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Liberties Union

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Fund of Michigan

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August 12, 2010

Rod Slaughter, Executive Director
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VIA FIRST CLASS MAIL
FACSIMILE AND EMAIL

Re: Suspicionless Drug Tests for Public Housing

Dear Mr. Slaughter:

The American Civil Liberties Union of Michigan recently learned that you were considering a plan to require that each public housing tenant in Flint over age 18 submit to humiliating drug tests as a condition of remaining a tenant. According to the *Flint Journal*, the drug tests would be mandatory regardless of whether there was reason to suspect that any individual was using drugs. (See 5/13/10 article, attached as Exhibit A). As discussed below, we strongly urge you to reconsider this idea because it is unconstitutional, it unfairly singles out poor people for privacy violations, and there are more effective means to address drug abuse.

DRUG TESTING PUBLIC HOUSING TENANTS WITHOUT SUSPICION IS UNCONSTITUTIONAL

In 2000, the ACLU successfully challenged a Michigan law that required all welfare applicants and recipients to be drug tested as a condition of receiving benefits. If a person failed the test, they were required to participate in substance abuse assessments and treatment plans. If a person failed to comply with the requirements, they faced progressive sanctions such as denial of their application, or a reduction in benefit amount.

The U.S. District Court for the Eastern District of Michigan ordered the state to stop conducting suspicionless testing of welfare applicants and recipients. Specifically, the court found:

Drug testing under these circumstances must satisfy a special need, and that need must concern public safety. In this instance, there is no indication of a concrete danger to public safety which demands departure from the Fourth Amendment's main rule and normal requirement of individualized suspicion.

Marchwinski v. Howard, 113 F.Supp.2d 1134, 1135 (E.D. Mich. 2000).

As in *Marchwinski*, the proposal under consideration is unconstitutional. The proposal singles out those who are poor and in need of housing assistance like the Michigan state law singled out those who are poor in need of welfare assistance. People do not lose their constitutional rights because they are

poor, and the State's financial assistance cannot be used to regulate those in need in a manner that erodes privacy rights. *Marchwinski v. Howard*, 113 F.Supp.2d 1134, 1142 (E.D. Mich. 2000) (“[T]he State's financial assistance to parents for the care of their minor children through the FIP cannot be used to regulate the parents in a manner that erodes their privacy rights in order to further goals that are unrelated to the FIP.”).

DRUG TESTING PUBLIC HOUSING TENANTS UNFAIRLY SINGLES OUT POOR PEOPLE FOR INTRUSIVE, HUMILIATING TESTS

The proposed policy feeds into the worst and most unfair stereotypes about poor people. The policy assumes people applying for assistance are violating the law and treats them like criminals without basis. In fact, the United States Department of Labor Occupational Safety and Health Administration reports, “[o]f the 17.2 million illicit drug users aged 18 or older in 2005, 12.9 million (74.8 percent) were employed either full or part time.”¹ Despite popular but unsupported stereotypes, poor people should not be treated as if they have already broken the law.

Flint housing tenants would be subjected to humiliating tests only because they are receiving assistance from the government. Yet, corporate executives and individuals who receive government funds are not forced to urinate in a cup as a condition to receiving funds. For example, GM executives were not required to be tested for drugs before taking advantage of a taxpayer-backed bailout. Additionally, students at the University of Michigan-Flint are not required to submit to humiliating tests in exchange for government aide.

Even in the context of housing, only the poor are forced to submit to tests. In 2009, the mortgage-interest deduction was estimated to cost the government \$100 billion.² This specific tax deduction is the largest government subsidy for housing and one of the most expensive tax deductions. However, no drug tests are required as a condition to receiving the mortgage-interest deduction. It is not a crime to be poor and the Flint Housing Commission should not be treating all tenants as if they are criminals.

THERE ARE LESS EXPENSIVE AND MORE EFFECTIVE MEANS TO ADDRESS DRUG ABUSE THAN SUSPICIONLESS DRUG TESTING.

We understand your good intentions in trying to help tenants who use drugs. However, mandatory drug testing is both an ineffective and fiscally irresponsible means to discover drug abuse. The average cost of a drug test is \$42.³ This figure does not include the many costs associated with implementation of a credible and confidential program. Especially given that poor tenants are no more likely to use drugs than others, the program would be a waste of scarce resources.⁴ In fact, the State of Michigan abandoned a plan to do drug testing only of welfare recipients for whom they had reasonable suspicion of drug abuse due to the expense of the program.

¹ Occupational Safety & Health Administration, <http://www.osha.gov/SLTC/substanceabuse/index.html> (last visited June 22, 2010).

² Wall Street Journal, <http://online.wsj.com/article/SB123569898005989291.html> (last visited June 22, 2010).

³ U.S. Dep't of Educ., Robert L. DuPont, Teresa G. Campbell and Jacqueline J. Mazza, Report of a Preliminary Study: Elements of a Successful School-Based Student Drug Testing Program 8 (2002).

⁴ National Institutes of Health Press Release, NIAAA Researchers Estimate Alcohol and Drug Use, Abuse, and Dependence Among Welfare Recipients, <http://www.nih.gov/news/pr/oct96/niaaa-23.htm> (last visited July 7, 2010).

The Center for Addiction and Mental Health (CAMH) position statement explains, "Research has shown that drug testing has limited utility in confirming substance use problems and treatment needs."⁵ Instead of mandatory drug testing, CAMH's recommendation includes allocating resources to train government employees to appropriately screen and identify those with addictions and mental health problems, as well as expanding the capacity of the current treatment system. Many states have had success with screening for drug abuse using questionnaires coupled with effective treatment plans. Rather than instituting an unconstitutional and stigmatizing policy, a cheaper and more effective assessment plan and program can be developed.

REQUEST TO RECONSIDER THE IDEA OF DRUG TESTING PUBLIC TENANTS

The *Marchwinski* case was an expensive case to litigate for the state. Similarly, a recent ACLU case against Flint involving unreasonable searches and seizures of night club patrons was extremely expensive for the city.⁶ It is our strong desire to avoid protracted expensive litigation over an unconstitutional policy to drug test all public tenants. Rather, we would like to resolve this issue amicably.

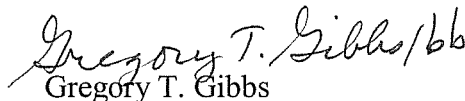
Therefore, we respectfully request that you reconsider the plan to drug test all adult public tenants in Flint. While motivated by good intentions, the proposal is unconstitutional and unfair and there are other more effective methods to address the problem you seek to fix.

Thank you for your attention to this issue and we look forward to your response.

Very truly yours,



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⁵ Mandatory Drug Testing and Treatment of Welfare Recipients Position Statement, http://www.camh.net/Public_policy/Public_policy_papers/manddrugtesting.html (last visited July 7, 2010).

⁶ American Civil Liberties Union of Michigan, <http://www.aclumich.org/issues/search-and-seizure/2006-10/1193> (last visited July 7, 2010).

Flint Housing Commission chief looks at drug tests for tenants in some public housing

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Ron Fonger | Flint Journal

FLINT, Michigan — Use illegal drugs, lose your apartment.

That could be the prospect facing some public housing tenants if Flint Housing Commission Director Rod Slaughter gets his way.

Slaughter is talking about requiring at least some tenants to be tested routinely for substance use as a part of future leases. He's interested in patterning the program after one in Indianapolis that checks some residents who receive rent assistance. Tests look for marijuana, cocaine and heroin use.

"We can do this change, (and) I would like to try," Slaughter said.

The idea still is in the early stages, so details of the proposal — including where and how it would be implemented — still are being sorted out, he said.

Slaughter, executive director of the Flint Housing Commission for more than two years, said such a zero-tolerance drug policy could coincide with making one or more public housing complexes smoke-free facilities.

A change like that sounds good to Nora Snowden, a resident of Centerview Apartments, a 90-unit complex built in 1968.

"When I moved in here, it was pretty much all elderly," Snowden said. "HUD changed that. I enjoyed it when it was just seniors."

Now, she said visitors sometimes are approached and asked if they need drugs or run into tenants who reek of marijuana.

"You could really make a person try not to do (drugs)" if they were at risk of losing their homes, she said.

When Michigan attempted to impose mandatory drug testing on welfare recipients in 1999, the American Civil Liberties Union filed a class-action lawsuit, claiming their privacy rights were being violated by the testing without reason to suspect drug use.

The lawsuit led to a settlement that allowed the state to require drug testing of welfare recipients only when there is reasonable suspicion that they are using drugs.

The U.S. Department of Housing and Urban Development could not be reached for comment.

EXHIBIT A

Edward J. Hoort, executive director of Legal Services of Eastern Michigan, said requiring all residents to take drug screens presumes they are guilty for no reason, and he called the idea a potential invasion of privacy.

"What you're saying is anybody in public housing is automatically suspect," Hoort said. "You can't do a search of someone without a reasonable cause."

Bud Myers, executive director of the Indianapolis Housing Agency, said in a message to The Flint Journal that the program requires annual testing of family members 18 years and older.

"Every year they are tested again, and if a leaseholder fails, we do move for eviction," Myers said. "We give people 30 days to get clean. If they are not clean, they are evicted."

Snowden, 53, said she's more interested in improving tenants' quality of life than in constitutional issues.

"The temptation is there, but you have a choice," she said. "If you want to use drugs, find another place to live."

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