

estimated that in its prior competitions about 18 percent of funds have been used for permanent housing. Congress has also required a new 25-percent match for supportive services applications. Both measures were designed to push HUD and its applicants toward the use of funds for permanent housing and away from other eligible uses. These measures were passed in the FY 1999 federal budget after efforts over the 1997-1998 legislative terms failed to result in comprehensive reauthorization legislation to reorganize the programs and redirect spending priorities. ■

### Summary of FY 1997-FY 2000 Funding for Major Federal Programs for Homeless People

(b = billion; m = million)

	<i>Proposed</i>			
	<i>FY 2000</i>	<i>FY 1999</i>	<i>FY 1998</i>	<i>FY 1997</i>
Homeless Assistance Programs, including Supportive Housing (24 C.F.R. Part 583), Shelter + Care (24 C.F.R. Part 582), Section 8/SRO (24 C.F.R. Part 882), and Emergency Shelter Grants	\$1.12 b	\$975 m	\$823 m	\$823 m
Emergency Food and Shelter Program	\$125 m	\$100 m	\$100 m	\$100 m
Runaway and Homeless Youth Programs	\$79 m	\$73.6 m	\$73.6 m	\$66.6 m
Health Care for the Homeless	\$81.3 m	\$79.6 m	\$71 m	\$69 m
PATH Mental Health Program	\$31 m	\$26 m	\$23 m	\$20 m
Education for Homeless Children and Youth	\$31.7 m	\$28.8 m	\$28.8 m	\$25 m

## COURT ENTERS FINAL JUDGMENT ENJOINING PHA BAN ON UNAUTHORIZED GATHERINGS

The court that last year preliminarily enjoined the Sanford, Florida, PHA from prohibiting any unauthorized gatherings on housing authority property<sup>1</sup> has now issued a final decision.<sup>2</sup>

In 1996, the housing authority had rewritten its leases to give it much more control over the lives of its tenants. In response, two tenants who had been forced to sign the new leases brought a suit in federal court challenging nine lease clauses as being unlawful.<sup>3</sup> In its final decision, the court

made permanent its injunction against enforcement of the unauthorized gatherings clause. However, it dismissed the challenges to most of the remaining clauses for lack of standing and denied relief on a challenge to a jury trial waiver provision.

*PHA is enjoined from enforcing a new lease clause prohibiting unauthorized gatherings on housing authority property.*

### Background

In October 1996, the PHA's board approved a new lease to be used by the PHA and its tenants, effective January 1, 1997. Among its various clauses were nine that the tenants who brought suit alleged to be unlawful. They were:

- A clause providing that "[t]here shall be no unauthorized gatherings or other unlawful activity on Housing Authority property," with an exception for social parties or family gatherings within the apartment or on the attached cement patio.
- A provision by which the tenant waives all rights to a jury trial in any action to enforce or terminate the lease;
- A clause obliging the tenant to pay the PHA's costs and attorneys' fees in eviction actions, unless the court determines that the tenant is the prevailing party;
- A provision by which the tenant waives all rights to a jury trial in any action to enforce or terminate the lease;
- A clause obligating the tenant to pay the PHA's costs and attorneys' fees in eviction actions, unless the court determines that the tenant is the prevailing party;
- Two provisions deeming late charges and repair charges that remain unpaid for 30 days to be additional rent;
- A clause authorizing the PHA to increase the security deposit from its normal \$250 level if the property is being abused, and to evict the tenant if the increased deposit is not paid within 14 days;
- A clause prohibiting anyone who is not a resident or a guest from being on PHA property after 11:00 p.m.
- A clause by which the tenant agrees that anyone under the age of 17 residing in the household or visiting may not be outdoors between 9:00 p.m. and 6:00 a.m. unless supervised by the tenant; and
- A clause limiting the PHA's duty to abate rent where it does not repair defects that are hazardous to life, health and safety to cases in which the PHA had the ability to correct the defect. Plaintiffs also challenged the PHA's

<sup>1</sup>*Knight v. Sanford Hous. Auth.*, No. 97-1225-CIV-ORL-19B (M.D. Fla. order entered Jan. 30, 1998). See *Court Enjoins PHA Ban on Unauthorized Gatherings*, 28 HOUS. L. BULL. 28 (Feb. 1998).

<sup>2</sup>*Id.* (judgment entered Jan. 15, 1999).

<sup>3</sup>*Id.* (complaint filed 1997).

use of a "one strike" lease violation notice that did not inform the tenants of their grievance procedure rights and other procedural protections.

### The Court's Decision

*Unauthorized gatherings.* The favorable part of the court's decision was its analysis of plaintiffs' challenge of the unauthorized gathering provision and their standing to bring that claim. The PHA contended that the tenants had no standing to challenge the unauthorized gathering clause because they had not shown or alleged that the clause would be or had been enforced against them. For the court, the issue was whether the injury alleged by the tenants was sufficiently real and immediate, not hypothetical or conjectural, under the lower, chilling effect standard used in First Amendment cases.

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*In the court's view, the PHA had curtailed tenants' activities — and First Amendment rights — in light of the threatened enforcement of the lease.*

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The court found sufficient injury in the plaintiffs' affidavits and their deposition testimony. The court was convinced that the tenants feared that they might be evicted because of their associational activities. That was the case, in the court's view, even though the tenants did continue socializing and the PHA director testified that he did not intend to penalize anyone for socializing. In the court's view, the PHA had curtailed tenants' activities in light of the threatened enforcement of the lease, and that tenants' reaction was objectively reasonable.

After the preliminary injunction had been issued, the PHA revised its lease in a way that it claimed no longer threatened the tenants' speech and associational rights. Then it claimed that plaintiffs' challenge was moot. The court rejected that argument on the ground that the PHA might revert back to the original provision if a permanent injunction were denied.

The merits of the tenants' challenge to the unauthorized gathering clause were that the lease provisions were vague, that their interpretation was subject to the unfettered discretion of the PHA director, that prior authorization of gatherings was required, and that the provision empowered the PHA to monitor their movements and activities, thus chilling their associational rights. The court concluded that plaintiffs had met their burden. The lease did not define unauthorized gatherings and that ambiguity gave the PHA unfettered discretion to enforce the provision in an arbitrary manner. The clauses violated the First Amendment, the comparable provision in the Florida Constitution and HUD's regulations requiring all PHA leases to grant tenants the right

to reasonable accommodation of their guests and visitors.

The court left in place parts of the revised lease that prohibited tenants and their guests from participating in criminal activities. In the court's view, those provisions were sufficiently clear because they applied only to activities that were already made unlawful by other statutes and ordinances.

### The Jury Trial Waiver

In the final decision, the court decided that the tenants had standing to challenge the jury trial waiver provision in the lease. It did not matter that none of the plaintiffs was then involved in an eviction action. The waiver became operative when the lease was signed. Thus there was sufficient actual injury, not merely threatened injury.

On the merits, the court concluded that the jury trial waiver provision did not conflict with HUD's regulation on jury trial waivers. The regulation provides that PHA leases may not have specified clauses, including:

(f) *Waiver of Jury Trial.* Authorization of the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.<sup>4</sup>

The lease clause provided that:

Tenant hereby waives any right to jury trial in any court action for enforcement or termination of this rental agreement. Tenant is waiving the tenant's own right to a jury trial and is not authorizing any other person to assert a jury trial waiver on the tenant's behalf.

Clearly, the PHA was trying to draft its way around the regulation. The court concluded that the PHA had succeeded, because the lease language was not literally what the regulations prohibited. It reached that conclusion despite a letter from HUD's General Counsel's Office stating that the PHA's lease conflicted with the regulation.

On the challenges to the remaining clauses, the court decided that the plaintiffs lacked standing because they have not been subjected to the clauses' enforcement.

The plaintiffs were represented by Treena Kaye, at Central Florida Legal Services in Sanford, and Robert Hornstein of Southern Legal Counsel in Gainesville. ■

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<sup>4</sup>24 C.F.R. § 966.6(f) (1998).