Docket No. 07-11368

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

TERESA BASCO and JOSEPH BASCO, her husband

Plaintiffs-Appellants,
v.
GIL MACHIN, in his official capacity as Director of Section 8 Housing of Hillsborough County, Florida Legal Services, Inc.
and
PATRICIA G. BEAN, in her official capacity as Administrator of Hillsborough County, Florida,

Defendants-Appellees.

On Appeal From The United States District Court For The
Middle District of Florida

BRIEF FOR AMICUS CURIAE HOUSING UMBRELLA GROUP OF FLORIDA LEGAL SERVICES, INC. IN SUPPORT OF PLAINTIFFS-APPELLANTS AND IN SUPPORT OF REVERSAL

Charles Shawn Boehringer
LEGAL AID SERVICE OF BROWARD COUNTY, INC.
COAST TO COAST LEGAL AID OF SOUTH FLORIDA, INC.
491 N. State Road 7
Plantation, FL 33317
(954) 765-8950

Alice M. Vickers
FLORIDA LEGAL SERVICES, INC.
(Counsel of Record)
2425 Torreya Drive
Tallahassee, FL 32303
(850) 385-7900

No. 07-11368
Basco v. Machin

CERTIFICATE OF INTERESTED PERSONS

Basco, Teresa (Plaintiff-Appellant)

Basco, Joseph (Plaintiff-Appellant)

Bay Area Legal Services, Inc. (Counsel for Plaintiffs-Appellants)

Bean, Patricia G. (Defendant-Appellee)

Boehringer, Charles Shawn (Counsel for *Amicus Curiae*)

The Honorable Susan C. Bucklew (United States District Judge for the Middle District of Florida)

Coast to Coast Legal Aid of South Florida, Inc. (Counsel for *Amicus Curiae*)

Fields, Louise B. (Counsel for Defendants-Appellees)

Florida Legal Services, Inc. (counsel for *Amicus Curiae)*

Hillsborough County, Florida (Employer of Defendants-Appellees and Counsel for Defendant-Appellees)

Housing Umbrella Group of Florida Legal Services, Inc. (*Amicus Curiae*)

Lawyer, III, C. Martin (Counsel for Plaintiffs-Appellants)

Legal Aid Service of Broward County, Inc. (Counsel for *Amicus Curiae*)

Machin, Gil (Defendant-Appellee)

No. 07-11368
Basco v. Machin

CERTIFICATE OF INTERESTED PARTIES

Mann, Linda S. (Counsel for Plaintiffs-Appellants)

Vickers, Alice M. (Counsel for *Amicus Curiae*)

No. 07-11368
Basco v. Machin

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. Rules 26.1 and 29(c), *Amicus Curiae* Housing Umbrella Group of Florida Legal Services, Inc. discloses the following:

1. The Housing Umbrella Group of Florida Legal Services, Inc. has no parent corporations and no subsidiary corporations.

2. No publicly held company owns 10% or more stock in the Housing Umbrella Group of Florida Legal Services, Inc.

Respectfully submitted:

_____

Alice M. Vickers
FLORIDA LEGAL SERVICES, INC.
2425 Torreya Drive
Tallahassee, FL 32303
(850) 385-7900

Charles Shawn Boehringer
LEGAL AID SERVICE OF
BROWARD COUNTY, INC.
COAST TO COAST LEGAL
AID OF SOUTH FLORIDA, INC.
491 N. State Road 7
Plantation, FL 33317

Attorneys for *Amicus Curiae*
Housing Umbrella Group of
Florida Legal Services, Inc.

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The Housing Umbrella Group of Florida Legal Services, Inc. respectfully submits this brief as *amicus curiae* with the consent of both parties. The brief urges this Court to reverse the decision below, and thus supports the position of the Plaintiffs-Appellants.

INTEREST OF THE *AMICUS CURIAE*

The Housing Umbrella Group of Florida Legal Services, Inc. (Housing Umbrella Group) is a statewide association of approximately 80 legal services and legal aid attorneys and law professors from 18 independent legal services and legal aid providers and two law schools in Florida. Founded in the 1980's, Housing Umbrella Group attorneys provide civil legal services to the indigent throughout the State of Florida. The Housing Umbrella Group is concerned with protecting the rights of low income tenants, particularly those living in federally subsidized housing.

In the course of a year, legal services and legal aid advocates represent nearly 18,000 clients in housing-related matters in all geographic regions of the state. *The Florida Bar Foundation Grants Recipients' Summaries*, The Florida Bar Foundation 2 (2005). A significant number of these clients are in possession of one of the over 90,000 Section 8 Housing Vouchers currently circulating in Florida and provided by an estimated 65 different housing agencies in Florida. *Winners and Losers Under Administration's 2007*

Housing Voucher Funding Plan, Florida, Center on Budget and Policy Priorities, Revised March 15, 2006, *at* http://www.cbpp.org/states/3-13-06hous-fl.pdf. Many of the advocates providing this representation are members of the Housing Umbrella Group. The combined experience of its members gives the Housing Umbrella Group a unique depth of understanding of the practical, as well as the legal, considerations relevant to the proper interpretation and application of federal housing program policies and requirements.

The Housing Umbrella Group seeks to assist this Court by highlighting the impact its decision may have beyond the immediate concerns of the parties to the case. Accordingly, this brief brings to the attention of this Court relevant matters that the parties have not raised. Because of their experience, the Housing Umbrella Group advocates are well situated to brief this Court on the significance of this case for current and future tenants with Section 8 Housing Choice Vouchers.

STATEMENT OF THE ISSUE

Did the district court correctly rule that the Appellees did not deprive Appellants of their procedural due process rights under 24 C.F.R. §982.555(e)(6) and §1983 and thereby granting Appellees summary judgment?

SUMMARY OF THE ARGUMENT

The district court below incorrectly ruled that Appellees adequately provided Appellants with procedural due process rights under 24 C.F. R. §982.555. Due process protections are required to protect the property interest of participants in the Section 8 Housing Voucher Program.

Appellants were not afforded the opportunity to cross-examine witnesses used by the Appellees in reaching their decision. This abrogation of a basic due process protection arose when Appellees chose to rely on conflicting police reports by unknown authors.

Further, Appellees, by basing their decision on patently unreliable conflicting police reports, relied solely on hearsay evidence. Appellees failed to call any witnesses with personal knowledge of the events at issue, choosing to conserve their fiscal and administrative budgets at the expense of Appellants, an extremely low-income family with a disabled head of household and minor children.

Appellees are relying on their Administrative Plan which incorrectly shifts the burden of proof to participants in the Section 8 Housing Voucher Program, such as Appellants. Participants are placed in the untenable position of having to refute hearsay evidence with no opportunity to cross-examine the authors of the hearsay documents.

The Department of Housing and Urban Development, in promulgating regulations for terminating a participant family from the Section 8 Voucher Program, directed housing authorities to allow participants to cross-examine witnesses. Had Appellees followed this clear directive, Appellants would have been protected.

ARGUMENT

I. SECTION 8 RECIPIENTS HAVE A PROTECTED PROPERTY INTEREST IN THEIR HOUSING SUBSIDIES AND PROCEDURAL DUE PROCESS IS REQUIRED WHEN A STATE AGENCY SEEKS TO TERMINATE THOSE BENEFITS

Chief Justice Warren in *Greene v. McElroy*, 360 U.S. 474 (1959) expressed the paramount importance of the requirements of confrontation and cross-examination when government administrative action profoundly impacts and potentially injures individuals:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of testimony of individuals [. . .]. **We have formalized these protections in the requirements of confrontation and cross-examination**. They have ancient roots. They find expression in the Sixth Amendment [. . .]. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, [. . .] but also in all types of cases where administrative and regulatory actions were under scrutiny.

Id. at 496 (Emphasis added; internal citations omitted.)

The Supreme Court in *Goldberg v. Kelly,* 397 U.S. 254, 269-270 (1970) cited Chief Justice Warren's words in holding that welfare beneficiaries have a property interest in continued receipt of benefits and that procedural due process requirements must be applied before a state agency can terminate those benefits. Courts have similarly held that continued participation in the Section 8 program is an essential, protected property interest which triggers due process protections similar to those set forth in *Goldberg*. *Clark v. Alexander,* 85 F.3d 146 (4th Cir. 1996)*; Ressler v. Pierce*, 692 F.2d 1212 (9th Cir. 1982); *Ferguson v. Metropolitan Development and Housing Agency*, 485 F. Supp. 517 (M.D.Tenn.1980); *See also* 55 Fed. Reg. 28,541 (July 11, 1990).[1]

The due process and hearing rights required under *Goldberg v. Kelly* involve an analysis of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation through

[1]The Department of Housing and Urban Development in promulgating Section 8 housing voucher program regulations for termination of assistance to participants if family members engage in drug-related criminal or violent criminal activities stated that "PHA's must adopt written informal pretermination hearing procedures for participants, which fully meet the requirements of *Goldberg v. Kelly*." 55 Fed. Reg. 28,541 (July 11, 1990) (Emphasis added). One of those requirements is the right to cross-examine adverse witnesses. *Goldberg* at 259-260 (text and n.4), 268, 269, 270.

the procedures utilized and the probable value of additional safeguards; and (3) the governmental interest, including fiscal and administrative burdens. *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

II. THE CONTROLLING REGULATION AND *MATHEWS V. ELDRIDGE* SHOULD BE APPLIED TO REQUIRE SIGNIFICANT DUE PROCESS PROTECTIONS FOR A SECTION 8 PARTICIPANT FACING TERMINATION

This Court's decision in this case will have significant nationwide impact for Section 8 participants and Public Housing Authorities (PHA) administrators, who regularly make similar termination decisions. The Section 8 housing voucher program has grown into the dominant form of federal housing assistance for low-income families with children and for the elderly and disabled. The voucher program is designed to assist low-income families by providing rent subsidies that enable them to rent units existing in the private housing market. The number of households served by the Section 8 program nationwide is 2.09 million. *Rental Housing Assistance: Policy Decisions and Market Factors Explain Changes in the Costs of Section 8 Programs*, United States Government Accountability Office Report 4(April, 2006). (Hereinafter cited as "GAO Report.") Over 90,000 Section 8 housing vouchers are currently in circulation in Florida. *Winners and Losers Under Administration's 2007 Housing Voucher Funding Plan*, Florida, Center on

Budget and Policy Priorities, Revised March 15, 2006, *at* http://www.cbpp.org/states/3-13-06hous-fl.pdf. These vouchers are administered by an estimated 65 independent public housing agencies throughout the State. *Id*.

The Section 8 program serves households whose incomes are less than or equal to 50 percent of area median income ("AMI"). Under the provisions of the Quality Housing and Work Responsibility Act of 1998, at least 75 percent of new participants in the voucher program must be households with extremely low-incomes - at or below 30 percent of AMI. GAO Report at 7. In Tampa, Florida, 30 percent of AMI for an extremely low-income family of four is $16,300 per year or less, *at* http://www.huduser.org/datasets/il/il2007/select_Geography.odb. Rental housing for which a Section 8 voucher may be used must comply with HUD housing quality standards. 24 C.F.R. 982.404(a)(4).

According to HUD data for calendar year 2003, HUD estimated that over 9 million very low income households did not receive assistance and had housing needs. Of these 9 million households with housing needs, over 5 million had what HUD terms "worst case" needs - that is, they paid over half of their income in rent, lived in severely substandard housing, or both. GAO Report at 9.

The National Low Income Housing Coalition ("NLIHC") annually compiles figures on the affordability of housing nationwide. Its description of the need in Florida in 2007 clearly describes the dilemma that families like the Bascos face if it loses its housing subsidy.

In Florida, the Fair Market Rent ("FMR") for a two-bedroom apartment is $850. In order to afford this level of rent and utilities without paying more than 30% of income on housing, a household must earn $2,834 monthly or $34,007 annually. Assuming a 40-hour work week for 52 weeks per year, this level of income translates into a Housing Wage of $16.35 per hour. In Florida, a minimum wage worker earns an hourly wage of $6.40. In order to afford the FMR for a two-bedroom apartment, a minimum wage earner must work 102 hours per week, 52 weeks per year or alternatively, a household must include 2.6 minimum wage earner(s) working 40 hours per week year-round in order to make the two bedroom FMR affordable. Danilo Pelletiere, Keith Wardrip and Sheila Crowley, *Out of Reach 2006*, National Low Income Housing Coalition (2006), *at* http://www.nlihc.org/oor/oor2006/area.cfm?state=FL.

According to the NLIHC, almost 70% of extremely low income tenants in Florida (those making less than 30% of area median income) were paying over 50% of their income in rent. Danilo Pelletiere, Mark Treskon and Sheila

Crowley, *Who's Bearing the Burden?*, National Low Income Housing Coalition (August 2005), Appendix 1, *at* http://www.nlihc.org/doc/bearingburden.pdf. Nationwide, the shortage of affordable housing units is greatest for extremely low income ("ELI") renters. Danilo Pelletiere, *American Community Survey Estimate Shows Larger National, State Affordable Rental Housing Shortages,* National Low Income Housing Coalition 2 (February, 2007). "Extremely low income" is defined as 0-30% of state median family income and thus is defined consistently with the cited GAO report. If ELI renters occupied every unit of housing affordable to them, there would still be a deficit of housing units exceeding 2.8 million nationwide. *Id*. at 3. In Florida, there are only 27 units of affordable and available housing for every 100 ELI renter households. *Id*. at 8.

The Bascos and other Section 8 participants terminated from the Section 8 program face the very real possibility of the "worst case" scenario described by the U.S. Government Accountability Office. Mr. Basco is disabled and unable to hold employment. The high cost of child care prevents Mrs. Basco from working to support her four children. The Bascos' story is typical of many Section 8 participants.

The importance of the Section 8 housing program to a low-income family cannot be understated. Research has shown that receipt of Section 8 benefits can lead to positive outcomes for children, reduced welfare receipt, and success for low-income adults in the workplace. *Introduction to the Housing Voucher Program*, Center on Budget and Policy Priorities (May 15, 2003).

The plight of the Bascos compels this Court to weigh heavily the first two prongs enunciated in *Mathews v. Eldridge*. First, the Court must consider the private interest that will be affected by the PHA action in terminating Section 8 benefits. Second, the Court must weigh the risk of an erroneous deprivation through procedures utilized which currently deprive a participant of a right of cross-examination, and the probable value of additional safeguards. The third prong enunciated in *Mathews* speaks to the interest of a local housing authority, and in this case is one of preventing fraud in the program in a way that is not unduly fiscally or administratively burdensome to the PHA. The PHA's concerns may easily be achieved by granting Section 8 participants the right to cross-examine witnesses and requiring the PHA to not base its termination decision solely on hearsay evidence.

The Bascos face potential homelessness or at the very least, tremendous financial hardship if the PHA's decision is upheld. A much larger percentage

of the Bascos' modest income will need to be devoted to shelter costs due to the loss of their housing subsidy. They will have difficulty finding affordable housing or will be forced into substandard housing which does not meet basic HUD standards for quality. They will be deprived of a crucially needed property interest without basic, minimal due process protections including the right to cross-examine individuals who have made reports against them and the right to have a decision based on some type of reliable, competent non-hearsay evidence.

The burden on the PHA to provide this basic due process protection is minimal. Requiring the production of witnesses at a hearing who have personal knowledge of relevant facts and provide non-hearsay evidence is not unduly onerous when compared with the potential harm of losing one's home and facing homelessness. Supporting a public policy of insuring family stability and providing adequate care and safety for children clearly outweighs the relatively minor inconvenience of producing witnesses to corroborate conflicting documents.

III. PROCEDURAL DUE PROCESS MANDATES THAT SECTION 8 PARTICIPANTS BE AFFORDED THE RIGHT TO CROSS-EXAMINE WITNESSES AT A TERMINATION HEARING AND HAVE A DECISION WHICH IS NOT BASED SOLELY ON HEARSAY EVIDENCE

The Court in *Davis v. Mansfield Metropolitan Housing Authority*, 751 F.2d 180 (6th Cir. 1984), applied the factors set forth in *Mathews v. Eldridge* and held that tenants who are terminated from a Section 8 program suffered a great loss by being deprived of their present shelter; the risk of erroneous deprivation was great; and the interest of the housing authority was to insure payment of meritorious damage and rent claims, while being free from unduly burdensome and expensive administrative claims in carrying out its duties. Upon considering these factors, the *Davis* court held that Section 8 termination hearings should include the right of a participant to cross-examine witnesses. *Davis* at 185.

Other courts have ruled consistently with *Davis*. A Section 8 participant facing termination has a right to cross-examine any witness on whose testimony a PHA relies as a basis for the termination. *Edgecomb v. Housing Authority of Vernon,* 824 F. Supp. 312 (D. Conn 1993); *Driver v. Housing Authority of Racine County,* 713 N.W. 2d 670 (Wisc.App. Ct. 2006). *See also*, 55 Fed. Reg. 28,541 and 28,546 (July 11, 1990). *Edgecomb* is similar to this case in that neither the police officers nor the confidential

informants who provided the source of information used by the public housing authority to terminate benefits were present at the termination hearing.[2]

The due process requirement of allowing participants to cross-examine witnesses and the rule excluding hearsay evidence are inextricably intertwined, and their relationship is well-established in American jurisprudence. Hearsay is inadmissible because it carries no inherent likelihood of truthfulness and denies to a damaged party the right of cross-examination. *U.S. v. Brown*, 411 F.2d 1134 (10th Cir. 1969). The hearsay rule is concerned only with reliability of evidence offered to prove a fact, whatever that fact might be, and operates to render inadmissible extrajudicial writings or declarations introduced to prove the truth of what was said or written, on theory that such evidence not being subject to test of cross examination, is not reliable. *Papadakis v. U.S.* 208 F.2d 945 (9th Cir. 1953).

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[2] Public housing authority Section 8 termination decisions have also been reversed when factual determinations are based on hearsay and unsupported by other competent evidence. *Kurdi v. DuPage County Housing Authority, et al.*, 514 N.E. 2d 802 (Ill.App.Ct., 2nd Dist. 1987) *cited in* 36 A.L.R. 3d 12, supp. sec. 36. The *Kurdi* decision is consistent with due process requirements for the termination of other public benefits. See *e.g.* Fla.Stat. 120.57(1)(c) (governing Food Stamp and welfare terminations in Florida and requiring that [h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions).

Wigmore's classic treatise on evidence further illustrates the close link between hearsay and cross-examination: "The hearsay rule, as accepted in our law, signifies a rule rejecting assertions, offered testimonially, which have not been in some way subject to the test of cross-examination.", 5 Wigmore, Evidence, § 1362; see also *Id.*, § 1363 ("Cross-examination is the essential and real test required by the [hearsay] rule.") While it is conceded that 24 C.F.R §982.555(e)(5) permits evidence at a termination hearing to be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings, due process and the participant's right to cross-examine witnesses necessitates a corollary rule that a PHA decision to terminate a Section 8 benefit cannot be sustained solely on the basis of hearsay.

The Appellees' administrative decision clearly violates this principle. Teresa and Joseph Basco face the loss of their Section 8 rent subsidy based entirely on hearsay evidence presented in two *conflicting* police reports by unknown authors, which was contradicted by live testimony presented at the hearing. At the Bascos' hearing, the Hillsborough County Section 8 program called no witnesses with personal knowledge of the events contained in the police reports, and the Bascos had no opportunity whatsoever to cross-

examine those who contributed to the report or made the statements contained in the report.

Accordingly, the Hillsborough County Housing Authority should have provided that (1) participants have the right to cross-examine all witnesses relied upon by a PHA in making its determination; and (2) that a PHA determination cannot be founded solely on hearsay evidence.

IV. APPELLEES' ADMINISTRATIVE PLAN IMPROPERLY SHIFTS THE BURDEN OF PROOF TO THE SECTION 8 PARTICIPANT DURING A TERMINATION HEARING FOR ALLEGED UNAUTHORIZED BOARDERS

The Appellee Housing Authority's Section 8 Administrative Plan states that if the Housing Authority is terminating a participant for having an unauthorized boarder, "the burden of proof that the individual is a visitor rests on the family." RE-6. The term "burden of proof" has two meanings: the burden of persuasion (which party loses if the evidence is equally weighted) and the burden of production (which party has the obligation to produce evidence). *See Schaffer v. Weast*, 546 U.S. 49, 56 (2005); *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 272 (1994). When the Housing Authority's Plan refers to the burden of proof, it places both the burden of persuasion and the burden of production on the participant.

The U. S. Housing Act, 42 U.S.C. §1437f makes no mention of the procedures for Section 8 termination hearings. PHAs are guided by the regulations promulgated by the Department of Housing and Urban Development and which are located at 24 C.F.R. §982.555. The regulation requires an informal hearing decision to be based on the preponderance of the evidence presented at the hearing. *See* 24 C.F.R. §982.555(e)(6). The U.S. Supreme Court recently reiterated the general default rule regarding the burden of persuasion at an administrative hearing when a statute is silent: the party seeking relief bears the burden of proof. *See Schaffer* at 56.

In addition to the federal statutes and other regulations, 24 C.F.R. §982.54 requires each PHA to "adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements." 24 C.R.R. §982.54(a). The administrative plan must cover informal hearing procedures for participants. 24 C.F.R. 982.54(d)(13). Appellees' Administrative Plan is in direct contradiction with the general rule on the burden of proof. The Housing Authority is the party seeking relief at the hearing because it seeks to terminate the rental assistance. The participant opposing the termination desires to maintain the status quo. Under the Housing Authority's Administrative Plan, when a participant is being terminated for an unauthorized boarder, the Housing Authority's allegation

and any evidence is presumed correct. For example, even if a non-household member uses the participant's address without the participant's knowledge and consent, the Housing Authority automatically presumes the individual is an unauthorized boarder. RE-6. The participant must attend the hearing and produce evidence that the individual resides elsewhere. This presumption clearly places the burden of proof (both the burden of production and the burden of persuasion) on the participant.

Appellee Housing Authority sought to terminate Appellants' Section 8 voucher based upon two police reports. RE-4 at 4. The hearing officer, pursuant to the Administrative Plan, treated the police reports as presumptively correct. When Appellant Teresa Basco attended the informal hearing without legal representation, she offered both documentary evidence and testimony that Elonzell Jones resided elsewhere. RE-4 at 6. The hearing officer, following the requirements of the Administrative Plan, presumed that the Housing Authority's evidence was correct. Essentially, the hearing officer began the hearing presuming that the Bascos would be terminated. By shifting the burden of proof to the Bascos in violation of the general default rule, the Housing Authority made it virtually impossible for the Bascos to defend their termination.

In addition to the requirements of the general default rule, there are also public policy reasons why the burden of proof should remain with the Housing Authority. A participant does not have the power to subpoena witnesses or obtain documents from third parties. If the Section 8 tenant needs the alleged unauthorized boarder to testify at the hearing, she has no way to ensure that the witness will be there or provide necessary documentation. Participants in the Section 8 voucher program have limited means -- most of the families live at or below 30% of AMI, and they do not have the financial resources to track down evidence contradicting the Housing Authority's allegations. On the other hand, the Housing Authority has the resources to develop and prove their case. For example, Housing Authorities have access to databases containing personal information and some Housing Authorities have full-time fraud investigators. Additionally, most Section 8 termination hearings involve unrepresented participants. Some Section 8 participants do not understand how to present or obtain information to support their case. The burden of proof should be placed on the Housing Authority to prove that the termination is justified. The Housing Umbrella Group is concerned that if the lower court's decision is affirmed, it will make it difficult for unrepresented Section 8 tenants to defeat unjustified terminations.

Frequently, termination notices do not provide enough information for a participant to prepare a defense. For example, the termination notice does not list the name of the alleged unauthorized boarder, but merely describes the individual (i.e. a white male in his late 20's). While a participant with legal counsel can challenge the deficiencies in the termination notice, the unrepresented participant will not be able to come to the hearing with evidence about an unidentified individual.

Currently, the Housing Authority's Plan shifts the burden of proof only in terminations for unauthorized boarders. The Administrative Plan adopted by the Hillsborough County Housing Authority was based on a template purchased from a vendor that offers consulting services and products to the subsidized housing industry. Several other Housing Authorities use the same template and the language shifting the burden of proof is included in those plans as well.[3] If the lower court's decision is affirmed, the Housing Umbrella Group fears other Housing Authorities will begin shifting the burden of proof in their Administrative Plans. Further, if the Court condones shifting the burden of proof to the participant, PHAs will begin shifting the burden of proof for all types of Section 8 terminations.

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[3] These Housing Authorities include: Hialeah Housing Authority, Broward County Housing Authority, Dania Beach Housing Authority, Deerfield Beach Housing Authority, and the Housing Authority of the City of Fort Lauderdale.

Shifting the burden of proof to the participant only makes a difference when the Housing Authority's evidence is weak -- such as when it is using anonymous tips or unreliable hearsay evidence. In these cases, an individual could easily be terminated without justification if the burden of proof is shifted away from the Housing Authority. The Housing Umbrella Group believes a participant should only lose their housing assistance when the government can prove by a preponderance of the evidence that the participant had an unauthorized boarder.

The lower court's decision must be overturned. This Court must follow the general default rule and prohibit the Appellee Housing Authority from shifting the burden of proof to the Section 8 participant.

CONCLUSION

For the foregoing reasons, the *amicus curiae* Housing Umbrella Group of Florida Legal Services, Inc. respectfully submits that the opinion of the district court should be reversed.

Respectfully submitted:

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Alice M. Vickers
FLORIDA LEGAL SERVICES, INC.
2425 Torreya Drive
Tallahassee, FL 32303
(850) 385-7900

Charles Shawn Boehringer
LEGAL AID SERVICE OF
BROWARD COUNTY, INC.
COAST TO COAST LEGAL
AID OF SOUTH FLORIDA, INC.
491 N. State Road 7
Plantation, FL 33317

May 11, 2007

CERTIFICATE OF COMPLIANCE

I, Alice M. Vickers, hereby certify that the Brief Amicus Curiae of the Housing Umbrella Group of Florida Legal Services, Inc. in Support of Plaintiffs-Appellants and in Support of Reversal complies with the type-volume limitations set forth in Federal Rules of Appellate Procedure 32(a)(7)(B)(i) and 20(d). The brief contains 3990 words in Times New Roman 14 point typeface.

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Alice M. Vickers
FLORIDA LEGAL SERVICES, INC.
2425 Torreya Drive
Tallahassee, FL 32303
(850) 385-7900

Charles Shawn Boehringer
LEGAL AID SERVICE OF
BROWARD COUNTY, INC.
COAST TO COAST LEGAL
AID OF SOUTH FLORIDA, INC.
491 N. State Road 7
Plantation, FL 33317

Attorneys for Amicus Curiae
Housing Umbrella Group of Florida
Legal Services, Inc.

May 11, 2007

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2007 true and correct copies of the foregoing Brief *Amicus Curiae* of the Housing Umbrella Group of Florida Legal Services, Inc. in Support of Plaintiffs-Appellants and in Support of Reversal were served via first class U.S. Mail, postage prepaid, on each of the following:

C. Martin Lawyer, III
Linda S. Mann
BAY AREA LEGAL SERVICES, INC.
829 West M.L. King Blvd., Suite 200
Tampa, FL 33603-3336

Louise B. Fields
Senior Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601-1110

I further certify that an original and 6 copies of the foregoing brief were filed by Federal Express, postage prepaid, addressed to Thomas K. Kahn, Clerk of the Court, United States Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, N.W., Atlanta, GA 30303.

_____
Alice M. Vickers
Counsel of Record for Amicus
Housing Umbrella Group of
Florida Legal Services, Inc.