

the mistake and has stated that it will modify the date in a revised notice.²⁴ Fortunately, this mistake should not affect the operation of the voucher program, since RD decides whether it can issue a voucher and the date in the notice should not affect its decision.

Conclusion

The last time RHS made information available on the operation of the voucher program, only 50% of eligible households were actually assigned vouchers. There is no logical reason why close to 100% of eligible residents should not receive voucher assistance when a development is prepaid or foreclosed upon. Accordingly, advocates who serve an area where an RD development has been prepaid or foreclosed should affirmatively monitor²⁵ whether residents in the development are receiving voucher assistance and if RD is operating the program in accordance with its authorities. If not, legal challenges are available to provide relief to affected tenants. ■

Domestic Violence Survivor Challenges Nuisance Ordinances

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Many municipalities throughout the country have enacted nuisance ordinances, including 20 of the most populous cities.¹ Nuisance ordinances impose sanctions on landlords based on the number of times police are called to respond to certain disturbances that occur on the landlords' properties.² These ordinances often aim to recover the costs associated with excessive police service and to motivate landlords to prevent criminal activity on their premises.³ Some of these ordinances explicitly exempt incidents of domestic violence.⁴ However, a significant proportion of the ordinances specifically list domestic violence and sexual assault as a nuisance activity.⁵

These laws are problematic for survivors of domestic violence seeking protection from the police for abuse being committed against them. In many situations, the ordinances force survivors to choose between protecting themselves and maintaining their housing. Few cases have addressed the legality of these laws. This article summarizes a recent lawsuit filed by a survivor challenging a municipality's nuisance ordinances as applied to survivors of domestic violence.

On April 24, 2013, the American Civil Liberties Foundation of Pennsylvania, American Civil Liberties Union of New York and Pepper Hamilton LLP filed a lawsuit in the Eastern District Court of Pennsylvania on behalf of Laki-sha Briggs, a domestic violence survivor and single mother of two children, against the Borough of Norristown, the Borough's former and interim Municipal Administrators, the former and interim Chief of Police, and the Municipal Code Manager (collectively "Norristown").⁶ In *Briggs v. Borough of Norristown*, Ms. Briggs challenged Norristown's former and current nuisance ordinances, claiming that Norristown's enforcement of these ordinances against survivors violated a number of federal and state laws.⁷ Specifically, Ms. Briggs, who is a participant in the Section 8 Housing Choice Voucher program, argued that the ordinances violated the First, Fourth and Fourteenth Amend-

¹Matthew Desmond & Nichol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117 (2013).

²*Id.*

³*Id.*

⁴*Id.*

⁵*Id.*

⁶See Complaint, *Briggs v. Borough of Norristown*, No. 13-CV-2191 (E.D. Pa. Apr. 24, 2013).

⁷*Id.*

²⁴See note 10, *supra*.

²⁵Advocates can sign up with RD to regularly receive notices of developments in their states that have applied to prepay their loans. <https://pix.sc.egov.usda.gov>. Unfortunately, foreclosures, which are relatively rare, can only be detected by following local newspapers that publish foreclosure notices.

ments of the United States Constitution, the federal Fair Housing Act, and the Violence Against Woman Act of 2005, as well as constitutional and statutory equivalents under Pennsylvania law.⁸ Ms. Briggs also filed for a preliminary injunction seeking to cease enforcement of Norristown's current nuisance ordinance.⁹ The defendants have filed a response to the motion¹⁰ and a motion to dismiss¹¹ based on lack of subject matter jurisdiction and failure to state a claim. The court has not yet ruled on either motion.

Factual Allegations

In 2009, Norristown enacted an ordinance requiring that landlords' rental licenses be revoked if the police reported three instances of "disorderly behavior" at a residence within a four-month span.¹² The law further permitted the forcible removal of a tenant from any property under a three-strike condition.¹³ The ordinance not only granted the Chief of Police sole discretion in determining whether "disorderly behavior" existed, but also explicitly stated that "domestic disturbances" would be considered such behavior.¹⁴ Norristown eventually repealed the law and enacted a subsequent ordinance that replaced license revocations with large fines, but retained similar provisions to the original ordinance.¹⁵ For example, the new law calls for a series of daily and escalating criminal fines against landlords of any property where the police have responded to three instances of "disorderly behavior" within a two-month period.¹⁶ Additionally, the current ordinance strongly encourages all landlords to include lease language indicating that convictions of "disorderly behavior" constitute a breach of the lease.¹⁷

According to the complaint, after responding to a number of domestic disturbances at Ms. Briggs's residence, the police began assessing "strikes" to Ms. Briggs's property, and warning her that three such "strikes" would lead to her eviction.¹⁸ Ms. Briggs alleged that after her ex-boyfriend assaulted her and her older daughter's boyfriend on separate occasions, she believed that she could not contact the police without fearing eviction.¹⁹ This fear, according to Ms. Briggs, forced her to avoid police assistance when further violent incidents occurred and left her essentially

defenseless when she was once again targeted by her ex-boyfriend.²⁰ In one incident, Ms. Briggs's ex-boyfriend attacked her with a brick;²¹ in another, he smashed a glass ashtray against her head and stabbed her in the neck.²² Ms. Briggs had to be taken to an area hospital for emergency medical care and almost died.²³ Ms. Briggs contended that despite these incidents, Norristown's officials quickly revoked Ms. Briggs's landlord's rental license and actively attempted to evict Ms. Briggs.²⁴ She also alleged that it was only after her attorneys had confronted Norristown's officials that such enforcement attempts ceased.²⁵

Federal Claims

Ms. Briggs alleged that the ordinances violated the First, Fourth and Fourteenth Amendments of the United States Constitution, as well as the Violence Against Women Act of 2005 (VAWA 2005) and the Fair Housing Act (FHA).²⁶ Ms. Briggs argued that the local laws "chilled" her First Amendment right to petition the government for a redress of grievances, which included reporting physical assault and criminal activity, as well as filing a complaint with law enforcement.²⁷ She further argued that Norristown's enforcement actions violated the Fourth Amendment and Fourteenth Amendments. Ms. Briggs contended that Norristown committed an "unreasonable search and seizure" when the ordinances deprived her of the ability to contact the police²⁸ and denied her due process of the law since she did not receive adequate notice of the ordinance violations or an opportunity to contest the decision to evict her.²⁹ Ms. Briggs further asserted that the ordinances violated her substantive due process rights through a state-created danger theory.³⁰ According to the complaint, Norristown's enforcement actions were not only indifferent, but also placed Ms. Briggs at a foreseeable and increased risk of physical danger, which the police had an affirmative duty to remedy.³¹ In addition, Ms. Briggs asserted that the ordinances violated the Equal Protection Clause by intentionally discriminating against female tenants when the ordinances included domestic violence as an activity that constituted "disorderly behavior."³²

In response, Norristown contended that Ms. Briggs did not have a constitutional right to utilize emergency

⁸*Id.*

⁹See Plaintiff's Motion for Preliminary Injunction, Briggs v. Borough of Norristown, No. 13-CV-2191 (E.D. Pa. Apr. 25, 2013).

¹⁰See Defendants' Response to Plaintiff's Motion for Preliminary Injunction, Briggs v. Borough of Norristown, No. 13-CV-2191 (E.D. Pa. May 13, 2013).

¹¹See Defendants' Motion to Dismiss, Briggs v. Borough of Norristown, No. 13-CV-2191 (E.D. Pa. May 17, 2013).

¹²Complaint at 7, Briggs v. Borough of Norristown, No. 13-CV-2191 (E.D. Pa. Apr. 24, 2013).

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at 19-20.

¹⁶*Id.* at 20.

¹⁷*Id.* at 21.

¹⁸*Id.* at 10.

¹⁹*Id.* at 13-14.

²⁰*Id.* at 14.

²¹*Id.* at 11-12.

²²*Id.* at 14-15.

²³*Id.*

²⁴*Id.* at 15.

²⁵*Id.* at 18.

²⁶*Id.* at 25-36.

²⁷*Id.* at 25.

²⁸Complaint at 26-27, Briggs v. Borough of Norristown, No. 13-CV-2191 (E.D. Pa. Apr. 24, 2013).

²⁹*Id.* at 27-28.

³⁰*Id.* at 28-30.

³¹*Id.* at 29.

³²*Id.* at 30-32.

police services.³³ The defendants also asserted that Fourth Amendment protection was not warranted because Ms. Briggs was not actually evicted from her home, and, therefore, her residence was not taken or searched.³⁴ According to Norristown, procedural due process rights also did not apply because no property interest had been deprived.³⁵ The defendants further attacked Ms. Briggs's allegations of foreseeability and affirmative creation of physical dangers by, in part, contending that Norristown had no affirmative duty to protect Ms. Briggs from another private citizen.³⁶ In addition, Norristown countered that the listing of domestic violence as a type of "disorderly behavior" provided more protection to survivors by carving out an exception for domestic disturbances not requiring mandatory arrest and providing that "emergency assistance" would not be deemed a "strike" if it did not violate the listed offense.³⁷

Additionally, Ms. Briggs alleged that the ordinances violated VAWA 2005 and the FHA.³⁸ Specifically, according to the complaint, the ordinances, which allowed survivors to be evicted for contacting the police due to the abuse committed against them, were void under the Supremacy Clause because they directly contradicted the protections provided by VAWA 2005, which expressly prohibited housing discrimination and eviction of domestic violence victims due to the abuse.³⁹ She further alleged that Norristown violated the FHA by enforcing these ordinances against survivors and intentionally discriminated against women, who make up the majority of survivors.⁴⁰ These acts further disparately impacted women.⁴¹ In response, Norristown countered that VAWA 2005 did not create a private right of action to enforce rights provided by the statute.⁴² It further argued that Ms. Briggs' allegations did not fall within the scope of the FHA since the statute did not apply to a municipality and could only be applied to a discriminatory action taken by her landlord.⁴³ Ms. Briggs countered that the defendants' narrow interpretation of the FHA unnecessarily limited the statute's application to certain types of housing interactions, contrary to the intent of the FHA.⁴⁴

Conclusion

The outcome of *Briggs* could have a significant impact on municipalities throughout the country that enforce nuisance ordinances against survivors of domestic violence. In the meantime, advocates and survivors dealing with these laws should work with municipalities and local officials to create enforcement exceptions so that survivors seeking protection from abuse are not also at risk of losing their housing. ■

³³Defendants' Response to Plaintiff's Motion for Preliminary Injunction at 13, *Briggs v. Borough of Norristown*, No. 13-CV-2191 (E.D. Pa. May 13, 2013).

³⁴Defendants' Motion to Dismiss at 11-14, *Briggs v. Borough of Norristown*, No. 13-CV-2191 (E.D. Pa. May 17, 2013).

³⁵*Id.* at 14-16.

³⁶*Id.* at 17.

³⁷*Id.* at 22-23.

³⁸Complaint at 33-35, *Briggs v. Borough of Norristown*, No. 13-CV-2191 (E.D. Pa. Apr. 24, 2013).

³⁹*Id.* at 35-36.

⁴⁰*Id.* at 33-35.

⁴¹*Id.*

⁴²Defendants' Motion to Dismiss at 35, *Briggs v. Borough of Norristown*, No. 13-CV-2191 (E.D. Pa. May 17, 2013).

⁴³*Id.* at 28.

⁴⁴Plaintiff's Response to Motion to Dismiss at 61-62, *Briggs v. Borough of Norristown*, No. 13-CV-2191 (E.D. Pa. June 3, 2013).