various public officials.

*Johnson v. Redevelopment Agency of Oakland, California*

In *Johnson v. Redevelopment Agency of Oakland, California*,<sup>105</sup> residents of the Acorn Project Area in Oakland sued the LPA to enjoin the local agency from carrying out the project and to enjoin further expenditures of federal money because the LPA had not formulated and executed a feasible plan for relocation of displacees as required by section 105(c).<sup>106</sup> Again, the court ruled that the plaintiffs lacked standing to sue and failed to reach the merits of the case.<sup>107</sup> The displacees' argument that they were third party beneficiaries of the contract between the HHFA and LPA was rejected because it was found not to be the intent of Congress to grant displacees a cause of action to enforce the regulations of section 105(c). The court also found that although plaintiffs might have met the requirement of a third party beneficiary under California law, the contract was a federal contract and federal law was applicable to the situation; and federal law had consistently denied standing to displaced tenants.<sup>108</sup>

The court stressed that plaintiffs in California urban renewal projects have three means of review: 1) a hearing before the administrator; 2) a public hearing; and 3) in California, by state statute any interested party may attack the proposed redevelopment plan in the state court within sixty days after the plan has been adopted.<sup>109</sup> There are, however, serious doubts regarding the effectiveness of such review procedures once the plan has been approved.<sup>110</sup>

*Green Street Association v. Daley*

In *Green Street Association v. Daley*,<sup>111</sup> displacees alleged that the Chicago Englewood Project was not a good faith urban renewal project,

102. 310 F.2d at 103.

103. *Id.*

104. *Block v. Hirsch*, 256 U.S. 135, 156 (1921).

105. 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963).

106. *Id.* at 874.

107. *Id.*

108. *Id.* at 874-75.

109. *Id.* at 875.

110. Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321, 328-29 (1959).

111. 373 F.2d 1 (7th Cir. 1967).



but rather a deliberate plan to create a "no-Negro" buffer zone between a shopping area and the surrounding residential community, devised in order to make the shopping mall more attractive to white customers.<sup>112</sup> Plaintiffs further contended that the urban renewal plan failed to satisfy the constitutional requirements of due process and freedom from discrimination because the plan was approved by the Chicago City Council without an adequate hearing and because the plan would relocate the Negro displacees in segregated areas of the city.<sup>113</sup>

Count one of plaintiffs' complaint alleged that 80 percent of the houses in the condemned area were standard and that there were more than enough parking facilities in the area, but due to the increased concentration of Negroes in the Englewood area the business volume of the shopping center had decreased.<sup>114</sup> It allegedly was the slack in business which caused the business interests in the area to seek a "no-Negro" buffer zone around the shopping center. Plaintiffs also contended that Chicago city officials were induced to join this conspiracy and under color of law used their offices to perpetrate the conspiracy.<sup>115</sup> This claim was dismissed because the plaintiffs failed to allege that the urban renewal project was designed *solely* to deprive them of their rights to own and occupy the dwellings to be cleared.<sup>116</sup>

The second count of plaintiffs' complaint alleged defective notice of the public meeting and intensive harrassment of the plaintiffs when they attempted to present their evidence at a hearing before the Chicago City Council.<sup>117</sup> Plaintiffs were limited to reading a prepared statement and were not allowed to cross-examine the city officials. Because the format of the hearing allegedly did not conform to the requirements of section 105(d) of the Housing Act of 1949,<sup>118</sup> plaintiffs contended that they were denied due process. This count was dismissed by the court upon the basis of *Harrison-Halsted*<sup>119</sup> (no basis for federal right to judicial review of an urban renewal plan), and upon the basis that "no substantial federal question of due process is raised."<sup>120</sup> The court appears to be saying that although section 105(d) requires a public hearing before the renewal

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112. *Id.* at 4.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 7. The court relied upon *Progress Development Corp. v. Mitchell*, 286 F.2d 222 (7th Cir. 1961) where the *sole* plan of the urban renewal project was to deprive Negroes of their rights to own and occupy housing.

117. *Green Street Ass'n. v. Daley*, 373 F.2d 1, 7 (7th Cir. 1967).

118. *Id.* Section 105(d) of the Housing Act of 1949, 42 U.S.C. § 1455(d) (1964), *as amended*, 42 U.S.C. § 1455(d) (1968) provides that no land may be acquired by the LPA unless there is first a public hearing following proper notice of such hearing.

119. 373 F.2d at 7.

120. *Id.*

plan may be started, courts will not inquire into the alleged insufficiencies at the public hearing and due process does not dictate that such hearing be held in a fair manner. Indeed, this seems diametrically opposed to the intent of Congress, which praised the Act for its built-in safeguards of due process.<sup>121</sup>

Plaintiffs' fourth count<sup>122</sup> alleged that the relocation provisions were not feasible as required by section 105(c) because plaintiffs would be forced to move into housing which was not decent, safe and sanitary, or that they would be forced to pay higher rents than they were paying in Englewood.<sup>123</sup> Plaintiffs also alleged that they would be forced to move into segregated areas of the city, that the city officials knew this, and that to allow such action was violative of the Civil Rights Act of 1964.<sup>124</sup> To ratify such a program of relocation is therefore a deprivation of equal protection of the law. The court again followed the *Harrison-Halsted* case and ruled that plaintiffs lacked standing under the Housing Act.<sup>125</sup> The court ruled plaintiffs' segregation claim inapplicable since the segregation pattern was a fact of life and not the result of the relocation program.<sup>126</sup>

#### NORWALK CORE v. NORWALK REDEVELOPMENT AGENCY

On June 7, 1968, the Second Circuit Court of Appeals issued an opinion which may have a notable effect upon judicial review of section 105(c) determinations. In *Norwalk CORE v. Norwalk Redevelopment Agency*<sup>127</sup> the court ruled that displacees having standing to seek an injunction to enjoin urban renewal projects when it is substantially alleged that the relocation requirements of section 105(c) have not been fulfilled, or when plaintiffs substantially allege that the local agency did

121. S. REP. NO. 84, 81st Cong., 1st Sess. 14 (1949) :

This bill sets up adequate safeguards against any undue hardship resulting from the undertaking of slum clearance under current conditions. It requires, first, that no slum clearance project shall be undertaken by a local public agency unless there is a feasible means for the temporary relocation of the families to be displaced, and unless adequate permanent housing is available or is being made available to them.

122. Plaintiffs' complaint originally contained five counts. On appeal only the first, second and fourth counts were in issue.

123. *Green Street Ass'n. v. Daley*, 373 F.2d 1, 7-8 (7th Cir. 1967).

124. § 601, 42 U.S.C. § 2000d (1964).

125. *Green Street Ass'n. v. Daley*, 373 F.2d 1, 8 (7th Cir. 1967).

126. *Id.* at 9. The court draws a distinction between de facto and de jure segregation. Although the relocation program did not establish segregation as an institutional product, the practical effect of the renewal was to relocate people on the basis of race. The *Norwalk* court recognized this problem and ruled that segregation was not to be tolerated as a "fact of life" or as an institutional product. *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920, 931 (2d Cir. 1968).

127. 395 F.2d 920 (2d Cir. 1968).

not assure or attempt to assure relocation for Negro and Puerto Rican displacees to the same extent that they did for whites.<sup>128</sup>

The South Norwalk Renewal Project No. 1, the program challenged by the displacees, was approved by the Common Council of Norwalk, Connecticut on August 28, 1962; and on June 24, 1963, the Norwalk Redevelopment Agency entered into a loan and capital grant contract with the HHFA (now HUD). The plaintiffs, all non-white, brought a class action against the defendants alleging discrimination in connection with the project.

The displacees alleged that the LPA included in its report that low-rent housing was available in the city to Negroes and Puerto Ricans, when in fact the LPA knew that: 1) the turnover figures were exaggerated for the purpose of favorably influencing the administrator; 2) that there was a long waiting list for low-rent public housing in the city, and any attempt to favor the displacees would result in hardship upon the Negroes and Puerto Ricans already on the rehousing list; and 3) that there was racial discrimination in the city's private housing market.<sup>129</sup> Furthermore, it was shown by a Connecticut survey that vacancies in housing projects were running less than one-half the estimated number, racial discrimination in the private or open market was flagrant, and non-whites often paid twice the rent that whites paid.<sup>130</sup> It was alleged that the local agency knew of these conditions but still continued the construction of middle-income housing beyond the financial means of the non-white tenants.<sup>131</sup> It was further alleged that the city and the LPA tried to run the plaintiffs out of the "on-site" housing by making the area unsafe and unsanitary, by charging usurious rents, by moving families from one on-site home to another, and by carrying on heavy construction activities around the on-site housing.<sup>132</sup>

The displacees sought judicial review on three theories: 1) that they had been denied equal protection of the law, and that local officials intended to deprive the non-white displacees of equal protection of the law; 2) that relocation procedures provided by the LPA were in violation of section 105(c) of the Housing Act of 1949; and 3) that the discriminatory actions of the LPA were violative of the Civil Rights Act of 1964.<sup>133</sup>

In considering the first claim, the court recognized the general

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128. *Id.* at 932, 936-39.

129. *Id.* at 924.

130. *Id.*

131. *Id.*

132. *Id.* at 925.

133. *Id.*

reluctance of the courts to interfere in urban renewal programs, but recognized also that constitutional claims take precedence over policy determinations.<sup>134</sup> In discussing the "standing" problem,<sup>135</sup> the court determined that "standing to sue" required that the plaintiffs have a personal stake in the outcome, and that the right they seek to assert is one which the courts will recognize.<sup>136</sup> The court found that the plaintiffs did have an interest in the outcome of the proceedings, and because racial discrimination was involved, it was an interest which the courts would recognize.<sup>137</sup>

The court, in deciding that the *Norwalk* displacees possessed a constitutional interest that the courts would protect, attempted to distinguish previous decisions which could have led to a contrary result. The court ruled that *Harrison-Halsted* was similar to competition cases previously decided by the Second Circuit.<sup>138</sup> The displacees in *Harrison-Halsted* alleged no substantial constitutional claims<sup>139</sup> and it was on this that the *Norwalk* court could so easily distinguish the Seventh Circuit decision.

The *Norwalk* court also attempted to reconcile its decision with the *Green Street* case on the constitutional issues involved.<sup>140</sup> The Seventh Circuit in *Green Street* did not say that the displacees lacked standing to sue on constitutional issues, but rather found that although condemnation proceedings were issues for state courts, if a substantial constitutional question is involved, the injured parties do have standing to prosecute their claim in federal courts.<sup>141</sup> However, because the displacees in *Green Street* failed to allege that the sole purpose of the supposed conspiracy was to violate their constitutional rights, their suit was dis-

134. *Id.* at 926.

135. The intricacies of standing are outside the scope of this note except to the extent that the courts have applied the theory directly to section 105(c) issues. A detailed analysis is therefore not attempted. However, see generally Davis, *Standing to Challenge Government Action*, 39 MINN. L. REV. 353 (1955); Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 HARV. L. REV. 255 (1961); Lewis, *Constitutional Rights and the Misuse of Standing*, 14 STAN. L. REV. 433 (1962); Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court*, 71 YALE L.J. 599 (1962).

136. 395 F.2d 920, 926-27 (2d Cir. 1968).

137. *Id.* at 927-28.

138. *Id.* at 927, 935 & n.35. The court referred directly to *Taft Hotel Corp. v. HHFA*, 262 F.2d 307 (2d Cir. 1958), *cert. denied*, 359 U.S. 967 (1959) and *Berry v. HHFA*, 340 F.2d 939 (2d Cir. 1965), both were decided by the Second Circuit and held one cannot object to governmental action on the basis that it aids one's competitors.

139. Plaintiffs' amended complaint contained only general allegations of violations of Due Process, which the court dismissed without comment. The displacees made no allegations which would have brought their cause within the Equal Protection Clause. 310 F.2d 99, 103 (7th Cir. 1962).

140. 395 F.2d 920, 927-29 (2d Cir. 1968).

141. *Id.* at 928. See also *Green Street Ass'n. v. Daley*, 373 F.2d 1, 7 (7th Cir. 1967).

missed.<sup>142</sup> Here, because plaintiffs alleged facts sufficient to show a violation of equal protection, they would have standing.<sup>143</sup> Although both courts say that displacees have standing to seek court review of urban renewal projects upon the constitutional claims, in practice they seem widely divergent. The displacees in both *Green Street* and *Norwalk* allege a substantial constitutional claim; yet, in the former, standing is denied,<sup>144</sup> while in the latter, it is permitted.<sup>145</sup> Though the *Norwalk* court speaks of the similarity of the holdings, one should doubt any *real* similarity in the opinions.

The *Norwalk* court recognized the necessity for discretionary decisions in the urban renewal program, but declared that not all cases are beyond judicial cognizance; it is necessary to review each factual situation on a case-by-case basis.<sup>146</sup> The court stated that it is not its function to inquire into the legislative intention or the discretionary actions of the executive department; but, when standards are set, it is the function of the judiciary to see that the same standards are applied to all.<sup>147</sup> This was the essence of the plaintiffs' constitutional claim and, at least in the Second Circuit, standing to sue will now be granted in such cases. And the fact that discrimination is not inherent in the administration of the program but is rather a fact of urban life, something "accidental to the plan," does not excuse the planners from making certain that relocation housing is available for all displacees.<sup>148</sup> "Equal protection of the laws means more than merely the absence of governmental action to discriminate. . . . [T]he arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and public interest as the perversity of a willful scheme."<sup>149</sup> Furthermore:

Where the relocation standard set by Congress is met for those who have access to any housing in the community which they can afford, but not for those who, by reason of their race, are denied free access to housing they can afford and must pay more for what they get, the state action affirms the discrimination in the housing market. This is not "equal protection of the laws."<sup>150</sup>

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142. 373 F.2d at 6.

143. 395 F.2d 920, 932 (2d Cir. 1968).

144. 373 F.2d 1 (7th Cir. 1967).

145. 395 F.2d 920 (2d Cir. 1968).

146. *Id.* at 929.

147. *Id.* at 931.

148. *Id.*

149. *Id.*, citing Judge Wright in *Hobson v. Hanson*, 269 F. Supp. 401, 497 (D.D.C. 1967).

150. 395 F.2d 920, 931 (2d Cir. 1968).

The second basis for allowing the plaintiffs' standing to sue is found in section 105(c) of the Housing Act of 1949.<sup>151</sup> The court determined that the displacees had the requisite personal stake in the agency's action and that there was no persuasive reason to believe that Congress intended to eliminate judicial review.<sup>152</sup> Although finding no language by which Congress expressly gave aggrieved parties a cause of action, the court determined from the legislative history that it was Congress' intent to eradicate slums, not merely to relocate them elsewhere.<sup>153</sup> Since the provisions of section 105(c) were centered upon adequate rehousing after slum removal, the logical inference is that Congress intended that displacees should have the right of judicial review to not only protect their own rights, but also to safeguard the public interest.<sup>154</sup>

It might be suggested that although the Second Circuit did grant standing under the constitutional claim, its ruling regarding section 105(c) standing was dictum, for the court did not need to decide the issue.<sup>155</sup> However, section II of the court's opinion seems to indicate that the statutory ruling is of equal weight: "We have found no reason to believe that Congress intended to cut off judicial review under this Act."<sup>156</sup> Later in the opinion this statement was strengthened: "Since Congress specifically intended to protect the displacees' interest in adequate relocation, the displacees have standing."<sup>157</sup> Near the end of the opinion the court openly stated, "We hold, then, that judicial review of agency action under Section 105(c) of the Act is available to displacees."<sup>158</sup> It appears that standing was allowed on both theories.<sup>159</sup>

151. Housing Act of 1949 § 105(c), 42 U.S.C. § 1455(c) (1964), *as amended*, 42 U.S.C. § 1455(c) (1968).

152. 395 F.2d at 934. Such reasoning could also allow judicial review of relocation procedures under the Administrative Procedure Act § 10, 5 U.S.C. §§ 701-06 (Supp. II 1965-66). *See also* Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966, 970, 973-76 (1968).

153. 395 F.2d 920, 933 (2d Cir. 1968). *See* note 6 *supra*.

154. 395 F.2d at 934.

155. This contention may be supported by a literal interpretation of Judge Smith's opening comment:

This appeal raises timely and fundamental questions regarding the availability of the federal courts to persons who, displaced by urban renewal programs, claim that they have been deprived of the equal protection of the laws in connection with government efforts to assure their relocation, and that such relocation efforts have not been adequate under the mandate of a federal statute.

395 F.2d 920, 922 (2d Cir. 1968).

156. *Id.* at 934.

157. *Id.* at 936.

158. *Id.*

159. It is submitted that standing should be allowed under both theories. To allow standing under only the constitutional claim could cause hardships in many cases. First, the real problem in most suits involving relocation is that the director has abused his

To reach the decision that those displaced by urban renewal projects did have standing to allege section 105(c) violations, the *Norwalk* court was in the tenuous position of distinguishing or refusing to follow substantial precedent which disallowed standing in section 105(c) cases. However, the only precedent from the Second Circuit bearing directly upon the question was *Gart v. Cole*<sup>161</sup> in which the court impliedly affirmed the lower court's ruling that displacees "seemed" to lack standing to challenge section 105(c) provisions. By passively affirming the lower court's dictum, the Second Circuit in *Gart* took no real position on the matter. Thus, the *Norwalk* decision did not directly refute the earlier Second Circuit decision and it might even be argued that the *Norwalk* treatment of section 105(c) determinations is an extension of *Gart*.

The *Gart* court also refused to grant plaintiff's standing to contest the LPA's open bidding procedure because the sections of the Act involved were not intended to protect the interests of individual persons in the redevelopment area, but rather the interests of the public at large.<sup>161</sup> In *Norwalk* the court ruled that "[j]udicial review obtains not only to advance what have traditionally been viewed as 'legal rights,' but also to vindicate the public interests, and Congress has made clear its view that adequate relocation is in the public interest."<sup>162</sup>

The court attempted to distinguish the *Harrison-Halsted* case on statutory as well as constitutional grounds.<sup>163</sup> Again, the point of departure was that plaintiffs sought standing to challenge decisions which would result in economic injury to them and thus lacked standing under section 105(c). The validity of this economic theory is doubtful, but raises an interesting question. The court in *Norwalk* openly declined to follow the *Green Street* and *Johnson* cases regarding the statutory decision;<sup>164</sup> why, then, did the court seek merely to *distinguish* the *Harrison-Halsted* case rather than decline to follow its ruling? At least two possibilities present themselves: 1) the court may have wished to

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discretion or has been negligent by allowing the renewal project to continue in violation of section 105(c). It would seem more reasonable to allow suits directly on this point, rather than to require circuitous arguments of equal protection. Second, if white and non-white persons were being relocated, to allow only the constitutional claim could preclude whites from having their claims heard in court. The white displacee would have difficulty proving racial discrimination. Third, if only minority groups were being relocated they would have an impossible task to prove unequal protection, for their relocation situation could in no meaningful manner be compared to whites.

160. 263 F.2d 244 (2d Cir.), cert. denied, 359 U.S. 978 (1959).

161. 263 F.2d at 250. The *Gart* court relied upon *Frothingham v. Mellon*, 262 U.S. 447 (1923), which has since been modified by *Flast v. Cohen*, 392 U.S. 83, 88 S. Ct. 1942 (1968).

162. 395 F.2d 920, 934 (2d Cir. 1968). See notes 170-79 *infra* and accompanying text.

163. *Id.* at 935-36.

164. *Id.* at 935.

preserve continuity between discussions of the constitutional and statutory claims, perhaps believing it necessary to mention the economic theory in both discussions; or 2) by distinguishing the *Harrison-Halsted* case on a separate theory the court may have believed it would take weight from the *Green Street* decision, which was based heavily on the former case. To show that *Green Street* was decided upon a faulty premise would lessen the impact of directly declining to follow it as precedent.

It appears that the end result of *Norwalk* is to grant standing to displacees seeking to enjoin urban renewal projects, because the statutory relocation requirements have not been met by the LPA, on at least two different theories: 1) that the fourteenth Amendment right of equal protection has been violated; or 2) that Congress intended to give the right to judicial review to those displacees substantially alleging violations of section 105(c) provisions.<sup>165</sup>

#### POSSIBLE IMPACT OF NORWALK UPON EXISTING LAW

The ambiguity of "standing to sue" has long been a problem for the courts and the bar,<sup>166</sup> and often the decisions in "standing" cases are understandable only when analyzed along with dominant policy considerations relevant to the litigated issues.<sup>167</sup> The leading case in the area of constitutional standing is *Frothingham v. Mellon*,<sup>168</sup> in which the Supreme Court refused to allow a federal taxpayer standing to challenge the constitutionality of a Massachusetts's maternity statute.<sup>169</sup>

The repercussions of this decision have been felt in the urban renewal

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165. *Id.* at 932, 936. The plaintiffs also alleged violation of section 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1964) as a third basis for standing. The court did not think it should decide that issue because "we do not read the section to set forth requirements differing from what is required of the states by the Fourteenth Amendment. . . ." 395 F.2d at 936 n.40.

166. See note 135 *supra*.

167. The foremost policy against allowing standing to displacees is the delay in the urban renewal programs which could result from judicial supervision of administrative policies. The court in *Norwalk* warned of unnecessary delay: "This does not mean, of course, that the courts are to intervene in relocation activities at the behest of every displacee disappointed in his relocation. Familiar doctrines limit the occasions on which particular judicial remedies, if any, are appropriate." 395 F.2d at 937. See also ABRAMS 141-42 (delays in a Washington, D.C. renewal project resulting from lawsuits, submission of numerous plans and a myriad of federal approval); Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321 (1959) this last article cites five policy reasons against delay in urban renewal projects: 1) the city suffers tax losses on the renewal property in the interim; 2) the city after a delay may be unable to meet commitments with private developers and therefore lose the project; 3) yearly rises in construction rates result in higher costs to the LPA as well as HUD; 4) public support wanes with the passage of time; and 5) judicial review encourages hold-up suits. *Id.* at 327.

168. 262 U.S. 447 (1923).

169. *Id.*



field. In the *Harrison-Halsted*<sup>170</sup> and *Green Street*<sup>171</sup> cases, the plaintiff's complaints were dismissed partly because of the *Frothingham* doctrine.<sup>172</sup> However, on June 10, 1968, the Supreme Court in *Flast v. Cohen*<sup>173</sup> allowed taxpayers standing to sue to enjoin expenditures of public funds on parochial schools, as provided by federal statutes,<sup>174</sup> when such statutes allegedly violated the Establishment Clause and the Free Exercise Clause of the First Amendment. The Majority of the Court, speaking through Mr. Chief Justice Warren, expressly modified the rule in *Frothingham* and held that the *de minimus* doctrine had no application where constitutional rights are concerned.<sup>175</sup> More important than the quantity of legal protection granted by the courts was the quality of that protection. Although it might be shown that the plaintiff's real monetary interest in the case was insignificant, financial interest was not controlling: rather it was the principle involved upon which the issue of standing turned.<sup>176</sup>

In the *Flast* case, Mr. Justice Douglas concurred in result, but would apparently abolish the *Frothingham* rule outright because the doctrine would eventually be distinguished to a point of non-existence.<sup>177</sup> Justice Fortas and Justice Stewart concurred in a more conservative vein. The decision meant only that a taxpayer may now maintain a suit to challenge the validity of a federal expenditure on the ground that such expenditure violated the Establishment Clause of the First Amendment.<sup>178</sup>

The possible effect of *Flast* upon standing prohibitions under section 105(c) is at this point impossible to determine.<sup>179</sup> It may have no effect

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170. 310 F.2d 99, 103-04 (7th Cir. 1962).

171. 373 F.2d 1, 5 (7th Cir. 1967).

172. 262 U.S. 447 (1923).

173. 392 U.S. 83, 88 S. Ct. 1942 (1968).

174. Titles I and II of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 241a, 821 (Supp. 1966).

175. 392 U.S. 83, 88 S. Ct. 1942 (1968). The *de minimus* doctrine, as enunciated in *Frothingham*, is that the federal taxpayer's monetary interest is comparatively minute and indeterminable when compared to a municipal taxpayer's interest. Under this theory one lacks standing to contest tax expenditures, not because he is a taxpayer, but because his tax bill is not large enough. *Id.*

176. 88 S. Ct. at 1955-56.

177. *Id.* at 1956.

178. *Id.* at 1960.

179. In analyzing the *Flast* decision in regard to displacee standing under section 105(c), there appears to be an easing of strict standing requirements which perhaps shows a beginning of a change of attitude in the federal courts.

Before *Flast* the prevailing view of commentators was that *Frothingham* announced only a non-constitutional rule of self-restraint. Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 HARV. L. REV. 225, 302-03 (1961); see Davis, *Standing to Challenge Government Action*, 39 MINN. L. REV. 353, 386-91 (1955). If there is an attitudinal change in the federal courts regarding standing, perhaps it will be reflected in section 105(c) cases. Since there are now different rulings among the circuits regarding section 105(c) determinations, perhaps in the near future the Supreme Court will decide the issue.

at all for it may be strictly limited to standing to assert First Amendment rights, or in a broader vein, constitutional rights, which have been violated. However, it may be possible to discern a general liberalization of standing requirements. Perhaps as the Supreme Court abrogated the *de minimus* doctrine in the interest of First Amendment rights, other federal courts will abolish the questionable theories which now disallow standing to challenge section 105(c) violations.

#### CONCLUSION

It appears that judicial review of administrative findings will be necessary if urban renewal projects are to meet the relocation requirements of a workable program. As long as federal housing directors fail to require a feasible relocation plan, slum eradication as envisaged by Congress in the Housing Act of 1949 will be little more than slum displacement. It is essential for progress in the fight against urban decay that decent, safe and sanitary rehousing be available for displacees. The history of the past fifteen years seems to indicate that this goal will not be achieved as long as the director has non-reviewable discretion regarding relocation requirements.

*Norwalk* has been the first case to realistically deal with the relocation problem.<sup>180</sup> At this time, only the Second Circuit has granted standing to displacees challenging a relocation program.<sup>181</sup> Hopefully, this view will

180. Handler, *Urban Renewal and Related Projects*, in NEWSLETTER (Ill. State Bar Ass'n, May, No. 1, 1968).

181. A decision which may have great importance was recently delivered by the Federal District Court for Northern California. The district court allowed displacees standing to challenge inadequate relocation plans of the San Francisco Redevelopment Agency and granted injunctive relief pending submission of a workable relocation program by the agency. In 1964 the San Francisco Redevelopment Agency submitted plans to HUD for approval of the Western Addition II Project. The plans were approved in mid-1966, but HUD required the Agency to reappraise the relocation plans by mid-1967. A second relocation program was submitted and found inadequate. The agency's third plan was approved in July, 1968. While these plans shuttled back and forth between San Francisco and Washington, D.C., the project continued. The Western Addition Community Organization (WACO) brought suit in January, 1968, to enjoin the project until a workable relocation program was developed. In addition to allowing standing and granting injunctive relief, the court reserved the right to review future HUD policies and determinations regarding the project.

In its decision, the court referred to the *Norwalk* case, and it might appear, therefore, that *Norwalk* has started a trend in section 105(c) cases. Two aspects of the case are especially worthy of attention: 1) this is the first federal *district* court to grant standing to displacees alleging section 105(c) violations (the district court in *Norwalk*, as well as the other circuits on both the district and appellate levels, have denied standing); and 2) this decision was rendered by a Ninth Circuit district court, the same circuit that denied standing to displacees in *Johnson v. Redevelopment Agency of Oakland*, 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963) on both the district and appellate levels. At the time of publication the full text of the court's opinion was not available. There was no opportunity, therefore, to determine how the court avoided the impact of *Johnson*; however, it should be noted that the district court did render a decision

gain majority status, for only when suits are allowed under section 105(c) to contest the adequacy of relocation provisions will the workable program become truly workable.

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contrary to the existing precedent of its circuit. See *Housing Progress: Community Challenge Halts Relocation In San Francisco Project*, LAW IN ACTION, Jan., 1969, at 1.